

CHAPTER 22:23
PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT

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TO PROVIDE for the control and regulation of public procurement and the disposal of public assets so as to ensure that such procurement and disposal is effected in a manner that is transparent, fair, honest, cost-effective and competitive; to establish the Procurement Regulatory Authority of Zimbabwe and to provide for its functions; to amend the Infrastructure Development Bank of Zimbabwe Act [*Chapter 24:14*]; to repeal the Procurement Act [*Chapter 22:14*] (No. 2 of 1999); and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and President of Zimbabwe.

1. Short title and date of commencement

(1) This Act may be cited as the Public Procurement and Disposal of Public Assets Act.

(2) This Act shall come into operation on a date to be fixed by the President by notice in a statutory instrument.

2. Interpretation

(1) In this Act-

"accounting officer", in relation to-

- (a) a procuring entity that is a Ministry or other entity for which there is a separate expenditure vote in the annual estimates of expenditure, means the person who is prescribed to be its accounting officer in terms of [section 10](#) of the Public Finance Management Act [*Chapter 22:19*];
- (b) a procuring entity other than an entity referred to in [paragraph \(a\)](#), means such officer of the entity as may be prescribed;

"Authority" means the Procurement Regulatory Authority of Zimbabwe established by [section 5](#);

"bid" means an offer, solicited by a procuring entity in accordance with this Act, which if accepted would bind the bidder to provide a procurement requirement in accordance with the procurement contract;

"bid security" means a monetary assurance given by a bidder and guaranteed by a bank or other third party that-

- (a) if the bidder withdraws his or her bid before the end of the bidding period; or
- (b) refuses to sign the procurement contract if selected,

the bidder will forfeit the bid security amount to the procuring entity;

"bidder" means a potential party to a procurement contract with a procuring entity for the supply of a procurement requirement;

"bidding document" means a document provided by a procuring entity to bidders and indicating the form in which they are to submit their bids and the information they are to provide in their bids;

"bidding period" means the period described in [section 39 \(1\)](#), within which bids may be submitted;

"Board" means the Board of the Authority;

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

"challenge" means a challenge to procurement proceedings brought in terms of Part X;

"Chief Executive Officer" means the Chief Executive Officer of the Authority, appointed in terms of [paragraph 12](#) of the [First Schedule](#);

"conduct" includes an act or omission;

"conflict of interest" means a situation in which a public officer's personal or family interests may benefit, directly or indirectly, from any conduct on his or her part, or any decision he or she may make, as a public officer;

"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 a procurement contract, and
 - (ii) the value of the services does not exceed that of the construction work itself;

"consultancy service" means a service of an intellectual and advisory nature, and **"consultant"** shall be construed accordingly;

"contractor" means a person that enters into a procurement contract with a procuring entity;

"corruption" means any conduct that constitutes an offence under Part IX of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] or any attempt, conspiracy or incitement to commit such an offence;

"day" means a day of the week other than a Saturday, Sunday or public holiday;

"e-procurement" means the procurement of goods, construction works or services through Internet-based information technology;

"electronic communication" means the transfer or recording of information through an electronic or similar medium;

"evaluation committee" means an evaluation committee appointed in terms of [section 18](#);

"framework agreement" means an agreement between a procuring entity and a bidder (or bidders consisting of two or more competing suppliers of the procurement requirement) to establish the terms and conditions governing procurement contracts to be awarded during a period, in particular with regard to price and, where appropriate, the quantities envisaged;

"goods" means things of any kind or description, including-

- (a) raw materials, products and equipment; and
- (b) things in solid, liquid or gaseous form; and
- (c) electricity; and
- (d) services incidental to the supply of the goods, where the value of the services does not exceed that of the goods themselves;

"hard copy", in relation to a document, means a document that is written on paper,

"joint venture agreement" has the meaning given to it by [section 2 \(2\)](#) of the Joint Ventures Act [Chapter 22:22];

"lead procuring entity" means a procuring entity that conducts procurement on behalf of other procuring entities under an arrangement referred to in [section 19 \(1\)](#);

"material deviation" has the meaning given to it in [subsection \(2\)](#);

"member" means the chairperson or any other member of the Board;

"Minister" means the Minister of Finance and Economic Development or any Vice-President or other Minister to whom the President may, from time to time, assign the administration of this Act;

"non-consultancy service" means a labouring or other service that is performed physically;

"parent body", in relation to-

- (a) a procuring entity that is a department, office or subdivision of a Ministry, means the Ministry;
- (b) any other procuring entity, means-
 - (i) a person or authority that controls or is responsible for the activities, in particular the financial affairs, of the procuring entity, or
 - (ii) such other person or authority as may be prescribed;

"performance security" means a monetary assurance given by a bidder or contractor and guaranteed by a bank or other third party that the bidder or contractor will satisfactorily perform his or her obligations under the procurement contract;

"price", in relation to a procurement requirement or procurement contract, means the price paid or to be paid by the procuring entity for the procurement requirement, or the cost of the procurement requirement to the procuring entity;

"procurement" means the acquisition by any means of goods, construction works or services (and for the purposes of [sections 3 \(5\)](#), [4 \(1\) \(a\)](#) and [\(d\)](#) and [6 \(1\) \(a\)](#), includes the disposal of any asset in terms of Part XII);

"procurement activities" means any one or more of the totality of the specific activities or tasks required in any way to bring the procurement process to a successful conclusion or to ensure that the process has been conducted in accordance with this Act;

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

"procurement management unit" means a procurement management unit established in terms of [section 17](#);

"procurement notice" means a notice published in terms of [section 38 \(2\)](#);

"procurement proceedings" or **"procurement process"** means all stages or any stage of the procurement of goods, construction works or services conducted by a procuring entity from the pre-bid stage up to and including the award of the contract;

"procurement requirement" means the goods, construction work or service to be acquired by procurement;

"procuring entity" means-

- (a) a Ministry, department or other division of the Government; or
- (b) a corporate body established by or in terms of any Act for special purposes laid down in that Act; or
- (c) any company in which the State has a controlling interest, whether by virtue of holding or controlling its shares or by virtue of a right of appointment of members to its controlling body or otherwise, and

includes any company which is a subsidiary, as determined in accordance with section 143 of the Companies Act [*Chapter 24:03*], of such a company; or

- (d) a provincial or metropolitan council or a local authority; or
- (e) any partnership or joint venture between the State and any person, which is prescribed in terms of this Act or the Public Finance Management Act [*Chapter 22:19*];

"public asset" means any asset of whatever nature, whether corporeal or incorporeal, belonging to or vested in the State or a procuring entity, but does not include any such asset exempted from the application of this Act by [section 3 \(8\)](#);

"responsive bid" means a bid that meets the requirements of the procuring entity;

"service" means a procurement requirement that is performed through a consultancy or non-consultancy service;

"threshold" means a financial limit above or below which certain procurement proceedings may be applied under this Act;

"writing" includes printing, photography, electronic communication and any other method of representing words, figures and information in visible form that is reproducible in tangible form by the device that generated the visible words, figures or information.

(2) For the purposes of this Act, there shall be a material deviation between bidding documents or the terms and conditions of a procurement contract, on the one hand, and the performance of the procurement contract, on the other hand, if-

- (a) the deviation affects in a substantial way the scope, quality or performance of the construction works, goods or services provided under the contract; or
- (b) the deviation limits in any substantial way the rights or obligations of the parties under the contract; or
- (c) rectification of the deviation would unfairly affect the competitive position of other bidders who presented substantially responsive bids.

3. Application of Act

(1) Subject to this section, this Act shall apply to all stages of the process of-

- (a) the procurement of goods, construction works and services by procuring entities; and
- (b) the disposal of public assets by procuring entities.

(2) To the extent that this Act conflicts with an obligation of Zimbabwe under or arising out of any convention, treaty or agreement between Zimbabwe and-

- (a) one or more foreign states or governments; or
- (b) one or more international financial organizations,

the requirements of the convention, treaty or agreement shall prevail.

(3) This Act shall not apply to-

- (a) the procurement or acquisition of any of the following services-
 - (i) fiscal agency or depositary services, or
 - (ii) liquidation and management services for regulated financial institutions, or
 - (iii) services related to the sale, redemption and distribution of public debt, including loans and Government bonds, notes and other securities, or
 - (iv) arbitration or conciliation services;
- (b) public employment contracts.

(4) If any professional services are to be procured from any person who is bound by a statutory tariff in relation to that profession or service, this Act shall apply so as not to require that person to be so bound, and no adverse consequences shall be visited upon that person for not adhering to such tariff.

(5) Procurement by Zimbabwean diplomatic or consular missions outside Zimbabwe need not be conducted in accordance with this Act, but the officers in charge of such missions shall ensure that their procurement is conducted through a competitive process compliant with the general principles set out in this Act.

(6) The President, by notice in the *Gazette*, may declare that it would be contrary to the interests of defence, public security or the national interests of Zimbabwe for the procurement or disposal of any construction works or

class of such works to be publicly disclosed, and thereupon this Act shall apply to the procurement or disposal of such works with whatever modifications may be necessary to ensure that information concerning such works, or their procurement or disposal, is not disclosed to the prejudice of the defence, security or national interests of Zimbabwe.

(7) The Authority, for good cause shown, may by written notice to the body concerned exempt any procuring entity from compliance with any provision of this Act, and thereupon the provision concerned shall not apply to that procuring entity:

Provided that the Authority shall ensure that a copy of any such exemption is kept at its offices and is open to inspection there by interested persons at all reasonable times.

(8) The Minister, with the approval of the Authority and by notice in the *Gazette*, may exempt any public asset from the application of Part XII of this Act.

4. Objectives of Act

(1) The objectives of this Act are-

- (a) to ensure that procurement is effected in a manner that is transparent, fair, honest, cost-effective and competitive; and
- (b) to promote competition among bidders; and
- (c) to provide for the fair and equitable treatment of all bidders, leading to procurement contracts that represent good value for money; and
- (d) to promote the integrity of, and fairness and public confidence in, procurement processes; and
- (e) to secure the implementation of any environmental, social, economic and other policy that is authorised or required by any law to be taken into account by a procuring entity in procurement proceedings.

(2) The Authority, all procuring entities, and all other persons concerned in the implementation of this Act shall exercise their functions so as to give full effect to the objectives set out in [subsection \(1\)](#).

PART II

Procurement Regulatory Authority of Zimbabwe

5. Establishment of Procurement Regulatory Authority of Zimbabwe

There is hereby established an authority to be known as the Procurement Regulatory Authority of Zimbabwe, which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

6. Functions of Authority

(1) The functions of the Authority shall be-

- (a) to ensure that public procurement is effected in a manner that is transparent, fair, honest, cost-effective, competitive and in compliance with this Act; and
- (b) to monitor and supervise procuring entities and the public procurement system in order to secure compliance with this Act, and to implement electronic means of monitoring and supervising procuring entities and the public procurement system; and
- (c) to issue technical guidelines and instructions regarding the interpretation and implementation of this Act; and
- (d) to prepare standard documents and templates to be used in connection with public procurement and to enable procuring entities to maintain records and prepare reports; and
- (e) to develop the use of electronic tools for procurement, including a public procurement website and statistical databases containing information on public procurement in Zimbabwe, and specify the conditions under which such databases will be availed to the public; and
- (f) to enable the publication on the website referred to in [paragraph \(e\)](#) of documents that are required to be published by procuring entities; and
- (g) on request, to give advice and assistance to procuring entities:

Provided that no such advice or assistance shall limit the responsibilities of a procuring entity for compliance with this Act; and

- (h) to promote the training and professional development of persons engaged in public procurement so as to ensure their adherence to high ethical standards; and
- (i) to develop and implement a transparent and equitable framework for the registration of bidders or contractors; and
- (j) to develop and advise the Government on ways in which the environmental, social and economic policies of Zimbabwe, including those designed for economic empowerment and domestic preferences, may be implemented through public procurement; and
- (k) to refer contraventions of this Act to appropriate enforcement or disciplinary authorities; and
- (l) to establish and implement an independent review mechanism to deal with challenges brought by aggrieved bidders in accordance with Part X or by other persons in accordance with Part XII; and
- (m) to consult regularly with persons in the public and private sectors who have an interest in the public procurement system, in order to assess their perception of the system; and
- (n) to recommend amendments to the law regarding public procurement, in the light of international practices and experience; and
- (o) to exercise any other function conferred or imposed on the Authority by or under this Act or any other enactment.

(2) The Authority shall exercise its functions impartially and without fear, favour or prejudice and shall conduct all its activities in a clear and open manner so as to give the fullest effect to the objectives of this Act set out in [section 4](#).

(3) Before reaching a decision that affects or is likely to affect the rights or interests of any person, the Authority shall, to the fullest extent practicable-

- (a) give the person due and clear notice of the nature of the decision the Authority is to make and of the factors the Authority is likely to take into consideration when making it; and
- (b) allow the person reasonable access to the information available to the Authority in regard to the matter under consideration; and
- (c) give the person as full an opportunity as circumstances allow to make representations in the matter; and
- (d) take into account any representations that the person may make in the matter,

and generally the Authority shall observe due process and the rules commonly known as the rules of natural justice.

(4) Where the Authority has made a decision or taken action that adversely affects the rights or interests of any person, the Authority shall give that person, promptly on demand, written reasons for the decision or action.

7. Powers of Authority

Without limiting [section 5](#) ("Establishment of Procurement Regulatory Authority of Zimbabwe"), in the exercise of its functions the Authority shall have power, subject to this Act, to do any of the following things-

- (a) to issue directions of a general nature to procuring entities regarding the manner in which they are to conduct procurement proceedings in order to ensure compliance with this Act:

Provided that the Authority shall not issue such directions so as to apply only to individual procurement proceedings;
- (b) to require procuring entities to collect information regarding procurement and to provide the Authority with such information in such form, and at such intervals or within such periods, as the Authority may direct;
- (c) to require any procuring entity or bidder to produce or disclose to the Authority, or to an officer or agent of the Authority, any information, document, record or report regarding any aspect of the procurement, contract implementation or disposal process where a breach, wrongdoing or mismanagement has been alleged, reported or proven against any procuring entity;
- (d) to co-operate with other organisations, whether inside or outside Zimbabwe, in the exercise of its functions;
- (e) to exercise any of the ancillary powers set out in the [Second Schedule](#);
- (f) generally, to take such measures as the Board reasonably considers are necessary or desirable to ensure compliance with this Act.

8. Board of Authority

(1) The operations of the Authority shall be managed and directed by a Board consisting of seven or nine members appointed, subject to this section, by the Minister after consultation with the President.

(2) Members of the Board shall be chosen for their knowledge of and experience in procurement, law, management, accountancy, auditing, engineering, human resource management, commerce or other relevant discipline, and in appointing them the Minister shall ensure that, so far as practicable-

- (a) the public and private sectors, as well as appropriate professional bodies, business associations and non-governmental organisations, are adequately represented on the Board; and
- (b) there is fair representation of Zimbabwe's regions on the Board; and
- (c) at least half the members are women.

9. Provisions relating to membership, procedure, staff and finances of Authority

(1) [Part I](#) of the [First Schedule](#) applies in regard to the appointment, tenure and conditions of service of members of the Board.

(2) [Part II](#) of the [First Schedule](#) applies in regard to the procedures to be followed by the Board in the conduct of the Authority's business.

(3) [Part III](#) of the [First Schedule](#) applies in regard to appointment and conditions of service of the Authority's staff.

(4) [Part IV](#) of the [First Schedule](#) applies in regard to the Authority's finances.

10. Execution of contracts and instruments by Authority

An agreement, contract or instrument approved by the Board may be entered into or executed on the Authority's behalf by the Chief Executive Officer or any other person generally or specially authorised by the Board for that purpose.

11. Reports of Authority

(1) Subject to this section, as soon as possible after the end of each financial year, the Authority shall provide Parliament, through the Minister, with a report setting out-

- (a) the Authority's activities during the year; and
- (b) the overall functioning of the public procurement and asset disposal system in Zimbabwe; and
- (c) any recommendations the Authority may wish to make on revising and improving procurement procedures; and
- (d) any other matters the Authority wishes to bring to the attention of the Government and Parliament.

(2) On receipt of an annual report, the Minister shall without delay lay it before Parliament.

(3) In addition to the annual report, the Authority-

- (a) may submit to the Minister reports on such matters relating to the public procurement or asset disposal system of Zimbabwe as the Board wishes to bring to the Minister's attention; and
- (b) shall provide the Minister with such reports and information regarding the public procurement or asset disposal system of Zimbabwe as the Minister may reasonably require.

12. Validity of decisions and acts of Board and committees

No decision or act of the Board or a committee, and no act that is authorised by the Board or a committee, shall be invalid solely because there was a vacancy in the membership of the Board or the committee or because a disqualified person purported to act as a member of the Board or the committee, as the case may be, at the time the decision was taken or the act was done or authorised.

13. Exemption from liability of Authority and its employees and agents

No liability shall attach to-

- (a) the Authority; or
- (b) any member of the Board or of a committee of the Authority; or
- (c) any employee or agent of the Authority,

in respect of loss or damage sustained by any person as a result of the *bona fide* exercise of any function conferred or imposed on the person concerned by or under this Act:

Provided that this section shall not be construed as preventing anyone from recovering damages or compensation for loss or damage that was caused by deliberate wrong-doing, negligence or breach of contract.

PART III

Responsibility for Procurement and Procuring Entities

14. Responsibility for procurement

(1) Subject to this Act-

- (a) each procuring entity shall be responsible for managing its procurement, where the value of the procurement requirement is below the prescribed threshold;
- (b) every procuring entity that has been authorised in terms of [section 15](#) shall be responsible for managing its procurement, where the value of the procurement requirement is at or above the prescribed threshold.

(2) Within any procuring entity, responsibility for ensuring that its procurement activities are carried out in compliance with this Act and any directions of the Authority shall devolve upon-

- (a) the entity's accounting officer; and
- (b) within their spheres of responsibility, the members of the entity's procurement management unit and the entity's, employees and agents who are involved in any way with procurement.

15. Authorisation to conduct procurement

(1) A procuring entity shall not initiate or conduct any procurement proceedings in which the value of the procurement requirement is at or above the prescribed threshold unless the procuring entity has been generally authorised by the Authority to conduct such proceedings.

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

- (a) shall be given in writing; and
- (b) may be subject to such terms and conditions as the Authority may specify in the authorisation; and
- (c) shall be valid for a period of two years from the date on which it was given, and may be renewed for further such periods.

(3) The [Third Schedule](#) shall apply to applications for authorisation, to the grant or refusal of such applications and to the renewal of such authorisation.

(4) The Authority shall in relation to a procuring entity that fails to obtain authorisation to initiate or conduct any procurement proceedings at or above the prescribed threshold appoint another procuring entity so authorised to conduct such procurement on behalf of the first mentioned entity.

16. Duties of accounting officers and other persons to comply with Act

(1) If an accounting officer is directed by-

- (a) a Minister or Deputy Minister; or
- (b) any other person with authority over the accounting officer,

to do or omit to do anything in respect of procurement which the accounting officer believes he or she is not authorised to do in terms of this Act, he or she shall not comply with the direction but instead shall forthwith submit in writing to the Minister, Deputy Minister or other person in authority, as the case may be, his or her objections and the reasons for the objection.

(2) If after receiving an accounting officer's objections and reasons under [subsection \(1\)](#), the Minister, Deputy Minister or other person instructs the accounting officer, in writing, to comply with the direction concerned, the accounting officer shall comply with the instruction and shall immediately submit a written report thereon-

- (a) to the Minister responsible for administering this Act; and
- (b) to the Auditor-General; and
- (c) where he or she is the accounting officer of a Ministry or department of government, to the Accountant-General; and
- (d) where the instruction was given by a Minister or Deputy Minister, to the Secretary to the Cabinet:

Provided that, if the Minister, Deputy Minister or other person fails or refuses to put the instruction in writing, the accounting officer shall not comply with it and, notwithstanding any term or condition of his or her employment, shall not be liable to any penalty for such non-compliance.

(3) [Subsections \(1\)](#) and [\(2\)](#) shall apply, with any necessary changes, where an officer, employee or agent of a procuring entity, other than an accounting officer, is directed by a Minister or Deputy Minister or any other person with authority over him or her to do or not to do anything in respect of procurement or the disposal of a public asset which he or she believes he or she is not authorised to do in terms of this Act.

17. Procurement management unit of procuring entity

(1) Subject to this section, every procuring entity shall establish a procurement management unit headed by the accounting officer, which shall be responsible for managing all the entity's procurement activities in accordance with this Act.

(2) The accounting officer of a procuring entity shall determine the size, location and structure of the entity's procurement management unit, taking into account the entity's procurement requirements and the availability of trained and experienced persons to staff the unit.

(3) The functions of a procurement management unit shall be-

- (a) planning the procurement activities of its procuring entity; and
- (b) securing the adoption of the appropriate method of procurement; and
- (c) preparing bidding documents in compliance with provisions in or under this Act for the design of contract specifications and the evaluation criteria; and
- (d) preparing bid notices and short-lists; and
- (e) managing bidding processes, including pre-bid meetings, clarifications and the receipt and opening of bids; and
- (f) managing the evaluation of bids and any post-qualification negotiations required; and
- (g) supervising its procuring entity's evaluation committee and-
 - (i) ensuring that the committee has carried out its duties in accordance with this Act, and
 - (ii) receiving evaluation reports from the committee and ensuring that they are correct and have been prepared in accordance with this Act; and
- (h) preparing evaluation reports, including contract award recommendations, where the value of the procurement is less than the prescribed threshold; and
- (i) submitting all evaluations to its procuring entity's accounting officer, with confirmation that the procedure followed has complied with this Act; and
- (j) preparing contract documents and amendments; and
- (k) managing procurement contracts or overseeing their management; and
- (l) preparing such procurement reports as may be required by the procuring entity's accounting officer or the Authority; and
- (m) exercising any other function conferred or imposed on the unit by or under this Act or by its accounting officer or procuring entity.

(4) Where the level of a procuring entity's procurement activity does not justify the entity creating its own procurement management unit-

- (a) the entity's procurement activities shall be carried out by its parent body; or
- (b) if the entity's parent body is unable to carry out the entity's procurement activities, the entity's accounting officer may, subject to [subsection \(5\)](#) and any guidelines issued by the Authority-

(i) with the consent of the other procuring entity concerned, appoint another procuring entity's procurement management unit to conduct those activities; or

(ii) appoint an independent procurement agent to conduct those activities.

(5) Before taking action in terms of [subsection \(4\) \(b\)](#), an accounting officer shall satisfy himself or herself that his or her procuring entity has funds available to pay for the services provided by the other procuring entity or independent procurement agent concerned.

18. Evaluation committees of procuring entity

(1) For each procurement above the prescribed threshold, the accounting officer of a procuring entity shall appoint an evaluation committee in accordance with this section.

(2) An evaluation committee shall consist of-

(a) one member of the procuring entity's procurement management unit; and

(b) at least three other members, including-

(i) the person responsible for preparing the requirements and additionally, or alternatively, the technical specifications for the procurement concerned, or a person with equivalent technical expertise; and

(ii) a financial officer of the procuring entity; and

(iii) one or more other members to provide technical, legal, financial or commercial expertise, as appropriate.

(3) The member referred to in [subsection \(2\) \(a\)](#) shall attend meetings of the evaluation committee as an adviser and shall not have a vote on any issue to be decided by the committee.

(4) The functions of an evaluation committee shall be-

(a) receiving from the procurement management unit the bid opening records and bids; and

(b) evaluating bids and preparing the bid evaluation report and recommendations for award of a contract; and

(c) submitting its evaluation reports to the procurement management unit; and

(d) exercising any other functions conferred or imposed on the committee by or under this Act.

(5) In the exercise of its functions an evaluation committee shall be answerable to the procurement management unit or accounting officer of its procuring entity.

19. Shared procurement among procuring entities

(1) Notwithstanding [section 14](#) ("Responsibility for procurement"), procuring entities may, and if directed by the Authority shall, conduct their procurement by way of shared procurement arrangements which may include arrangements for-

(a) procuring all their requirements through a procurement management unit established by one of the procuring entities;

(b) procuring particular categories of goods, construction works or services through one of the procuring entities with expertise in that type of procurement;

(c) procuring goods, construction works or services for common use through one or more designated procuring entities.

(2) A procuring entity that conducts procurement on behalf of other entities under a shared procurement arrangement shall be primarily responsible for ensuring that the procurement is conducted in accordance with this Act.

(3) Where the Authority considers, on the basis of its review of the annual procurement plans submitted to it by procuring entities in terms of [section 22](#), that-

(a) it is proper to direct any group of two or more procuring entities to conduct their procurement by way of shared procurement arrangements; and

(b) the shared procurement is of such a nature as to make the use of a framework agreement expedient, desirable or necessary in order to achieve economies of scale,

the Authority shall negotiate the framework agreement on behalf of the procuring entities concerned.

(4) A procuring entity that is a party to a shared procurement arrangement governed by a framework

agreement referred to in [subsection \(3\)](#) must obtain its procurement requirements in accordance with that agreement unless it satisfies the Authority in writing that it is able to obtain such requirements at a better price or on better contract terms by means of a separate procurement.

(5) Nothing in this section inhibits-

- (a) a procuring entity from negotiating a framework agreement on its own for procurement requirements that are not subject to shared procurement arrangements; or
- (b) a group of procuring entities which are not governed by a framework agreement referred to in [subsection \(3\)](#) from negotiating a suitable framework agreement for their common procurement requirements with a view to achieving economies of scale.

PART IV

Procurement Preparation and Planning

20. Procurement preparation

(1) For the purposes of any procurement, a procurement management unit shall use only the standard bidding documents that are produced and issued by the Authority.

(2) A procuring entity shall ensure that, before initiating procurement proceedings, adequate funds have been budgeted and allocated to the procurement, including any funds required for the publication of notices:

Provided that the absence of budgeted or allocated funds shall not inhibit a procuring entity from concluding a framework agreement, as long as any orders made in pursuance of such agreement are, on the date of the order, financed by budgeted or allocated funds.

(3) Before initiating proceedings for a procurement contract that will commit the entity to make payments in subsequent financial years, a procuring entity shall-

- (a) obtain approval from-
 - (i) the Minister responsible for finance, where the procuring entity is a Ministry or department of government; or
 - (ii) such other person as may be prescribed, in any other case;
- and
- (b) ensure that funds for the current financial year are budgeted and allocated to the procurement; and
 - (c) ensure that funds for the procurement are included in budgets for subsequent financial years:

Provided that this paragraph shall not preclude the procuring entity from including provision in the procurement contract for a right to cancel the contract in the event that sufficient funding is not included in a budget for a subsequent financial year.

21. Planning of procurement

(1) A procuring entity shall plan its procurement with a view to achieving maximum value for public expenditure, so that the procurement is carried out within available financial resources and other applicable limitations and at the most favourable time.

(2) So far as possible, a procuring entity shall aggregate its procurement requirements in order to achieve economies of scale and shall use framework agreements where appropriate.

(3) Before commencing any procurement process, a procuring entity shall-

- (a) investigate whether or not its requirements can be met internally, for example by the transfer of goods from one department to another; and
- (b) ensure that an accurate estimate has been prepared of the cost of the procurement process, including the price of the procurement requirement and the cost of contingencies that may reasonably be expected to arise under the procurement contract; and
- (c) ensure that the amount of the estimate referred to in [paragraph \(b\)](#) has been properly covered in the entity's budget for the current financial year.

22. Annual procurement plan

(1) For each financial year and no later than one month after the end of such, a procuring entity shall prepare a procurement plan which shall-

- (a) be in accordance with a template prepared by the Authority; and
- (b) contain at least such information as may be prescribed,

and shall forward the plan without delay to the Authority.

(2) The Authority and the procuring entity shall publish, in summary form, the list of goods, construction works and services included in the entity's annual plan for procurement during the coming financial year.

23. Individual procurement plan

(1) In addition to its annual procurement plan prepared in terms of [section 22](#), a procuring entity shall prepare an individual procurement plan for each individual procurement above the prescribed threshold value, which plan shall-

- (a) be in accordance with a template prepared by the Authority; and
- (b) contain at least such information as may be prescribed,

and shall forward the plan without delay to the Authority.

(2) The Authority shall publish on its website every plan forwarded to it in terms of [subsection \(1\)](#).

24. Planning for shared procurement

Where two or more procuring entities conduct their procurement by way of shared procurement arrangements in terms of [section 19](#), the designated or lead procuring entity, on behalf of the others, may prepare the plans referred to in [sections 21, 22](#) and [23](#), and for that purpose the other entities shall provide it with the necessary information to enable it to prepare those plans and carry out the shared procurement activities.

25. Division of procurements

(1) Subject to this section, a procuring entity may divide a procurement requirement, which could be procured in a single contract, into a package consisting of several lots which are to be bid together, where it is anticipated that the award of several separate contracts may result in the best overall value for the procuring entity or meet any environmental, social and economic objectives referred to in [section 4 \(1\) \(e\)](#).

(2) A procurement requirement shall not be divided-

- (a) in order to avoid financial thresholds prescribed for the purposes of determining the appropriate procurement method, whether such division is by way of splitting a quantity of a single procurement requirement or splitting of a generic procurement requirement into several lots; or
- (b) where the award of several separate contracts would create problems of compatibility or interchangeability between goods, construction works or services procured as separate lots, or would unduly strain contract administration resources; or
- (c) where the award of several separate contracts would invalidate or otherwise restrict any contractor's warranty or liability; or
- (d) where the award of several separate contracts would increase the costs of servicing, maintenance or similar requirements.

(3) Where a procurement requirement that could be procured through a single procurement contract is divided into lots, the procuring entity shall-

- (a) permit bidders to bid for a single lot, any combination of lots or all lots; and
- (b) ensure, prior to awarding the contract, that the recommended contract award or combination of contract awards offers the best overall value for the procuring entity.

26. Market consultations

(1) Before initiating any procurement procedure, a procuring entity may conduct market consultations with a view to preparing the contract specifications and informing potential bidders of the entity's procurement plans and requirements.

(2) In the course of market consultations, a procuring entity may receive technical information and advice from independent experts or authorities and from potential bidders, and may use that information and advice in planning and conducting their procurement:

Provided that the procuring entity-

- (a) shall ensure that its use of the information or advice does not distort competition and does not infringe the principles of non-discrimination and transparency; and
- (b) without limiting [paragraph \(a\)](#), where the information or advice was supplied by a bidder, shall communicate the information or advice to all other bidders.

PART V

Technical Requirements and Qualifications of Bidders

27. Description of subject-matter of procurement

(1) A procuring entity shall ensure that its bidding documents-

- (a) set out clearly a full and appropriately detailed description of the procurement requirement, including-
 - (i) the quality and quantity required; and
 - (ii) its function and the purpose for which it is required; and
 - (iii) any requirements relating to its performance, safety features and its safe disposal; and
 - (iv) requirements as to inspection and testing; and
 - (v) any applicable standards which, where possible, shall be international standards or Zimbabwean standards incorporating international standards;
- and
- (b) specify the methods by which performance under the procurement contract will be measured for conformity with those requirements.

(2) The requirements referred to in [subsection \(1\)](#) shall not refer to any particular trademark or brand name, or to any patent or design, or to any producer or service provider, unless there is no other practical way of describing the procurement requirement, in which event words such as "**or equivalent**" shall be included in the specifications.

28. Participation by bidders

(1) Except as prescribed under this Act or any other enactment, bidders shall be permitted to participate in procurement proceedings without regard to nationality.

(2) Subject to this section, a procuring entity may require bidders to meet such of the following criteria for eligibility as the procuring entity considers appropriate and relevant in the circumstances of the particular procurement-

- (a) that they meet specified ethical standards;
- (b) that they have the legal capacity to enter into the procurement contract;
- (c) that-
 - (i) they are not insolvent, in liquidation or under judicial management; or
 - (ii) their affairs are not being administered by a court or a judicial officer; or
 - (iii) their business activities have not been suspended;and no legal proceedings are pending for any of the foregoing;
- (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 neither they nor any of their officers have, in the five years immediately preceding the initiation of the procurement proceedings-
 - (i) been convicted in any country of an offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications; or

(ii) been censured or subjected to any penalty in any country following disciplinary proceedings arising out of any conduct involving the making of false statements or misrepresentations;

- (f) any other criteria that will demonstrate that the bidders possess the professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience, business reputation and personnel, needed to perform the procurement contract.

(3) Procuring entities shall not impose eligibility criteria that are unduly restrictive or designed to reduce competition, and shall prepare them for each procurement requirement, taking into account the size, complexity and technical requirements of the proposed procurement contract.

(4) Any requirement imposed pursuant to this section shall be set out in the pre-qualification documents, if any, and in the solicitation documents, and shall apply equally to all bidders.

29. Domestic preference

When evaluating bids, a procuring entity may give preference to bids from Zimbabwean or local suppliers and manufacturers and shall-

- (a) take into account the extent to which Zimbabwean or local suppliers and manufacturers must participate in such bid, or be subcontracted to supply the bidden goods, construction works or services, in accordance with the provisions of the Indigenisation and Economic Empowerment Act [Chapter 14:33]; and
- (b) take into account the extent to which suppliers and manufacturers who are women or entities controlled predominantly by women must participate in such a bid, or be subcontracted to supply the bidden goods, construction works or services; and
- (c) procure technological, engineering and industrial designs, solutions or applications that are or maybe the subject of registration as intellectual property, and that originate from a Zimbabwean university, polytechnic, college or research institution:

Provided that any preference shall be-

- (i) stated clearly in the bidding documents; and
- (ii) applied strictly in accordance with such procedures and criteria as may be prescribed or as maybe stated in circulars issued by the Authority.

PART VI

Methods of Procurement

30. Selection of procurement method

(1) Subject to this Act, a procuring entity shall employ the competitive bidding method of procurement described in [section 31](#), except where-

- (a) the restricted bidding method is to be employed in terms of [section 32](#); or
- (b) the direct procurement method is to be employed in terms of [section 33](#); or
- (c) the request for quotations method is to be employed in terms of [section 34](#); or
- (d) consultancy services are to be procured, in which event the request for proposals method shall be employed in accordance with Part VIII; or
- (e) procurement is effected under a joint venture agreement, in which event the method shall be as prescribed under [section 100](#).

(2) When a method of procurement other than competitive bidding is used, the procuring entity shall include in the record of the procurement proceedings a written justification of the decision to utilise the procurement method, including the grounds for taking that decision.

(3) Where a procuring entity enters into a framework agreement for any procurement-

- (a) all stages of the procurement up to the award of contract shall be effected in accordance with [section 31](#) or [32](#); and
- (b) all contracts based on the framework agreement shall be awarded in accordance with such procedures as may be prescribed.

31. Competitive bidding method

- (1) The competitive bidding method of procurement entails a process in which-
 - (a) a bidding document is published in accordance with [section 38](#); and
 - (b) all eligible and qualified bidders are permitted without discrimination to submit their bids; and
 - (c) all bids from eligible and qualified bidders are assessed according to the same criteria; and
 - (d) subject to [subsection \(2\)](#), the bidding is held in one stage.
- (2) Competitive bidding may be held in two stages, in accordance with prescribed procedures, where-
 - (a) it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; or
 - (b) because of the complex nature of the procurement requirement, the procuring entity wishes to consider various technical or contractual solutions and to discuss them with bidders before deciding on the final technical or contractual specifications.

(3) Where the procurement requirement is of particularly high value or complexity, competitive bidding may be preceded by prescribed pre-qualification procedures, with a view to identifying qualified bidders prior to the submission of bids.

32. Restricted bidding method

- (1) The restricted bidding method of procurement entails a process in which the bidders are limited to those selected or invited by the procuring entity.
- (2) The restricted bidding method of procurement may be used-
 - (a) when the time and cost of considering a large number of bids is disproportionate to the estimated value of the procurement requirement; or
 - (b) where urgency renders impracticable the time-limit prescribed for the purpose of [section 39](#) ("Bidding period"):
Provided that the urgency shall not be due to the procuring entity's unjustifiable delay; or
 - (c) for procurement contracts with an estimated value that does not exceed the prescribed threshold.
- (3) Under the restricted bidding method of procurement-
 - (a) the procuring entity shall invite bids from a standing list of qualified bidders established and maintained by the procuring entity in accordance with the prescribed procedure; and
 - (b) in all other respects, the procedures for the single stage competitive bidding method shall be employed.

33. Direct procurement method

- (1) The direct procurement method of procurement is one where a procuring entity procures its requirement from one bidder or supplier without having received bids from other bidders.
- (2) A procuring entity may use the direct procurement method-
 - (a) where no responsive bids have been submitted in response to a competitive bidding procedure:
Provided that the procuring entity shall not substantially modify the requirements of the initial bid; or
 - (b) where, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract can be performed only by a particular supplier and no reasonable alternative or substitute exists; or
 - (c) where, for reasons of extreme urgency not attributable to and unforeseen by the procuring entity, the procurement requirement cannot be obtained in time by means of competitive bidding procedures; or
 - (d) for additional supplies of goods or services by a supplier, where a change of supplier would cause problems of inter-changeability or incompatibility with existing equipment or discontinuity of services, which would cause significant inconvenience or substantial duplication of costs to the procuring entity; or
 - (e) where a procuring entity procures a prototype or a first product or service from a research institute

which is then developed at its request for a particular procurement contract for research, experiment, study or original development; or

- (f) where additional services which were not included in an initial procurement contract but which were within the objectives of the original bidding documents have, through unforeseen circumstances, become necessary to complete the services described in those documents:

Provided that the total value of contracts awarded for the additional services shall not exceed fifty *per centum* of the amount of the original contract; or

- (g) for new services that repeat similar services provided under a procurement contract awarded following the competitive bidding method of procurement, where the procuring entity indicated in the original procurement notice that a direct procurement method might be used in awarding contracts for such new services; or
- (h) for acquisitions made under exceptionally advantageous conditions from unusual disposals such as legal forfeitures, liquidation, insolvency, judicial sale in execution or other forced sale or disposal; or
- (i) for the procurement of immovable property; or
- (j) for the procurement of spare parts of a proprietary nature.

(2) Direct procurement shall be conducted in accordance with such procedures as may be prescribed.

34. Request for quotations method

(1) The request for quotations method of procurement entails a process in which the procuring entity solicits at least three competitive quotations for its procurement requirement from reputable suppliers, and the procurement requirement is below the prescribed threshold.

(2) The request for quotations method of procurement shall be effected in accordance with such procedures as may be prescribed.

PART VII

Procedures for Competitive and Restricted Bidding

35. Application of Part VII

This Part shall apply to procurement by the competitive and restricted bidding methods.

36. Form of communication

All communications between bidders and the procuring entity shall be in writing, and a procuring entity shall not entertain or respond to a communication from a bidder that is not in writing:

Provided that a procuring entity may comply with an oral or telephonic request for the supply of a document that is generally available to bidders.

37. Invitations to bid

A procuring entity shall invite bids-

- (a) through the publication of a bidding document; or
- (b) from all bidders on the list of pre-qualified bidders, where pre-qualification is used; or
- (c) from all bidders on the standing list of qualified bidders established in accordance with [section 32](#), in the case of restricted bidding.

38. Contents and publication of procurement notices

(1) A bidding document containing the procuring entity's invitation to bid or, as the case may be, invitation to prequalify shall contain the following information-

- (a) the identity and address of the procuring entity and the contact details of the person from whom

further information can be obtained; and

- (b) a description of the procurement, including the place of delivery of goods or services, the location of any construction works and the time within which the procurement requirement is to be provided; and
- (c) how the bidding documents or, if applicable, the prequalification documents may be obtained and the price, if any, payable for them; and
- (d) the place at which and the time within which bids or applications to prequalify must be submitted; and
- (e) such other matters as may be prescribed or as may be set out in standard forms issued by the Authority.

(2) A procuring entity shall cause the bidding document containing its notice of invitation to bid or to pre-qualify, as the case may be, to be published in the *Gazette* and-

- (a) in at least one national newspaper of wide enough circulation to reach sufficient bidders to ensure effective competition; or
- (b) to the extent it is feasible to do so, on the Internet and on any website established by the Authority,

and may cause the notice to be broadcast over radio or television, so as to reach as many potential bidders as possible.

(3) Where the estimated value of a procurement contract exceeds the prescribed financial threshold for international procurement, the procuring entity, in addition to complying with [subsection \(2\)](#), shall cause the bidding document containing its notice of invitation to bid or pre-qualify to be-

- (a) published in at least two publications widely used for international trade or in other printed media with adequate circulation to attract foreign competitive bidders; and
- (b) posted on widely-read Internet websites; and
- (c) posted in Zimbabwe's foreign diplomatic and consular missions,

and shall conform with such other requirements as may be prescribed.

(4) For the purpose of ensuring wide competition, a procuring entity may send its notice of invitation to bid or pre-qualify directly to potential bidders, to chambers of commerce and to trade or professional associations after the notice has been published in terms of [subsection \(2\)](#) or [\(3\)](#):

Provided that the procuring entity shall keep a record of any bidders to whom the notice is sent directly, and shall file the record with the procurement documents.

39. Bidding period

(1) The bidding period shall commence on the date on which the bidding document is published in the *Gazette* in terms of [section 38 \(2\)](#), and shall end on the date specified in that document or in a subsequent notice as the closing date for the submission of bids.

(2) In determining the appropriate bidding period for any procurement, the procuring entity shall take into account-

- (a) the time reasonably required for bidders to prepare their bids, taking into account the level of detail required and the complexity of the bids, including the time needed for any site visits and pre-bid meetings; and
- (b) any need for bidders to submit authenticated legal documents or similar documents as part of their bids and the time required to obtain such documents; and
- (c) the time potential bidders need to obtain the bidding document and to deliver and submit their bids to the procuring entity; and
- (d) the time by which the procuring entity needs to be supplied with the procurement requirement:

Provided that the bidding period for any procurement shall not be shorter than the period prescribed for that procurement or class of procurement, as the case may be.

40. Bidding documents

(1) For the purposes of any procurement, a procuring entity shall use the prescribed standard bidding documents, including any manuals or guidelines pertaining thereto that may be issued by the Authority.

(2) A procuring entity shall ensure that its bidding documents are ready for distribution before the publication

of the invitation to bid and shall provide them, promptly and without discrimination-

- (a) to all potential bidders that respond to the invitation to bid; or
- (b) in the case of competitive bidding with pre-qualification, to all bidders that have been prequalified; or
- (c) in the case of restricted bidding, to all the bidders that have been selected or invited to participate in the procurement.

(3) A procuring entity shall not charge more for bidding documents than the cost of printing and distributing them, and where they are delivered by electronic means they shall be free of charge.

(4) Bidding documents shall provide bidders with all the information they need in order to submit responsive bids, and shall give them such particular information as may be prescribed.

(5) A procuring entity shall record the name, postal address, telephone number and e-mail address of every bidder to whom an invitation to bid is issued, together with details of the bidder's contact person, and shall file the record with the procurement documents.

(6) A procuring entity may establish an electronic system approved by the Authority for the purpose of this section.

41. Clarification and modification of bidding documents

(1) A procuring entity shall respond promptly and in writing to a written request from a bidder for clarification of any bidding document, and the response shall be communicated simultaneously to all the bidders without identifying the bidder that requested the clarification and in a manner that does not disclose the identities of the other bidders.

(2) For the purpose of clarifying bidding documents, a procuring entity may, before the close of the bidding period-

- (a) hold one or more meetings of bidders; and
- (b) conduct one or more site visits,

which all bidders shall be invited to attend.

(3) Any clarification of bidding documents in terms of [subsection \(1\)](#) or [\(2\)](#) shall be effected within such period as may be prescribed.

(4) A procuring entity may modify its bidding documents at any time before the end of the bidding period, but the modification shall be communicated simultaneously to all the bidders and, where necessary, the procuring entity shall extend the bidding period to allow bidders to alter their bids to take the modification into account.

(5) A procuring entity may establish an electronic system approved by the Authority for the purpose of this section.

42. Cancellation of procurement proceedings or rejection of bids

(1) If possible a procuring entity shall avoid cancelling procurement proceedings, but may do so where-

- (a) the need for the procurement has ceased to exist or changed significantly; or
- (b) insufficient funding is available for the procurement; or
- (c) there is a significant change in the technical details of the procurement requirement, or in the bidding conditions, contractual terms or other particulars, so that the procurement proceedings need to be recommenced; or
- (d) subject to [subsection \(5\)](#), insufficient, or no responsive bids are received; or
- (e) there is evidence of collusion among bidders; or
- (f) it is otherwise in the public interest.

(2) Whenever a procuring entity cancels procurement proceedings it shall promptly notify bidders accordingly, and cause a written statement detailing the reasons for the cancellation to be filed with the record of the proceedings.

(3) Where a procuring entity cancels procurement proceedings before the end of the bidding period, it shall-

- (a) ensure that all hard-copy bids received are available for the bidders to collect for a period of thirty days following the announcement of the cancellation; and
- (b) destroy all bids after the thirty-day period referred to in [paragraph \(a\)](#).

(4) If so specified in the bidding documents, a procuring entity may reject all bids at any time prior to their acceptance, where the bids are not substantially responsive, or where there is evidence of lack of competition:

Provided that the procuring entity shall notify all the bidders promptly of the rejection of their bids and, upon request by any such bidder, shall inform the bidder of the reasons for the rejection.

(5) Where no responsive bids are received or procurement proceedings are otherwise unsuccessful, the procuring entity shall conduct a reasonably adequate investigation into the failure and record-

- (a) the reasons for the failure; and
- (b) the course of action taken by the procuring entity,

and shall file the record with the procurement documents.

(6) A procuring entity shall incur no liability towards bidders for action taken by it in terms of this section:

Provided that this subsection shall not relieve the procuring entity, or any of its officers, employees or agents, from liability for negligence or for anything done in bad faith.

43. Submission of bids or applications to pre-qualify

(1) Bids and applications to pre-qualify shall be submitted in writing, duly signed, before the end of the bidding period or, as the case may be, before the date stated in the invitation to pre-qualify as the date by which applications to pre-qualify must be submitted.

(2) Bids and applications to pre-qualify may be submitted to the procuring entity by hand or by post or by courier, at the option of the bidder:

Provided that, subject to any e-procurement policy laid down by the Authority, a procuring entity in its bidding documents may authorise other methods of submission of bids, such as by electronic mail, as long as the confidentiality and security of bids are assured.

(3) Where a bid or application to pre-qualify is received by the procuring entity after the deadline specified in [subsection \(1\)](#)-

- (a) if the bid or application is received in electronic form, the procuring entity shall not consider it;
- (b) if the bid or application is received in hard copy, the procuring entity shall not open it but instead shall permit the bidder to collect it within thirty days after the deadline, following which the procuring entity may return it or destroy it unopened.

(4) Bids shall remain valid for the period indicated in the bidding documents, and if a bidder modifies or withdraws a bid while it is valid the bidder shall forfeit any bid security he or she may have provided in respect of the bid.

(5) The period of validity of a bid may be extended only during that period and with the agreement of the bidder concerned, and a bidder that agrees to extend the period shall be entitled to a corresponding extension of any bid security he or she may have provided.

44. Bid security

(1) Subject to [subsection \(2\)](#) and to any prescribed requirements or conditions, a procuring entity may require bidders to provide bid security in order to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids.

- (2) A requirement for the provision of bid security-
 - (a) shall be stated in the procurement documents; and
 - (b) shall be imposed equally on all bidders.

45. Amendment or withdrawal of bid

(1) A bidder may amend or withdraw his or her bid by submitting a notice of amendment or withdrawal to the procuring entity not later than the end of the bidding period.

- (2) A notice of amendment or withdrawal of a bid-
 - (a) shall comply with any directions that may be specified in the invitation to bid; and
 - (b) in the case of-

- (i) a hard-copy bid, shall be submitted in an envelope identifying the invitation to bid and clearly labelled "**Amendment of Bid or Proposal**" or "**Withdrawal of Bid or Proposal**", as the case may be,
- (ii) a bid submitted as an electronic communication, shall comply with such requirements as may be prescribed or as the Authority may specify.

46. Opening of bids

(1) At the end of the bidding period, or as soon as possible thereafter, a procuring entity shall, at the time and place specified in the bidding documents, open all the bids it has received.

(2) The opening of bids shall be conducted in public and the procuring entity shall invite bidders or their representatives to witness it.

(3) At the opening of bids, an employee or agent of the procuring entity shall read aloud and record the following particulars of each opened bid-

- (a) the name of the bidder; and
- (b) the total amount of the bid; and
- (c) any discounts or alternatives offered by the bidder; and
- (d) whether or not bid security has been given, where that is required; and
- (e) any essential supporting documents.

(4) Where bids have been received by electronic communication, the procedure to be followed at the opening of bids shall be as prescribed or as specified by the Authority.

(5) A procuring entity shall ensure that a copy of the record is made available to any bidder that requests it.

(6) No decision regarding the disqualification or rejection of any bid shall be taken or announced in the opening of bids.

(7) Following opening of bids, and until a preliminary decision on awarding the procurement contract has been notified to the successful bidder, no bidder shall make any unsolicited communication to the procuring entity's procurement management unit or try in any way to influence the procuring entity's examination or evaluation of the bids.

(8) Where a bidder contravenes [subsection \(7\)](#), his or her bid shall be rejected by the procuring entity.

47. Examination of opened bids

Following the opening of bids, the procuring entity shall first determine whether the bidders meet the qualification criteria, if any, contained in the bidding documents and reject those that do not, and then shall examine the bids in order to determine whether the bids are complete and responsive:

Provided that bidders shall be deemed to have met the qualification criteria if any default of compliance therewith relates simply to the failure to submit company registration or incorporation documents, credentials or other historic documents that can be readily availed or accessed.

48. Clarification of bids

(1) Subject to this section, a procuring entity may seek clarification from a bidder of its bid, but the request and any response to it shall be made in writing.

(2) A request for clarification in terms of [subsection \(1\)](#) shall not seek, and the bidder shall not be permitted to-

- (a) amend the bid price, except to correct arithmetical errors; or
- (b) change the substance of the bid; or
- (c) alter substantially anything that is a deciding factor in the evaluation of the bid.

(3) Any clarification received from a bidder which is not in response to a request in terms of [subsection \(1\)](#) shall not be taken into account in the evaluation of the bid.

(4) If a bidder fails to reply to a request for clarification in terms of [subsection \(1\)](#), the procuring entity may reject his or her bid.

49. Rejection of bids

(1) A procuring entity shall reject a bid if it finds that information submitted in the bid-

- (a) is materially false or misleading; or
- (b) is inaccurate or incomplete to an extent that makes it impossible to evaluate the bid.

(2) This section shall not be construed as limiting any other provision of this Act that requires or permits a procuring entity to reject a bid.

50. Evaluation of bids

(1) Having examined the opened bids in terms of [section 47](#) and obtained any necessary clarification in terms of [section 48](#), the procuring entity shall proceed to evaluate those that have not been rejected, in order to provide an equal basis for comparing them.

(2) The evaluated price for bids shall be determined by-

- (a) taking the bid prices, as read out when the bids were opened; and
- (b) correcting any arithmetic errors, in accordance with [section 51](#) and the methodology, if any, stated in the bidding documents; and
- (c) making adjustments for any non-material non-conformity, error or omission in accordance with [section 51](#); and
- (d) converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding documents; and
- (e) applying any domestic preference in accordance with [section 29](#) and any prescribed criteria or weighting.

(3) In addition to price, a procuring entity may, subject to [subsection \(4\)](#), evaluate bids according to such of the following criteria as are relevant-

- (a) costs of inland transport and insurance to the specified site;
- (b) any payment schedule offered by the bidder;
- (c) the delivery time;
- (d) operating costs, efficiency and compatibility of equipment that constitutes or forms part of the procurement requirement;
- (e) availability of service and spare parts and related training;
- (f) safety, environmental and social benefits;
- (g) cost-effectiveness based on life-cycle;
- (h) costing, including costs relating to acquisition, costs of use such as consumption of energy and other resources, maintenance costs, and end of life costs such as environmental rehabilitation, collection and recycling costs;
- (i) any other criteria that may be prescribed.

(4) Criteria referred to in [subsection \(3\)](#) that are to be used in the evaluation of bids shall whenever possible-

- (a) be quantified in monetary terms; or
- (b) be expressed in the form of pass or fail requirements,

and shall be set out in full in the procurement notice or in the bidding documents:

Provided that, where it is not possible so to quantify or express those criteria, the procurement notice or the bidding documents shall either-

- (a) specify the relative weighting to be given to each of the criteria, expressed by providing for a range with an appropriate maximum spread; or
- (b) specify the criteria in descending order of importance.

51. Correction of errors and omissions in bids

(1) Where a bid is substantially responsive, the procuring entity may waive, clarify or correct any non-conformity, error or omission in it which does not constitute a material deviation:

Provided that the procuring entity shall quantify the non-conformity, error or omission in monetary terms to the extent that this can be done in the bidding document.

(2) A procuring entity may correct purely arithmetical errors in bids in accordance with the procedure stated in the bidding document:

Provided that the procuring entity shall forthwith notify the bidder concerned of any such correction and request the bidder to agree to it in writing, and if the bidder does not do so without delay-

- (a) the procuring entity shall reject the bid; and
- (b) any bid security provided by the bidder may be forfeited.

52. Prohibition of negotiation regarding bids

(1) Subject to [subsection \(2\)](#), except in the case of direct procurement there shall be no negotiation between a procuring entity and a bidder with respect to a bid submitted by the bidder.

(2) If the price of the lowest evaluated responsive bid exceeds the budget for the procurement contract by an amount which cannot be met through an increase in the budget, the procuring entity may-

- (a) request new bids; or
- (b) negotiate with the lowest evaluated bidder to try to obtain a reduction of the contract price through reducing the scope of the procurement requirement:

Provided that in no case shall the reduction in scope affect the technical specifications required by the bidding documents.

53. Confidentiality

A procuring entity shall take all necessary steps to ensure that information relating to-

- (a) the content of pre-qualification applications and bids; or
- (b) the examination, clarification, evaluation and comparison of bids,

is not disclosed to suppliers, contractors, service providers or consultants or to any other person not officially involved in the examination, evaluation, comparison or acceptance of bids.

54. Special Procurement Oversight Committee for certain especially sensitive or especially valuable contracts

(1) In this section-

"Accountant-General" means the person appointed as such in terms of [section 9](#) of the Public Finance Management Act [*Chapter 22:19*];

"especially sensitive", in relation to a procurement contract or exempted contract, means a contract of such a nature or description as may be prescribed or as the Minister may indicate in writing to the Committee, being one that has or may have a significant impact-

- (a) upon the national economy or the economic interests of the State; or
- (b) in the sphere of-
 - (i) the State's foreign or international relations; or
 - (ii) the public interest, national defence or national security;

"especially valuable", in relation to a procurement contract or exempted contract, means a procurement contract whose threshold exceeds by a prescribed margin any established prescribed threshold above which certain procurement proceedings may be applied under this Act;

"exempted contract" means a contract in the nature of a procurement contract involving the expenditure of public funds or the use of State resources that is exempted from the scope of this Act by virtue of [section 3 \(2\)](#), [\(3\)](#), [\(6\)](#) or [\(7\)](#);

"Principal Director Public Works" means the person employed as such in the Ministry responsible for public works;

"procurement contract by a joint venture" means a contract referred to in [section 100 \(5\) \(c\)](#);

"procurement record" means the record of procurement proceedings kept in terms of [section 69](#);

"responsible officer", in relation to the State party to an exempted contract, means the accounting officer of the Ministry or entity as defined in Public Finance Management Act [*Chapter 22:19*] or other person who is empowered to sign the contract on behalf of the State;

"Special Procurement Oversight Committee" or "Committee" means the committee constituted in terms of [subsection \(2\)](#);

"scrutinise", in relation to the scrutinising by the Committee of the proposed award of-

- (a) a procurement contract, means to ensure-
 - (i) that that all the processes, procedures and formalities required to be undertaken in terms of this Act in order to bring the procurement contract into being before its award have been substantially complied with and have not been omitted; and
 - (ii) conformity otherwise with the applicable provisions of the Public Finance Management Act [*Chapter 22:19*] and any other enactment securing public and financial accountability; and
 - (iii) generally that the objectives of the Act in relation to public procurement as outlined in [section 4 \(1\)](#) have, to the fullest possible extent, been given effect to with reference to the proposed award;
- (b) an exempted contract, means to ensure-
 - (i) that the objectives of the Act in relation to public procurement as outlined in [section 4 \(1\)](#) have, to such extent as may be applicable to the exempted contract in question, been given effect to with reference to the proposed award; and
 - (ii) conformity otherwise with the applicable provisions of the Public Finance Management Act [*Chapter 22:19*] and any other enactment securing public and financial accountability;
- (c) a procurement contract by a joint venture, means to ensure-
 - (i) that the proposed award complies with the criteria set forth in [section 100 \(5\) \(c\)](#), and
 - (ii) conformity otherwise with the applicable provisions of the Public Finance Management Act [*Chapter 22:19*] and any other enactment securing public and financial accountability.

(2) For the purposes of scrutinising especially sensitive or especially valuable procurement contracts and exempted contracts, there is hereby constituted a Special Procurement Oversight Committee, which shall report to the Minister and the Authority, and which shall consist of-

- (a) the Attorney-General (who shall be the Chairperson of the Committee), or his or her authorised delegate employed in the Attorney-General's Office whose seniority shall be that of a Director or above in the Civil Service's ranking of grades; and
- (b) the Auditor-General, or his or her authorised delegate employed in the Audit Office whose seniority shall be that of a Director or above in the Civil Service's ranking of grades; and
- (c) the Accountant-General (who shall be the deputy chairperson of the Committee and shall act as chairperson whenever the Attorney-General is represented in the committee by his or her delegate), or his or her authorised delegate employed in his her department whose seniority shall be that of a Director or above in the Civil Service's ranking of grades; and
- (d) the Principal Director Public Works, or his or her authorised delegate employed in his or her department whose seniority shall be that of a Director or above in the Civil Service's ranking of grades.

(3) The Chief Executive Officer shall provide secretarial services to the Committee and, at the invitation of the Chairperson of the Committee, the Chief Executive Officer shall attend any meeting of the Committee.

(4) Within the time referred to in [subsection \(5\)](#)-

- (a) the Minister may-
 - (i) on his or her own initiative or on the advice of the Accountant-General, in relation to any procurement contract or procurement contract by a joint venture that the Minister or the Accountant-General deems to be especially sensitive or especially valuable despite no prescription being made to that effect governing the contract in question; or
 - (ii) in relation to any exempted contract that the Minister deems to be especially sensitive or especially valuable;
- (b) the Accountant-General shall, in relation to any procurement contract or procurement contract by a joint venture whose value or subject-matter falls within the meaning of **"especially sensitive"** or **"especially valuable"** as prescribed,

convene on not less than forty-eight hours' written notice to the members of the Committee a meeting of the Committee to scrutinise the proposed contract award at a time and place specified by the Minister or the Accountant-General in his or her notice.

- (5) A meeting of the Committee must be convened, in the case of-
- (a) an especially sensitive or especially valuable procurement contract, as soon as possible after the evaluation of the bids in terms of [section 50 \(1\)](#) or [59](#), and in any event before the notification of the successful bidder; or
 - (b) an exempted contract or procurement contract by a joint venture that is deemed to be especially sensitive or especially valuable, at any time before the acceptance of the contract terms is communicated to contractor.

(6) For the purpose of scrutinising-

- (a) procurement proceedings for a contract that is or is deemed to be especially sensitive or especially valuable, the Chief Executive Officer shall avail to the Committee in advance-
 - (i) the procurement record relating to those proceedings; and
 - (ii) such other documents or information as the Chairperson may reasonably require for the purposes of the scrutiny;
- (b) an exempted contract or procurement contract by a joint venture that is or is deemed to be especially sensitive or especially valuable, the responsible officer shall avail to the Committee in advance such documents or information as the Chairperson may reasonably require for the purposes of the scrutiny.

(7) Any refusal on the part of any person to co-operate, to the best of his or her ability, with the Committee's request in terms of [subsection \(6\) \(a\) \(ii\)](#) or [\(b\)](#), whether communicated directly by the Chairperson of the Committee or through the Chief Executive Officer, is deemed to be an offence referred to in [section 97 \(4\)](#) as if for the word "investigator" the word "Committee" is substituted therefor.

(8) Subject to [subsection \(9\)](#), all questions or matters which are required to be decided by the Committee shall be decided by a majority of the members thereof:

Provided that, where the opinions of the members are equally divided on any question or matter, the decision of the Chairperson or member acting as the Chairperson shall be the decision of the Committee.

(9) Any matter of law arising for decision by the Committee and any question as to whether a matter for decision is a matter of fact or a matter of law shall be decided by the Attorney-General or his or her delegate.

(10) The Committee has the following powers-

- (a) to adjourn and reconvene its meetings to enable it to complete the scrutiny of any proposed award of a procurement contract:

Provided that the Committee must endeavour to complete its review in a single sitting, failing which it must complete its review by the third sitting;

- (b) to invite any person to attend a meeting of the Committee, where the Committee considers that the person has special knowledge or experience in any matter being considered by the Committee;
- (c) in relation to the award of a proposed procurement contract that is or is deemed to be especially sensitive or especially valuable-
 - (i) to certify to the best of its knowledge and ability that the proposed award withstands scrutiny, and to recommend that the procurement contract be awarded; or
 - (ii) with respect to defective procurement proceedings-
 - (A) to refer any matter back to the procuring entity for corrective action to be taken; or
 - (B) to cancel the procurement proceedings and order that they be recommenced;
- (iii) to order the Authority to initiate an investigation in terms of Part XIII, whether or not concurrently with any other action the Committee may order under [subparagraph \(ii\)](#); or
- (d) to recommend to the Minister the acceptance (unconditionally or subject to such conditions as the Committee may specify) of any proposed exempted contract or procurement contract by a joint venture that withstands scrutiny, or the rejection of any proposed exempted contract or procurement contract by a joint venture for failure to withstand scrutiny;
- (e) to deem any proposed contract to be rejected because not enough information or documentation in relation to the proposal was availed to the Committee to enable it to properly scrutinise it (in which event the Minister or the Accountant-General, as the case may be, may resubmit the proposal to the Committee within the period of validity of the bid concerned).

(11) The Committee shall incur no liability towards bidders or other persons for action taken by it in good faith in terms of this section.

55. Contract award

- (1) Having evaluated the bids, a procuring entity shall award the procurement contract to the bidder that-
 - (a) submitted the lowest bid which meets the price and non-price criteria specified in the bidding documents; or
 - (b) offers the most economically advantageous tender.
- (2) Before the expiry of the period of bid validity, the procuring entity shall notify-
 - (a) the successful bidder of the proposed award and of the time within which the contract must be signed, subject to any intervening challenge filed in accordance with Part X; and
 - (b) the other bidders of the name and address of the proposed successful bidder and the price of the contract,

and the contract shall not be signed until at least fourteen days have passed following the giving of that notice.

(3) If the successful bidder fails to sign a written contract when required to do so or fails to provide, when required, any performance security before the time stated in the bidding documents for the signing of the contract, the procuring entity shall accept the next ranked bidder from among the remaining bids that have not been rejected, and shall thereupon comply with [subsection \(2\)](#) in relation to that bid:

Provided that the procedure set out in this subsection may be applied only to the next two ranked bidders after the original successful bidder, and only to the extent that the bids can be economically justified.

(4) Procurement contracts shall be signed by the procuring entity's accounting officer or a person delegated by him or her.

56. Performance security

In such cases as may be prescribed, a procuring entity may require the successful bidder, before signing the procurement contract, to provide a performance security:

Provided that any such requirement shall be stated in the bidding documents and the procurement contract.

PART VIII

Procurement of Consultancy Services

57. Interpretation in and application of Part VIII

(1) In this Part-

"community service organisation" means a non-profit non-governmental organisation concerned with local issues and community needs;

"financial bid" means a bid, or that part of a bid, which sets out the price to be charged by a firm for the service to be provided under the bid;

"firm" means a person or association of persons providing consultancy services;

"technical bid" means a bid, or that part of a bid, which sets out the nature of the service to be provided under the bid and the manner in which it is to be provided.

(2) This Part shall apply to the procurement of consultancy services.

58. Request for proposals method

(1) For the procurement of consultancy services, procuring entities shall employ the request for proposals method described in this section.

(2) Subject to [subsection \(3\)](#), a procuring entity shall, as part of its pre-qualification procedures, prepare a short-list of not fewer than three and not more than six firms which, so far as the procuring entity can ascertain-

- (a) are of the same category and similar capacity and business objectives; and
- (b) have the capacity to perform the required services,

and shall provide those firms with the request for proposals for services.

(3) For the purpose of preparing the short-list referred to in [subsection \(2\)](#)-

- (a) where the estimated value of the procurement exceeds the prescribed threshold, the procuring entity shall seek expressions of interest by publishing a notice in an appropriate publication such as a local or international newspaper of wide circulation or on the Internet, or in a relevant trade publication or technical or professional journal;
- (b) where the estimated value of the procurement is less than the prescribed threshold, the procuring entity may prepare the short-list from market knowledge or other sources of information:

Provided that in such cases as may be prescribed or when so directed by the Authority, the procuring entity shall also advertise the procurement in the prescribed manner.

(4) The request for proposals for services shall provide short-listed bidders with all the information they need to enable them to participate in the procurement proceedings and submit responsive bids, and in particular shall contain the following information-

- (a) the name and address of the procuring entity; and
- (b) the nature, time-frame and location of the services to be provided; and
- (c) the consultant's terms of reference, that is to say his or her duties and the manner in which he or she is to provide the services; and
- (d) criteria to be used in evaluating and comparing bids, and their relative weights as compared to price; and
- (e) the terms of the procurement contract, and the manner in which it will enter into force; and
- (f) instructions for the preparation and submission of bids, and the deadline for their submission; and
- (g) the procedure for the final selection of bids; and
- (h) notice of any rules, restrictions or precautions against conflicts of interest, fraud or corruption, including potential debarring of persons who contravene those rules, restrictions or precautions from participating in future procurements; and
- (i) any other information that may be prescribed or stated in standard bidding documents issued by the Authority.

59. Methods of soliciting, evaluating and selecting bids

Under the request for proposals method of procurement, the procuring entity shall solicit and evaluate bids and select the successful bid in the following ways-

- (a) whenever practicable and appropriate, by the quality and cost based selection method, set out in [section 60](#); or
- (b) where the service sought is simple and precisely defined and the budget is fixed, by the selection under fixed budget method set out in [section 61](#); or
- (c) where the service sought is of a standard or routine nature and well-established practices and standards exist, and in which the cost is small, by the least-cost selection method set out in [section 62](#); or
- (d) where the service sought is of a highly technical nature, by the quality-based selection method set out in [section 63](#); or
- (e) where involvement and knowledge of community needs, local issues and community participation are important in the preparation, implementation and operation of a community development project, by the selection amongst community service organisations method set out in [section 64](#); or
- (f) in exceptional cases, such as-
 - (i) for services that continue a previous completed assignment; or
 - (ii) for very small assignments; or
 - (iii) when only one consultant is qualified or has experience of exceptional worth for the assignment; or
 - (iv) where, owing to a catastrophic event, there is an urgent need for the service sought;by the single-source selection method set out in [section 65](#); or

- (g) where-
 - (i) the qualification and experience of the consultant are the paramount requirement; and
 - (ii) teams of personnel are not required; and
 - (iii) no outside professional support is required,by the selection of individual consultant method set out in [section 66](#).

60. Quality and cost based selection method

(1) The quality and cost based selection method entails a competitive process among short-listed firms that takes into account the quality of their bids and the price of the services they offer, the relative weight given to quality and price being determined for each case according to the nature of the service sought by the procuring entity.

(2) In the quality and cost based selection method-

- (a) bidders shall submit their technical bids and their financial bids in separate sealed envelopes; and
- (b) the technical bids shall be evaluated first as to the quality of the services offered, and then the financial bids as to the price of the services, the persons who evaluate the technical bids not being permitted to see the financial bids until the qualitative evaluation is completed.

(3) In evaluating the technical bids for the purposes of [subsection \(2\)](#), the procuring entity shall take into account, in relation to each bid-

- (a) the consultant's relevant experience for the assignment; and
- (b) the manner in which the service is proposed to be provided, including any transfer of knowledge if that is specified in the terms of reference in the request for proposals; and
- (c) the qualifications of the key personnel who will provide the services; and
- (d) such other criteria as may be prescribed,

the bid being marked according to each criterion on a scale of one to one hundred and the marks being weighted to become quality scores.

(4) The criteria to be used in evaluating technical bids, and the weight to be given to each criterion shall be set out in the request for proposals.

(5) Where upon evaluation in terms of [subsection \(3\)](#) a technical bid is found not to meet important aspects of the terms of reference set out in the request for proposals, or fails to achieve a minimum quality score specified in the request for proposals, the bid shall be rejected, whereupon the procuring entity shall notify the firm that submitted the bid that it has been rejected and invite the firm to collect the financial bid within thirty days, after which the procuring entity may destroy it.

(6) Immediately after evaluating the technical bids in terms of [subsection \(3\)](#), the procuring entity shall notify the firms that have achieved the minimum qualifying score of the date, time and place set for opening their financial bids, which date shall be fixed to allow sufficient time for the firms to attend.

(7) The financial bids shall be opened publicly in the presence of representatives of the firms that choose to attend, and when each financial bid is opened the name of the firm, the quality score achieved by the bid, and the proposed price of the service, as stated in the financial bid, shall be read aloud and recorded.

(8) In considering financial bids, the procuring entity shall-

- (a) correct any arithmetical errors in them; and
- (b) convert the prices to a single currency as stated in the request for proposals.

(9) In the evaluation of financial bids-

- (a) the bid with the lowest price may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices; or
- (b) a directly proportional or other method may be used in allocating the marks for the price:

Provided that, whichever method is used it shall be described in the request for proposals.

(10) The total score to be awarded to a bid under this section shall be obtained by weighting the quality and financial scores achieved by the technical bid and the financial bid respectively and adding those scores.

(11) The relative weights to be given to the technical and financial scores under [subsection \(10\)](#) shall be specified in the request for proposals and may vary according to the complexity of the service to be provided and the relative importance of quality, but the financial score shall normally account for twenty *per centum* of the total

score.

(12) After ascertaining the total scores to be awarded to bids under this section, the procuring entity shall without delay invite the bidder obtaining the highest total score to enter into negotiations regarding-

- (a) the terms of reference of the consultant; and
- (b) the manner in which the consultant is to provide the service; and
- (c) personnel needed to provide the service; and
- (d) any service or facility to be provided by the procuring entity; and
- (e) special terms and conditions of the procurement contract; and
- (f) any other matters that may be prescribed or that the procuring entity and the bidder may consider necessary to discuss:

Provided that the negotiations shall not result in any substantial alteration in the terms of reference or the terms of the procurement contract, and the price of the service shall not be negotiated.

(13) If negotiations under [subsection \(12\)](#) fail to result in an acceptable procurement contract, the procuring entity shall-

- (a) terminate the negotiations, informing the firm concerned in writing of the reasons for termination; and
- (b) invite the next ranked firm for negotiations in accordance with that subsection, and after such invitation the procuring entity shall not reopen the earlier negotiations.

(14) After negotiations in terms of [subsection \(12\)](#) or, as the case may be, [subsection \(13\)](#) have been successfully completed, the procuring entity shall promptly notify other firms on the short-list that they were unsuccessful, and shall not sign a procurement contract with the successful firm until at least fourteen days have elapsed following the giving of that notice.

61. Selection under fixed budget method

(1) The selection under fixed budget method entails a process whereby the procuring entity evaluates the bids submitted by short-listed bidders-

- (a) first according to the quality of the services they offer, disregarding the price at which they offer them; and
- (b) then according to the price at which the bidders offer their services, rejecting all the bids that exceed the proposed budget; and
- (c) then selecting from the remaining bids the one whose quality of service ranks highest.

(2) When employing the selection under fixed budget method, the procuring entity shall indicate in its request for proposals the available budget and request the firms to provide their technical and financial proposals in separate envelopes, within the budget.

(3) Evaluation of the quality of all technical bids submitted shall be carried out in accordance with the quality and cost based selection method set out in [section 60](#), then the financial bids shall be opened in public and read out as provided in that section, and the procuring entity shall reject any bids that exceed the budget stated in its request for proposals.

(4) The procuring entity shall select from the remaining bidders the technical bid that achieved the highest quality score and shall invite the bidder to negotiate a procurement contract.

(5) Subject to [subsections \(1\) to \(4\)](#), [section 60](#) ("Quality and cost based selection method") shall apply, with any necessary modifications, to the evaluation and selection of bids under the fixed budget method.

62. Least-cost selection method

(1) The least-cost selection method entails a process whereby the procuring entity establishes minimum standards for the quality of service required, and-

- (a) the bids which offer less than those minimum standards are rejected; and
- (b) of the remaining bids the one offering to provide the service at the lowest price is accepted, so the bidders compete only on price.

(2) When employing the least-cost selection method, the procuring entity shall specify the minimum qualifying standards in its request for proposals and request bidders to provide their technical bids and their financial bids in separate envelopes.

(3) Opening and evaluation of the quality of all technical bids submitted shall be carried out first, and those that fail to meet the minimum qualifying standards shall be rejected.

(4) Following evaluation of the technical bids in terms of [subsection \(3\)](#), the financial bids of the remaining bidders shall be opened and the procuring entity shall select the bidder offering to provide the service sought at the lowest price, and shall invite the bidder to negotiate a procurement contract.

(5) Subject to [subsections \(1\) to \(4\)](#), [section 60](#) ("Quality and cost based selection method") shall apply, with any necessary modifications, to the evaluation and selection of bids under the least-cost selection method.

63. Quality-based selection method

The quality-based selection method entails a process whereby the procuring entity establishes the best technical offer regardless of cost, subject however to the procuring entity engaging in negotiations around the issue of cost to achieve value for money.

64. Selection amongst community service organisations method

(1) The selection amongst community service organisations method entails a process whereby all or most of the firms on the procuring entity's short-list consists of community service organisations because the service sought requires local participation and knowledge of local issues and community needs.

(2) Under the selection amongst community service organisations method, technical bids submitted shall be evaluated using criteria reflecting the unique qualifications of community service organisations, such as voluntarism, non-profit status, local knowledge, scale of operation, and reputation.

(3) Subject to [subsections \(1\) and \(2\)](#), [section 60](#) ("Quality and cost based selection method") shall apply, with any necessary modifications, to the evaluation and selection of bids under the selection amongst community service organisations method.

65. Single-source selection method

(1) The single-source selection method entails a process whereby the procuring entity, without inviting competitive bids, selects a firm to provide a service even though other firms are available to provide the service.

(2) Under the single-source selection method, the procuring entity shall-

- (a) prepare written terms of reference, and request from prospective firms information regarding their qualifications, experience and competence; and
- (b) draw up a short-list of prospective firms; and
- (c) from the short-list, select the firm that the procuring entity considers has the most appropriate qualifications, experience and competence; and
- (d) invite the selected firm to submit a combined technical and financial bid; and
- (e) if the bid submitted by the selected firm is responsive and otherwise satisfactory, negotiate a procurement contract with that firm.

66. Selection of individual consultant method

(1) The selection of individual consultant method entails a process whereby the procuring entity, without inviting competitive bids, selects an individual person, rather than a firm that is an organisation or association, to provide a service even though other persons are available to provide the service.

(2) The procedure to be followed by a procuring entity when employing the selection of individual consultant method shall be the same as that for the single-source selection method set out in section submit company 65.

PART IX

Transparency and Integrity

67. Information to be given to rejected bidders

(1) A procuring entity shall upon request, inform a bidder, promptly and in writing, of the reason for the

rejection of the bidder's application to pre-qualify, or of the bidder's bid or quotation.

(2) Where a rejected bidder requests information during the fourteen-day period referred to in [section 55 \(2\)](#) or [60 \(14\)](#), that period shall be extended until the information has been provided.

(3) In responding to a request for information by a rejected bidder, the procuring entity shall-

- (a) inform the bidder of the stage at which the bidder's application, bid or quotation was rejected; and
- (b) provide brief details of any material deviation, reservation or omission leading to the rejection; and
- (c) where appropriate, state that although the bid or quotation was substantially responsive, it failed to offer the best value for money or lowest price or failed to achieve the highest score,

but the procuring entity shall not provide details of any other bids, proposals or quotations other than information that is publicly available from bid openings or published notices.

68. Notification of contract award

Within one month after awarding a procurement contract, a procuring entity shall-

- (a) publish a notice of the award in the same manner as it published the procurement notice; and
- (b) send a copy of the notice to the Authority for publication on the Authority's website.

69. Records of procurement proceedings

(1) A procuring entity shall keep a separate record for each procurement, (the "procurement record") which shall be marked with a reference number for easy identification.

(2) The procurement record shall contain accurate copies of all documents and communications related to the procurement concerned and shall include at least the following-

- (a) a description of the procurement requirement; and
- (b) a list of the participating bidders and their qualifications; and
- (c) any requests for clarifications and any responses thereto; and
- (d) where applicable, a statement of the reason for choosing a procurement method other than competitive bidding or request for proposals; and
- (e) the bid prices; and
- (f) a summary of the evaluation of bids; and
- (g) a summary of any review proceedings, and the resulting decisions; and
- (h) such other information as may be prescribed.

(3) The procuring entity shall, on request made at any time after a bid has been accepted in the procurement proceedings concerned, permit any person to inspect the procurement record and to make copies of any documents in the record:

Provided that-

- (i) this subsection shall not preclude earlier disclosure of the record, where such disclosure is required by law or by order of a court or an arbitrator,
- (ii) such disclosure shall be made in such a way as to preserve the confidentiality of proprietary commercial information.

(4) A procuring entity shall preserve the procurement record for at least six years following completion or termination of the procurement contract or cancellation of the procurement proceedings.

(5) Procuring entities shall provide the Authority with summaries of their procurement proceedings at such times and in such form as the Authority may require.

(6) The Authority must establish an electronic system for the purpose of this section, and specify the conditions under which access to electronic data in the system is open.

70. Conduct of procurement officers

(1) In this section-

"procurement officer" means an officer, employee or agent of a procuring entity who is responsible for any aspect of the entity's procurement, including the implementation of procurement contracts.

(2) Every procurement officer shall, in the exercise of his or her responsibilities as such-

- (a) ensure that each decision is based on adequate information to the extent that it is available, and is made in good faith, for a proper purpose in accordance with this Act, and in the best interest of the procuring entity; and
- (b) ensure fair competitive access by bidders to procurement proceedings, including the award of procurement contracts; and
- (c) avoid any conflict of interest; and
- (d) act with the utmost propriety and honesty; and
- (e) not reveal confidential information, including bidders' proprietary information; and
- (f) abide by the code of conduct referred to in [section 71](#); and
- (g) comply with any other provision of this Act that is applicable to him or her as a procurement officer.

(3) Before a procurement officer enters upon his or her office as such, he or she shall, in writing, undertake to-

- (a) faithfully exercise the functions assigned to him or her as a procurement officer; and
- (b) abide by rules of conduct provided for by or under this Act, including the code of conduct referred to in [section 71](#).

(4) A procurement officer who-

- (a) contravenes [subsection \(2\)](#) or, within forty-eight hours of being requested to do so in writing by his or her superior, fails to comply with [subsection \(3\)](#); or
- (b) breaches an undertaking given in terms of [subsection \(3\)](#),

shall be guilty of-

- (i) misconduct under Part V of the Public Service Act [*Chapter 16:04*], where he or she is a civil servant; or
- (ii) a military offence for the purposes of the Defence Act [*Chapter 11:02*], where he or she is a member of the Defence Forces; or
- (iii) omitting or neglecting to perform a duty, or performing a duty in an improper manner, as provided in paragraph 34 of the [First Schedule](#) to the Police Act [*Chapter 11:10*], where he or she is a police officer; or
- (iv) a breach of discipline for the purposes of the Prisons Act [*Chapter 7:11*], where he or she is a prison officer; or
- (v) a breach of his or her terms and conditions of employment for the purpose of the Labour Act [*Chapter 28:01*], in any other case,

and the procurement officer shall be liable to disciplinary action and any other sanction or punishment accordingly.

(5) Where a contravention or breach referred to in [subsection \(4\)](#) amounts to an offence under any law, the procuring entity shall report it to the police for prosecution.

71. Code of conduct for procurement officers

(1) Regulations in terms of [section 101](#) shall provide for a code of conduct for officers and employees of procuring entities, in so far as they are responsible for any aspect of the entities' procurement, including the implementation of procurement contracts.

(2) The code of conduct shall provide for all matters relating to the conduct of the officers and employees concerned, in so far as they are engaged in procurement, including-

- (a) the qualifications and training of such officers and employees; and
- (b) the prevention of conflicts of interest in procurement; and
- (c) the prohibition of collusion with any bidder involved in a competitive bidding process; and
- (d) declarations of interest in particular procurements.

(3) The Authority shall ensure that the code of conduct is promptly made readily accessible to the public and is systematically up-dated to conform with evolving best practices in procurement.

72. Conduct of bidders and contractors

(1) Bidders and contractors shall at all times abide by their obligations under this Act and, where applicable, their procurement contracts.

(2) Bidders shall not collude with each other, before or after they submit their bids, in order to-

- (a) allocate procuring entities among bidders; or
- (b) establish bid prices at artificial non-competitive levels; or
- (c) in any other way, deprive a procuring entity of the benefits of free and open competition.

(3) Where a procuring entity ascertains that a bidder or potential bidder-

- (a) has contravened [subsection \(1\)](#) or [\(2\)](#); or
- (b) has been convicted of an offence involving-
 - (i) dishonesty, corruption, obstruction of justice or a lack of honesty or business integrity; or
 - (ii) anti-competitive practices, whether or not involving collusion;or
- (c) has neglected or failed without good cause to carry out a material provision of a contract, with the result that the other contracting party terminated the contract and additionally, or alternatively, became entitled to liquidated damages or some other contractual remedy; or
- (d) has been guilty of unethical conduct in relation to any procurement, including-
 - (i) offering or making a payment or offer of employment, or offering or giving a gratuity or other reward, in order to influence a decision; or
 - (ii) offering to pay or paying a bribe, whether in the form of a payment, gratuity, offer of employment or otherwise; or
 - (iii) knowingly soliciting or obtaining confidential information, or attempting to obtain confidential information, for the purpose of obtaining an advantage over other bidders or potential bidders,

the procuring entity may reject the bidder's bid or refuse to consider any bid he or she may submit.

(4) Whenever a procuring entity proposes to reject or refuse to consider a bid in terms of [subsection \(3\)](#), the procuring entity shall inform the bidder of the reasons for the proposed rejection or refusal and afford the bidder a reasonable opportunity to make representations in the matter.

(5) Where the conduct of a bidder or potential bidder referred to in [subsection \(3\)](#) amounts to an offence under any law, the procuring entity shall report it to the police for prosecution.

(6) Regulations in terms of [section 101](#) may provide for debarring persons from participating in future procurements where they have been guilty of conduct referred to in [subsection \(3\)](#).

PART X

Challenge Proceedings

73. Challenge to procurement proceedings

(1) A potential or actual bidder in procurement proceedings who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a procuring entity by or under this Act, may challenge the procurement proceedings by lodging a written notice with the procuring entity in accordance with this section.

(2) Where notice of the award of a contract has not yet been issued, a challenge may be lodged at any stage of the procurement proceedings up to the date on which such notice is issued:

Provided that, where the grounds of a challenge concern alleged improprieties in the invitations to bid or to pre-qualify which have become apparent before bids were opened, the challenge shall be lodged prior to bid opening.

(3) Where notice of the award of a contract has been issued, a challenge may be lodged only within the fourteen-day period referred to in [section 55 \(2\)](#) or [60 \(14\)](#).

(4) A challenge shall not be entertained unless-

- (a) in the written notice the bidder has identified the specific act or omission alleged to constitute a

breach of duty on the part of the procuring entity; and

(b) when lodging the written notice, the bidder deposits with the procuring entity a sum of money in the prescribed amount by way of security for costs.

(5) If the procuring entity concedes that it breached a duty as alleged in the challenge, it shall within five days-

(a) notify the bidder concerned and the Authority of its concession; and

(b) take whatever steps it considers necessary, or as the Authority may direct, to rectify the breach.

74. Application for review of procurement proceedings by review panel

(1) Where-

(a) a procuring entity has not conceded that it breached a duty as alleged in a challenge; or

(b) the bidder that lodged the challenge is dissatisfied with any steps taken or to be taken in terms of [section 73 \(5\) \(b\)](#) to rectify the breach alleged in a challenge,

the bidder may within five days after lodging the challenge apply in writing to the Authority for the procurement proceedings concerned to be reviewed by a review panel.

(2) An application shall be made in writing, setting out-

(a) the grounds of the challenge, as stated in the written notice lodged with the procuring entity in terms of [section 73 \(1\)](#); and

(b) whether the procuring entity has notified the bidder of any steps it has or proposes to take to rectify the breach alleged in the challenge, and if it has done so, the reasons why the bidder is dissatisfied with them.

(3) Within seven days after receiving an application under [subsection \(1\)](#), the Authority shall appoint a review panel to hear the challenge and shall fix a date for the hearing.

(4) The making of an application to the Authority within the five-day period specified in [subsection \(1\)](#), shall suspend the challenged procurement proceedings until-

(a) the review panel determines the challenge; or

(b) the review panel cancels the suspension in terms of [section 76 \(7\)](#).

75. Appointment of review panels

(1) Review panels shall be appointed from one or more lists of panellists prepared by the Authority in terms of this section.

(2) The Authority shall select persons for inclusion on a list of panellists by-

(a) requesting-

(i) the Law Society of Zimbabwe; and

(ii) the Civil Service Commission; and

(iii) organisations representing professional associations or bodies or commercial and industrial entities; and

(iv) other organisations which, in the opinion of the Board, have or represent persons who have expertise in fields relating to procurement,

to nominate persons for inclusion on the list; and

(b) publishing advertisements in newspapers circulating in Zimbabwe, calling on persons to apply for inclusion on the list,

and selecting from the nominees and the persons who respond to the advertisements panellists who-

(i) are or have been registered legal practitioners; or

(ii) have been senior officers in the Civil Service with experience in procurement; or

(iii) have qualifications or experience in fields relating to procurement.

(3) The Authority shall keep the lists of panellists at its offices available for inspection by members of the public, free of charge, during normal office hours.

(4) A review panel for any challenge shall consist of at least three members appointed by the Authority from a list of panellists, of whom-

- (a) one shall be a registered legal practitioner or former legal practitioner or a member or former member of the judiciary; and
 - (b) one shall be a former member of the Civil Service with experience in procurement; and
 - (c) one shall be a person nominated by an organisation referred to in [subsection \(2\) \(a\)](#).
- (5) The terms and conditions of service for members of a review panel shall be as prescribed.

76. Review by review panel

(1) A review panel appointed to hear a challenge shall conduct such investigation and hearing as it considers appropriate and deliver its written decision in the matter, setting out its reasons for the decision, within fourteen days after the application for review of the procurement proceedings concerned was received by the Authority.

(2) The procedure to be adopted by a review panel shall be as prescribed or, in relation to any matter that is not prescribed, as may be fixed by the panel:

Provided that the panel shall afford the parties to the challenge an adequate opportunity to make representations in the matter and, generally, shall observe the rules commonly known as the rules of natural justice.

(3) The decision of a review panel shall be binding on the bidder that lodged the challenge and the procuring entity whose proceedings are the subject of the challenge.

(4) A review panel shall dismiss a challenge where-

- (a) the bidder that lodged the challenge has failed to comply with [section 73 \(4\)](#); or
- (b) the statement of the grounds of the challenge is vague or embarrassing; or
- (c) the grounds of the challenge do not constitute a valid basis for a challenge; or
- (d) the bidder that lodged the challenge has failed to establish the grounds of the challenge,

and may order the bidder to compensate the procuring entity for any expense or loss it incurred as a result of the challenge.

(5) Where a review panel finds that a bidder that lodged a challenge has established valid grounds for the challenge, the panel may, as appropriate-

- (a) prohibit the procuring entity from reaching any decision or doing any thing in an unauthorised manner or from following incorrect procedure; or
- (b) annul in whole or in part any unauthorised act or decision of the procuring entity, other than an act or decision bringing the procurement contract into force; or
- (c) order the procuring entity to begin the procurement proceedings afresh; or
- (d) award damages to the bidder to compensate for any loss he or she has suffered.

(6) Where a review panel orders compensation to be paid to a procuring entity in terms of [subsection \(4\)](#) or damages to be paid to a bidder in terms of [subsection \(5\)](#), the procuring entity or the bidder, as the case may be, may register a copy of the panel's award, certified by the chairperson of the panel, with the clerk of the magistrates court for the province in which the panel conducted its hearing, whereupon the award may be enforced as if it were a judgment of a magistrate of that court.

(7) At any stage after a review panel has been appointed and before it delivers its decision, the panel may, upon the application of the procuring entity, cancel the automatic suspension of the procurement proceedings imposed by [section 74 \(4\)](#), if the procuring entity satisfies the panel that continuation of the suspension would cause disproportionate harm to the public interest, to the procuring entity or to other suppliers and contractors.

77. Appeal to Administrative Court against decision of review panel

(1) A bidder or a procuring entity aggrieved by a decision of a review panel may appeal against the decision to the Administrative Court within twenty days after the panel's decision was notified to the party concerned.

(2) In an appeal the Administrative Court shall not set aside the decision of the review panel but may award fair and adequate compensation to the appellant for any patrimonial loss or damage the appellant may have suffered.

78. Procurement contract

(1) Where possible, a procurement contract shall be based on the appropriate model contract set out or referred to in standard bidding documents developed by the Authority.

(2) Subject to this Part, a procuring entity shall ensure that every procurement contract it enters into-

- (a) sets out the complete names and addresses of the parties to the contract; and
- (b) lists the contract documents by order of priority; and
- (c) states the specifications of the procurement requirement; and
- (d) states the quantity of the procurement requirement; and
- (e) states the price of the procurement requirement or how the price will be determined; and
- (f) states when the price will be paid and the method of payment; and
- (g) provides for the procuring entity's right to inspect the procurement requirement in order to ensure proper performance of the contract by the contractor; and
- (h) specifies the place and time of delivery or completion of the procurement requirement and any conditions relating to its delivery or completion; and
- (i) provides for delivery of the procurement requirement, including, where appropriate, transfer of title, risk of loss, insurance and the completion of import and export formalities, which provisions shall conform to international commercial terms published by bodies such as the International Chamber of Commerce; and
- (j) where applicable, provides for the nature and amount of securities to be provided by the parties; and
- (k) provides for the remedies of either of the parties in the event of breach by the other; and
- (l) provides for the responsibilities of the parties in the event of delay in performance, supervening impossibility of performance or other event affecting performance; and
- (m) provides for termination of the contract; and
- (n) contains provisions for dispute settlement; and
- (o) covers other necessary issues concerning the obligations of the parties and clarifying the transaction, including price revision, warranties, contract modification, subcontracting, insurance obligations, and remedies for delay and non-performance.

79. Responsibility for contract management

A procuring entity shall be responsible for administering its procurement contracts and shall establish procedures for doing so and provide the necessary resources, human and material, for effective contract administration.

80. Approaches to pricing in procurement contract

(1) The price of the procurement requirement in a procurement contract shall be set-

- (a) on the basis of a unit price applied to the quantities actually delivered; or
- (b) on a lump-sum basis, applied to the whole or a part of the contract, irrespective of the actual quantity needed to be delivered; or
- (c) in any other way that may be prescribed or authorised in standard bidding documents, general conditions of contract, or other instruments issued by the Authority.

(2) No adjustment of the price of the procurement requirement shall be permitted unless it is provided for in the procurement contract:

Provided that in permitting such adjustment there must be no material deviation from the procurement requirements and fee evaluation of the bid on the basis of which the contract was awarded.

(3) A procurement contract may include an incentive clause whereby an increased price is payable for

improved delivery periods, improved quality, or cost reduction.

(4) Where the time for performance under a procurement contract extends beyond a prescribed period, the contract may provide for an adjustment in the price to take into account changes in economic circumstances.

(5) Where a procurement contract provides for an adjustment in the price, the contract shall stipulate clearly-

- (a) the conditions under which price adjustment will be permitted, which conditions may include increases or decreases in the cost of materials, labour, and energy; and
- (b) the formulae and indices to be referred to in order to determine whether a price adjustment is permissible and to identify the amount of the adjustment; and
- (c) the frequency with which price adjustments may be implemented; and
- (d) the procedures to be followed in order to effect a price adjustment.

(6) A procurement contract may provide that, when the application of price adjustment would modify the initial price by more than twenty *per centum* or would modify the balance owing under the contract by more than twenty *per centum*, the procuring entity may terminate the contract.

81. Variation of procurement contract

(1) Any variation of a procurement contract that exceeds the maximum variations allowed in the contract documents or necessitated by any law enacted after the award shall be effected by a modification of the contract signed by both parties.

(2) The parties to a procurement contract shall not agree to vary the contract if the variation would result in a contract materially different from the original contract or would significantly alter the nature or scope of the contract.

(3) Where a procuring entity wishes to vary a procurement contract-

- (a) in a manner referred to in [subsection \(2\)](#); or
- (b) so as to increase the contract price to a greater extent than is prescribed or permitted by [section 80](#) ("Approaches to pricing in procurement contract"),

the procuring entity shall either initiate fresh procurement proceedings or, where appropriate, embark on direct procurement in terms of [section 33](#).

82. Payment under procurement contract

(1) Payments under a procurement contract shall be made within the time-limits set out in the contract, and the contract may provide for the payment of compensation for a failure to make the payments within those time-limits.

(2) A procurement contract may provide for the procuring entity to make progress payments based on progress in the fulfilment of the contract, and such payments may be-

- (a) calculated as a percentage of the total performance due under the contract; or
- (b) paid according to the achievement of performance milestones identified in the contract; or
- (c) based on actual quantities delivered or completed; or
- (d) paid or calculated on any other basis that may be prescribed.

(3) Progress payments shall not be made except upon presentation and acceptance of such documentation as is required under the procurement contract as evidence of the progress in performance.

(4) Where a procurement contract provides for the making of progress payments, the contract may provide that the procuring entity may withhold a percentage of the amounts due as retention money until performance of the procurement contract is completed.

(5) When necessary to enable effective implementation of the contract, a procurement contract may provide for the procuring entity to make advance payments of the price:

Provided that-

- (i) the total amount of advance payment made under the procurement contract shall not exceed the prescribed percentage of the total contract price,
- (ii) unless otherwise stipulated in the contract, an advance payment shall not be made unless the contractor furnishes an advance payment guarantee covering the amount of the advance payment and satisfies any other terms set out in the bidding documents.

- (6) Where a procuring entity has made an advance payment under a procurement contract-
- (a) the contractor, and any of its subcontractors, shall utilise materials, equipment and personnel that are the subject of the advance payment only for the work or services for which the advance payment was made;
 - (b) in the case of a contract for the construction of works, the contractor and any subcontractors shall commit the materials, equipment and personnel that are the subject of the advance payment exclusively to sites related to the works covered by the contract and for which the advance payment was made.

83. Subcontracting

(1) Unless the procurement contract provides otherwise, a contractor may subcontract part of its performance under the procurement contract, subject to the written approval of the procuring entity for each subcontract:

Provided that the contractor shall not subcontract the performance of all its obligations under the contract, nor shall the contractor assign the entire contract to a subcontractor.

(2) Any subcontracting shall not diminish or affect the contractor's responsibility for fulfilling its obligations under a procurement contract.

84. Inspection of goods and construction works

(1) Where the procurement requirement consists of goods or construction works, a procurement contract shall give the procuring entity the right-

- (a) to inspect the procurement requirement before accepting it; and
- (b) at all reasonable times, to observe and inspect the manufacture of the goods or the progress of the construction work,

and the contract shall provide that any defects or omissions detected at such an inspection or observation shall be remedied at the contractor's expense.

(2) A contractor shall, at its own expense, place at the procuring entity's disposal any premises, facilities and personnel needed for inspections referred to in [subsection \(1\)](#).

(3) The contractor and the procuring entity shall each bear the expenses for the attendance of their respective representatives at inspections referred to in [subsection \(1\)](#).

(4) If a contractor has been permitted to employ the services of a subcontractor, it shall in its contract with the subcontractor reserve to the procuring entity the rights of inspection and observation referred to in this section.

(5) A procuring entity may appoint-

- (a) an inspection committee and additionally, or alternatively, an inspection agent to carry out inspections referred to in [subsection \(1\)](#); and
- (b) a technical committee to inspect the procurement requirement and accept the performance under the contract.

85. After-sale service

Bidding documents and a procurement contract may oblige a contractor to provide workshops and spare parts for goods that require after-sale service, the duration of such obligation corresponding to the average operating life of the goods.

86. Insurance requirements

(1) Where in any procurement a successful bidder is required to obtain insurance, the requirement shall be stated in the bidding documents or the request for proposals, as the case may be, and in the procurement contract, indicating the amount and essential terms of the insurance cover that the successful bidder is required to obtain.

(2) A procurement contract may require the contractor to cause any of its subcontractors to take out and maintain insurance cover in accordance with the requirements of the procurement contract.

(3) Where a procurement contract contains a requirement referred to in [subsection \(1\)](#) or [\(2\)](#), it shall reserve to the procuring entity the right to reject insurance coverage that does not comply with the requirements stated in

the contract.

87. Remedies for breach of contract

A procurement contract shall provide the procuring entity with one or more lawful remedies in the event of breach of contract by the contractor, which remedies may include-

- (a) rejection of defective performance; and
- (b) prompt removal and replacement of defective goods, or repair or replacement of defective performance; and
- (c) liquidated damages; and
- (d) termination of the contract and procurement of replacement performance, at the expense of the defaulting party.

88. Liquidated damages for delay

Where a procurement contract provides that the contractor is liable to pay an agreed percentage of the contract value for delay in the performance due under the contract, the provision shall specify-

- (a) the amount to be paid for each day, week or month of the delay; and
- (b) the maximum period of delay allowed before a contract can be terminated; and
- (c) that the contractor is not relieved of its liability for performance under the contract by virtue of payment under the provision; and
- (d) that if the procuring entity terminates the contract for delay, the contractor will be liable for liquidated damages accruing until the procuring entity reasonably obtains delivery or performance of a similar procurement requirement from another contractor, and that those liquidated damages are in addition to liability for any extra costs of entering into a further procurement contract with that other contractor; and
- (e) that the contractor will not be charged liquidated damages when the delay in delivery or performance is beyond the contractor's control and is not caused by fault or negligence on the part of the contractor.

89. Contract termination

The grounds stated in a procurement contract as justifying termination of the contract by the procuring entity may include-

- (a) default on the part of the contractor in performance under the contract; and
- (b) the public interest; and
- (c) supervening impossibility of performance.

PART XII

Disposal of Public Assets

90. Responsibility for disposal of public assets

The accounting officer of a procuring entity shall be responsible for ensuring that the entity, in accordance with this Part, disposes of its public assets that are unserviceable, obsolete or surplus.

91. Disposal committee

(1) A procuring entity shall establish a disposal committee for the purpose of recommending the best method of disposing of unserviceable, obsolete or surplus public assets.

(2) The composition of a disposal committee, and its powers and procedures, shall be as prescribed.

92. Disposal procedure

(1) An employee of a procuring entity who is in charge of any of the entity's public assets shall without delay report to the entity's disposal committee whenever such an asset under his or her charge becomes unserviceable, obsolete or surplus.

(2) A disposal committee shall without delay consider any report in terms of [subsection \(1\)](#) and recommend to the procuring entity's accounting officer a method of disposing of the asset concerned, which method may include-

- (a) transferring the asset to another procuring entity, with or without financial adjustment; and
- (b) selling the asset by public tender or by public auction; and
- (c) destroying, dumping or burying the asset; and
- (d) trading in the asset for another one; and
- (e) any other suitable method that may be prescribed or that the Authority may direct or recommend.

(3) Within such period as may be prescribed after receiving recommendations of the disposal committee in terms of [subsection \(2\)](#), the accounting officer of the procuring entity shall notify the committee whether or not he or she accepts the recommendations, and if he or she-

- (a) accepts them, the asset shall be disposed of in accordance with those recommendations;
- (b) rejects them, he or she shall, when notifying the disposal committee of the rejection or as soon as possible thereafter-
 - (i) provide the committee with written reasons for the rejection; and
 - (ii) send the Authority a copy of the notice of rejection and the reasons for it; and
 - (iii) refer the matter back to the disposal committee for further consideration.

(3) The Authority may issue written directions to procuring entities regarding the disposal of public assets that are unserviceable, obsolete or surplus.

93. Restriction on disposal of assets to employees, etc.

Except in such circumstances and subject to such conditions as may be prescribed, a procuring entity shall not dispose of an unserviceable, obsolete or surplus asset to any of its employees or to a member of its board or any of its committees.

94. Challenge to disposal of asset by procuring entity

Any person who is aggrieved by the disposal or proposed disposal of a public asset by a procuring entity may challenge the disposal or proposed disposal as if he or she were a bidder in procurement proceedings to acquire the asset concerned, and Part X, with any necessary changes, shall apply to the challenge accordingly.

PART XIII

Investigations by Authority

95. Interpretation in Part XIII

In this Part-

"investigator" means a person appointed in terms of [section 96](#) to conduct an investigation under this Part.

96. Appointment of investigator by Authority

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

97. Powers of investigator

(1) For the purpose of an investigation, 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, with any necessary changes, in relation to the investigation and to any person summoned to give or giving evidence at that investigation.

(2) In addition, an investigator may, for the purposes of an investigation-

- (a) at any time during normal office hours, without previous notice, enter any premises of the procuring entity concerned or of any bidder or contractor in the procurement proceedings concerned;
- (b) require any officer, employee or agent of the procuring entity, bidder or contractor 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, bidder or contractor referred to in [paragraph \(a\)](#);
- (e) remove any books, records, accounts or documents of the procuring entity, bidder or contractor 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, bidder or contractor 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, bidder or contractor as the investigator may reasonably require.

(3) The powers of entry and search conferred by [subsection \(2\)](#) 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.

(4) Any person who, without just cause, hinders or obstructs an investigator in the exercise of his or her functions under this Part 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.

98. Procedure on completion of investigation

(1) On completion of an investigation in terms of this Part, an investigator shall-

- (a) forward a copy of his or her report thereon to the Authority; and
- (b) send a summary of his or her findings and recommendations to the procuring entity and to any contractor whose conduct was the subject of the investigation.

(2) If, after considering an investigator's report the Authority 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 Authority 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) activation of any penalty clause in the procurement contract;
- (d) condonation of the contravention;
- (e) ratification of anything done in relation to the proceedings;
- (f) a declaration in terms of [section 99](#) debarring the contractor from participating in any procurement proceedings,

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 Authority shall afford that person an adequate opportunity to make representations in the matter.

99. Authority may declare person ineligible to be awarded procurement contract

- (1) Subject to this section, if the Authority is satisfied that-
 - (a) a person who is or was a bidder has been convicted of an offence under this Act or of corruption in respect of any procurement proceedings; or
 - (b) any procurement contract between a contractor and a procuring entity has been cancelled or otherwise terminated on account of fraud or persistent underperformance or non-performance of the contract on the part of the contractor,

the Authority may declare the bidder, former bidder or contractor, as the case may be, to be ineligible to participate in procurement proceedings with any procuring entity for such period as the Authority may specify, which period shall not exceed three years.

(2) Before making a declaration, the Authority shall notify the contractor or former contractor concerned that it is contemplating making the declaration and shall ensure that it is given an adequate opportunity to make representations in the matter.

(3) The Authority shall ensure that all procuring entities and the bidder, former bidder or contractor concerned are notified without delay of the terms of any declaration by the Authority.

(4) The Authority, on good cause shown, may at any time amend or revoke a declaration.

(5) During the period that a declaration is in effect, no tender or bid submitted by the bidder, former bidder or contractor concerned in any procurement proceedings shall be considered, and any procurement contract concluded between the bidder, former bidder or contractor and a procuring entity shall be void.

(6) This section shall not be construed as limiting any other provision of this Act or any other enactment under which a person may be declared ineligible to participate in procurement proceedings or to be awarded a procurement contract.

100. Application of Act to joint ventures

(1) In this section-

"contracting authority" and **"counterparty"** are as defined in the Joint Ventures Act;

"joint venture" means the entity resulting from a joint venture agreement (and if no such entity is formed, the parties to the agreement are deemed for the purposes of this section to constitute such an entity);

"Joint ventures Act" means the Joint Ventures Act [*Chapter 22:22*].

(2) This Act does not apply to procurement of or by joint ventures except to the extent herein specified.

(3) If the Cabinet, in terms of the Joint Ventures Act, directs a contracting authority to receive tenders for a joint venture project from one of two or more identified counterparties in accordance with the law relating to public procurement, then the contracting authority must adopt the restricted bidding method outlined in [section 32](#) in relation to those counterparties as if they constituted the list of qualified bidders there referred to.

(4) If the Cabinet, in terms of the Joint Ventures Act, directs a contracting authority to receive tenders for a joint venture project from proposed counterparties in accordance with the law relating to public procurement, then the contracting authority must-

- (a) treat the joint venture project as a procurement requirement of particularly high value or complexity as contemplated in [section 31 \(3\)](#), and accordingly follow the pre-qualifying procedures prescribed in [paragraph \(b\), \(c\) and \(d\)](#) below;
- (b) cause a notice inviting expressions of interest in the project from potential counterparties to be published in the *Gazette* and-
 - (i) in at least one national newspaper of wide enough circulation to reach sufficient bidders to ensure effective competition; or
 - (ii) to the extent it is feasible to do so, on the internet and on any website established by the Authority,

and may cause the notice to be broadcast over radio or television, so as to reach as many potential

bidders as possible;

- (c) shortlist three to five expressions of interest where the contracting authority receives more than three responses, in descending order of eligibility according to the criteria set out in [section 3 \(2\) \(a\)](#) of the Joint Ventures Act, namely-
 - (i) affordability to the contracting authority; and
 - (ii) value for money; and
 - (iii) provision for the optimum transfer of technical, operational and financial risks to the counterparty; and
 - (iv) competitiveness;
- (d) determine whether, in accordance with [section 31](#), the bidding is to be held in one stage or two stages.

(5) If a joint venture comes into being after a counterparty has been chosen in accordance with [subsection \(3\)](#) or [\(4\)](#), that joint venture becomes the procuring entity in relation to any of its procurement requirements and, despite anything to the contrary in this Act, is empowered to obtain its procurement requirements on the following basis-

- (a) the joint venture shall select or invite potential contractors with which it may wish to enter into any procurement contract, in accordance with such guidelines as it may agree; and
 - (b) the joint venture shall determine and set guidelines for obtaining the most competitive bids from the potential contractors it has selected, including negotiating with each contractor individually; and
 - (c) subject to [paragraph \(d\)](#), in awarding a procurement contract the joint venture must, where the procurement contract involves the expenditure of public funds or the use of State resources, favour the contract that offers either or both of the following-
 - (i) the lowest tariff to State;
 - (ii) the largest payment to State;
- and
- (d) the joint venture as a procuring entity may contract directly with any potential contractor, or with any of the potential contractors it has selected-
 - (i) in the circumstances referred to in [section 16](#) ("Savings") of the Joint Venture Act, where the contractors have already been identified in the joint venture agreement; or
 - (ii) where the procurement requirement is a small project and the cost of competitive process would be prohibitively high given the level of expected returns; or
 - (iii) in any of the cases referred to in [section 8 \(4\)](#) of the Joint Venture Act; or
 - (iv) where an urgent procurement requirement must be met in situations of emergency where speed of supply outweighs value for money.

(6) [Section 54](#) applies to the proposed award of a procurement contract by a joint venture in terms of [subsection \(5\) \(c\)](#) that is or is deemed to be especially sensitive or especially valuable.

101. Regulations

(1) Subject to this section, the Minister, after consultation with the Minister responsible for finance and the Authority, may make regulations providing for all matters which by this Act are required or are permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed in order to carry out or give effect to this Act.

(2) Before enacting regulations the Minister shall cause a notice to be published in the *Gazette* and one or more newspapers circulating throughout Zimbabwe-

- (a) stating that it is intended to enact the regulations and setting out briefly the effect of them; and
- (b) specifying places in Zimbabwe where copies of the proposed regulations may be inspected by the public at all reasonable times during ordinary business hours; and
- (c) inviting members of the public to submit representations regarding the proposed regulations to his or her Ministry within such period, being not less than one month, as may be specified in the notice,

and the Minister shall ensure that copies of the proposed regulations are available for inspection at those places for at least one month.

(3) The Minister shall pay due regard to any representations submitted by members of the public in response to a notice in terms of [subsection \(2\)](#) before he or she enacts the regulations concerned.

102. Publication of legal documents

The Authority shall ensure that copies of-

- (a) This Act and any regulations made thereunder; and
- (b) all directions and instructions that are issued by the Authority and have general application; and
- (c) all judicial decisions and administrative rulings that affect persons other than the immediate parties to the decisions or rulings, or that provide guidance to persons other than the immediate parties,

are kept available for public inspection at the offices of the Authority and are published in such form as the Board considers will make them readily accessible to procuring entities and potential bidders.

103. Repeal of Cap. 22:14 and savings and transitional provisions

(1) In this section-

"fixed date" means the date fixed in terms of [section 1 \(1\)](#) as the date of commencement of this Act;

"repealed Act" means the Procurement Act [*Chapter 22:14*];

"transitional period" means the period of two years immediately following the fixed date.

(2) Subject to this section, the Procurement Act [*Chapter 22:14*] is repealed.

(3) Any property or asset and any obligation which, immediately before the fixed date, vested in or, as the case may be, had been incurred by the State Procurement Board established under the repealed Act shall on and after that date be property or an asset or obligation of the Authority.

(4) Any procurement proceedings commenced before the fixed date shall be completed in accordance with the repealed Act, any reference to the State Procurement Board being construed as a reference to the Authority:

Provided that the Authority may, by written notice to the procuring entity concerned, direct that any provision of this Act that is specified in the notice shall apply to the proceedings, and that provision shall thereupon apply accordingly, subject to any modification stated in the notice.

(5) Any direction or order which was given by the State Procurement Board under the repealed Act and which, immediately before the fixed date, 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 given by the Authority.

(6) Every procuring entity that wishes to conduct procurement proceedings for which authorisation is required in terms of [section 15](#) shall, as soon as possible after the fixed date, apply for authorisation in accordance with the [Third Schedule](#).

(7) Where an application for authorisation has been made in terms of [subsection \(6\)](#), the Authority-

- (a) shall assess the capacity of the procuring entity concerned as soon as possible in accordance with the [Third Schedule](#); and
- (b) pending completion of the assessment, may grant the procuring entity concerned temporary authorisation to conduct procurement proceedings subject to such terms and conditions as the Authority may notify in writing to the entity.

104. Amendment of [section 4](#) of Cap. 24:14

[Section 4](#) ("Board of Directors") of the Infrastructure Development Bank of Zimbabwe Act [*Chapter 24:14*] is amended-

- (a) in subsection (2) by the deletion of "not fewer than twelve and not more than fifteen directors" and the substitution of "not fewer than seven and not more than nine directors";
- (b) in subsection (3) by the repeal of [paragraphs \(a\), \(b\), \(c\) and \(d\)](#) and the substitution of-
 - "(a) one seventh of the Bank's issued share capital, where the Board consists of seven directors; or
 - (b) one eighth of the Bank's issued share capital, where the Board consists of eight directors; or
 - (c) one ninth of the Bank's issued share capital where the Board consists of nine directors."

105. Amendment of [section 79](#) of Cap. 29:13

[Section 79](#) ("Contracts and tenders of councils") of the Rural District Councils Act [*Chapter 29:13*] is amended by the insertion of the following subsections after subsection (8)-

"(9) A council or any committee of the council appointed by it shall be the "procuring entity" for the purposes of the Public Procurement and Disposal of Public Assets Act [*Chapter 22:23*] ("the procurement law").

(10) In the event of inconsistency between this section and any provision of the procurement law, then-

- (a) the procurement law shall prevail over this section to the extent of the inconsistency; and
- (b) this section shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with the procurement law.

(11) For the purpose of subsection (10) (b) and for the purpose generally of assisting councils to adapt their procurement procedures to the procurement law, every council shall comply with any directions issued by the Procurement Regulatory Authority of Zimbabwe in terms of [section 7 \(a\)](#) of the procurement law."

106. Amendment of Cap. 29:15

The Urban Councils Act [*Chapter 29:15*] is amended-

(a) in section 210 ("Municipal procurement board") (1) by the deletion of "Every municipal council" and the substitution of "Subject to section 211, every municipal council";

(c) in section 211 ("Tenders"), by the insertion of the following subsections after subsection (10)-

"(11) Every municipal procurement board shall be the "procuring entity" for the purposes of the Public Procurement and Disposal of Public Assets Act [*Chapter 22:23*] ("the procurement law").

(12) In the event of inconsistency between this section and section 210 and any provision of the procurement law, then-

- (a) the procurement law shall prevail over this section and section 210 to the extent of the inconsistency; and
- (b) this section and section 210 shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring them into conformity with the procurement law.

(13) For the purpose of subsection (11) (b) and for the purpose generally of assisting councils to adapt their procurement procedures to the procurement law, every council shall comply with any directions issued by the Procurement Regulatory Authority of Zimbabwe in terms of [section 7 \(a\)](#) of the procurement law."

First Schedule **PROVISIONS APPLICABLE TO MEMBERSHIP, PROCEDURES, STAFF AND FINANCES OF AUTHORITY** ([Sections 2 and 9](#))

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PART I

Membership of Board

1. Disqualifications for appointment as member

(1) The Minister shall not appoint a person as a member, and no person shall be qualified to hold office as a member, if he or she-

is neither a citizen of Zimbabwe nor permanently resident in Zimbabwe; or

has, in terms of a law in force in any country-

been adjudged ~~(i)~~ otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

made an assignment ~~(ii)~~ to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside;

or

has, within the period of five years immediately preceding the date of his or her proposed appointment, been convicted-

in Zimbabwe, of ~~(b)~~ an offence; or

outside Zimbabwe, in respect of conduct which if committed in Zimbabwe would constitute an offence,

and sentenced to a term of imprisonment imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

(2) A person shall not be qualified for appointment as a member if he or she is-

a member of Parliament; or

a member of a provincial or metropolitan council; or

a member of the council of a local authority; or

a member of two or more other statutory or corporate bodies.

(3) A person who has twice been appointed as a member, whether or not he or she has served the terms for which he or she was appointed, shall not be eligible for further appointment to the Board.

(4) For the purposes of [subparagraph \(2\) \(d\)](#)-

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;

"statutory body" means-

any commission ~~(a)~~ established by [the Constitution](#); or

any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any other statutory body or by a Commission established by [the Constitution](#).

2. Terms and conditions of office of members

(1) Subject to this Part, a member shall hold office for such period, not exceeding four years, as the Minister may fix on his or her appointment.

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

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

(3) A retiring member shall be eligible for re-appointment as a member for one further term.

(4) A member shall be paid such remuneration and allowances, and hold office on such terms and conditions, as the Minister may fix for members generally.

3. Vacation of office by member

(1) A member shall vacate his or her office and the member's office shall become vacant-

one month after he or she gives notice in writing to the Minister of his or her intention to resign or on the expiry of such other period of notice as the member and the Minister may agree; or

on the date he or she begins to serve a sentence of imprisonment imposed without the option of a fine-
in Zimbabwe, in respect of an offence; or

outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

or

if he or she becomes disqualified in terms of [paragraph 1 \(1\)](#) or [\(2\)](#) to hold office as a member; or

if he or she is required in terms of [subparagraph \(2\)](#) or [\(3\)](#) to vacate his or her office.

(2) The Minister may require a member to vacate his or her office if-

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

the member has failed to comply with any condition of his or her office fixed in terms of [paragraph 2](#); or

the member has ceased to possess any qualification by reason of which he or she was appointed; or

the member is mentally or physically incapable of efficiently performing his or her duties as a member; or

the member contravenes [paragraph 10](#); or

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

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

4. Suspension of member

The Minister-

may suspend from office a member against whom criminal proceedings are instituted for an offence involving dishonesty; and

shall suspend from office a member who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended, pending determination of the question whether the member is to vacate his or her office,

and, whilst that member is suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member.

5. Dismissal of Board

(1) Subject to [subparagraph \(2\)](#), if the Minister considers that-

the Board has contravened this Act or any other law and has failed to rectify the contravention within a reasonable time after being required to do so by the Minister; or

whether through disagreements amongst its members or otherwise, the Board is unable to carry out any of its functions in terms of this Act,

and that it is in the national interest to do so, the Minister, with the approval of the President, may send a written notice to the chairperson and the Chief Executive Officer dismissing all the members, and their offices shall become vacant as soon as the Chief Executive Officer receives the notice.

(2) Before dismissing all the members, the Minister shall inform the President of the intended dismissal.

6. Filling of vacancies on Board

(1) Within three months after a member's death or vacation of office, the Minister shall appoint a person in terms of this Act to fill the vacancy.

(2) Within one month after dismissing all the members in terms of [paragraph 5](#), the Minister shall appoint persons in terms of this Act to fill the vacancies.

7. Chairperson and vice-chairperson of Board

(1) The Minister shall designate two of the members to be chairperson and vice-chairperson of the Board.

(2) The chairperson and vice-chairperson of the Board may at any time, by written notice to-
the Minister, in the case of the chairperson or vice-chairperson;
the Chief Executive Officer, in the case of the vice-chairperson,
resign as chairperson or vice-chairperson of the Board, as the case may be.

(3) The vice-chairperson of the Board shall perform the functions of the chairperson whenever the chairperson is unable to perform them or the office of chairperson is vacant.

PART II

Meetings and Procedure of Board and Committees

8. Meetings and procedure of Board

(1) The Board shall hold its first meeting on a date and place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Board shall meet at least four times in each financial year.

(2) The chairperson of the Board-

may convene a special meeting of the Board at any time; and

shall convene a special meeting of the Board on the written request of the Minister or not fewer than two members, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairperson's receipt of the request.

(3) Written notice of a special meeting convened in terms of [subparagraph \(2\)](#) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.

(4) No business shall be discussed at a special meeting convened in terms of [subparagraph \(2\)](#) other than-

such business as may be determined by the chairperson of the Board, where he or she convened the meeting in terms of [subparagraph \(2\) \(a\)](#); or

the business specified in the request for the meeting, where the chairperson of the Board convened the meeting in terms of [subparagraph \(2\) \(b\)](#).

(5) The chairperson of the Board or, in his or her absence, the vice-chairperson shall preside at all meetings of the Board:

Provided that, if the chairperson and vice-chairperson are both absent from any meeting of the Board, the members present may elect one of their number to preside at that meeting as chairperson.

(6) Six members shall form a quorum at any meeting of the Board.

(7) Subject to [subparagraph \(12\)](#), anything authorised or required to be done by the Board may be decided by a majority vote at any meeting of the Board at which a quorum is present.

(8) With the Board's approval, the chairperson of the Board may invite any person to attend a meeting of the Board or of a committee, where the chairperson considers that the person has special knowledge or experience in any matter to be considered by the Board or the committee, as the case may be, at that meeting.

(9) A person invited to attend a meeting of the Board or of a committee may take part in the proceedings of the Board or the committee as if he or she were a member thereof, but shall not have a vote on any question before the Board or committee, as the case may be.

(10) The Chief Executive Officer may take part in meetings of the Board as if he or she were a member, but shall have no vote on any matter to be decided by the Board:

Provided that-

the Board may, for good cause, request the Chief Executive Officer to withdraw from any meeting of the Board, but if it does so it shall cause such withdrawal to be noted in the minutes of the meeting;

the Chief Executive Officer shall not take part in the discussion of any question before the Board which involves his or her tenure of office or conditions of service.

(11) Subject to [paragraph 10](#), at all meetings of the Board each member present shall have one vote on any question before the Board and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote.

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

Provided that, if a member requires that such a proposal be placed before a meeting of the Board, this subparagraph shall not apply to the proposal.

9. Committees of Board

(1) For the better exercise of its functions, the Board may establish one or more committees in which the Board may vest such of its functions as it considers appropriate:

Provided that the vesting of a function in a committee shall not divest the Board of 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 in terms of [subparagraph \(1\)](#), the Board-

shall appoint at least two of its members to the committee and that member or one of those members, as the case may be, shall be chairperson of the committee; and

may appoint persons who are not members of the Board to be members of the committee.

(3) Members of committees may be paid-

such remuneration; and

such allowances to meet reasonable expenses incurred by them in connection with the business of the committee concerned,

as the Board may fix with the approval of the Minister.

(4) Meetings of a committee may be convened at any time and at any place by the chairperson of the Board or the chairperson of the committee.

(5) Subject to subparagraph (4) and to [paragraphs 11](#) and [12](#), the procedure to be followed at any meeting of a committee and the quorum at any such meeting shall be as fixed by the Board.

10. Members of Board and committees to disclose certain connections and interests

(1) In this paragraph-

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

(2) Subject to [subparagraph \(4\)](#)-

if a member of the Board or of a committee-

knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or committee; or

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 or her functions as a member; or

knows or has reason to believe that any of his or her relatives-

has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or the committee; or

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 or her functions as a member;

or

if for any reason the private interests of a member of the Board or a committee come into conflict with his or her functions as a member,

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

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

(4) Nothing in this paragraph shall be taken to prevent members of the Board or of a committee of the Board from taking part in the consideration of, or voting on, any matter that affects members generally in their capacity as persons liable to pay revenue.

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

11. Minutes of proceedings of Board and committees

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

(2) Any minutes which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings and decisions taken at the meeting concerned.

PART III

Staff of Authority

12. Appointment and functions of Chief Executive Officer

(1) The Board, with the approval of the Minister, shall appoint a Chief Executive Officer of the Authority who shall be responsible, subject to the Board's control, for administering the Authority's affairs, staff and property and for performing any other functions that may be conferred or imposed upon him or her by or under this Act or that the Board may assign to him or her.

(2) An assignment of functions in terms of [subparagraph \(1\)](#)-

may be made generally or specially and subject to such conditions, restrictions, reservations and exceptions as the Board may determine;

may be revoked by the Board at any time;

shall not preclude the Board itself from exercising the functions.

(3) A person shall be qualified for appointment as Chief Executive Officer if he or she is of good moral character and proved integrity and has such qualifications (at the minimum level of a Master's Degree) and experience in a field relevant to the Authority's functions as may be prescribed or as may be acceptable to the Board.

(4) The Chief Executive Officer shall be appointed for a term of not more than six years on such terms and conditions as may be fixed by the Board with the approval of the Minister, and on the expiry of his or her term of office he or she shall be eligible for appointment for a further term:

Provided that-

the terms and conditions of his or her employment, and the renewal of his or her appointment, shall be in accordance with any enactment regulating corporate governance in public bodies;

the employment of the Chief Executive Officer shall terminate if he or she would be required in terms of [paragraph 3 \(1\) \(b\)](#) to vacate office were he or she a member of the Board.

(5) The Chief Executive Officer shall serve as secretary of the Board and shall be responsible for keeping the Board's minutes referred to in [paragraph 11](#).

13. Other staff of Authority

(1) Subject to any other law, the Authority may employ such persons in addition to the Chief Executive Officer as the Board considers necessary for the proper exercise of the Authority's functions, and may promote, suspend or discharge any such employee.

(2) Employees of the Authority referred to [subparagraph \(1\)](#) shall carry out their functions under the direction and control of the Chief Executive Officer, who shall be responsible to the Board for their proper conduct.

14. Engaging of consultants

The Board may engage persons otherwise than as employees, on such terms and conditions as the Board thinks appropriate, to perform services of a specialised, technical or professional nature for the Authority.

15. Employees and consultants to disclose certain connections and interests

[Paragraph 10](#) shall apply, with any necessary changes, to persons employed or engaged by the Authority in terms

of [paragraphs 12, 13 and 14](#).

PART IV

Financial Provisions

16. Funds of Authority

The funds of the Authority shall consist of-

any moneys that may be appropriated for the purpose by Parliament; and

any loans, donations and grants which the Authority receives, with the approval of the Minister, from any person or authority or from the government of any country; and

any other moneys that may accrue to the Authority, whether in the course of its operations or otherwise.

17. Financial year of Authority

The financial year of the Authority shall be the period of twelve months ending on the 31st December in each year or on such other date as may be prescribed.

18. Accounts of Authority

(1) The Authority 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 Authority 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.

19. Audit of Accounts of Authority

The accounts of the Authority shall be audited by the Auditor-General, who for the purpose shall have all the functions conferred on him or her by [sections 8 and 9](#) of the Audit Office Act as though the assets of the Authority were public moneys and the members, employees and agents of the Authority were officers as defined in that Act.

[Cap. 22:18]

Second Schedule ANCILLARY POWERS OF AUTHORITY

(Section 7 (e))

1. To acquire by lease, purchase, or otherwise, immovable property, and to construct buildings thereon.
2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.
3. To maintain, alter and improve property acquired by it.
4. To mortgage or pledge any assets or part of any assets and to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of assets which are not required for the exercise of its functions for such consideration as the Board, with the approval of the Minister, may determine.
5. To open bank and building society and post office accounts in the name of the Authority and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions promissory notes, bills of exchange, bills of lading, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To sell, rent, grant leases, subleases or other interests or concessions in respect of land, buildings or any other facility or structure owned by it, or under its control.
8. To enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind such suretyships or guarantees.
9. With the approval of the Minister, to enter into, review, cancel or abandon arrangements with any government or authority, whether inside or outside Zimbabwe, that may seem conducive to the exercise of any of its functions and to obtain from such government or authority rights, privileges and concessions which the Board thinks desirable, and to carry out, exercise and comply with such arrangements, rights, privileges and concessions.
10. To raise loans or borrow money in such amounts and for such purposes and under conditions as may be approved by the Minister.

11. To establish and administer such funds and reserves as the Board considers appropriate or necessary for the proper exercise of the Authority's functions.
12. To provide terminal benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury.

Third Schedule
AUTHORISATION TO CONDUCT PROCUREMENT PROCEEDINGS
(Section 15 (3))

1. Interpretation in [Third Schedule](#)

In this Schedule-

"**authorisation**" means authorisation to conduct procurement proceedings granted by the Authority in terms of [section 15 \(1\)](#);

"**remedial plan**" means a plan prepared in terms of [paragraph 5](#).

2. Application for Authorisation

(1) An application for authorisation shall be made by a procuring entity in such form as may be prescribed or as may be provided by the Authority.

(2) In its application for authorisation, a procuring entity shall provide the Authority with information concerning-
the nature of procurement proceedings to be conducted by the procuring entity; and
the assignment of responsibilities for procurement within the procuring entity's organisation; and
the identity of the procuring entity's accounting officer; and
the structure of the procuring entity's procurement management unit and any evaluation committees; and
the procuring entity's facilities for conducting procurement proceedings; and
particulars of procurement proceedings conducted by the procuring entity during the preceding two years; and
such other information as may be required in the application form or as the Authority may reasonably require.

3. Assessment by authority of procuring entity's capacity

(1) On receipt of an application in terms of [paragraph 2](#), the Authority shall assess the capacity of the applicant to conduct procurement proceedings, and for the purpose of such assessment may inspect the applicant's facilities and premises.

(2) In determining whether to grant an applicant authorisation, the Authority shall have regard to the applicant's capacity to engage in procurement proceedings of the nature and extent envisaged in the application, taking into account-

the assignment of responsibilities for procurement within the applicant's organisational structure; and
the qualifications and experience of the applicant's officers who will be responsible for procurement, and their numbers; and
the applicant's use of information technology and other facilities for communication; and
the performance of the applicant in previous procurement proceedings.

(3) The Authority shall carry out its assessment of an applicant's capacity with all reasonable dispatch so that its decision on the application can be made and communicated to the applicant without undue delay.

4. Grant or refusal of authorisation

(1) If, after assessing an applicant's capacity as provided in [paragraph 3](#), the Authority is-

satisfied that the applicant has the capacity to conduct procurement proceedings of the nature and extent envisaged in the application, the Authority shall grant the application and, subject to [subparagraph \(2\)](#), issue the applicant with the authorisation sought;

not satisfied as provided in [subparagraph \(a\)](#), the Authority shall refuse the application and notify the applicant accordingly, providing the applicant with reasons for the refusal.

(2) Authorisation to conduct procurement proceedings shall be in writing and-
shall state-

the name of the procuring entity to which it has been granted, and
the nature of the procurement proceedings that are authorised, and
the period for which the authorisation is granted;

and

may specify terms and conditions subject to which the authorisation is granted.

5. Remedial plan following refusal of authorisation

(1) Where the Authority refuses a procuring entity's application for authorisation, the Authority shall prepare a remedial plan, in consultation with the entity, whereby-

the procuring entity takes such measures as are stated in the plan to improve its procurement capacity; and
pending completion, to the Authority's satisfaction, of the measures referred to in [subparagraph \(a\)](#)-

the procuring entity may conduct such procurement proceedings as are specified in the plan; or

some other procuring entity conducts procurement proceedings on behalf of the entity, whether through shared procurement arrangements in accordance with [section 19](#) or otherwise, as may be specified in the plan.

(2) Notwithstanding any other provision of this Act, while a remedial plan remains operative, the procuring entity shall conduct its procurement proceedings in accordance with the plan.

6. Termination of remedial plan

(1) At any time while a remedial plan for a procuring entity remains operative, the Authority may conduct an assessment of the entity's capacity to conduct procurement proceedings, and if the Authority is-

satisfied that the entity has the capacity to conduct procurement proceedings of the nature and extent envisaged in its original application or any other procurement proceedings the entity wishes to conduct, the Authority shall issue the applicant with authorisation to conduct those proceedings; and

not satisfied as provided in [subparagraph \(a\)](#), the Authority may do any one or more of the following-

extend the remedial plan;

require the entity to continue to take additional measures to improve its procurement capacity;

appoint another procuring entity to conduct procurement proceedings on behalf of the entity, whether through shared procurement arrangements in accordance with [section 19](#) or otherwise;

take any other measures which, in the Board's opinion, will enable the entity to conduct procurement proceedings in accordance with this Act.

7. Renewal of authorisation

(1) Before the expiry of its authorisation, a procuring entity shall apply to the Authority for renewal of the authorisation, and [paragraphs 2 to 6](#) shall apply, with any necessary changes, to the application.

(2) The Authority may grant a procuring entity temporary authorisation to conduct procurement proceedings pending a decision by the Authority on an application for renewal of the entity's authorisation.

8. Continuous assessment of procurement capacity

(1) The Authority shall continuously assess-

the continued capacity of authorised procuring entities to conduct procurement proceeding; and

the compliance of authorised procuring entities with the terms and conditions of their authorisation,

and if the Authority considers that the entity no longer has the capacity to conduct procurement proceedings, or is contravening or failing to comply with any material term or condition of its authorisation, the Authority may cancel the authorisation or direct the entity to rectify the non-compliance, or may take such other measures to remedy the situation as the Authority considers necessary or desirable.

(2) Before cancelling a procuring entity's authorisation in terms of [subparagraph \(1\)](#), the Authority shall notify the entity concerned of the proposed cancellation and the reasons for it, and shall give the entity a reasonable opportunity to make representations in the matter.

REGULATION

[S.I. 5 of 2018](#)

Public Procurement and Disposal of Public Assets (General) Regulations

S.I. 5 of 2018: Public Procurement and Disposal of Public Assets (General) Regulations

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IT is hereby notified that the Minister of Finance and Economic Development has in terms of section 101 of the Public Procurement and Disposal of Public Assets Act [*Chapter 22:23*], and after complying with subsections (2) and (3) thereof, made the following regulations-

PART I

Preliminary

1. Title

These regulations may be cited as the Public Procurement and Disposal of Public Assets (General) Regulations, 2018.

2. Interpretation

In these regulations-

"appropriate form" means-

- (a) the appropriate standard form issued or published by the Authority, whether in a manual or on the Authority's website; or
(b) a form approved by the Authority;

"challenger" means a bidder or other person that challenges procurement proceedings in terms of [Part X](#) of the Act;

"Code of Conduct" means the code of conduct for procurement officers set out in the First Schedule;

"infrastructure" means physical facilities and systems that facilitate, directly or indirectly, the provision of a service to the general public;

"life-cycle cost", in relation to a procurement requirement, means the aggregate of the costs associated with-

- (a) its initial acquisition; and
- (b) its continuation, use and maintenance, including its consumption of energy and other resources; and
- (c) its cessation or disposal,

and includes environmental costs linked to the procurement during its life cycle, where the monetary amount of those costs can be determined or verified by the procuring entity or a credible agent;

"pilot study" means an initial evaluation or study that is conducted on a small scale to demonstrate the feasibility of a design concept or business proposal;

"procurement officer" means an officer, employee or agent of a procuring entity who is responsible for any aspect of the entity's procurement, including the implementation of procurement contracts;

"procurement record", in relation to procurement proceedings, means an account in writing preserving knowledge or information about the proceedings and the reasons for decisions made in connection with the proceedings, in particular the information specified in section 69 (2) of the Act and section 37 of these regulations;

"Secretariat" means the Secretariat established by the Authority in terms of section 51 to provide services to review panels;

"Special Procurement Oversight Committee" means the committee of that name constituted by section 54 of the Act.

3. Non-application of regulations in certain circumstances

(1) If a procuring entity forms a special purpose vehicle (that is, a legal entity created for a specific and well-defined purpose, in this case the provision or procurement of goods, services or works for the benefit of the procuring entity), that special purpose vehicle must comply with the Act and these regulations as if it is the procuring entity; however, if the procurement by the special purpose vehicle is compliant with the Act and these regulations, the consequent supply of goods, services and works by the special purpose vehicle to the procuring entity that formed it shall not be subject the Act and these regulations.

(2) The regulations do not apply to the leasing of-

- (a) facilities or amenities for sporting purposes or for a specific event, for a period not exceeding twelve months; and
- (b) accommodation for office space (or other purposes, so long as the lease is not for a period of more than three years.

PART II

Preparation for Procurement

4. Registration of bidders and contractors

(1) Persons who by virtue of this section are included in the list hereinafter mentioned are deemed to be "registered bidders and contractors" for the purposes of sections 6 ("Functions of Authority") (1) (i) and 28 ("Participation by bidders") of the Act.

(2) The Authority shall compile an annual list of registered bidders and contractors that shall be eligible to bid and be awarded contracts with procuring entities, which list shall be published in the *Gazette* and the Authority's website.

(3) Before framing a list in terms of [subsection \(2\)](#) the Authority shall publish a notice in the *Gazette*, national newspapers and its website inviting prospective bidders and contractors to submit applications for inclusion on the list of registered bidders and contractors.

(4) An application for inclusion in the list of registered bidders and contractors must be accompanied by the appropriate registration fee prescribed in the Fifth Schedule and contain the following particulars, as may be applicable-

- (a) in the case of a company, the memorandum and articles of association or other constitutive document of the company, together with its certificate of incorporation, list of directors, head office and local physical address and particulars showing the relative extent of Zimbabwean and foreign shareholding of the company;
- (b) in the case of a partnership, syndicate or other business entity, the partnership agreement or other constitutive document of the partnership, syndicate or entity, together with the list of partners or controlling members or managers, head office and local physical address and particulars showing the relative extent of Zimbabwean and foreign control of the partnership, syndicate or entity;

(c) in the case of an individual, a detailed curriculum vitae, and proof of qualifications.

(5) The Authority may invite prospective bidders and contractors to be registered in specialised categories for supply of goods, services and works, which additional requirements for the categories shall be specified in the invitation.

5. Engagement of procurement agent

For the purpose of engaging an independent agent to act on its behalf in procurement proceedings, a procuring entity shall follow the procedures set out in [Part VIII](#) of the Act.

6. Shared procurement

(1) Where procurement is conducted by way of shared procurement in accordance with section 19 of the Act, the accounting officers of the procuring entities involved shall, in writing, agree on-

- (a) the functions to be shared; and
- (b) the mechanisms for implementation of the procurement; and
- (c) the procedure for approving the procurement; and
- (d) the procedures for reporting and monitoring; and
- (e) the limitations or exceptions to the procurement contract, if any; and
- (f) the costs, if any, to be paid by each of the procuring entities.

(2) Where-

- (a) the Authority has directed that procuring entities conduct their procurement by way of shared procurement; or
- (b) the procuring entities engaging in shared procurement have been unable to agree on the matters referred to in [subsection \(1\)](#),

the terms of the agreement referred to in [subsection \(1\)](#) shall be decided by the Authority.

(3) In any shared procurement under section 19 of the Act, the accounting officer of each of the procuring entities that benefit from the services of the lead procuring entity shall remain accountable for-

- (a) decisions relating to contracts made under a framework agreement entered into by the lead procuring entity; and
- (b) complying with all provisions of the Act which are not required to be complied with only by the lead procuring entity.

(4) When planning for a shared procurement, the lead procuring entity shall-

- (a) either compile lists of designated or common use items identified by the participating procuring entities or, where the shared procurement has been directed by the Authority, utilise such lists compiled by the Authority; and
- (b) require each participating procuring entity, not less than three months before the end of the fiscal year preceding the year in which the intended procurement will take place, to provide the information needed for the lead procuring entity to identify the aggregated requirements for the procurement; and
- (c) cause the participating procuring entities to indicate the procurement requirements to be procured through the shared procurement, which requirements shall be categorised in categories established by the lead procuring entity; and
- (d) finalise the procurement plan and distribute it to the participating procuring entities not later than one month before the deadline for the submission of procurement plans to the Authority in terms of section 23 of the Act.

(5) Where appropriate, the lead procuring entity shall aggregate the procurement requirements to be obtained through shared procurement, making full use of framework agreements, in order to achieve economies of scale, and in deciding where aggregation is appropriate the lead procuring entity shall consider all relevant factors, including-

- (a) which items are of a similar nature and likely to attract the same potential bidders; and
- (b) when items will be ready for bidding and when delivery, implementation or completion is required; and

- (c) the optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market for the items required; and
- (d) which items will be subject to the same bidding requirements and terms of contract; and
- (e) potential savings in time or transaction costs; and
- (f) facilitating contract administration by the procuring entity; and
- (g) any other special factors related to the procurement requirements concerned.

7. Procurement plans

- (1) An annual procurement plan referred to in section 22 of the Act shall contain-
 - (a) a detailed breakdown of the procurement requirement; and
 - (b) a schedule of the anticipated delivery, implementation and completion dates for the procurement requirement; and
 - (c) an indication of which items can be aggregated for procurement as a single package, which could be awarded by way of a framework agreement or for procurement through any applicable arrangements for shared procurement; and
 - (d) an estimate of the price of each package referred to in [paragraph \(c\)](#), and details of the budget available and sources of funding; and
 - (e) an indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification of bidder; and
 - (f) the anticipated time for the complete procurement cycle, taking into account the time needed for any necessary approval; and
 - (g) any other relevant information.
- (2) An individual procurement plan referred to in section 23 of the Act shall contain-
 - (a) a description of the procurement requirement, including its delivery, implementation or completion, and any division into lots; and
 - (b) the estimated price of the procurement requirement and, where applicable, the individual lots; and
 - (c) the proposed procurement method, in accordance with [Part VII](#) or [VIII](#) of the Act, with where applicable a justification for the use of any method other than competitive bidding or request for proposals for consultant services; and
 - (d) an estimate of the time required for each stage in the procurement cycle, taking into account publication requirements and the time needed for any necessary approval; and
 - (e) an indication of the resources required and available for managing the procurement process and administering the procurement contract; and
 - (f) the source of funding for the procurement; and
 - (g) any other relevant information.

(2) Any adjustments to the procurement plan by the procuring entity shall be submitted promptly to the Authority according to provision of section 22 of the Act.

8. Domestic preference

- (1) Circulars issued by the Authority in regard to domestic preference referred to in section 29 of the Act shall clearly state-
 - (a) eligibility for domestic preference, in terms of ownership, location of bidder or production facilities, origin of labour, raw material or components, extent of sub-contracting or association with domestic partners, or any other relevant factor; and
 - (b) the documentation required to demonstrate eligibility for domestic preference; and
 - (c) the percentage allowable for preference and the manner in which domestic preference will be applied during the evaluation.
- (2) The percentage domestic preference allowable shall be-
 - (a) up to fifteen *per centum* for the procurement of goods; and

(b) up to seven and one-half *per centum* for the procurement of contractors' services, as may be determined by the Authority in a circular:

Provided that the Authority shall review these percentages annually.

(3) Domestic preference, within the limits prescribed in [subsection \(2\)](#), may be given to bidders that are domestic suppliers or manufacturers, and additional preference within those prescribed limits may be given-

- (a) to women or entities controlled predominantly by women; or
- (b) in respect of consultancies, to Zimbabwean universities or polytechnics.

(4) Any preference which a procuring entity will give to domestic bidders, and any preference given in accordance with the Indigenisation and Economic Empowerment Act [*Chapter 14:33*] shall be stated in the bidding documents.

(5) Where a domestic preference is applied in any procurement proceedings, the procuring entity shall classify the responsive bids, for the purposes of comparison, into one of the following two groups during evaluation-

- (a) Group A, that is to say bids exclusively from Zimbabwean companies or offering goods manufactured in Zimbabwe where the bidders establish to the satisfaction of the procuring entity that labour, raw material, and components from within Zimbabwe will account for at least thirty *per centum* of the ex-works price of the goods, construction work or service offered; and
- (b) Group B, that is to say bids from international suppliers or offering goods manufactured abroad that have been already imported or that will be directly imported.

(6) Having classified the responsive bids in accordance with [subsection \(5\)](#), the procuring entity shall compare the bids in each group to determine the lowest bid in each group and shall then compare those lowest bids taking into account their total costs, that is to say the Carriage Insurance Paid price offered by the bidders together with all duties, taxes, insurance and other costs payable, and-

- (a) if the lowest bid from Group A is lower than the lowest from Group B, the procuring entity shall select the Group A bid for the procurement award;
- (b) if the lowest bid from Group B is lower than the lowest from Group A, the procuring entity shall compare the two bids further after adding to the Group B bid an amount equal to the allowable domestic preference, and shall select whichever of the two bids is then the lower.

9. Market consultations

(1) Procuring entities shall ensure that all their consultations with the market in terms of section 26 of the Act are conducted transparently and without favour to any potential bidder.

(2) Procuring entities shall ensure that notices inviting interested parties to participate in their market consultations are published so as to reach as many potential bidders as practicable, which notices may be published in appropriate newspapers or trade journals and additionally, or alternatively, in the *Gazette*.

(3) Market consultation for the purpose of section 26 of the Act may consist of consultation on the general aspects of the procurement requirement or on particular aspects of it, particularly technical solutions, and may be undertaken by any appropriate means, including-

- (a) a paper based consultation through the issue of outline documents seeking written comments;
- (b) open days, where market operators are invited to an open discussion;
- (c) interviews with interested market operators;
- (d) on-line notice boards of contributions.

(4) A procuring entity shall record the results of any market consultation and shall make the results available to all bidders participating in any subsequent procurement proceedings based on those results.

10. Financial thresholds

(1) For the purpose of section 14 (1) of the Act, where the price of the procurement requirement is below-

- (a) two hundred thousand United States dollars, in the case of construction works; or
- (b) one hundred thousand United States dollars, in the case of goods; or
- (c) fifty thousand United States dollars, in the case of consultancy and non-consultancy services,

procuring entities shall be responsible for managing their own procurement.

(2) For the purpose of section 34 of the Act, where the price of the procurement requirement for items not covered in a framework agreement is below-

- (a) twenty thousand United States dollars, in the case of construction works; or
- (b) ten thousand United States dollars, in the case of goods; or
- (c) five thousand United States dollars, in the case of consultancy and non-consultancy services,

procuring entities may adopt the request for quotations method of procurement.

(3) Where the price of the procurement requirement is-

- (a) above twenty thousand United States dollars but does not exceed five million United States dollars, in the case of construction works; or
- (b) above ten thousand United States dollars but does not exceed three hundred thousand United States dollars, in the case of goods; or
- (c) above five thousand United States dollars but does not exceed two hundred thousand United States dollars, in the case of consultancy and non-consultancy services,

procuring entities may invite only Zimbabwean (domestic) suppliers to bid.

(4) Where the price of the procurement requirement exceeds-

- (a) five million United States dollars, in the case of construction works; or
- (b) three hundred thousand United States dollars, in the case of goods; or
- (c) two hundred thousand United States dollars, in the case of consultancy and non-consultancy services,

procuring entities shall invite bids in accordance with the Act from both Zimbabwean (domestic) and foreign bidders.

(5) The threshold for scrutiny of especially valuable procurement contracts by the Special Procurement Oversight Committee in terms of section 54 of the Act shall depend on whether a procuring entity falls within any of the following classifications-

- (a) Class A, that is to say procuring entities with a procurement budget of two million United States dollars or more and with a low risk profile, or procuring entities that fall under lower procurement budget with lower risk profile;
- (b) Class B, that is to say procuring entities with a procurement budget above five hundred thousand United States but less than two million United States dollars and with a low risk profile, or procuring entities with a procurement budget under class C but with lower risk profile, or procuring entities with a procurement budget for class A but with a high risk profile;
- (c) Class C, that is to say procuring entities with a procurement budget of less than five hundred United States dollars and with a lower risk profile, or procuring entities with a procurement budget under Class A and B but with a high risk profile,

and the thresholds for each of those classes shall be those set out in the Second Schedule.

(6) The risk profiles referred to in [subsection \(5\)](#) shall be determined in accordance with guidelines issued by the Authority from time to time.

(7) For all procurements where the estimated price exceeds the request for quotation thresholds set out in [subsection \(2\)](#)-

- (a) the competitive bidding method of procurement shall be used; and
- (b) an evaluation committee shall be established in accordance with section 18 of the Act; and
- (c) an individual procurement plan shall be prepared in accordance with section 23 of the Act; and
- (d) the procurement shall be advertised in accordance with the Act.

(8) The calculation of the estimated price of procurement shall be based on the total amount payable under the procurement contract, net of taxes and duties, as estimated by the procuring entity, including payments for any type of option and any renewals of the contract.

(9) The calculation of the estimated price of procurement shall not be made with the intention of excluding the procurement from the scope of the Act or of avoiding the adoption of a procurement method prescribed by the Act.

(10) For the procurement of consultancy services, the threshold for-

- (a) inviting expressions of interest shall be fifty thousand United States dollars;
- (b) scrutiny by the Special Procurement Oversight Committee in terms of section 54 of the Act shall be calculated in accordance with [subsection \(5\)](#).

11. Framework Agreements

(1) A framework agreement may be concluded between a procuring entity and one or more contractors.

(2) Where a procuring entity concludes a framework agreement with a single contractor, contracts based on the agreement shall be awarded in accordance with the agreement and their duration shall not exceed one year unless the Authority authorises a longer duration.

(3) Where a procuring entity concludes a framework agreement with more than one contractor, contracts based on the agreement shall be awarded in accordance with the agreement and their duration shall not exceed three years unless the Authority authorises a longer duration.

(4) Contracts based on a framework agreement may be awarded either-

- (a) by applying the terms laid down in the framework agreement without reopening competition; or
- (b) where not all the terms are laid down in the framework agreement, by inviting further bids on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the framework agreement.

(5) Contracts based on a framework agreement shall not alter substantially the terms and conditions set out in the framework agreement.

(6) The procedures for concluding framework agreements and contracts based on framework agreements shall be described in guidelines issued by the Authority.

12. Procurement by embassies and public bodies operating outside Zimbabwe

(1) Subject to this section, procurement by embassies and other public bodies operating outside Zimbabwe shall be conducted through a competitive process in accordance with the general principles set out in the Act and any specific instructions issued by the Authority.

(2) For the purpose of determining the appropriate procurement method it should adopt, a procuring entity outside Zimbabwe shall calculate the price of the procurement requirement by the method set out in guidelines issued by the Authority.

(3) A procuring entity outside Zimbabwe shall take into account any requirements imposed by the host country in respect of public procurement.

(4) The minimum bidding period by a procuring entity outside of Zimbabwe shall be-

- (a) ten working days, where the competitive bidding method is adopted;
- (b) five working days, where the restricted bidding method is adopted;
- (c) three working days, where the request for quotations method or proposals method is adopted.

(5) Where the direct procurement method is adopted by a procuring entity outside Zimbabwe, there shall be no minimum bidding period.

(6) A procuring entity outside Zimbabwe shall not require bidders to provide bid security except where it has adopted the competitive bidding method of procurement.

(7) Where a procuring entity outside Zimbabwe receives bid security in the form of cash, the entity shall ensure that the cash is held in a trust account in accordance with section 93.

(8) When disposing of public assets, a procuring entity outside Zimbabwe shall take into account any procedures required by the host country in addition to complying with the Act.

PART III

Methods of Procurement

13. Use of two-stage method of competitive bidding

(1) In the first stage of the two-stage competitive bidding method provided for by section 31 (2) of the Act, the procuring entity may engage in discussions with all bidders whose bids satisfy the requirements set out in the bidding documents with a view to-

- (a) understanding the bids; or

- (b) indicating changes required to make the bids acceptable and seeking the bidders' willingness to make such changes,

and minutes of these discussions shall form part of the procurement record.

- (2) At the end of the first stage of the process referred to in [subsection \(1\)](#), the procuring entity may-
 - (a) reject those bids that do not, and cannot, be changed to meet the basic requirements set out in the bidding documents or have any other weakness which makes them substantially non-responsive; or
 - (b) revise the bidding documents to modify the technical specifications, evaluation criteria and contract conditions set out in them, while seeking to maximise competition and articulate an appropriate evaluation methodology.

(3) In the second stage of the two-stage process referred to in [subsection \(1\)](#), the procuring entity shall invite bidders whose bids have not been rejected to submit final bids with prices responsive to the revised bidding documents, and where the bidding documents have been revised at the end of the first stage, those final bids shall be evaluated and compared in accordance with the revised documents.

(4) A bidder who does not wish to submit a final bid may withdraw from the bidding proceedings without forfeiting any bid security the bidder may have provided.

(5) Where a procuring entity decides to conduct a pilot study to prepare specifications of requirements, the entity shall engage a consultant in accordance with [Part VIII](#) of the Act to conduct the study, and neither the consultant nor his or her associates or partners shall be allowed to participate in the procurement process resulting from the pilot study.

14. Use of pre-qualification in competitive bidding

- (1) Pre-qualification shall be used where-
 - (a) the procurement requirement is highly complex or specialised or requires detailed design or methodology; or
 - (b) the costs of preparing a detailed bid would discourage competition; or
 - (c) the evaluation of bids is particularly complex and the evaluation of a large number of bids would take excessive time and resources; or
 - (d) the bidding is for a group of similar contracts, for the purposes of facilitating the preparation of a standing list.
- (2) In the pre-qualification stage-
 - (a) the procuring entity shall provide pre-qualification documents to all bidders responding to the invitation to pre-qualify; and
 - (b) the pre-qualification documents shall provide bidders with the information they need to prepare and submit applications for pre-qualification; and
 - (c) the procuring entity shall, in accordance with section 41 of the Act, respond promptly to any request by a bidder for clarification of the pre-qualification documents, where the procuring entity receives the request within the period specified in section 21 (1).

(3) In assessing applications to pre-qualify, the procuring entity shall use only such criteria as are necessary to establish whether the applicants have the resources and technical skills to perform the procurement contract satisfactorily.

(4) The procuring entity shall make a decision with respect to each application to pre-qualify and shall invite all the bidders that have been pre-qualified to submit bids in the procurement proceeding.

(5) At any time before awarding the contract, the procuring entity may require a pre-qualified bidder to demonstrate again its qualifications in accordance with the same criteria used to pre-qualify the bidder, and the procuring entity shall disqualify any such bidder that fails to such a requirement.

15. Use of restricted bidding method

- (1) In this section-

"standing list" means a list of qualified bidders prepared in accordance with this section for the purpose of procurement by the restricted bidding method.

(2) Subject to this section, procuring entities may in co-operation with the Authority establish and maintain standing lists of qualified bidders in any particular field of activity.

- (3) Enrolment of a bidder on a standing list-

- (a) shall constitute a presumption of the bidder's overall suitability pursuant to the Act and that the bidder meets any other criteria for selection; and
- (b) subject to [subsection \(5\)](#), shall qualify bidders to participate in a restricted bidding procedure without further investigation.

(4) In procurement proceedings that are not restricted to bidders enrolled on a standing list, bidders that are not enrolled shall not benefit from the presumption of suitability under [subsection \(3\)](#) and shall be required to demonstrate their qualifications to participate in the procurement procedure.

(5) Once invited to submit bids under a restricted bidding procedure, bidders enrolled on a standing list may be required to demonstrate their suitability to fulfill the requirements of the specific procurement contract in question.

(6) In order to establish a standing list-

- (a) the procuring entity shall determine the general requirements necessary for potential bidders to demonstrate for the purposes of enrolment, the requirements to include those prescribed in the Act; and
- (b) in making the determination under [paragraph \(a\)](#), the procuring entity shall call upon the assistance of appropriately qualified members of its staff and additionally, or alternatively, external consultants chosen in accordance with [Part VIII](#) of the Act for their competence in the sector concerned.

(7) Having compiled a standing list, the procuring entity shall send it to the Authority for approval, such approval to be based solely on whether the selection criteria for enrolment on the list are compatible with the Act.

(8) After a standing list has been approved by the Authority, the procuring entity shall publish a notice in-

- (a) the *Gazette*; and
- (b) at least one national newspaper of wide enough circulation to reach sufficient bidders to ensure effective competition; and
- (c) where feasible, on the internet, on websites established by the Authority and the procuring entity,

stating that the list has been established and that for a specified period, being at least two months from the date of the notice-

- (i) the list may be inspected by interested parties at the offices of the procuring entity, and
- (ii) potential bidders may apply for enrolment on the list.

(9) During the period specified in the notice published in terms of [subsection \(8\)](#), potential bidders may apply in writing for enrolment on the list, enclosing all relevant information required by the procuring entity:

Provided that the procuring entity may engage in discussions with any such potential bidder to clarify and additionally, or alternatively, to supplement the information contained in his or her application.

(10) Within two months after a potential bidder has applied for enrolment on a standing list in terms of [subsection \(9\)](#), the procuring entity shall evaluate his or her qualifications for enrolment in accordance with [subsection \(6\) \(b\)](#).

(11) After complying with [subsection \(8\)](#) and evaluating the qualifications of any potential bidders in terms of [subsection \(10\)](#) and enrolling those found to be qualified, the procuring entity shall send the standing list to the Authority for publication on its website, and no standing list may be used for the purpose of procurement until it is so published.

(12) The procuring entity shall keep its standing list at its head office where, upon request, it may be inspected by any interested party during normal office hours.

(13) Potential bidders may request enrolment on a standing list published on the Authority's website, and [subsections \(9\)](#) and [\(10\)](#) shall apply, with any necessary changes, to such requests.

(14) A procuring entity shall update its published standing list monthly where bidders have been added to it, and annually where there have been no such additions.

(15) Whenever a procuring entity rejects an application or request for enrolment on a standing list, the entity shall notify the bidder concerned, within five days, of its decision and of the reasons for it.

(16) In the case of a shared procurement-

- (a) references in this section to the procuring entity shall be construed as references to the lead procuring entity;
- (b) the lead procuring entity shall consult the other procuring entities when determining requirements and qualifications for enrolment on a standing list;
- (c) any standing list shall be kept for inspection at the head offices of all the procuring entities in accordance with [subsection \(12\)](#).

(17) Notwithstanding any other provision of this section, when employing the restricted bidding method of procurement, a procuring entity may restrict bids in accordance with any lawful Government directive or policy communicated to the entity by the Authority through a written instruction or circular in terms of the Act.

16. Use of direct procurement method

(1) Where the direct procurement method is employed-

- (a) the procuring entity shall prepare a document-
 - (i) describing the procurement requirement and any special requirements as to its quality, quantity, terms and delivery, and
 - (ii) specifying the period for which bids are required to remain valid, which period shall be at least sixty days;
- (b) where feasible, the procuring entity shall give the bidder a time limit to prepare and submit his or her bid;
- (c) the procuring entity shall examine every bid to ensure compliance with the specifications and terms set out in the document referred to in [paragraph \(a\)](#); and
- (d) where the procuring entity considers the bidder's price to be excessive or substantially in excess of prevailing market prices, it shall negotiate with the bidder to bring the price down.

(2) Where procurement of immovable property is effected through the direct procurement method, the procuring entity shall negotiate the price on the basis of an evaluation done by the Ministry responsible for public works and two other independent evaluators chosen by the procuring entity in accordance with [Part VIII](#) of the Act.

(3) Where procurement is for spares or equipment of a proprietary nature and where there is a sole supplier for the product or service, direct procurement method shall be applied.

17. Use of request for quotations method

(1) When engaging in procurement by the request for quotations method, a procuring entity shall solicit, by way of a notice board advertisement, e-mail and the procuring entity's website, quotations from as many bidders as practicable but from at least three competitive bidders, using standard documents produced by the Authority.

(2) In procurement proceedings using the request for quotations method-

- (a) the written request for quotations shall-
 - (i) contain a clear statement of the procurement requirement, with particulars as to quality, quantity, terms and time to delivery, as well as any other special requirements, and
 - (ii) specify the period for which bids are required to remain valid, which period shall be at least thirty days;
- (b) bidders shall be given adequate time, and in any event not less than three days, to prepare and submit their quotations;
- (c) each bidder shall be permitted to submit only one quotation, which may not be altered or negotiated;
- (d) sealed quotations shall be deposited unopened in a tender box which shall be opened at the end of the bidding period by a member of the procuring entity's procurement management unit and internal audit section or by any senior officer appointed by the entity's accounting officer:

Provided that, where quotations made by e-mail or in some other electronic form are received before the end of the bidding period, they shall be printed out, marked appropriately and deposited in the tender box without delay;

- (e) the quotations taken from the tender box shall be opened, stamped and signed by the officers appointed to preside over the opening;
- (f) the procuring entity shall place a purchase order, prepared in accordance with a template issued by the Authority, with the bidder whose quotation provides the lowest price and meets the delivery and other requirements of the procuring entity.

PART IV

Invitations to Bid

18. Domestic and international bids

Where procurement is effected by the competitive bidding method, with or without pre-qualification, or is for consultancy services under [Part VIII](#) of the Act, and the estimated price of the procurement requirement necessitates the soliciting of domestic or international bids in accordance with sections 10 (3) and (4)-

- (a) any procurement notice shall be published in accordance with section 38 (2) of the Act; and
- (b) the procuring entity shall allow sufficient time for the procurement notice to reach bidders and enable them to prepare and submit applications to pre-qualify or their bids, as the case may be, in accordance with the instructions given in the bidding documents, and shall observe the minimum bidding periods set out in section 19; and
- (c) bidders shall be permitted to express their bids, as well as any documents relating to bid security, in a currency widely used in international trade and stated in the bidding documents; and
- (d) general and special conditions of contract shall be of a kind generally used in international trade; and
- (e) technical specifications shall not be specific to a particular brand and, to the extent compatible with the procuring entity's requirements, shall be based on international standards; and
- (f) where procurement is for vehicles, the procuring entity shall obtain the authority of the Chief Secretary to the President and Cabinet before specifying that the vehicles should be of a particular brand; and
- (g) specifications of the procurement requirement, where necessary appropriate, shall consider life cycle costs and the disposal of any hazardous and toxic waste based on standards set by the Environmental Management Agency, or shall be based on international standards.

19. Bidding periods

(1) Procuring entities shall afford bidders a reasonable period for the preparation and submission of their bids, which period shall not be less than-

- (a) twenty days, in the case of procurement by the competitive bidding method where bids are solicited from national bidders; and
- (b) forty days, in the case of procurement by the competitive bidding method where bids are solicited from national and international bidders.

(2) Where pre-qualification applies in any procurement, the procuring entity shall allow bidders at least fifteen days to prepare their applications for pre-qualification following the publication of the invitation to pre-qualify in the *Gazette*.

20. Content of bidding documents

(1) Bidding documents shall contain at least the following information-

- (a) the identity of the procuring entity and an address where further information may be obtained about it and the procurement; and
- (b) a description of the procurement requirement, including any technical requirements and specifications; and
- (c) where not already determined through pre-qualification, the qualifications required for bidders and the documentation needed to establish those qualifications; and
- (d) information as to site visits and pre-bid conferences; and
- (e) instructions for the preparation and submission of bids, including the deadline for their submission and the time and place of bid opening; and
- (f) components to be reflected in the price, the currency or currencies in which the price may be stated, and the currency and exchange rate to be used for the comparison of bids; and
- (g) the period for which bids are required to remain valid, which period shall be at least sixty days, in the case of bids from domestic bidding, and ninety days in the case of bids from international bidding; and
- (h) the criteria and methodology to be used for the evaluation of bids and the selection of the successful bidder; and
- (i) the preference if any to be given for domestic goods and contractors; and
- (j) any grouping and sub-division of the procurement requirement into lots and packages and the manner of evaluation and the award of the lots and packages; and

- (k) whether alternatives to the technical or contractual specifications will be considered and, if so, how those alternatives will be evaluated; and
 - (l) where bidders are permitted to submit bids for one or more portions of the procurement requirement, a description of that portion or those portions; and
 - (m) the amount and acceptable forms of any required bid, performance or other security; and
 - (n) declarations to be signed by bidders that they are not debarred from bidding and that the documents they submitted are true and correct; and
 - (o) the terms and conditions of the procurement contract; and
 - (p) any obligations to be imposed on the successful bidder regarding the safe disposal of the procurement requirement; and
 - (q) any restrictions on bidding arising out of conflicts of interest or anti-fraud or anti-corruption rules; and
 - (r) the manner in which bidders may obtain a review of actions, omissions and decisions of the procuring entity; and
 - (s) such other matters as may be required in guidelines, manuals and appropriate forms published or issued by the Authority.
- (2) Bidding documents shall contain-
- (a) where bids are to be subject to review by the Special Procurement Oversight Committee, a statement that at least two identical copies of the bid document are required for such bids and that, where the copies are not identical, the contents of the bid marked original will alone be considered; and
 - (b) a statement to the effect that-
 - (i) no bidder may submit more than one bid, either individually or as a joint venture partner in another bid, except as a subcontractor, and
 - (ii) a conflict of interest will be deemed to arise if bids are received from more than one bidder owned, directly or indirectly, by the same person; and
 - (c) a signed declaration by the accounting officer of the procuring entity that the procurement is based on neutral and fair technical requirements and bidder qualifications.

21. Clarification of bidding documents

(1) At any time up to the middle of the bidding period, a bidder may in writing request clarification of a bidding document.

(2) The procuring entity shall respond promptly in accordance with section 41 of the Act to every request for clarification in terms of [subsection \(1\)](#):

Provided that the response shall be made no later than the end of the third quarter of the bidding period.

22. Modification of bidding documents

(1) At any time before the end of the bidding period, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a potential bidder, modify the bidding documents by issuing an addendum.

(2) The procuring entity shall communicate every modification of a bidding document promptly to all potential bidders that have been provided with the bidding document, and upon such communication the modification shall be binding on them.

(3) Where a modification is made to a bidding document, the procuring entity may extend the bidding period to enable potential bidders to take account of the modification when preparing their bids: Provided that, if less than one-third of the bidding period remains when the modification is made, the procuring entity shall extend the bidding period by at least half of the original period.

(4) Where a procuring entity decides to extend the bidding period, it shall give prompt notice of the extension to every bidder that was provided with the bidding documents.

23. Site visits

If, before the end of the bidding period, a procuring entity convenes a meeting of potential bidders, the procuring entity shall-

- (a) obtain details of the participants in a manner that does not make those details known to the other participants; and
- (b) promptly issue certificates of attendance to all the participants, which certificates shall be signed by the participants and at least two senior officers of the procuring entity representing its accounting officer; and
- (c) prepare minutes of the meeting containing any requests made for clarification of the bidding documents, and its responses to those requests, without identifying the source of the requests; and
- (d) send copies of the minutes, within three days after the meeting, to all potential bidders that were provided with the bidding documents, so as to enable those bidders to take the minutes into account in preparing their bids.

24. Investigation into unsuccessful procurement proceedings

(1) An investigation into unsuccessful procurement proceedings conducted by a procuring entity in terms of section 42 (5) of the Act shall consider all relevant issues, including whether-

- (a) the bidding period was sufficient, considering the factors listed in the Act; and
- (b) the requirements set out in the bidding documents and the terms and conditions of the proposed procurement contract were clear, non-discriminatory, proportionate, reasonable and not so excessive as to deter competition; and
- (c) the invitation to bid was published in an appropriate publication and on the required date; and
- (d) there was any delay in issuing the bidding documents; and
- (e) any clarification or modification of the bidding documents was done in sufficient time to be taken into account by bidders in preparing their bids; and
- (f) there were other extraneous events or circumstances, which may have affected the ability of bidders to submit responsive bids; and
- (g) the evaluation of bids was conducted in accordance with the Act and the bidding documents, and was conducted by officers who had adequate skills and resources; and
- (h) there is any suspicion of collusion between potential bidders; and
- (i) the choice of procurement method was appropriate.

(2) Following an investigation under section 42 (5) of the Act, the procuring entity shall take any appropriate action suggested by the cause or causes of failure, which may include-

- (a) the use of an alternative method of procurement; and
- (b) amendments to the bidding documents, including bidding requirements, the type of procurement contract sought and the terms and conditions of the proposed contract; and
- (c) alternative publication of any invitations to bid or similar notices.

25. Submission of bids

(1) A procuring entity shall-

- (a) at the place stated in the bidding documents, provide a box for the submission of bids and ensure that the box is accessible to bidders during working hours until the end of the bidding period; or
- (b) ensure that a member of its staff is available at the place where, as stated in the bidding documents, bids may be submitted and that, during working hours until the end of the bidding period, he or she will receive bids and, upon receipt of them, will issue a signed receipt stating the date and time they are received,

and in either case the procuring entity shall ensure that the bids are not accessible to anyone before the end of the bidding period.

(2) It shall be the responsibility of a bidder who receives a receipt issued in accordance with [subsection \(1\) \(b\)](#) to ensure that the particulars entered on the receipt correspond with the details of the bid as marked on the bid envelope.

(3) A procuring entity shall maintain a record of all bids received by it.

26. Bid security

(1) The value of any bid security shall be expressed as a fixed amount, which shall be not more than two *per centum* of the estimated price of the procurement requirement.

(2) In determining the amount of bid security required from bidders, a procuring entity shall take into account-

- (a) the cost to bidders of obtaining the security; and
- (b) the estimated price of the procurement requirement; and
- (c) the risk of bidders failing to fulfill the conditions of their bids,

and the procuring entity shall fix an amount, in the currency specified in the bidding documents, which is high enough to deter irresponsible bids but not so high as to discourage competition.

(3) Where bid security is required, the bidding documents shall state that fact, and that-

- (a) the undertaking by which bid security is given shall be in the format and wording set out in the bidding documents; and
- (b) bid security shall be given in a form acceptable to the procuring entity, which may be-
 - (i) a certified bank cheque, or
 - (ii) a bank guarantee, or
 - (iii) a cash deposit to the Authority, or
 - (iv) any alternative form permitted by the Authority to facilitate participation by small enterprises in procurement;

and

- (c) bid security shall be valid for the period stated in the bidding document, which shall normally be twenty-eight days after the end of the bidding period.

(4) Notwithstanding [subsection \(3\) \(b\)](#), bidding documents may provide an alternative arrangement whereby bidders are required to sign and submit with their bids a bid-securing declaration in an appropriate form set out in the bidding documents.

(5) Where the Authority receives bid security in the form of a cash deposit, the Authority shall as soon as possible deposit the cash in a trust account kept at a registered banking institution in terms of section 93.

(6) A bid security may be forfeited only in the event of-

- (a) the bidder modifying or withdrawing his or her bid after the end of the bidding period; or
- (b) the bidder refusing to accept a correction of an arithmetical error appearing on the face of his or her bid; or
- (c) the successful bidder failing to sign the procurement contract in accordance with the terms set out in the bidding documents; or
- (d) the successful bidder failing to provide security for the performance of the procurement contract, if required to do so by the bidding documents.

(7) The procuring entity shall release bid securities promptly to unsuccessful bidders upon expiry of the term of the securities or upon conclusion of a procurement contract with the successful bidder and submission of any required performance security, whichever is earlier:

Provided that bid security provided by the successful bidder shall not be released until any required performance security has been received.

PART V

Opening and Evaluation of Bids and Award of Contract

27. Bid opening requirements

(1) The public opening of bids shall be managed by the procuring entity's procurement management unit and witnessed by one or more persons appointed by the entity's accounting officer.

(2) Before bids are opened, every bidder or representative of a bidder who is present shall be required to sign an attendance register and provide such identity particulars as may be specified by the Authority in a circular, and any such bidder or representative who refuses to sign and additionally, or alternatively, to provide the required particulars shall not be permitted to witness the opening of the bids.

(3) Before a bid is opened, the bidder or his or her representative, if present, shall confirm that the bid is intact and sealed, and no addition, deletion or modification to the exterior or the contents of the sealed bid shall be permitted.

(4) Upon the opening of bids, an employee or agent of the procuring entity shall read aloud and record the following particulars of each opened bid, in addition to the particulars set out in section 46 (3) of the Act-

- (a) the currency in which the bid is expressed; and
- (b) the form, currency and amount of any bid security that has been given; and
- (c) the number of copies of the bid that have been submitted, where the bidding documents required more than one copy to be submitted; and
- (d) such other particulars as may be specified in the bidding documents.

(5) A bidder or his or her representative may ask questions in relation to the particulars read out in relation to any bid, and an employee or agent of the procuring entity may answer them but shall not enter into a discussion of the specific details of any bid.

(6) The procuring entity's procurement management unit shall ensure that accurate minutes are kept of the proceedings at an opening of bids, and the minutes shall-

- (a) form part of the procurement record; and
- (b) be circulated, free of charge, to all bidders that request them.

28. Examination of bids

(1) For the purpose of determining, in terms of section 47 of the Act, whether opened bids are complete and responsive, a procuring entity shall reject a bid as non-responsive on the ground of lack of qualification where-

- (a) the bidder lacks legal capacity to enter into a contract with the procuring entity; or
- (b) under the law of any country, the bidder is insolvent, bankrupt or being wound up; or
- (c) under the law of any country, the bidder's business activities have been suspended; or
- (d) legal proceedings have been instituted under the law of any country to sequestrate or wind up the bidder or to place the bidder receivership or to suspend the bidder's business activities; or
- (e) the bidder has failed to comply with any obligation to pay taxes or social security contributions in Zimbabwe; or
- (f) the bidder has a conflict of interest in relation to the subject of the procurement; or
- (g) the bidder is ineligible under the Act to be awarded a procurement contract.

(2) For the purpose of determining, in terms of section 47 of the Act, whether opened bids are complete and responsive, a procuring entity shall regard a bid as administratively compliant where-

- (a) the bidder has submitted a bid security, where it is required, in the correct form and amount; and
- (b) the bidder has submitted a bid-securing declaration, where it is required, in the appropriate form; and
- (c) the bidder has submitted the bid in the appropriate form; and
- (d) the authorisation and signature of the bid is in accordance with the instructions in the bidding documents; and
- (e) the period for which the bid is valid is correct; and
- (f) the bidder has submitted such additional documents or samples as were required in the bidding documents.

(3) Where a bidder is not qualified or a bid is not administratively compliant, the procuring entity shall reject the bid:

Provided that this subsection shall not preclude the procuring entity from rejecting a bid on any other lawful ground.

(4) Where a bidder omits to submit company registration or incorporation documents, credentials or other historic documents as specified in the proviso to section 47 of the Act, the procuring entity shall immediately request the bidder, in writing, to submit the missing documents within two days of the request.

29. Clarification of bids

(1) A procuring entity, in terms of section 48 of the Act-

- (a) may seek clarification from a bidder of its bid in order to facilitate evaluation of the bid; and
- (b) shall seek clarification from a bidder of its bid where the bid price appears to be abnormally low, in order to establish one or all of the following-
 - (i) the economics of the manufacturing process, of the services provided or of the construction method,
 - (ii) the technical solution proposed or any exceptionally favourable conditions available to the bidder,
 - (iii) the originality of the goods, works or services proposed by the bidder,
 - (iv) compliance with local laws on the fair treatment of labour, the environment, packaging, taxes, social security payments, and any other matter relevant to the procurement.

(2) Where clarification of a bid is sought on the ground that the bid price appears to be abnormally low, the procuring entity shall give the bidder forty-eight hours within which to reply to the request, and if the bidder's written reply is not received within that period the procuring entity shall reject the bid.

30. Evaluation of bids

(1) A procuring entity shall complete the evaluation of bids within fifteen days after the end of the bidding period:

Provided that an extension of the time for evaluation may be authorised, in writing, by-

- (a) the procuring entity's accounting officer, where the procurement contract does not require prior review by the Special Procurement Oversight Committee; or
- (b) the Authority, where the procurement contract requires prior review by the Special Procurement Oversight Committee.

(2) The procuring entity shall evaluate all bids that have not been rejected as non-responsive under section 28, to determine-

- (a) whether the bids are responsive; and
- (b) where the bids are found to be responsive, to evaluate the bid prices.

(3) For the purposes of evaluation, bids shall be regarded as substantially responsive where-

- (a) the bidders fulfill the conditions of eligibility, if any, laid down in the bidding documents; and
- (b) the bids are administratively compliant, in that they are complete with the required information and duly filled in forms prescribed in the bidding documents; and
- (c) the bids comply substantially with the terms and conditions set out in the bidding documents.

(4) If in evaluating a bid, the procuring entity finds a minor deviation between the bid and the requirements of the bidding documents which did not merit rejection of the bid when it was initially examined, the quantum and associated cost of the deviation shall be ascertained, and the evaluated cost of the bid shall then be compared to those of other bids to determine the lowest bid.

(5) In competitive bidding with pre-qualification, once the procuring entity has ascertained the lowest responsive bid, it shall verify again the qualifications of the bidder to take account of any change since the original pre-qualification.

(6) Where there is no pre-qualification, once the procuring entity has ascertained the lowest responsive bid, it shall check the bidder's qualifications against the criteria specified in the bidding documents and, if that results in rejection of the bid, shall perform the same check to the next ranked bid.

31. Correction of arithmetical errors in bids

(1) For the purpose of section 51 of the Act, a procuring entity shall correct arithmetical errors in bids on the following basis-

- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the procuring entity there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected;

- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail, subject to [paragraphs \(a\) and \(b\)](#).

(2) Where a bid price has been corrected, the corrected price shall be the basis for evaluating the bid, awarding the procurement contract and performing the contract.

(3) Where a bid is ambiguous, whether due to error or otherwise, so that the bid price cannot be ascertained with certainty, the bid shall not be capable of correction under section 51 of the Act and the procuring entity shall reject it.

32. Scrutiny by Special Procurement Oversight Committee

(1) Where procurement is of a class specified under section 10 (5) and subject to scrutiny by the Special Procurement Oversight Committee, the procuring entity shall submit to the Authority-

- (a) a copy of the procurement notice; and
- (b) the procurement record; and
- (c) copies of all bids submitted.

(2) The Secretariat shall convene a meeting of the Special Procurement Oversight Committee within seven days after receipt of the procurement record in terms of [subsection \(1\)](#), and the Committee shall consider the proceedings promptly in terms of section 54 of the Act.

(3) Where procurement is the subject of a framework agreement and the procurement requirement is of a class that requires scrutiny by the Special Procurement Oversight Committee-

- (a) the framework agreement shall be scrutinised by the Committee; and
- (b) procurement contracts awarded in accordance with the framework agreement shall not be subject to scrutiny by the Committee.

(4) Where a procuring entity purports to award a procurement contract that is especially sensitive or especially valuable as defined in section 54 of the Act, and the Special Procurement Oversight Committee has not certified in terms of that section that the contract withstands scrutiny, the contract shall be void.

33. Notification of contract award

(1) Where procurement proceedings are subject to scrutiny by the Special Procurement Oversight Committee, the procuring entity shall not award the procurement contract until the Committee has scrutinised the proceedings and made its recommendations.

(2) Notification of a proposed contract award in terms of section 55 (2) of the Act may be sent by e-mail or by registered post, and the fourteen-day period referred to in that section shall commence on the date when the notification was published or was received by all bidders, as the case may be.

34. Performance security

(1) A procuring entity may require a successful bidder to provide a performance security in terms of section 56 of the Act whenever failure by the contractor for any reason to complete the procurement contract in accordance with its terms and conditions is likely to result in substantial loss or inconvenience to the procuring entity or to the public.

(2) In determining the amount of performance security required, the procuring entity shall take into account the cost to the contractor of providing the security, the value of the procurement contract, the risk of the contractor failing to fulfill his or her contractual obligations and the extent of protection offered to the procuring entity through alternative means, such as payment retentions.

(3) The value of any required performance security may be expressed either as a fixed amount or as a percentage of the price of the procurement contract, but shall be no more than ten per centum of the price.

(4) Where appropriate, the value of a performance security may be progressively reduced, in line with the contractor's progress in delivering or completing the procurement requirement to which the security relates.

(5) Where performance security is required to be provided, the bidding documents and procurement contract shall state that the security shall be-

- (a) in accordance with the format and wording provided in the bidding document; and
- (b) in a form acceptable to the procuring entity; and

- (c) from an institution acceptable to the procuring entity, where the security is issued by a financial institution; and
 - (d) valid for the period specified in the documents and the contract.
- (6) The conditions for forfeiture of a performance security shall be specified in the procurement contract.
- (7) Where a procuring entity receives a performance security in the form of cash, the entity shall as soon as possible deposit the cash in a trust account kept in terms of section 93.
- (8) The procuring entity shall release a performance security promptly to the contractor upon completion of all the contractor's obligations which are subject to the security, or upon termination of the procurement contract for a reason that is not attributable to any fault on the part of the contractor.

PART VI

Procurement of Consultancy Services

35. Interpretation in [Part VI](#)

Any word or expression that is defined in section 57 of the Act shall bear the same meaning when used in this Part.

36. Thresholds for expressions of interest and scrutiny by Special Procurement Oversight Committee

(1) Where the estimated value of the procurement exceeds the threshold prescribed in section 10 (10) (a), the procuring entity shall seek expressions of interest from prospective participants in which they shall be requested to demonstrate their capacity to participate in the procurement.

(2) Where the estimated value of the procurement exceeds the threshold prescribed in section 10 (10) (b), expressions of interest the short-listing of firms and the award of the contract shall be subject to prior scrutiny by the Special Procurement Oversight Committee.

37. Terms of reference

The terms of reference contained in the proposal for services issued to short-listed bidders in terms of section 58 (4) of the Act shall-

- (a) set out clearly the scope of the services to be provided, which shall be within the procuring entity's budget; and
- (b) define clearly the objectives, goals, and scope of the services to be provided and give background information to facilitate the bidders' preparation of their proposals; and
- (c) list the services and surveys needed to perform the services and the expected outputs, for example reports, data, maps and surveys; and
- (d) if transfer of knowledge or training is an objective, specifically outline that objective, giving along with sufficient details of who is to be trained to enable bidders to estimate the resources needed; and
- (e) clearly define the responsibilities of the procuring entity and the consultants; and
- (f) include a cost estimate for the services based on the procuring entity's assessment of the resources needed to carry out the assignment in terms of experts' time, logistical support and physical inputs such as vehicles and laboratory equipment.

38. Deadlines for submission of proposals

- (1) The deadlines for the submission of proposals in accordance with [Part VIII](#) of the Act shall be-
- (a) for proposals involving domestic and international bidders, not less than thirty days from the date of publication of the request for proposals;
 - (b) for proposals involving only domestic bidders, not less than twenty days from the date of publication of the request for proposals;
 - (c) for proposals based on a short-list under Act and including international bidders, not less than twenty days from the date of publication of the request for proposals;

- (d) for proposals based on a short-list under the Act and including only domestic bidders, not less than twelve days from the date of publication of the request for proposals.

(2) There shall be no minimum period for submission of proposals under the single-source selection method described in section 65 of the Act.

PART VII

Integrity and Transparency

39. Procurement records

(1) Accounting officers shall maintain an individual file for each procurement requirement, which shall be marked with the relevant procurement reference number.

(2) Each file referred to in [subsection \(1\)](#) shall contain all information, documents and communications related to the procurement proceedings concerned, including the information specified in section 69 of the Act and such of the following information as is relevant to the procurement concerned-

- (a) the names and addresses of the persons who were prequalified or selected and invited to submit bids; and
- (b) the bidding document; and
- (c) the price and other principal terms and conditions of each bid and of the procurement contract; and
- (d) the application of any margin of preference; and
- (e) if all bids were rejected, a statement to that effect and the grounds of rejection; and
- (f) if, for any reason other than rejection of bids, the proceedings did not result in a procurement contract, a statement to that effect and of the reasons for it; and
- (g) where the procuring entity limited participation of bidders on the basis of nationality or ethnic origin, a statement of the grounds and circumstances relied upon by the procuring entity for imposing the limitation; and
- (h) a summary of any requests for clarification of the pre-qualification or bidding documents, the responses thereto, and a summary of any modification made to those documents.

(3) Procuring entities shall ensure that confidential and commercially sensitive information provided by bidders and included in the procurement record is not disclosed to other bidders or made public.

40. Reports to Authority

(1) Procuring entities shall make such reports to the Authority, within such time-limits and at such frequency and in such manner, as the Authority may specify in instructions or circulars.

(2) The Authority shall publish, in instructions or circulars and on its website, reporting templates for procuring entities to use when submitting the reports referred to in [subsection \(1\)](#).

41. Code of Conduct for procurement officers

(1) Procurement officers shall carry out procurement proceedings in accordance with the Act and the Code of Conduct set out in the First Schedule.

(2) The Authority shall ensure that the Code of Conduct is issued to all procuring entities and is published on the Authority's website.

(3) Before engaging in any procurement proceedings, every procurement officer shall sign a declaration agreeing to abide by the standards of conduct prescribed in the Act and the Code of Conduct.

42. Ethical responsibilities of bidders and contractors

Procuring entities shall ensure that the ethical responsibilities of bidders and contractors are stated in the bidding documents and that submission of a bid is deemed to be an undertaking to accept these responsibilities.

PART VIII

43. Interpretation in [Part VIII](#)

In this Part-

"application for review" means an application for review of procurement proceedings made in terms of section 74 of the Act;

"panellist" means-

- (a) a person whose name is on a list of panellists prepared in terms of section 75 of the Act and section 46 of these regulations; or
- (b) a member of a review panel appointed in terms of section 75 of the Act,

as the case may be;

"respondent" means the procuring entity against whose decision an application for review is made in terms of section 74 of the Act.

44. Security for costs

(1) A challenger to procurement proceedings shall deposit with the procuring entity as security for costs, in terms of section 73 (4) of the Act, the appropriate amount specified in the Third Schedule.

(2) Where a procuring entity receives a deposit of cash as security for costs, the entity shall as soon as possible deposit the cash in a trust account kept in terms of section 93.

(3) If a challenge is conceded by the procuring entity, the amount deposited in terms of [subsection \(1\)](#) shall be returned to the challenger together with the notice of remedial measures to be taken by the procuring entity under the Act.

(4) If the procuring entity does not concede a challenge, it shall transfer to the Authority the amount deposited by the challenger in terms of [subsection \(1\)](#).

(5) If a challenge is upheld by a review panel appointed in terms of section 75 of the Act, the Authority shall return to the challenger the amount transferred to it in terms of [subsection \(4\)](#), together with the notice of remedial measures to be taken to rectify the matters at issue in the challenge.

(6) If a challenge is rejected by a review panel appointed in terms of section 75 of the Act, the Authority shall retain the amount transferred to it in terms of [subsection \(4\)](#).

45. Procuring entity to give reasons for decision regarding challenge

Whenever a procuring entity concedes or upholds a challenge it shall-

- (a) provide the challenger, as soon as practicable and in writing, with full reasons for its decision; and
- (b) where it concedes the challenge, notify the other bidders, in writing, of-
 - (i) its decision on the challenge and the reasons for it, and
 - (ii) the name and address of the new successful bidder, and
 - (iii) the price of the contract.

46. Review of procurement by Authority: preparation of lists of panellists

(1) Subject to this section, for the purpose of section 75 of the Act, the Authority shall prepare one or more lists of panellists through the request for proposals procedure set out in [Part VIII](#) of the Act.

(2) Each list of panellists shall consist of not fewer than nine nor more than twelve panellists.

(3) The request for proposals sent to persons for the purpose of preparing the lists of panellists shall set out-

- (a) the duties to be performed by panellists; and
- (b) the anticipated number of days panellists may be required to serve on a review panel annually; and

(c) the terms and conditions of service of panellists, in particular their remuneration; and

(d) the procedure for applying for inclusion on a list of panellists.

(4) For the purpose of selecting persons for inclusion on a list of panellists, the Authority shall establish an evaluation committee to evaluate their capability to issue a decision on a bid challenge in a fair, independent and professional manner in accordance with the Act and these regulations, as well as any rules of procedure issued by the Authority.

(5) The evaluation committee shall evaluate applicants by assessing the documents submitted by them as evidence of their qualifications, experience and records of employment, basing the assessment on criteria set out in the request for proposals.

(6) Where applicants pass the evaluation process, the evaluation committee shall put forward their names to the Authority for inclusion in an appropriate list of panellists.

(7) Whenever the number of persons on any list of panellists is reduced by a third for any reason, the Authority select more panellists in accordance with this section.

47. Disqualifications for appointment as panellist

(1) A person shall not be qualified for appointment as a panellist if-

(a) he or she is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or

(b) he or she has, in terms of a law in force in any country-

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated, or

(ii) made an assignment or composition with his or her creditors which has not been rescinded or set aside,

or

(c) he or she has been convicted in Zimbabwe or in any other country-

(i) of any offence involving dishonesty, or

(ii) of any other offence, in the period of five years before his or her appointment, for which a term of imprisonment without the option of a fine has been imposed, whether or not any portion of that sentence has been suspended;

or

(d) he or she is-

(i) a member of two or more statutory bodies, or

(ii) a Senator or member of the National Assembly, or

(iii) a councillor or employee of a provincial or metropolitan council or of a local authority.

(2) For the purposes of [subsection \(1\) \(d\) \(i\)](#)-

(a) 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;

(b) "**statutory body**" means-

(i) any commission established by the Constitution, or

(ii) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any other statutory body or by a Commission established by the Constitution.

(3) A panellist who becomes disqualified for appointment as a panellist in terms of [subsection \(1\)](#) shall forthwith cease to be a panellist.

48. Publication of lists of panellists

The lists of panellists which the Authority, in terms of section 75 (3) of the Act, keeps available for inspection by members of the public, shall indicate the names of the panellists and to which of the categories, specified in section 75 (2) (i), (ii) and (iii) of the Act, they belong.

49. Training of panellists

(1) The Authority shall ensure that every panellist undergoes a specialised training course on the implementation of the Act and the functions of panellists.

(2) The training course referred to in [subsection \(1\)](#) shall be of at least three days' duration every two years or whenever necessary, with training based so far as possible, on disputes that have arisen or are likely to arise during procurement in Zimbabwe, using examples of frequent breaches of the Act and errors in its implementation, with case studies and role play.

(3) The Authority shall make arrangements for the continuous training of panellists, and shall approve the curriculum for such training where it is provided by someone other than the Authority itself.

(4) The Authority may require panellists to undergo, at the Authority's expense, any specialised training in addition to the training referred to in [subsections \(1\), \(2\) and \(3\)](#).

50. Review panels

(1) When the Authority appoints a review panel in terms of sections 74 (3) and 75 (4) of the Act, it shall ensure that its members are chosen from the appropriate list of panellists by rotation, by sector experience or in such other manner as guarantees an objective selection of panellists:

Provided that each panellist shall have experience in a sector or area of procurement relevant to the dispute in hand.

(2) The Authority shall designate a chairperson of each review panel having regard to the seniority and experience of the panellists.

(3) Panellists shall be appointed for three-year terms, renewable once.

(4) Panellists may be removed or suspended from office by the Authority in consultation with the Minister, but only for disqualification, incompetence, mental or physical disability, neglect of duty or serious misconduct.

(5) Panellists may resign from office by giving one month's notice in writing to the Authority.

51. Conditions of service of panellists

(1) Panellists shall be entitled to be paid their out-of-pocket expenses and fees, at a rate fixed by the Authority, for days spent on training and on preparation and sitting at meetings of a panel and for performing other duties as panellists.

(2) The remuneration of panellists shall be paid by the Authority from its funds.

52. Duty of panellists to be impartial and independent

(1) In the performance of their functions panellists shall be independent and impartial and, in all respects relating to their status and ethical standards, shall be bound by the rules applicable to civil servants.

(2) If a panellist stands to gain financially or has any other conflict of interest in relation to procurement proceedings under review by his or her review panel, he or she shall immediately, by notice to the Authority, resign his or her office as a member of that review panel and cease to take any part in its proceedings.

(3) A panellist who has a direct or indirect personal interest in a matter being considered or to be considered by his or her review panel shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his or her knowledge, disclose the nature of his or her interest to the Authority, and thereupon the Authority, if it considers the interest to be material, shall appoint an alternative panellist.

53. Secretariat and secretarial services for review panels

(1) The Authority shall establish a Secretariat responsible for providing secretarial services to every review panel and carrying out the day-to-day functions associated with organising reviews of procurement proceedings.

(2) The administrative business of every review panel and all clerical matters arising out of the conduct of review proceedings under the Act shall be carried out by the Secretariat on behalf of the panel.

(3) Applications for review of procurement proceedings, defences and subsequent communications relating to a review shall be addressed to the appropriate review panel at the Secretariat, unless otherwise specified by the Authority.

(4) Following the receipt of an application for review in terms of section 74 of the Act, the Secretariat shall-

- (a) appoint from its staff a secretary to the review panel who shall be responsible for coordinating the panel's activities and for receiving and transmitting all communications between the parties to the review and the review panel; and
- (b) prepare and provide to the review panel the case file and the terms of reference for the panel in the appropriate form.

(5) The Secretariat and the secretary appointed in terms of [subsection \(4\) \(a\)](#) shall be accountable to the review panel concerned for the performance of their functions and, subject to the Act and these regulations and any instructions given by the Authority, shall perform their functions under the direction and control of the review panel.

54. Forms to be used in reviews of procurement proceedings

The Secretariat shall ensure that copies of all appropriate forms to be used for the review of procurements proceedings are available for collection at the offices of the Authority and that copies of such forms are sent to all interested parties upon request.

55. Representation of parties at review proceedings

Any party to a review of procurement proceedings may be represented by a legal practitioner or any other person.

56. Application for review

(1) An application for review of procurement proceedings shall be made by the applicant submitting the following documents to the Secretariat-

- (a) a completed application for review in the appropriate form; and
- (b) copies of any documentary evidence the applicant relies on in support of the claim set out in the review form; and
- (c) where the application is made by an agent of the applicant, an appropriate power of attorney.

(2) Upon receipt of an application for review, the Secretariat shall immediately-

- (a) record it in a Register of Reviews and assign it a case reference number; and
- (b) verify that the application is in conformity with the provisions of the Act and these regulations.

(3) Where an application for review is found not to be in conformity with the Act and these regulations, the Secretariat shall reject it and return it to the applicant together, with a statement of the reasons for rejecting it, whereupon the applicant may correct it and resubmit it together with the appropriate resubmission fee.

(4) Upon verifying an application for review that is found to be in conformity with the Act and these regulations, the Secretariat shall forthwith, and in any event no later than the day after the application was received by the Secretariat, notify the respondent, in writing, of the application and send the respondent copies of all the documents making up the application.

(5) As soon as the respondent has been notified of an application for review in terms of [subsection \(4\)](#), the respondent shall suspend the procurement proceedings until the review panel has completed the review and given its decision.

57. Respondent's reply

(1) Within three days after being notified of an application in terms of section 56 (4), the respondent shall submit to the Secretariat a written reply to the application in the appropriate form, which reply shall-

- (a) set out the respondent's reasons for the decision that is the subject of the review and its response to the applicant's contentions in the application; and
- (b) be accompanied by-
 - (i) copies of any documentary evidence relied upon by the respondent, and
 - (ii) the full procurement record.

(2) If a respondent fails to submit a reply within the three-day period specified in [subsection \(1\)](#)-

- (a) the Secretariat may proceed to appoint a review panel to review the procurement proceedings concerned:

Provided that the Secretariat shall advise the respondent of the appointment and of the date of the hearing, if any; and
- (b) the review panel shall, if it considers that the respondent had no good cause for failing to submit a response, proceed with the review on the basis of the evidence before it; and
- (c) the respondent shall be bound by any decision of the review panel, including any award of damages or costs.

58. Commencement of review

(1) Without delay after receiving the respondent's reply, the Secretariat shall-

- (a) collate into a single case file all the relevant documents, including the application for review, the reply, and the supporting documents submitted by the parties; and
- (b) appoint the review panel and provide each of the panellists with a copy of the case file; and
- (c) provide each of the parties with a copy of the case file.

(2) As soon as the Authority has confirmed the appointment of the review panel, the Secretariat shall note the date of confirmation in the Register of Reviews as the date of commencement of the review proceedings concerned, and shall notify the parties of that date.

59. Meetings of review panel

(1) Subject to the Act and these regulations, the Authority shall determine the time and place of its meetings and the procedure to be followed at those meetings.

(2) The secretary of a review panel shall keep minutes of each meeting of the panel, recording the time and place of the meeting and the names of those attending, together with a summary of the proceedings at the meeting.

60. Evidence in review proceedings

(1) A review panel may take into consideration, without further proof, statements and allegations made in the application and reply and the supporting documents submitted by the parties with the application and reply, unless the panel considers any such statement or allegation needs to be clarified, amplified or verified, in which event the panel may call upon the parties to supply such further evidence, whether documentary or oral, as the panel may specify.

(2) A review panel may require a party to a review to adduce such further evidence, whether documentary, oral or real, as the panel may specify.

(3) Unless the justice of the case otherwise requires, a review panel shall receive evidence in documentary form rather than orally.

(4) A review panel may receive and rely on hearsay evidence, giving it such weight as the panel considers appropriate in the circumstances.

61. Decision of review panel

(1) When a review panel is satisfied that all contentions and evidence of the parties have been submitted, the panel shall conclude the proceedings.

(2) A review panel shall deliver its decision to the Secretariat within fourteen days after the date of commencement of the review.

(3) The decision of a review panel shall that of the majority of its members, with each panellist having one vote in the panel's decision:

Provided that in the event of an equality of votes the chairperson shall have a casting vote in addition to a deliberative vote.

(4) The decision of a review panel shall be confined to the issues raised by the application and the respondent's reply, and shall be formulated in the appropriate form.

(5) The secretary of a review panel shall without delay notify applicant and respondent of the panel's decision.

Appeals to the Administrative Court or other Courts

An appeal to the Administrative Court or other Courts shall only be valid if the challenge proceedings under the Act and regulations have been complied with.

PART IX

Contract Management

62. Procurement contracts

(1) Procurement contracts shall be based on the terms and conditions that were stated in the bidding documents and that were used for the evaluation and award of the contract, unless the bidder has offered more favourable terms and conditions than those stated in the bidding documents.

(2) Notwithstanding [subsection \(1\)](#), the procuring entity and the successful bidder may negotiate terms of the procurement contract that were not specified in the bidding documents, where those terms are necessary for the effectiveness of the contract:

Provided that this subsection shall not apply to procurement conducted under the direct procurement method.

(3) In a contract for a fixed supply or service and where it becomes necessary to vary the scope and costs of a contract that was awarded subject to prior review by the Special Procurement Review Committee, the variation of the contract shall only be effective after the prior review in terms of section 10 (5).

Where a procurement contract was concluded with a process that was not subject to prior review in terms of section 10 (5), and the proposed scope or price variation escalates the procedure to a threshold subject to prior review, the proposed contract variation shall be subject to prior review in terms of Section 54 of the Act:

Provided that this subsection shall not apply to contract price variations resulting from statutory changes such as rate of duty, exchange rate or labour rate.

(4) Where parties conclude a contract based on international conditions of contract and where any terms and conditions of such contract are not consistent with provisions of the Act and of [subsection \(1\)](#), such terms and conditions shall not be binding.

63. Advance payments

(1) In this section-

"advance payment" means a payment made by a procuring entity to a contractor before completion of the procurement contract, but does not include a payment for goods that have been delivered or construction work that has been done or services that have been performed.

(2) Any advance payment made to a contractor shall be based on costs the contractor is likely to incur in mobilising resources to perform the procurement contract, and in the case of construction contracts shall not exceed-

- (a) fifteen *per centum* of the contract price, in the case of a domestic contractor; or
- (b) ten *per centum*, in the case of an international contractor.

(3) No advance payment shall be made unless it is provided for in the procurement contract and was provided for in the bidding documents.

64. Reports on performance of procurement contracts

(1) Procuring entities shall report to the Authority on the performance, management and completion of their procurement contracts.

(2) Reports in terms of [subsection \(1\)](#) shall be made within such time-limits and at such frequency and in such manner, and shall specify such particulars, as the Authority may specify in circulars.

PART X

Disposal of Public Assets

65. Disposal procedures

(1) A disposal committee established by a procuring entity in terms of section 93 of the Act shall consist of such persons as the procuring entity, on the advice of its accounting officer, may determine, including-

- (a) employees of the procuring entity; and
- (b) where the procuring entity considers it desirable, persons with relevant qualifications or experience who are not employees of the procuring entity and who are appointed in accordance with [Part VIII](#) of the Act.

(2) The accounting officer of every procuring entity shall ensure that a disposal plan is prepared for the entity, linked to the planned acquisition of new equipment in the entity's annual or individual procurement plan.

(3) In order to maximise competition and achieve value for money, a procuring entity shall group the public assets it wishes to dispose of in contracts or lots, including as many public assets as possible at a given time, where the assets are to be disposed of by public auction.

(4) Each procuring entity, acting by itself or jointly with other procuring entities, shall in accordance with [Part VIII](#) of the Act appoint a person carrying on business as an auctioneer to conduct public auctions of the entity's public assets whenever the entity disposes of them by public auction.

(5) Where a procuring entity disposes of assets above such value as may be specified by the Authority in a circular, it may do so through the competitive bidding method or the restricted bidding method, with such modifications as may be necessary.

(6) Where a public asset can be upgraded in a convenient, economic and efficient way by trading it in for a new one, a procuring entity may dispose of it in that way, so long as it receives value for money.

(7) A procuring entity shall dispose of a public asset by destroying, dumping or burying it where it is in the interests of national security, the general public, public health or safety or the environment to do so or where the public asset has no residual value and cannot be transferred to another procuring entity or converted into another form with any value.

(8) A procuring entity shall not dispose of a public asset to any of its employees or to a member of its board or any of its committees unless-

- (a) the public asset is of low value and selling to a member of the public, whether by public auction or otherwise, would not be economic for the procuring entity; and
- (b) the price or consideration for the asset is determined by independent valuation.

(9) Where a procuring entity accumulates unserviceable, obsolete or surplus public assets before disposing of them, the entity shall ensure that the assets do not deteriorate so as to reduce their value on disposal, nor shall the entity keep them for so long that storage costs erode their value.

66. Disposal committees to keep records

A procuring entity's disposal committee shall ensure that complete records of all the entity's disposals of public assets are kept for at least five years.

67. Disposal of rights and licences

Where a procuring entity disposes of a right or a licence, it shall follow the procedure laid down in any enactment for such disposal, and if no enactment provides for such a procedure the entity shall dispose of the right or licence through the competitive bidding method or the restricted bidding method, with such modifications as may be necessary.

PART XI

Debarring of Bidders and Contractors

68. Interpretation in [Part XI](#)

In this Part-

"accused bidder or contractor" means a bidder or contractor who is alleged to be or to have been guilty of

prohibited conduct, and includes any affiliate of a bidder or contractor who is alleged to have been guilty of such conduct or to have participated in it;

"debarment committee" means a committee established in terms of section 71 (1);

"prohibited conduct" means conduct referred to in section 72 (1), (2) or (3) of the Act;

"recommendation" means a recommendation referred to in section 69 (1), to debar a bidder or contractor in terms of this Part.

69. When bidders and contractors may be debarred

(1) Subject to the Act and this Part, the Authority, on the recommendation of-

- (a) a procuring entity; or
- (b) the Monitoring and Evaluation Department of the Authority, following an investigation carried out by that Department,

may debar a bidder or contractor guilty of prohibited conduct from engaging in any public procurement or disposal process for a period determined by the Authority.

(2) [Subsection \(1\)](#) shall not be construed as limiting the right of a procuring entity to reject or refuse to consider a bidder's bid under section 72 of the Act.

70. Recommendation to debar bidder or contractor

A recommendation shall be made to the Authority in writing and shall state-

- (a) the name of the bidder or contractor; and
- (b) the procurement or disposal proceedings or contract which gave rise to the recommendation; and
- (c) the grounds for the recommendation, in particular the prohibited conduct of which the bidder or contractor is alleged to be guilty; and
- (d) the documentary or other evidence supporting the recommendation; and
- (e) any evidence which, to the knowledge of the person making the recommendation, might tend to mitigate the culpability of the bidder or contractor; and
- (f) any other information relevant to the recommendation.

71. Debarment committee

(1) On receipt of a recommendation, the Chief Executive Officer of the Authority shall establish a debarment committee consisting of-

- (a) one member of the Authority's Legal and Policy Department appointed by the Chief Executive Officer, who shall be the chairperson of the committee; and
- (b) one legal practitioner employed in the Attorney-General's Office, appointed by the Attorney-General at the request of the Chief Executive Officer; and
- (c) one person selected by the Chief Executive Officer from a list of panellists prepared in terms of section 75 of the Act and section 46 of these regulations.

(2) The function of a debarment committee shall be to determine whether there is sufficient evidence to debar an accused bidder or contractor and, if it decides he or she should be debarred, determining the appropriate period.

72. Procedure for debarring bidder or contractor

(1) Within ten days after receiving a recommendation, the Chief Executive Officer shall convene a meeting of the debarment committee to review the recommendation and decide whether or not to proceed.

(2) If on review of a recommendation the debarment committee decides that there is insufficient evidence to support the allegations of prohibited conduct-

- (a) the committee shall notify the procuring entity or the Authority's Monitoring and Evaluation Department, as the case may be, of its decision and of the reasons for it; and

- (b) the procuring entity or the Monitoring and Evaluation Department, as the case may be, may submit a revised recommendation for consideration by the committee.
- (3) If on review of a recommendation the debarment committee believes there are grounds to proceed further, it-
 - (a) shall send a copy of the recommendation and all the documents that accompanied it to the accused bidder or contractor; and
 - (b) may issue a notice of suspension to the accused bidder or contractor prohibiting him or her from being awarded a procurement contract from the date of the notice until the committee reaches a decision on the recommendation.
- (4) If, within ten days after the accused bidder or contractor received a notice of suspension, or within such longer period as the debarment committee may allow-
 - (a) the bidder or contractor does not inform the debarment committee that he or she intends to contest the allegations against it, or admits all or part of the allegations, the committee shall proceed to make a decision on the recommendation;
 - (b) the bidder or contractor informs the debarment committee that he or she intends to contest the allegations and additionally, or alternatively, any debarment that may be imposed on him or her, the committee shall within five days inform the bidder or contractor of the date by which his or her written response must be received,

which date shall not be less than ten days after the accused bidder or contractor informed the committee of his or her intention.

73. Decisions of debarment committee

- (1) All decisions of a debarment committee shall be reached by a majority vote.
- (2) Before reaching a decision on any recommendation, and before imposing any sanction on an accused bidder or contractor, a debarment committee shall afford the bidder or contractor a reasonable opportunity to make representations in the matter.
- (3) The decision of a debarment committee on a recommendation shall be reached on a balance of probability, that is to say the committee shall determine whether it is more likely than not that the accused bidder or contractor was guilty of prohibited conduct.
- (4) Where a debarment committee decides that an accused bidder or contractor was guilty of prohibited conduct, the committee may impose an appropriate sanction on him or her, including disbaring, taking into account all the circumstances of the case and in particular any mitigating or aggravating factors.

74. Sanctions that may be imposed by debarment committee

- (1) A debarment committee may impose any of the following sanctions on an accused bidder or contractor whom it has found guilty of prohibited conduct-
 - (a) a caution, that is to say a formal letter to the bidder or contractor warning him or her to avoid the conduct in the future;
 - (b) a reprimand, that is to say a formal letter to the bidder or contractor reprimanding him or her for the conduct;
 - (c) suspension from participating in public procurement for a period not exceeding twelve months, coupled with a remedial plan that the bidder or contractor will be obliged to carry out;
 - (d) temporary debaring, that is to say disbaring the bidder or contractor from participation in procurement proceedings for a period of more than twelve months but not exceeding three years, as specified by the committee;
 - (e) debaring the bidder or contractor permanently from participating in procurement proceedings:

Provided that this sanction shall be imposed only where the bidder or contractor has been temporarily debarred on at least two previous occasions.

(2) Where a debarment committee permanently debar a bidder or contractor, the committee's decision shall be referred as soon as possible to a debarment adjudicator appointed ad hoc by the Authority from a list of panellists prepared in terms of section 75 of the Act and section 46 of these regulations.

(3) A debarment adjudicator appointed in terms of [subsection \(2\)](#) shall without delay review the evidence and decision of the debarment committee without hearing further evidence or submissions, and may set aside or alter the committee's decision only if he or she considers that-

- (a) the evidence does not support the decision; or
- (b) the sanction imposed by the committee was excessive in all the circumstances,

and in all cases shall provide the debarment committee, the procuring entity concerned and the accused bidder or contractor with written reasons for his or her decision.

(4) The decision of a debarment committee to debar a bidder or contractor permanently shall not be suspended pending review by a debarment adjudicator.

75. Notice to suspended or debarred bidder or contractor

Where a debarment committee decides to suspend or debar an accused bidder or contractor, the committee shall communicate its decision to the bidder or contractor immediately by written notice stating-

- (a) that the bidder or contractor is excluded from participating in any public procurement or disposal proceedings for the period of suspension or debarment; and
- (b) the period for which the bidder or contractor is suspended or debarred; and
- (c) the committee's reasons for suspending or debarring the bidder or contractor; and
- (d) where the committee has decided to debar the bidder or contractor permanently, that its decision is subject to review by a debarment adjudicator.

76. Consequences of suspending or debarring bidder or contractor

(1) Bidders or contractors that have been suspended or debarred under this Part shall remain liable to fulfill their obligations under any contract they entered into with a procuring or disposing entity before they were suspended or debarred.

The Authority may apply the debarred list of other nationalities and recognised development partners.

(2) The suspending or debarring of a bidder or contractor shall apply to any successor in title of the bidder or contractor, where the successor is substantially controlled or influenced by any individual who controlled or influenced the bidder or contractor.

(3) Immediately upon the suspension or debarring of a bidder or contractor, the Authority shall-

- (a) enter the name and particulars of the bidder or contractor on the list of suspended or debarred bidders and contractors which the Authority shall post on its website and keep available for public inspection, free of charge, at its offices; and
- (b) inform all the procuring and disposing entities that the bidder or contractor has been suspended or debarred and the period of suspension or debarment.

(4) While a bidder or contractor is suspended or debarred, no procuring entity or disposing entity shall-

- (a) award a contract to the bidder or contractor; or
- (b) have any dealing or communication with the bidder or contractor, except in respect of a contract concluded before the bidder or contractor was suspended or debarred.

77. Reinstatement of suspended or debarred bidder or contractor

(1) At the end of the period for which a bidder or contractor has been suspended under this Part, the Authority shall remove the name of the bidder or contractor from the list referred to in section 76 (3) (a).

(2) At the end of the period for which a bidder or contractor has been debarred under this Part, the bidder or contractor may apply in writing to the Authority to be removed from the list referred to in section 76 (3) (a), and the Authority shall remove the bidder or contractor from the list within fifteen working days unless it is satisfied that the bidder or contractor has not complied with any conditions on reinstatement that were set out in the notice sent to the bidder or contractor in terms of section 75.

PART XII

Joint Ventures

78. Interpretation in [Part XII](#)

Words and phrases defined in-

- (a) section 100 of the Act; or
- (b) section 2 of the Joint Ventures Act [*Chapter 22:22*] (Act [No. 6 of 2015](#)),

shall bear the same meaning when used in this Part.

79. Accounting officer for certain joint venture projects

The Chief Secretary to the President and Cabinet shall be the accounting officer for joint venture projects in which two or more Ministries, departments or agencies of government are parties to the joint venture agreement.

80. Submission of bids, etc., by consortia

(1) When two or more persons combine as a consortium to submit a bid or an expression of interest for the purpose of a joint venture project-

- (a) no such person may submit a separate bid or expression of interest, whether individually or as part of another consortium; and
- (b) the contracting authority shall evaluate the consortium's bid according to the combined capability of its members.

(2) Any bid or expression of interest submitted in contravention of [subsection \(1\) \(a\)](#) shall be disqualified.

81. Expressions of interest from counterparties

(1) The notice published by a contracting authority in terms of section 100 (4) (b) of the Act in order to invite expressions of interest from counterparties shall identify the contracting authority and describe the proposed joint venture project, and shall specify-

- (a) the number of counterparties that will be shortlisted; and
- (b) the minimum professional and technical qualifications, human resources, equipment and other physical facilities needed to carry out all the phases of the project, including design, construction, operation and maintenance; and
- (c) the evidence and information potential counterparties will be required to produce in order to demonstrate their capability to manage the financial aspects of the project and their ability to sustain its financial requirements; and
- (d) the minimum managerial and organisational capability, reliability and experience required from potential counterparties, including their previous experience in providing or operating similar infrastructure, assets, facilities or services.

(2) The contracting authority shall evaluate expressions of interest from potential counterparties in accordance with the requirements specified [subsection \(1\)](#), and where it applies weighting to any of the requirements, the weights shall reflect the relative importance of the requirement to the joint venture project.

(3) The short-listing of potential counterparties shall be subject to review by the Special Procurement Oversight Committee, and the accounting officer of the contracting authority shall communicate its outcome to all potential counterparties that submitted expressions of interest.

82. Request for proposals

A request for proposals sent to potential counterparties that have been short-listed in accordance with section 81-

- (a) may amplify the requirements specified in the call for expressions of interest:
Provided that the amplification shall not render the requirements more restrictive; and
- (b) shall specify the following-
 - (i) whether the bidding will be held in one or two stages, and
 - (ii) whether the project will be financed entirely from fees or tariffs or from other sources, and
 - (iii) the technical requirements and the relative weight that will be accorded to such requirements in accordance with the Act, including the minimum threshold for accepting offers, and

- (iv) environmental standards, if any, to be met by the project, and the weight that will be accorded to them, and
- (v) the operational feasibility for the project, and
- (vi) the quality of service expected of the counterparty.

83. One-stage bidding

Where the contracting authority has determined, in terms of section 100 (4) (d) of the Act, that bidding is to be held in one stage-

- (a) potential counterparties shall submit their bids as final proposals; and
- (b) the proceedings shall be subject to review by the Special Procurement Oversight Committee.

84. Two-stage bidding

(1) A contracting authority shall determine, in terms of section 100 (4) (d) of the Act, that bidding should be held in two stages where the authority considers it is not feasible to formulate project specifications, performance indicators, financial arrangements or contractual terms in a manner that is sufficiently detailed or precise to allow bidding to be held in one stage.

(2) When bidding is in two stages, the contracting authority shall-

- (a) request potential counterparties to submit initial technical and contractual proposals that exclude financial information; and
- (b) enter into simultaneous negotiations with all the potential counterparties that submitted their proposals; and
- (c) issue revised specifications for the project to all potential counterparties that submitted their proposals and request them to submit their best and final offers that include financial information.

(3) Before calling for second proposals from potential counterparties, the contracting authority-

- (a) may amend the project's initial specifications, including financial requirements, and also amend the criteria for making the award;
- (b) shall indicate to all the potential counterparties that submitted proposals whether they all qualified or whether a limited number selected from bidders in the first stage will participate in the second stage; and
- (c) shall inform all bidders invited to submit proposals in the second stage what the criteria will be for evaluating their proposals.

85. Evaluation of proposals

When evaluating a proposal from a potential counterparty, a contracting authority may take into account-

- (a) the present value of the proposed fees or tariffs, unit prices and other changes over the period of the project; and
- (b) the present value of any proposed direct payments by the contracting authority; and
- (c) the costs of design and construction activities, annual operating costs, the present value of capital costs and of operating and maintenance costs; and
- (d) the extent of financial support, if any, expected from the contracting authority; and
- (e) the soundness of the counterparty's financial arrangements; and
- (f) the extent to which the counterparty accepts any negotiable contractual terms proposed by the contracting authority in the request for proposals; and
- (g) the social and economic development potential offered by the proposal.

86. Negotiations for joint venture agreement

(1) When a contracting authority and a successful bidder negotiate a joint venture agreement they shall not-

- (a) negotiate or vary any terms stated as being non-negotiable in the request for proposals issued or in

the bidder's proposal; or

(b) change the essential elements of the project.

(2) Negotiations for a joint venture agreement between a contracting authority and a successful bidder shall be limited to-

(a) finalising the details of the documentation; and

(b) satisfying the reasonable requirements of lenders or funders of the project.

(3) If a contracting authority and a successful bidder fail to negotiate a joint venture agreement, the contracting authority shall proceed to negotiate an agreement with the next-ranked bidder and shall not resume negotiations with the original successful bidder.

PART XIII

General

87. Accounting officer for certain procurements

The Chief Secretary to the President and Cabinet shall be the accounting officer for-

(a) procurement proceedings for the conclusion of especially sensitive contracts as defined in section 54 of the Act; and

(b) procurement proceedings for the conclusion of contracts that affect the responsibilities of more than one procuring entity.

88. Provisions relating to Special Procurement Oversight Committee

(1) The Secretariat shall provide secretarial services to the Special Procurement Oversight Committee and, subject to the directions of the Attorney-General, shall be responsible for carrying out the day-to-day functions associated with the Committee's business.

(2) The remuneration payable to members of the Special Procurement Oversight Committee shall comprise reimbursement for expenses and fees, at a rate fixed by the Authority, for days spent on training, for preparation, for attendance at meetings of the Committee, and other duties performed for the Committee.

(3) The remuneration of members of the Special Procurement Oversight Committee shall be paid from the funds of the Authority.

89. Licensing of procurement officers and procurement management units

(1) The Authority shall establish, by instructions or circulars, a system for the licensing of procurement officers and procurement management units that engage in procurement proceedings that require review by the Special Procurement Oversight Committee.

(2) For the purpose of licensing procurement officers under the system referred to in [subsection \(1\)](#), the Authority-

(a) shall prescribe the qualifications for obtaining licences; and

(b) may require attendance at courses of study for the professional development of licensees; and

(c) may impose fees for licences issued and other things done or provided under the system.

(3) For the purpose of licensing procurement management units under the system referred to in [subsection \(1\)](#), the Authority shall prescribe requirements in relation to management systems, equipment, personnel and any other relevant factors.

90. Discipline of procurement officers

Notwithstanding anything to the contrary in their employment contracts, procurement officers shall be subject to the disciplinary provisions set out in the Fourth Schedule.

91. Appropriate forms

The Authority shall ensure that copies of all appropriate forms to be used in procurement proceedings are kept at its offices, where at all reasonable times they may be-

- (a) inspected by members of the public free of charge; and
- (b) purchased by interested parties for a reasonable fee not exceeding the cost of producing the forms.

92. Fees

Where a person does anything for which a fee is specified in the Fifth Schedule, the person shall pay that fee to the Authority, and the thing shall not be regarded as properly done until the fee has been paid.

93. Trust accounts

- (1) The Authority and every procuring entity that receives moneys in the form of cash as or for-
 - (a) bid security; or
 - (b) performance security; or
 - (c) security for costs; or
 - (d) a refundable fee,

shall pay the moneys into a trust account opened by the Authority or the procuring entity concerned with a registered banking institution.

(2) Where a procuring entity retains any portion of a payment owing to a contractor as security for proper performance of a procurement contract, the entity shall without delay pay an amount equivalent to the portion retained into a trust account opened by it for the purpose with a registered banking institution or into a trust account opened by it in terms of [subsection \(1\)](#).

- (3) Immediately after opening a trust account in terms of this section-

- (a) the Authority shall notify the Minister, in writing, of the banking institution where the account is held and the name under which the account is held;
- (b) a procuring entity shall notify the Authority, in writing, of the banking institution where the account is held and the name under which the account is held.

(4) Moneys referred to in [subsection \(1\)](#) shall be paid into the trust account on the next banking day after the Authority or the procuring entity, as the case may be, received them.

(5) Moneys referred to in [subsection \(2\)](#) shall be paid into the trust account on the next banking day after the procuring entity paid the contractor concerned the balance of the payment from which the moneys were retained.

- (6) The Authority and any procuring entity that opens a trust account in terms of this section shall-

- (a) keep proper books of account showing particulars and information on all moneys paid into and out of the trust account; and
- (b) hold the moneys in the account in trust and subject to under which they were paid or retained.

94. Offences

- (1) Any-
 - (a) procuring entity that initiates or engages in procurement proceedings without having been authorised to do so in terms of section 15 of the Act; or
 - (b) person who induces a procuring entity to initiate or engage in procurement proceedings without authorisation in terms of section 15 of the Act,

shall be guilty of an offence and liable

- (i) in the case of a body corporate, to a fine not exceeding level fourteen,
 - (ii) in the case of an individual, to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (2) Any person who, without lawful excuse, discloses information relating to-
 - (a) the content of any pre-qualification application or bid; or

- (b) the examination, clarification, evaluation or comparison of bids,

to any other person not officially involved in the examination, evaluation, comparison or acceptance of bids by a procuring entity shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) Where a procuring entity purports to award a procurement contract that is especially sensitive or especially valuable as defined in section 54 of the Act, and the Special Procurement Oversight Committee has not certified in terms of that section that the contract withstands scrutiny, any person who induced the procuring entity to award the contract, knowing that the contract was especially sensitive or especially valuable, as the case may be, and that it had not been so certified by the Committee, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) Any-

- (a) procuring entity which, without lawful excuse, engages in procurement proceedings that are not specified in its annual or individual procurement plan prepared in terms of section 22 or 23 of the Act; or
- (b) individual who, without lawful excuse, induces a procuring entity to engage in procurement proceedings that are not specified in its annual or individual procurement plan prepared in terms of section 22 or 23 of the Act,

shall be guilty of an offence and liable-

- (i) in the case of a body corporate, to a fine not exceeding level fourteen,
- (ii) in the case of an individual, to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(5) Any-

- (a) procuring entity which, without lawful excuse, engages in procurement by a method that is prohibited by the Act in view of the price of the procurement requirement;
- (b) person who, without lawful excuse, induces a procuring entity to engage in procurement by a method that is prohibited by the Act in view of the price of the procurement requirement,

shall be guilty of an offence and liable-

- (i) in the case of a body corporate, to a fine not exceeding level fourteen,
- (ii) in the case of an individual, to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) Any-

- (a) procuring entity which, without lawful excuse, fails to observe the minimum bidding periods set out in section 19 in any procurement proceedings;
- (b) person who, without lawful excuse, induces a procuring entity not to observe the minimum bidding periods set out in section 19 in any procurement proceedings,

shall be guilty of an offence and liable-

- (i) in the case of a body corporate, to a fine not exceeding level ten,
- (ii) in the case of an individual, to a fine not exceeding level six or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(7) Except as provided in section 62, any-

- (a) procuring entity that concludes a procurement contract on terms and conditions materially different from those specified in the bidding documents;
- (b) individual who induces a procuring entity to conclude a procurement contract on terms and conditions materially different from those set out in the bidding documents,

shall be guilty of an offence and liable-

- (i) in the case of a body corporate, to a fine not exceeding level ten,
- (ii) in the case of an individual, to a fine not exceeding level six or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(8) Any-

- (a) procuring entity which, without lawful excuse, fails to preserve any procurement record for the period specified in section 69 of the Act;

- (b) employee or agent of a procuring entity who is entrusted with any procurement record and who fails to ensure its preservation for the period specified in section 69 of the Act;
- (c) person who causes or induces a procuring entity to fail to preserve any procurement record for the period specified in section 69 of the Act,

shall be guilty of an offence and liable-

- (i) in the case of a body corporate, to a fine not exceeding level fourteen,
- (ii) in the case of an individual, to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

First Schedule CODE OF CONDUCT FOR PROCUREMENT OFFICERS

(Sections 2 and 39)

ARRANGEMENT OF PARAGRAPHS

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PART I

Preliminary

1. Purpose of Code

The purpose of this Code of Conduct is to regulate the behaviour and actions of procurement officers and set out values and clear guidelines for them during and after their employment in procurement activities. It is also aimed at supporting policy-makers to maintain public trust in the integrity of procurement processes.

2. Scope of Code

(1) This Code applies to all procurement officers who are involved directly or indirectly in public procurement processes.

(2) Procurement officers are required to uphold this Code whenever they engage in public procurement activities.

(3) The conduct of procurement officers will be judged against this Code, and any breach may lead to action under the disciplinary rules set out in the Fourth Schedule.

3. General conduct

(1) Procurement officers must ensure they are not involved in any procurement proceedings in which they are indebted to a bidder or contractor.

(2) Throughout the procurement cycle, procurement officers must exhibit responsible behaviour and strive for transparency and collegial decisions.

(3) Regardless of the position they occupy, and under all circumstances, procurement officers must exhibit good judgement and responsibility.

(4) Procurement officers must not disclose information on procurement processes to anyone who does not have a right to know the information.

(5) Procurement officers must encourage their procuring entities to adopt ethical procurement and disposal policies based on the principles contained in the Public Procurement and Disposal of Public Assets Act and this Code. They must raise any matter of ethical concern at the appropriate level within their procuring entity and also with the Authority.

4. Serving the interests of the public

(1) Procurement officers must seek to advance the public good at all times. They must maintain and strengthen the public's trust and confidence in procuring entities by demonstrating the highest standard of professional competence, efficiency and effectiveness.

(2) Procurement officers must uphold the provisions of the Constitution of Zimbabwe (particularly Chapter 9, which sets out principles of public administration) as well as the Public Procurement and Disposal of Public Assets Act and other related laws.

(3) Procurement officers must never engage in conduct, either professional or personal, which would bring the public procurement practice, their procuring entity, the Authority or the Government as a whole into disrepute. They must be aware that their behaviour outside the public procurement processes may influence how they are perceived as professionals.

(4) Procurement officers must not engage contractors that are known to use forced labour (modern slavery), or to abuse human rights, or to be operating against the principles of sustainable (green) procurement, or to engage in fraudulent or corrupt practices.

5. Accountability and transparency

(1) Procurement officers must use their authority and resources for the public good, in accordance with the law and Government policy. They must be accountable for the decisions they make and the actions they take, and they must be prepared, whenever appropriate, to justify their decisions and actions to the Authority, or their procuring entities, or to the public.

(2) Procurement officers must inform everyone with whom they conduct official business that they are subject to this Code and cannot deviate from it without profound effects.

6. Integrity

(1) Procurement officers must exercise their official functions without consideration of their personal and private interest. Because of the need to maintain public trust, improper use of office for private gain is regarded as a serious breach of professional integrity.

(2) Procurement officers must declare to their line manager any personal interest that might affect, or be seen by others to affect, their impartiality in decision-making. If a procurement officer is the most senior officer in a procuring entity, he or she must make the declaration to the entity's board, council or other governing body.

(3) Except as permitted by paragraph 11, procurement officers must not solicit or accept gifts, favours or other advantages for themselves, their family or friends, or for persons whom they have business or social or political dealings. They must not allow offers of hospitality or pressure from those with vested interests to influence, or be perceived to influence, their decisions.

(4) Procurement officers must ensure that information they give in the course of their work is, to the best of their knowledge and belief, accurate and not misleading.

(5) Procurement officers must never breach the confidentiality of the information they receive in their official capacity.

(6) Procurement officers must fulfill their agreed contractual obligations.

(7) Procurement officers must be truthful about their skills, experience, qualifications and other credentials.

7. Legitimacy

(1) Procurement officers must carry out their duties according to the law and lawful Government policies, and must exercise only those powers that have been lawfully assigned to them. Those powers must be exercised impartially, without fear or favour, and for its proper purpose as laid down by the law.

(2) Procurement officers shall ensure that the competition in public procurement is genuine, fair and transparent.

8. Fairness

Procurement officers must make decisions and take action in their official capacity in a fair and equitable manner, without being affected by bias or personal prejudice, taking into account only the merits of the matter, and respecting the rights of affected stakeholders.

9. Responsiveness

Procurement officers, as agents of their employers, must serve the legitimate interests of the Government, public entities, other procurement officers and civil servants, and the public as a whole in a timely manner, with appropriate care, respect and courtesy.

10. Efficiency and effectiveness

(1) Procurement officers must foster the highest standards of professional competence in themselves and amongst those for whom they are responsible.

(2) Procurement officers shall continually develop and apply knowledge to increase their personal skills and those of the entities they work for.

(3) Procurement officers must strive to obtain the best value when expending public funds, to secure the efficient use of assets deployed through public management, and to avoid wasteful and extravagant use of resources in public programmes and official activities.

(4) Procurement officers must strive for the optimal use of the resources over which they have control for the benefit of their procuring entities and the Government at large.

11. Treatment of gifts and benefits

(1) A procurement officer must take into account each of the following subparagraphs before accepting any gift or benefit.

(2) The gift or benefit must be minor, of low value, and not readily resalable. Included in this category are: minor gifts in the form of calendars, pens, advertising material and minor office furnishings; and conventional gestures of hospitality in the form of modest invitations.

(3) Gifts and benefits that do not fall within the framework described in subparagraph (2) must be recorded and returned to the sender with a letter signed by the accounting officer.

(4) Regardless of the nature of the gifts or benefits received, procurement officers must report them to their line managers or, if there is no line manager, to the governing body of their procuring entities.

(5) Gifts received by a procurement officer must be used for the benefit of the officer's whole department or office through a scheme for sharing or distribution. This applies also to invitations to receptions or promotions, cultural, sporting or charitable events.

(6) Procurement officers must never solicit gifts or benefits from bidders or potential bidders or contractors. The fact that an officer who solicited a gift or benefit was on leave when he or she solicited it, is not a defence.

(7) Invitations to procurement officers to participate in courses or workshops funded by bidders or potential bidders or contractors, must be assessed in the light of their context. Where procurement officers do participate, their expenses must be paid by their procuring entities.

PART III

Specific Principles

12. Conduct during the pre-bidding stage

(1) Procurement officers may maintain contacts with the private sector in order to acquire technical familiarity with the goods, works and services they may be required to procure, so that they can more effectively draft bidding documents and evaluate bids, provided that the contacts are not used to limit competition in an inappropriate manner.

(2) Procurement officers may accept invitations from suppliers to attend business meetings so long as the meetings enhance their knowledge of the market in addition to any knowledge they can acquire from the Internet, marketing journals, exhibitions and fairs.

(3) Procurement officers may participate in joint exhibitions or forums with professional partners such as professional institutions, chambers of commerce and trade unions to increase stakeholder knowledge of the public procurement process in general or in relation to particular planned procurement activities.

- (4) For the purposes of subparagraph (3), the information that can be exchanged or disclosed is limited to-
- (a) information about completed procedures where a procurement contract has been awarded, so long as confidential information is not disclosed; and
 - (b) a description of the procuring entity and the activities of procurement services and other administrations involved in the procurement process.

(5) Procurement officers shall, in order to preserve equal treatment of suppliers or bidders, not disclose the information on the estimated values of the project or the scheduled date of consultations or any information that may give others an advantage on an upcoming process.

(6) A procurement officer may disclose information about a draft procurement contract only through the publications prescribed in the Public Procurement and Disposal of Public Assets Act or regulations made under it.

(7) The drafting of specifications must be the responsibility of the procuring entity, and information gathered by its procurement officers during consultations must not undermine the principle that neutral specifications are needed in order to achieve fair competition.

13. Conduct during the bidding stage

(1) Procurement officers must observe the provisions of the Public Procurement and Disposal of Public Assets Act governing the need for transparency and equal treatment of bidders, in particular where there is a need to correct bidding documents.

(2) In order to reduce the risk or suspicion of collusion, procurement officers must ensure that bidding documents are by an officer not directly involved in the procurement proceedings.

(3) Procurement officers must ensure that the record of participants in procurement proceedings is not disclosed to other participants.

(4) Procurement officers must ensure that the evaluation of bids and the award of procurement contracts is objective and consistent with the principles of fairness, equal treatment and integrity in the public procurement process.

(5) Procurement officers must ensure that notification of contract award, handling of queries and challenges to procurement proceedings are done in a fair and transparent manner as required by the Public Procurement and Disposal of Public Assets Act.

14. Conduct after award of contract

(1) Procurement officers must ensure that they manage procurement contracts in accordance with terms and conditions specified in the bidding documents and that all decisions on the contracts are based exclusively on the terms and conditions of the contract, particularly with regard to the application of penalties or bonuses.

(2) Procurement officers must ensure that their supervision and management of contract performance has collegiality and that there is full, correct and up-to-date documentation of decisions on certification of performance, amendments to the contract and penalties and bonuses applied.

(3) Procurement officers must not use relationships established with contractors under a procurement contract as a pretext for private dealings.

Second Schedule

FINANCIAL THRESHOLDS FOR PROCUREMENT CONTRACTS LIABLE TO SCRUTINY

(Section 8 (5))

	<i>Financial threshold</i> (US\$)
Class A Procuring Entity-	
(a) for construction works:	500 000,00
(b) for goods	250 000,00
(c) for non-consultancy and consultancy services	100 000,00
Class B Procuring Entity-	
(a) for construction works:	250 000,00
(b) for goods	150 000,00
(c) for non-consultancy and consultancy services	75 000,00
Class C Procuring Entity-	
(a) for construction works:	200 000,00
(b) for goods	100 000,00
(c) for non-consultancy and consultancy services	50 000,00

Third Schedule
(Sections 42 and 90)

PART I

Security and Fees for Challenges to Procurement Proceedings

<i>Description and legal source</i>	<i>Fee (US\$)</i>
1. Application to challenge contract award below US\$10000	100,00
2. Application to challenge contract award of US \$10 000 or more but below US \$50 000	500,00
3. Application to challenge contract award of US \$50 000 or more but below US \$100000	750,00
4. Application to challenge contract award of US \$100 000 or more but below US \$500 000	1 000,00
5. Application to challenge contract award of US \$500 000 or more but below US \$1 million	1 500,00
6. Application to challenge contract award of US \$ 1 million or more but below US \$2 million	3 000,00
7. Application to challenge contract award of US \$2 million or more but below US \$5 million	10 000,00
8. Application to challenge contract award of US \$5 million or more but below US \$15 million	25 000,00
9. Application to challenge contract award of US \$15 million or more but below US \$30 million	50 000,00
10. Application to challenge contract award of US \$30 million or more but below US \$50 million	75 000,00
11. Application to challenge contract award of US \$50 million or more but below US \$100 million	100 000,00
12. Application to challenge contract award of US \$ 100 million or more but below US \$250 million	150 000,00
13. Application to challenge contract award of US \$250 million or more but below US \$500 million	200 000,00
14. Application to challenge contract award of US \$500 million or more	250 000,00

Fourth Schedule
DISCIPLINE OF PROCUREMENT OFFICERS
(Section 88 and First Schedule)

1. Interpretation

In this Schedule-

"accused officer" means a procurement officer whose conduct is the subject of a complaint to the Authority, or who is the subject of an investigation in terms of this Schedule;

"complaint" means a complaint against a procurement officer that is lodged with the Authority in terms of paragraph 5;

"disciplinary committee" means a disciplinary committee established by the Authority in terms of paragraph 4;

"hearing" means a hearing held by a disciplinary committee in terms of paragraph 10 into allegations contained in a complaint.

2. Principles of natural justice

The Authority, the disciplinary committee and all other persons exercising disciplinary power under this Schedule shall observe the principles of natural justice that take into account the right to a fair hearing, the right to reply, and the need to ensure that there is no bias or conflict of interest nor an appearance of a bias or conflict of interest.

3. Responsibility for exercising disciplinary powers

(1) The Authority shall be ultimately responsible for the integrity of the disciplinary processes under this

Schedule.

(2) The Authority may delegate to a disciplinary committee the investigation of complaints and the recommendation of appropriate sanctions following an investigation.

4. Disciplinary committee

(1) A disciplinary committee shall consist of at least three members appointed by the Authority, of whom-

- (a) one, who shall be the chairperson of the committee, shall be the head of the Authority's legal section; and
- (b) at least two shall be heads of sections of the Authority; and
- (c) one shall be a registered legal practitioner who is a member of the Authority's *ad hoc* review panel.

(2) An officer of the Authority's legal section shall provide secretarial services to the disciplinary committee and may attend its meetings, but shall have no vote in its decisions.

5. Lodging of complaint

(1) Subject to this paragraph, any person may lodge a complaint with the Authority about the conduct of a procurement officer.

(2) A complaint shall be made in writing, setting out the details of the conduct complained of and supported, where possible, by documentary evidence.

(3) The Authority shall not launch an investigation on receipt of a complaint if-

- (a) the accused officer is not, or is no longer, an employee of a procuring entity; or
- (b) the complaint is not in writing; or
- (c) the complaint is made anonymously.

(4) When the conduct giving rise to a complaint is the subject of proceedings before a court, the Authority may postpone investigations until the conclusion of the proceedings.

6. Assessment of complaint and appointment of investigators

(1) On receipt of a complaint, the Authority shall refer it to a disciplinary committee to verify that the complaint is admissible and to check that-

- (a) the accused officer is an employee of a procuring entity; and
- (b) the complaint is in writing and the complainant is identified; and
- (c) the complaint alleges a breach of one or more principles of the Code of Conduct.

(2) Once the disciplinary committee has verified a complaint in terms of subparagraph (1), the disciplinary committee shall-

- (a) appoint an investigation team of at least two officers of the Authority to investigate the allegations contained in the complaint; and
- (b) give the investigation team the complaint and all supporting documents; and

7. Response to be solicited from accused officer

(1) The investigation team shall without delay send a copy of the complaint and supporting documents to the accused officer and instruct him or her to respond in writing to the allegations within three days.

(2) If an accused officer fails or refuses, without just cause, to respond to the allegations in the complaint within the three-day period referred to in subparagraph (1)-

- (a) the disciplinary committee may impose on him or her a fine not exceeding level six, payable to the Authority; and
- (b) the investigation team may continue with its investigation and the disciplinary committee may proceed to deal with the case on the basis of the evidence at hand.

(3) The disciplinary committee shall inform the accused officer's employer of any fine imposed on an accused officer in terms of subparagraph (2), and the employer shall deduct the amount of the fine from the remuneration payable to the officer and forward it to the Authority.

8. Investigation

(1) The investigation team shall gather evidence in relation to the complaint and forward it to the disciplinary committee for consideration.

(2) Every procuring entity, including the employer of the accused officer, and every bidder and contractor that had dealings with the accused officer, shall co-operate with the investigation team in its investigations.

(3) The investigation team shall conclude its investigations within fourteen days after receiving the complaint and supporting documents, or within such shorter period as the disciplinary committee may have directed, and shall forward its findings, in writing, to the disciplinary committee.

9. Consideration of findings by disciplinary committee

(1) If, on consideration of the findings of the investigation team, the disciplinary committee considers that-

- (a) there is no case to be answered, the committee shall close the file and notify the accused officer accordingly;
- (b) there appears to be a case to be answered but additional information or evidence is required, the committee shall instruct the investigation team accordingly;
- (c) there is a case to be answered, the committee shall hold a hearing into the case.

(2) Where the disciplinary committee considers that there is a case to answer, it shall fix a date and venue for the formal hearing and instruct the investigating team-

- (a) to inform the accused officer of the date and venue of the hearing and to give him or her copies of all documents that the committee will consider at the hearing; and
- (b) to request the complainant and any person who may be called as a witness to attend the hearing.

10. Hearing

(1) On the date fixed by the disciplinary committee in terms of [paragraph 9 \(2\)](#), the committee shall convene a hearing into the allegations made against the accused officer.

(2) The accused officer shall attend the hearing in person and may be represented by a legal practitioner.

(3) If the accused officer fails or refuses, without just cause, to attend the hearing, the disciplinary committee-

- (a) may impose on him or her a fine not exceeding level six, payable to the Authority, which fine shall be recovered from his or her remuneration in the manner set out in paragraph 7 (3); and
- (b) shall proceed to consider the evidence available and reach a decision in the absence of the accused officer.

(4) Where the accused officer attends the hearing, he or she shall be afforded a full opportunity to make any representations, whether orally or in writing, that he or she may wish to make in the matter.

(5) A member of the investigation team shall attend the hearing as secretary to the disciplinary committee but shall not take part in the committee's decision making.

(6) The disciplinary committee may question the accused officer, the complainant and any other persons at the hearing in order to reach a determination on the matter, and may receive documents in evidence:

Provided that no person shall be obliged to answer a question that he or she would not have to answer in civil or criminal proceedings before a court.

(7) The disciplinary committee may adjourn and reconvene the hearing whenever the committee thinks it necessary to do so.

(8) Subject to this paragraph, the procedure to be adopted at the hearing shall be determined by the chairperson of the disciplinary committee, and shall be as informal as is compatible with fairness and the rules of natural justice.

11. Decision of disciplinary committee

(1) Following the hearing, the disciplinary committee shall deliberate and reach its decision in private.

(2) The chairperson may adjourn the meeting if the committee decides that additional information or clarification of a particular point is required, and reconvene at a later date.

(3) The decision of the disciplinary committee shall be recorded in the minutes of the meeting at which it was made, together with the reasons for the decision, and the members of the committee shall all sign the minutes.

(4) Within fourteen days after the disciplinary committee reached its decision, the secretary of the committee shall send a copy of the minutes recording the decision to the accused officer, the complainant and the officer's employer.

12. Sanctions that may be imposed on accused officer

(1) If the disciplinary committee considers that the accused officer's breach of the Code of Conduct was trivial or justified in the circumstances, it may impose no sanction upon him or her, but in other cases, depending on the gravity of the officer's conduct, the committee may impose any of the following sanctions-

- (a) a written reprimand;

- (b) a written reprimand with conditions imposed on his or her future conduct;
- (c) temporary suspension of his or her licence for up to twenty-four months, with or without conditions imposed on his or her future conduct;
- (d) permanent withdrawal of his or her licence.

(2) In addition to the sanctions specified in [subparagraph \(1\) \(b\)](#), (c) and (d), the disciplinary committee may impose on an accused officer a fine not exceeding level six, payable to the Authority, to be recovered from the officer's remuneration in the manner set out in paragraph 7 (3).

13. Appeal

(1) Within seven days after receiving notice of the disciplinary committee's decision, the accused officer may note an appeal against it in accordance with this paragraph.

(2) For the purpose of hearing appeals under this paragraph, the Authority shall establish an appeal committee consisting of the Chief Executive Officer of the Authority and two members of its review panel.

(3) A notice of appeal shall be in writing, addressed to the appeal committee and stating the grounds of the appeal.

(4) On receipt of a notice of appeal in accordance with subparagraph (3), the appeal committee shall set a date and venue for the hearing of the appeal, and the Authority's director responsible for legal services shall cause the appellant to be informed of that date and venue.

(5) The appeal committee shall not be bound by findings made by the disciplinary committee.

(6) The procedure to be followed at an appeal hearing shall be the same as that for hearings by the disciplinary committee.

(7) After hearing an appeal, the appeals committee may uphold, vary or set aside the decision of the disciplinary committee.

Fifth Schedule FEES

(Section 90)

PART I

Applications for Exemption

<i>Description and legal source</i>	<i>Fee (US\$)</i>
1. Application and renewal of exemption of procurement of trading stock per class of items	2 500,00
2. Application for exemption of procurement of a strategic nature by procuring entities operating in competitive nature in terms of section 3 (7) of the Act per each application	2 500,00

PART II

Application to Conduct Procurement

<i>Description and legal source</i>	<i>Fee (US\$)</i>
1. Application and renewal of authority to conduct procurement under class C procuring entity	1 000,00
2. Application and renewal of authority to conduct procurement under class B procuring entity	1 500,00
3. Application and renewal of authority to conduct procurement under class A procuring entity	2 000,00

PART III

Registration of Public Sector Suppliers

<i>Description and legal source</i>	<i>Fee (US\$)</i>
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1.	Registration and renewal of registration of public sector domestic suppliers	100,00
2.	Registration and renewal of registration of public sector international suppliers	750,00

PART IV

Administration Fees Payable by Bidders for Bids Subject to Review

<i>Description and legal source</i>	<i>Fee (US\$)</i>
1. Administration fees for domestic bids for goods, services and consultancy services, for each bid	100,00
2. Administration fees for domestic bids for works, for each bid	200,00
3. Administration fees for international bids for goods, services and consultancy services, for each bid	200,00
4. Administration fees for international bid for works, for each bid	350,00
5. Non-refundable cash bid bond (below US \$5 000) establishment fee for each bid	200,00
6. Non-refundable cash bid bond (US \$5 000 and more but below US \$ 10 000) establishment fee for each bid	350,00
7. Non-refundable cash bid bond (US \$ 10 000 and more but below US \$20 (XX)) establishment fee for each bid	500,00
8. Non-refundable cash bid bond (US \$20 000 and more but below US \$50 000) establishment fee for each bid	750,00
9. Non-refundable cash bid bond (US \$50 000 and more but below US \$100000) establishment fee for each bid	1 000,00
10. Non-refundable cash bid bond (US \$100 000 and more but below US \$200 000) establishment fee for each bid	1 500,00
11. Non-refundable cash bid bond (US \$200 000 and more) establishment fee for international bids, for each bid	2 000,00

PART V

Contract Administration Fees Payable by Contractors

<i>Description and legal source</i>	<i>Fee (US\$)</i>
1. Domestic bids with a contract value above US \$50 000 for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	100,00
2. International bids with a contract value below US \$1 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	150,00
3. International bids with a contract value of US \$1 million or more but below US \$2,5 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	250,00
4. International bids with a contract value of US \$2,5 million or more but below US \$5 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	500,00
5. International bids with a contract value of US \$5 million or more but below US \$7,5 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	750,00
6. International bids with a contract value of US \$7,5 million or more but below US \$10 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	1 000,00
7. International bids with a contract value of US \$10 million or more but below US \$15 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	1 500,00
8. International bids with a contract value of US \$15 million or more but below US \$20 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	2 000,00
9. International bids with a contract value of US \$20 million or more but below US \$30 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	2 500,00
10. International bids with a contract value of US \$30 million or more but below US \$40 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	3 000,00
11. International bids with a contract value of US \$40 million or more but below US \$50 million for all types of procurement (goods, services,	4 000,00

	works and consultancy services), for every year of contract	
12.	International bids with a contract value of US 50 million or more but below US \$75 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	5 000,00
13.	International bids with a contract value of US \$75 million or more but below US \$100 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	7 500,00
14.	International bids with a contract value of US \$100 million or more but below US \$150 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	10 000,00
15.	International bids with a contract value of US \$150 million or more but below US \$250 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	15 000,00
16.	International bids with a contract value of US \$250 million or more but below US \$500 million for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	20 000,00
17.	International bids with a contract value of US \$500 million or more for all types of procurement (goods, services, works and consultancy services), for every contract or contract year	25 000,00

PART VI

Public Procurement Continuous Development Training

<i>Description and legal source</i>	<i>Fee (US\$)</i>
1. Public sector elementary one-day procurement training per person (covers training material, meals and certificate of attendance)	60,00
2. Public sector elementary three-day procurement training per person (covers training material, meals and certificate of attendance)	150,00
3. Public sector elementary five-day procurement training per person (covers training material, meals and certificate of attendance)	230,00
4. Public sector intermediary one-day procurement training per person (covers training material, meals and certificate of attendance)	75,00
5. Public sector intermediary three-day procurement training per person (covers training material, meals and certificate of attendance)	200,00
6. Public sector intermediary five-day procurement training per person (covers training material, meals and certificate of attendance)	300,00
7. Public sector advanced one-day procurement training per person (covers training material, meals and certificate of attendance)	90,00
8. Public sector advanced three-day procurement training per person (covers training material, meals and certificate of attendance)	250,00
9. Public sector advanced five-day procurement training per person (covers training material, meals and certificate of attendance)	350,00