

**Public Procurement and Disposal of Public Assets (General)
Regulations, 2018**

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FIRST SCHEDULE: Code of Conduct for Procurement Officers.

SECOND SCHEDULE: Financial Thresholds for Procurement Contracts Liable to Scrutiny.

THIRD SCHEDULE: Security and Fees for Challenges to Procurement Proceedings.

FOURTH SCHEDULE: Discipline of Procurement Officers,
Fifth Schedule: Fees.

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

Title

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

Interpretation

2. 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.

Non-application of regulations in certain circumstances

3. (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

Registration of bidders and contractors

4. (1) Persons who by virtue of this section are included in the list hereinafter mentioned are deemed to be “registered bidders and

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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.

Engagement of procurement agent

5. 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.

Shared procurement

6. (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—TM

- (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.

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(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.

Procurement plans

7. (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

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- (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.

Domestic preference

8. (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.

Market consultations

9.(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.

Financial thresholds

10. (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.

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(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.

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(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).

Framework Agreements

11. (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.

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(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.

*Procurement by embassies and public bodies operating outside
Zimbabwe*

12,(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

Use of two-stage method of competitive bidding

13.(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—

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- (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 that 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.

Use of pre-qualification in competitive bidding

14. (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.

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- (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.

Use of restricted bidding method

15. (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—

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- (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 fulfil 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

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- (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.

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(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.

Use of direct procurement method

16. (I) 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.

Use of request for quotations method

17. (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 deliver)/", 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;

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- (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

Domestic and international bids

18. 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.

Bidding periods

19. (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*.

Content of bidding documents

20. (1) Bidding documents shall contain at least the following information—

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- (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

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- (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.

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Clarification of bidding documents

21. (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.

Modification of bidding documents

22. (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.

Site visits

23. 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.

Investigation into unsuccessful procurement proceedings

24. (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

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- (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.

Submission of bids

25. (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.

Bid security

26. (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 fulfil 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

Bid opening requirements

27. (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.

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(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.

Examination of bids

28. (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 sequester 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

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- (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.

Clarification of bids

29. (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.

Evaluation of bids

30. (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 fulfil 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.

Correction of arithmetical errors in bids

31. (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.

Scrutiny by Special Procurement Oversight Committee

32. (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.

Notification of contract award

33. (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.

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Performance security

34. (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 fulfil 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 a 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

Interpretation in Part VI

35. Any word or expression that is defined in section 57 of the Act shall bear the same meaning when used in this Part.

Thresholds for expressions of interest and scrutiny by Special Procurement Oversight Committee

36. (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.

Terms of reference

37. 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

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- 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.

Deadlines for submission of proposals

38. (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

Procurement records

39. (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 pre-qualified 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.

Reports to Authority

40. (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).

Code of Conduct for procurement officers

41. (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.

Ethical responsibilities of bidders and contractors

42. 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

CHALLENGE PROCEEDINGS

Interpretation in Part VIII

43. 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.

Security for costs

44. (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).

Procuring entity to give reasons for decision regarding challenge

45. Whenever a procuring entity concedes or upholds a challenge it shall—

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- (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.

Review of procurement by Authority: preparation of lists of panellists

46. (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.

Disqualifications for appointment as panellist

47. (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.

Publication of lists of panellists

48. 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.

Training of panellists

49. (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).

Review panels

50. (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.

Conditions of service of panellists

51. (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.

Duty of panellists to be impartial and independent

52. (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.

Secretariat and secretarial services for review panels

53. (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.

Forms to be used in reviews of procurement proceedings

54. 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.

Representation of parties at review proceedings

55. Any party to a review of procurement proceedings may be represented by a legal practitioner or any other person.

Application for review

56. (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.

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(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.

Respondent's reply

57. (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.

Commencement of review

58. (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.

Meetings of review panel

59. (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.

Evidence in review proceedings

60. (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.

Decision of review panel

61. (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

Procurement contracts

62. (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.

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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.

Advance payments

63. (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.

Reports on performance of procurement contracts

64. (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

Disposal procedures

65. (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.

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(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.

Disposal committees to keep records

66. 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.

Disposal of rights and licences

67. 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

Interpretation in Part XI

68. 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.

When bidders and contractors may be debarred

69. (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.

Recommendation to debar bidder or contractor

70. A recommendation shall be made to the Authority in writing and shall state—

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- (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.

Debarment committee

71. (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.

Procedure for debarring bidder or contractor

72. (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,

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which date shall not be less than ten days after the accused bidder or contractor informed the committee of his or her intention.

Decisions of debarment committee

73. (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 disbarring, taking into account all the circumstances of the case and in particular any mitigating or aggravating factors.

Sanctions that may be imposed by debarment committee

74. (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 debarring, that is to say disbarring 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) debarring 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 debars 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.

Notice to suspended or debarred bidder or contractor

75. 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—

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- (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.

Consequences of suspending or debarring bidder or contractor

76. (1) Bidders or contractors that have been suspended or debarred under this Part shall remain liable to fulfil 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.

Reinstatement of suspended or debarred bidder or contractor

77. (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

Interpretation in Part XII

78. 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.

Accounting officer for certain joint venture projects

79. The Chief Secretary to the President and Cabinet shall be the accounting officer for joint venture projects in which two or more

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Ministries, departments or agencies of government are parties to the joint venture agreement.

Submission of bids, etc., by consortia

80. (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.

Expressions of interest from counterparties

81. (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.

Request for proposals

82. 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.

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One-stage bidding

83. 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.

Two-stage bidding

84. (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.

Evaluation of proposals

85. 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.

Negotiations for joint venture agreement

86. (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.

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(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

Accounting officer for certain procurements

87. 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.

Provisions relating to Special Procurement Oversight Committee

88. (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.

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Licensing of procurement officers and procurement management units

89. (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.

Discipline of procurement officers

90. Notwithstanding anything to the contrary in their employment contracts, procurement officers shall be subject to the disciplinary provisions set out in the Fourth Schedule.

Appropriate forms

91. 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.

Fees

92. 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.

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Trust accounts

93. (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 (i) 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.

Offences

94. (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

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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

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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 (*Sections 2 and 39*)

CODE OF CONDUCT FOR PROCUREMENT OFFICERS

ARRANGEMENT OF PARAGRAPHS

PART I

PRELIMINARY

Paragraph

- 1. Purpose of Code.
- 2. Scope of Code.

PART II

GENERAL PRINCIPLES OF CONDUCT

- 3. General conduct.

Paragraph

4. Serving the interests of the public.
5. Accountability.
6. Integrity.
7. Legitimacy.
8. Fairness.
9. Responsiveness.
10. Efficiency and effectiveness.
11. Treatment of gifts and benefits.

PART III

SPECIFIC PRINCIPLES

12. Conduct during the pre-bidding stage.
13. Conduct during the bidding stage.
14. Conduct after award of contract.

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.

PART II

GENERAL PRINCIPLES OF CONDUCT

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.

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(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 fulfil 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.

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(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 (Section 8(5))

FINANCIAL THRESHOLDS FOR PROCUREMENT CONTRACTS
LIABLE TO SCRUTINY

| | <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</i> (US\$) |
|---|----------------------|
| 1. Application to challenge contract award below US \$10 000 | 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 \$100 000 | 750,00 |

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| <i>Description and legal source</i> | <i>Fee (US\$)</i> |
|--|-----------------------|
| 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 (Section 88 and First Schedule)

DISCIPLINE OF PROCUREMENT OFFICERS

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.

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(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

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- (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.

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(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 (Section 90)

FEES

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> |
|--|-----------------------|
| 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 \$20 000) 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 \$100 000) 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 |

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| <i>Description and legal source</i> | <i>Fee (US\$)</i> |
|--|-----------------------|
| 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 |

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| <i>Description and legal source</i> | <i>Fee (US\$)</i> |
|---|-----------------------|
| 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, works and consultancy services), for every year of contract | 4 000,00 |
| 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 |

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| <i>Description and legal source</i> | <i>Fee (US\$)</i> |
|---|-----------------------|
| 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 |

| <i>Description and legal source</i> | <i>Fee (US\$)</i> |
|---|-----------------------|
| 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 |