

**CHAPTER 42:08 - PUBLIC PROCUREMENT AND ASSET DISPOSAL: SUBSIDIARY  
LEGISLATION**

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Public Procurement and Asset Disposal (Independent Complaints Review Committee)  
Regulations

Public Procurement and Asset Disposal Regulations

**PUBLIC PROCUREMENT AND ASSET DISPOSAL REGULATIONS**

*(under section 130)*

*(24th February, 2006)*

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S.I. 12, 2006.

## PART I

### *Preliminary (regs 1-4)*

#### **1. Citation**

These Regulations may be cited as the Public Procurement and Asset Disposal Regulations.

#### **2. Interpretation**

In these Regulations, unless the context otherwise requires-

**"accounting officer"** means the designated accounting officer of a procuring and disposing entity or, where none has been so designated, the Permanent Secretary of a procuring and disposing entity;

**"award"** means a decision by the Board, any of its committees or any other subsidiary body of a procuring entity to which the Board may delegate powers of adjudication and award within specified financial ceilings, to determine the successful bidder;

**"best practices"** means industry standards;

**"bid notice"** means any advertisement by which eligible providers are invited to submit written offers to provide works, services and supplies, or any combination thereof;

**"bid submission methods"** means documents containing instructions on the method of bid submission;

**"Contracts Committee"** means the Ministerial Tender Committee or the District Tender Committee;

**"disposal process"** means the successive stages in the disposal cycle, including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of such offers and award of contract;

**"dual envelope method"** means a one stage-two envelope method of bid submission in which a bid is submitted in an outer sealed envelope, containing two separately sealed and

labelled envelopes, marked and containing separate technical and financial proposals which are opened on different dates, in separate bid openings;

**"direct procurement method"** means a sole source procurement method for requirements where exceptional circumstances prevent the use of competition;

**"emergency procurement"** means a procurement under circumstances which are urgent, unforeseeable and not caused by any dilatory conduct of the procuring entity;

**"fixed budget selection"** means selection of a bidder with the best technical bid who is within the budget;

**"foreign provider"** means a provider who is not a citizen of Botswana and whose operations are not based in Botswana;

**"framework contracts"** mean a contractual arrangement which allows the procuring entity to procure works, services or supplies that are needed continuously or repeatedly at an agreed price over a period of time, through the placement of a number of orders;

**"guidelines"** mean any advice given by the Board through any circular that may be issued to procuring and disposing entities in accordance with section 28 of the Act;

**"INCOTERMS"** means the international commercial terms, issued by the International Chamber of Commerce;

**"least cost selection services"** means the cost selection evaluation method set out in Part V of the Fourth Schedule;

**"least cost selection-supplies and works"** means the cost selection evaluation method set out in Part IV of the Fourth Schedule;

**"local provider"** means a company registered in Botswana irrespective of whether or not it is wholly owned and controlled by citizens of Botswana;

**"open international bidding"** means a procurement or disposal method open to competition and participation by all providers through advertisement of the procurement or disposal opportunity and which specifically seeks to attract foreign providers;

**"open domestic bidding"** means a procurement or disposal method open to participation on equal terms by all providers through advertisement of the procurement or disposal opportunity in the *Gazette* and in a newspaper of wide circulation in Botswana;

**"procurement method"** means the methods defined in Part V;

**"procurement process"** means the successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of such offers, award of contract and contract management;

**"provider"** means a natural person or an incorporated body including a consultant, contractor or supplier, licensed by a competent authority to undertake business activities;

**"quality and cost based selection"** means a procurement method defined in regulation 76 (2);

**"quotation procurement method"** commonly referred to as "proposal procurement method" means a simplified procurement and disposal method which compares price quotations or proposals obtained from a number of providers;

**"responsive bid"** means a bid which conforms to all the terms, conditions and requirements of the solicitation document without any material deviation, reservation or omission therefrom;

**"single envelope submission method"** means a one stage single envelope method in which a bid is submitted in one sealed envelope which is opened on the specified date and time in a single bid opening;

**"standardisation policy"** means a policy of standardisation approved by Cabinet through a Cabinet Directive;

**"statement of requirements"** means documents prepared by a procuring entity providing a correct and competitive description of the subject of the procurement for the purposes of creating fair and open competition; and

**"third party procurement provider"** means any provider of services to whom procurement or disposal functions of a procuring and disposing entity is contractually assigned.

### **3. Application of Regulations**

(1) These Regulations shall apply to all public procurement and asset disposal, except procurement determined by the Board to require a different procurement procedure, for purposes of national security or any other reason the Board may think reasonable.

(2) Disputes regarding the applicability of the Act and these Regulations shall be submitted, in writing, with all supporting documentation, to the Board.

(3) The Board shall decide upon a dispute referred to it under subregulation (2) within 10 days.

(4) The Board shall, by notice published in the *Gazette*, periodically publish a list of the procuring entities which are subject to the Act and these Regulations.

### **4. International obligations**

(1) Where an international agreement requires a procuring entity to use an alternative procurement procedure, such entity shall apply to the Board for permission to use such alternative procedure and shall submit, together with the application, supporting documentation that shall include a copy of the international agreement embodying the obligation.

(2) The Board shall consider and determine whether to approve the application made under subregulation (1), within 10 days of such application.

(3) The decision of the Board rendered in accordance with the provisions of subregulation (2) shall be final and shall not be capable of being reviewed by the Independent Committee.

## **PART II**

### ***Procuring Entities (regs 5-19)***

#### **5. Composition of procuring entity**

A procuring entity shall be composed of-

- (a) an accounting officer or his or her representative; and
- (b) the Ministerial Committee.

#### **6. Powers of a procuring entity**

A procuring entity shall be responsible for the management of all procurement activities within its jurisdiction in accordance with the provisions of the Act.

#### **7. Accounting officer**

(1) The accounting officer shall, in considering persons for appointment to the Ministerial Committee, recommend to the Board the appointment of persons-

- (a) at appropriate levels of decision making;
- (b) from more than one discipline;
- (c) from different departments; or
- (d) with experience in public procurement.

(2) The accounting officer shall have overall responsibility for the execution of the procurement process in the procuring entity and, in particular, shall be responsible for-

- (a) procurement planning;
- (b) providing a certification confirming the availability of funds to support the procurement activities;
- (c) investigating all complaints by providers;
- (d) submitting copies of any complaint received and reports of the findings thereof, to the Independent Committee;
- (e) ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the award; and
- (f) executing the decisions of the Board.

(3) An accounting officer or any person authorised by him or her shall make a certification as to the availability of funds prior to any procurement activity and before the

awarding of the contract.

(4) A certification confirming the availability of funds shall be in the standard form set out in the First Schedule.

#### **8. Composition of Ministerial Committee**

(1) Each Ministerial Committee shall be composed of -

- (a) a Chairperson;
- (b) a Vice-Chairperson;
- (c) other members, not exceeding five, appointed by the Board on the recommendation of the accounting officer, in writing; and
- (d) a Secretary, who shall attend meetings, and participate in the deliberations, of the Ministerial Committee, but shall not have the right to vote;

(2) A Ministerial Committee may co-opt advisers to assist it in the discharge of its functions, but the co-opted members shall not vote.

(3) Membership of a Ministerial Committee shall not exceed seven persons.

(4) The accounting officer shall inform the Board of the composition of the Ministerial Committee and the qualifications of its members.

(5) Members of a Ministerial Committee shall be appointed with regard to their technical competence, skills mix and levels of skills required for the discharge of the functions of the Committee.

(6) The Minister may, on the advice of the accounting officer, by notice published in the *Gazette*, amend the composition of a Ministerial Committee.

#### **9. Functions of Ministerial Committee**

(1) A Ministerial Committee shall be responsible for -

- (a) ensuring compliance with the provisions of the Act and best practices in all procurements; and
- (b) liaising directly with the Board on any matter within its jurisdiction.

(2) Without prejudice to the generality of the provisions of subregulation (1), a Ministerial Committee shall-

- (a) recommend to the Board the procurement procedure to be employed for a procurement;
- (b) recommend to the Board the type of bidding documents to be used for a procurement before issue of a solicitation document;
- (c) preside over and manage public bid openings;
- (d) recommend technical, financial or combined technical and financial evaluation reports to the Board for adjudication and award of contracts;
- (e) prepare contract documents in line with the authorised evaluation report;
- (f) propose the delegation of authority to a procurement unit; and
- (g) provide overall guidance on procurement development within the procuring entity.

#### **10. Meetings of Ministerial Committee**

(1) Subject to the provisions of the Act and these Regulations, a Ministerial Committee shall regulate its own procedure.

(2) A Ministerial Committee shall meet at least once a month for the discharge of its functions.

(3) There shall preside at every meeting of a Ministerial Committee-

- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice Chairperson; or
- (c) in the absence of the Chairperson and the Vice Chairperson, such member as the members present shall elect from among themselves for the purpose of the meeting.

(4) The quorum at a meeting of a Ministerial Committee shall be four members.

(5) A decision of a Ministerial Committee on any matter shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the

Chairperson shall have a casting vote in addition to his or her deliberate vote.

(6) A decision of a Ministerial Committee shall not be rendered invalid by reason only of a vacancy in the membership of the Ministerial Committee or by reason only that a person who was not entitled to sit as a member sat as such a member.

(7) The Secretary shall record the minutes of the proceedings of the Ministerial Committee, but shall not vote at any meeting of the Ministerial Committee.

(8) Where a member is present at a meeting of a Ministerial Committee at which any matter which is the subject of consideration, and in which matter the member has a direct or indirect interest in his or her private capacity, is to be discussed, he or she shall forthwith upon the commencement of the meeting disclose such interest to the Committee, and shall not, unless the Committee otherwise directs, take part in any consideration or discussion of, or vote on, any question with respect to that matter.

(9) A disclosure made under subsection (8) shall be recorded in the minutes of the meeting at which it is made.

(10) A member who contravenes the provisions of subregulation (8) shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

#### **11. Composition of procurement unit**

The accounting officer shall cause to be established a procurement unit staffed at an appropriate level consisting of such number of members as the accounting officer may determine.

#### **12. Functions of procurement unit**

A procurement unit shall-

- (a) manage all procurement and disposal activities of the procuring and disposing entity, except adjudication and award of contracts;
- (b) implement the decisions of the Ministerial Committee;
- (c) liaise directly with the Board on all matters pertaining to the Board;
- (d) plan the procurement by the procuring entity;
- (e) recommend procurement procedures to the procuring entity;
- (f) check and prepare statements of requirements;
- (g) prepare tender documents;
- (h) maintain lists of suppliers;
- (i) evaluate or manage the evaluation of bids;
- (j) prepare contract documents;
- (k) issue approved contract documents;
- (l) administer and manage contracts once placed;
- (m) arrange payments to contractors;
- (n) maintain and archive records of procurement;
- (o) prepare monthly reports for the Ministerial Committee;
- (p) coordinate projects and liaise with the procuring entity's departments about all other aspects of their procurement;
- (q) act as a procurement coordinator for the user department of the procuring and disposing entity; and
- (r) liaise with the Secretary to the Ministerial Committee to ensure that submissions to the Ministerial Committee are correct and submitted on time.

#### **13. Powers of procurement unit**

(1) In the discharge of its functions, a procurement unit may-

- (a) nominate persons to evaluation committees for approval by the Ministerial Committee;
- (b) obtain such independent advice as may be necessary;
- (c) ensure compliance with the provisions of the Act, Regulations and best practices;
- (d) manage bid proposals and pre-qualification submissions and make recommendations



- to the Ministerial Committee;
- (e) advertise tender opportunities;
- (f) sell tender documents;
- (g) issue tender clarifications; and
- (h) receive tenders.

(2) A procurement unit shall coordinate submissions to the Ministerial Committee concerning its disposal and procurement needs as well as the needs of any user department.

#### **14. Procedure in case of disagreement**

(1) Where a procurement unit disagrees with the Ministerial Committee concerning any decision relating to the application or interpretation of any procurement or disposal method, process or practice, it shall state the reasons for its disagreement and may-

- (a) submit those reasons to the Ministerial Committee for review; and
- (b) if the matter is not satisfactorily resolved within a period of five days following the decision of the Ministerial Committee, request an independent review on the matter, by the Board.

(2) A member of a procurement unit shall not, while he or she is a member of the procurement unit, sit in any Ministerial Committee.

#### **15. Maintenance of independence**

Accounting officers, procurement units and Ministerial Committees shall act independently in relation to their respective functions and powers.

#### **16. Delegation of powers by the accounting officer**

(1) An accounting officer may delegate the procurement function of a procuring entity to another procuring and disposing entity or to a third party procurement provider, which shall be based on-

- (a) thresholds established by the Board and which shall be issued by the Board;
- (b) the sub-division having the required number of personnel to allow it to set up the structures necessary to execute the procurement function as in the parent procuring entity; and
- (c) the sub-division having the capacity to fulfil the recording, reporting and accountability requirements which the parent body is required to comply with.

(2) Notwithstanding the delegation referred to in subregulation (1), the accounting officer shall remain accountable for all decisions taken by the procuring entity.

#### **17. Third party procurement**

(1) A procuring entity shall determine the need, in each particular case, to acquire third party procurement services in the discharge of its procurement functions.

(2) A procuring entity shall, in making an invitation for third party procurement services-

- (a) request applications for the rendering of such services from among firms registered with the Board;
- (b) follow the procedures laid down in the guidelines; and
- (c) secure prior written assurance of the accounting officer that funds are available, to pay in full and on time for such services.

#### **18. Records of procuring entity**

(1) A procuring entity shall maintain records of its procurement proceedings for a period of seven years from the later date of any of the following-

- (a) the decision to terminate the procurement action; or
- (b) the contract award; or
- (c) completion of the contract or the settlement of the dispute, whichever comes earlier, and thereafter for an additional year where a contract is ongoing or is challenged.

(2) The records of the procurement process of a Ministerial Committee shall be open for inspection by the Board during working hours.

#### **19. Procedure for Defence Force, Police Service etc.,**

(1) Procuring entities of the Defence Force, Police Service and other security organs of the State may conduct their procurement through an open or restricted list basis.

(2) Where the procuring entities referred to in subregulation (1) procure through restricted bidding, they shall-

- (a) obtain prior written approval of the Board;
- (b) first commit themselves to a progressive reduction in procurement through the restricted list; and
- (c) obtain the consent of the Board to the procurement procedures that shall apply to each category of procurement activity on the restricted lists.

(3) Unless otherwise provided under the Act or these Regulations, the Defence Force, Police Service and other security organs of the State shall comply with the provisions of these Regulations.

### **PART III**

#### ***Public Procurement Rules and Process (regs 20-39)***

##### **20. Preference and reservation**

(1) Where an international agreement or preference policy is in place which contains provisions favourable to citizen and local providers, the Board or its committees shall bring the agreement or the policy to the attention of the providers and it shall cause full advantage to be taken by such providers of the opportunities contained in such provisions.

(2) Any agreements favourable to citizen and local providers shall be brought to the attention of such providers through a notice in a newspaper of wide circulation in Botswana, and information on the same shall be contained in the bidding documents.

(3) A procuring entity may decide to limit participation in a procurement activity to a category of providers, so as to attain-

- (a) development of local or citizen capacity; or
- (b) compliance with provisions in agreements requiring that part of the procurement contracts are subcontracted to such providers.

(4) When a procuring entity decides to restrict participation in a procurement proceeding on the basis of nationality, it shall include-

- (a) a statement to that effect in either the bid document or pre-qualification notice, or in both; and
- (b) information on how either the reservation or preference, or both, shall be applied.

(5) The evaluation committee shall allow certain price preferences which do not affect the tender price, but which are taken into account when calculating the comparative price.

(6) The following preferences shall be considered, based on the information provided by the tenderers-

- (a) local procurement;
- (b) preferences based on the use of special national standards; and
- (c) such other preferences as the Government may determine.

(7) The Board may terminate a contract awarded where evidence is adduced to prove that the contract was awarded contrary to the requirements of this regulation with respect to citizen and local provider empowerment.

##### **21. Records of procurement**

(1) All procurement records, where appropriate, shall contain the following documents-

- (a) a request to initiate procurement proceedings;
- (b) a copy of the published advertisement or shortlist;
- (c) pre-qualification and bidding documents and any amendments or clarifications thereto;
- (d) records of bid openings;
- (e) copies of records of all bids evaluated and any clarification responses;
- (f) an evaluation report;
- (g) a contract document;

- (h) all documents related to the contracts management, including, but not limited to, contract performance and payment, warranties, bank guarantees and any claims;
- (i) minutes of any meetings related to the procurement, including negotiations;
- (j) all correspondence between the procuring entity and bidders;
- (k) all submissions to the Board or its committees; and
- (l) all decisions of the Board related to the procurement, including, but not limited to-
  - (i) the choice of procurement procedure,
  - (ii) the approval of bidding documents,
  - (iii) the approval of evaluation reports,
  - (iv) the contract award,
  - (v) the approval of contract documents and contract amendments, and
  - (vi) any decision to suspend or cancel procurement proceedings.

(2) Records shall be maintained on all procurement proceedings for the periods specified in the National Archives Act.

## **22. Communication**

(1) The language that shall be used in all bidding documents shall be English, and it shall be so specified in the documents.

(2) Subject to the provisions of these Regulations-

- (a) minutes shall be taken at meetings that include negotiations authorised by the Board and its committees, between a procuring entity and either the bidders or contractors, or both; and
- (b) any agreement concluded at a meeting referred to in paragraph (a) shall be confirmed in writing.

## **23. Emergency procurement**

(1) Any person intending to use an emergency procurement shall make a request to the Board, in writing, stating the reasons for the emergency and justification for the departure from the established procedure.

(2) An emergency procurement may be permitted only for emergencies which could not have been foreseen by the procuring entity and which are not the result of delays by or within the procuring entity.

(3) Where emergency procurement is permitted in situations which could have been foreseen or are the result of delays by or within the procuring entity, a plan shall be prepared by the procuring entity to indicate the steps to be taken to prevent a repeat of similar circumstances.

## **24. Splitting of procuring requirements**

(1) A procuring entity shall not split up procurement requirements for works, services or supplies which could be procured on a single contract, for purposes of avoiding a method of procurement required in Part V.

(2) Each procurement entity shall ensure that for each procurement the method of procurement utilised is the open unrestrictive competitive bidding, unless otherwise specified by the Board.

## **25. Aggregation of requirements**

(1) Procurement requirements shall be aggregated for all departments of the procuring entity for the financial year or other appropriate period of time, whichever is applicable.

(2) Supplies and works in common use by more than one procuring entity shall be subject to common procurement, coordinated by the Board or any of its committees.

## **26. Framework contracts**

(1) Procurement for framework contracts shall be subject to all the provisions of these Regulations, except where specified otherwise in this regulation or the guidelines.

(2) A procuring entity shall use the appropriate method of procurement for the procurement of works, services or supplies under a framework contract in accordance with the

provisions of Part VI.

(3) A procuring entity shall use the standard documentation provided by the Board for procurement under a framework contract.

(4) A framework contract shall-

- (a) be concluded for a minimum period of 12 months; and
- (b) have contract prices fixed and not subject to variation for the duration of the contract.

(5) A procuring entity shall use estimated quantities or values when concluding a framework contract and shall not make a commitment to purchase the full quantity or value.

(6) Following the award of a framework contract, specific requirements during the period of the framework contract shall be procured through the placement of call-off or delivery orders in accordance with the provisions of the framework contract.

## **27. Initiation of procurement requirements and confirmation of funding**

(1) Procurement requirements shall be stated in the standard Form provided by the Board and set out in the Second Schedule.

(2) A procuring entity shall request for and obtain the consent of the Board before the use of a format other than that provided by the Board.

(3) The accounting officer or any authorised official shall provide a certification confirming the availability of funds, as evidence of the availability of budgeted or supplementary funds for the current financial year, the procurement or allocation for subsequent years.

(4) The signature of the accounting officer or authorised official, on the standard form stating that the procurement requirements provided by the Board have been met, shall be evidence of approval of procurement requirements.

(5) The accounting officer shall designate a person as an authorised official for the purposes of this regulation in accordance with internal procedures, but the accounting officer shall retain overall responsibility for procurement for the procuring entity.

## **28. Pre-qualification**

(1) A pre-qualification process may be used under open international bidding or open domestic bidding to obtain a shortlist of bidders who have the proven capability and resources to perform the contract satisfactorily.

(2) A pre-qualification process may be used where the supplies, works or services required are highly complex or specialised or require detailed design.

(3) A pre-qualification process shall be open to all providers, who shall be invited to participate in the process through an advertisement of a prequalification notice containing a statement as provided in subregulation (5), published in a newspaper of wide circulation in Botswana.

(4) A procuring entity shall commence a pre-qualification exercise by completing and submitting a request for the pre-qualification form set out in the Third Schedule, to the Board, the Ministerial Tender Committee or the District Tender Committee, as the case may be.

(5) A pre-qualification notice shall contain a statement of the scope of the procurement, clearly giving the necessary details of the requirements and the criteria for pre-qualification.

(6) The pre-qualification period shall be no less than 14 days.

(7) A procuring entity shall require providers to submit sealed, written pre-qualification applications accompanied by such documents as the procuring entity may require.

(8) A provider shall qualify for the pre-qualification bid on the basis of having the highest capability and the resources for the particular procurement, taking into account-

- (a) its experience and past performance on similar contracts;
- (b) its capability with respect to personnel, equipment and manufacturing or construction facilities;
- (c) its financial position; and
- (d) any other relevant criteria specified in the pre-qualification document.

(9) The assessment of pre-qualification submissions shall be in accordance with the

requirements and criteria stated in the invitation for prequalification.

(10) After the assessment referred to in subregulation (9), the procuring entity shall address an invitation to bid to-

- (a) all providers who submitted pre-qualification applications and who meet the specified pre-qualification criteria; or
- (b) a stated number of bidders, which number shall be appropriate to ensure effective competition from among the bidders who submitted pre-qualification applications and who meet the pre-qualification criteria.

(11) Where an invitation to bid is not addressed to all pre-qualified bidders, the bidders selected to bid are those who satisfy the minimum cut-off mark specified in the bidding documents.

### **29. Statement of requirements**

(1) A statement of requirements shall include-

- (a) generic, functional or performance specifications of the items to be procured;
- (b) the terms of reference for the particular procurement activity;
- (c) a brief;
- (d) the scope of works for a construction contract;
- (e) design drawings;
- (f) bills of quantities or the equivalent;

as may be appropriate, giving a correct and complete description of the subject of the procurement for the purposes of creating fair and open competition.

(2) A statement of requirements shall be used to inform bidders of the procuring and disposing entity's requirements and to determine how closely and effectively a bidder can meet these requirements.

(3) The description, in a statement of requirements, shall be prepared in such a way as to ensure that the works, services or supplies are fit for the purpose for which they are being purchased and are of appropriate quality.

(4) A statement of requirements shall use standard specifications issued in terms of the Act and these Regulations.

### **30. Bidding documents**

(1) A procuring entity shall state its procurement requirement for supplies, works or services-

- (a) in writing, in the appropriate standardised bidding documents provided by the Board; and
- (b) in accordance with the type, value and relative complexity of the particular procurement requirement.

(2) Any solicitation document issued by the procuring entity shall include-

- (a) an invitation to bid and instructions on the-
  - (i) preparation and submission of the bid,
  - (ii) date, time and address for receipt of bids, and
  - (iii) place and time of bid opening;
- (b) a bid form;
- (c) the general conditions of contract or a statement of the general conditions that will apply;
- (d) special conditions of contract;
- (e) a statement of requirements;
- (f) a schedule of requirements and price schedule;
- (g) a statement of the qualification documentation to be provided by the bidder;
- (h) the contract form or a statement of the contract or order documents that will apply; and
- (i) the format for securities, guarantees or other documents of security, where required.

### **31. Pre-bid meetings**

- (1) A procuring entity may hold pre-bid meetings to-
  - (a) allow potential bidders to either seek clarification; or
  - (b) have access to project sites.
- (2) Arrangements for pre-bid meetings shall be included in the bidding documents.
- (3) A potential bidder shall be given not less than 14 days notice of the pre-bid meetings, and, where appropriate, such notice period shall be extended to accommodate international methods of procurement.
- (4) A pre-bid meeting shall be held for such time as is reasonable for the particular bid, to enable bidders to consider any additional information that may be necessary in preparing their bids.
- (5) The Secretary to the Board shall prepare minutes for all pre-bid meetings and copies of the minutes shall be provided to all providers who purchased or were issued with the bidding documents.
- (6) Pre-bid meetings shall be managed by the procuring entity.

### **32. Selection of bidders**

- (1) The method for selection of bidders to be invited to bid shall be in accordance with the provisions of Part IV and shall be-
  - (a) by publication of a bid notice;
  - (b) by development of a shortlist; or
  - (c) on a sole provider basis.
- (2) A bid notice shall be published in at least one newspaper of wide circulation, in the *Gazette* and in any electronic or print media as the procuring entity may consider appropriate.
- (3) A tender notice and an invitation to tender shall be in the standard form approved for use by the Board.
- (4) A short list of bidders shall be based on written expressions of interests and shall include bidders who would have met the pre-determined cut-off mark selected on the basis of-
  - (a) a provider's performance record on previous projects;
  - (b) market knowledge of providers, where available; or
  - (c) whether the provider is on the register of contractors maintained by the Board.
- (5) Where a successful provider is to be selected from a shortlist of bidders, the selected provider shall be the best qualified and his or her bid determined as offering value for money to the extent practicable.
- (6) Selection of bidders from a register of providers shall be conducted to allow for equal opportunity of selection to all registered providers.

### **33. Bidding period**

- (1) The bidding period shall be such length of time as is necessary to accommodate the-
  - (a) location of short-listed or potential bidders and the time required for delivery or transmission of their bids;
  - (b) level of detail required in a bid; or
  - (c) anticipated duration of the procurement process.
- (2) Unless otherwise determined by the Board, the minimum bidding period specified shall be-
  - (a) six weeks, in the case of open international competitive bidding;
  - (b) four weeks, in the case of national competitive bidding; and
  - (c) two weeks, in the case of selective tendering on the basis of a shortlist.

### **34. Clarification of bidding documents**

- (1) Bidding documents shall stipulate the date after which bidders may not seek clarification of the bidding documents.
- (2) The date to be stipulated under subregulation (1) shall be determined to allow adequate time for all bidders to receive and study the bidding documents.
- (3) Any addendum to a bidding document shall be communicated promptly, in writing, to

all bidders who purchased or were issued with bidding documents, in order to provide for adequate opportunity for bidders to seek clarification and to obtain necessary responses in accordance with regulation 34 (1).

(4) An addendum to a bidding document shall be issued in writing and the same information shall be sent to all prospective bidders.

(5) Any extension of a bidding period shall be communicated promptly, by publication of a notice in the *Gazette*.

(6) In the event of a conflict between the content of the information contained in the tender notice and that which is contained in the bidding document, the information contained in the bidding document shall take precedence.

### **35. Format of bid document**

(1) A bid shall be structured in the format prescribed in bidding documents approved by the Board.

(2) The procedure for signing and authorising a bid by the bidder shall be as set out in the bidding documents.

### **36. Bid submission methods**

(1) Bidding documents shall contain instructions on the method of bid submission, which shall be-

- (a) a one-envelope submission, in which a tender document containing the tenderers financial and technical offer, is submitted together in one sealed envelope; or
- (b) a two-envelope submission, in which the financial offer from the tenderer is placed in one sealed envelope marked Financial Offer, and the technical offer is placed into a second sealed envelope marked Technical Offer, and both envelopes are placed into a third envelope which is sealed.

(2) Bidding documents shall state that bids shall be submitted in outer envelopes, securely sealed in such a manner that opening and resealing cannot be achieved undetected.

(3) Bidders may use their preferred method of envelope sealing.

(4) The Board or a procuring or disposing entity shall reject any envelope, at any bid opening, that is not sealed in such manner as is stated in subregulation (2).

(5) Bidding documents shall contain instructions on the details of labelling and references to be written out on each envelope which shall include-

- (a) the procurement reference number;
- (b) the name of the bidder;
- (c) technical or financial information where one or two envelope submission methods are used; and
- (d) the instruction that the bid shall not be opened before the time and date set for the bid opening.

### **37. Withdrawal of bids**

(1) Bidding documents shall contain instructions that a bidder may -

- (a) withdraw his or her bid, in accordance with the provisions of the bidding documents by giving notification, to the Board, of the withdrawal of the bid, which notification shall be authorised and submitted in the same manner the bid was submitted;
- (b) modify his or her bid; or
- (c) replace his or her bid,

at any time before the deadline for submission of bids.

(2) A notification to withdraw a bid shall be opened, read out and recorded at the bid opening, in accordance with the guidelines.

(3) The procuring entity shall specify in bidding documents, the procedure and deadline for withdrawal, modification or replacement of bids, which shall be the same as the deadline for submission.

(4) A bidder withdrawing his or her bid shall, in writing, notify the procuring and disposing

entity of the withdrawal, and the withdrawal letter shall be authorised and submitted in the same way as the bid, in an envelope clearly marked "WITHDRAWAL".

(5) A bidder withdrawing his or her bid may submit a new bid in accordance with the bid submission instructions in the bidding documents.

### **38. Bid receipt and openings**

(1) All bidding documents shall contain instructions for the time, date and place for bid submission.

(2) Where the closing date falls on a Saturday, a Sunday or a public holiday, tenders may be lodged until 10 a.m. the following working day.

(3) Tender documents submitted by courier shall only be acceptable if they bear the appropriate tender number and description and the inscription "Tender Documents. Not to be opened before ....." on the face of the package.

(4) In addition to any other requirement in the bidding document, a bid submitted after the date and time of submission shall be returned, unopened, to the bidder immediately or after the bid opening with the words "Late Tender", together with the date and time on which the bid was so received.

(5) Extension of the tender closing date shall only be granted upon sufficient evidence by the procuring entity, to the Board, the Ministerial Committee or the District Committee, as the case may be, and only where there is sufficient time to publish an amending notification before the original closing date.

(6) The procedure for the opening of bids, which shall be in accordance with the provisions of Parts III, IV and V and the guidelines, shall require-

(a) a public bid opening to be witnessed by bidders representatives, who choose to attend; or

(b) an internal bid opening to be witnessed by at least three members of the procuring entity's staff, which shall include at least one member of the Ministerial Committee.

(7) For a bid opening referred to in subregulation (8), the procuring entity shall-

(a) keep a record of the opening on the prescribed form, which shall be signed by all members of the procuring entity or procurement unit attending; and

(b) in the case of an internal bid opening, avail to bidders representatives a copy of the record at such nominal fee as the Board may determine.

### **39. Minimum qualification**

(1) Bidding documents shall-

(a) state the minimum qualifications required for a bid; and

(b) require each bidder to produce the required documentary evidence as proof that they qualify for the bid.

(2) A bidder's ability to meet the required qualifications shall form an integral part of the evaluation process.

## **PART IV**

### ***Evaluation Processes (regs 40-53)***

#### **40. Evaluation**

(1) The accounting officer shall appoint an evaluation committee which shall comprise not less than three members.

(2) Where members of the Evaluation Committee disagree on the results of an evaluation, the findings and recommendations of the majority shall be stated in the evaluation report.

(3) The evaluation report shall contain a statement of any disagreement and the reasons therefor, further discussions held on the issue and the names of those holding the alternative views.

(4) The Evaluation Report shall be signed by all members of the Evaluation Committee in attendance.



(5) An Evaluation Report shall be in the format specified by the Board.

#### **41. Change to bid details**

(1) Notwithstanding the other provisions of this regulation, a procuring entity shall correct purely arithmetical errors in a bid document 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 the quantity, the unit price shall prevail, and the total price shall be corrected accordingly; or
- (b) if there is a discrepancy between the amount in words and the amount in figures, the amount in words shall prevail.

(2) Bidders shall be promptly notified of any correction of errors made under subregulation (1)(a), and, where the bidder does not accept such correction, his or her bid shall be rejected.

(3) The procedure for correction of arithmetic errors shall be stated in the bidding documents.

(4) Notwithstanding the provisions of this regulation, a procuring entity may correct other minor errors or oversights, in a bid document, that are capable of being corrected without changing the substance of the bid.

(5) Corrections made to a bid document shall be quantified and taken into account in the evaluation, wherever possible.

#### **42. Choice of evaluation method**

(1) Each evaluation to be performed under these Regulations shall be performed in accordance with such procedure, as is set out in regulations 43 to 48, as may be relevant to the particular evaluation and in accordance with the provisions of Part V.

(2) A procuring entity shall seek the consent of the Board to use an evaluation method other than one given in these Regulations.

#### **43. Evaluation by quality and cost based selection**

(1) The quality and cost based selection evaluation method shall be conducted as follows-

- (a) both the quality and the cost of bids shall be taken into account in a process under which technical bids are evaluated without access to financial bids; and
- (b) the relative weight to be given to the quality and cost components of the evaluation shall depend on the nature of the assignment and shall be stated in the invitation to bid.

(2) A bid submitted under the quality and cost based selection evaluation method shall be submitted under the dual envelope submission method and evaluated to determine the-

- (a) quality, with regard to a technical bid, in accordance with-
  - (i) an evaluation against set criteria on a merit point system to determine the total technical score for the technical bid received, and
  - (ii) the total scores determined compared to the minimum technical score;
- (b) the total weighted cost score, with regard to a financial bid, where the bidder reached the minimum technical score; and
- (c) the bidder obtaining the highest total score, who shall be recommended for the award of the contract.

(3) The procedure for the quality and cost based selection evaluation of a technical bid shall be conducted in three stages, as set out in Part I of the Fourth Schedule.

(4) In this regulation, quality and cost based selection means an evaluation methodology that takes into account both the quality and the cost of bids in a process under which technical bids are evaluated without access to financial bids.

#### **44. Evaluation by quality based selection**

(1) Under the quality-based selection evaluation method the evaluation of-

- (a) a technical bid shall be conducted against set criteria on a merit point system to

- (b) the quality of a bid shall be the primary factor to be considered; and
- (c) cost shall apply only to the best technical bid.

(2) The procedure for the quality-based selection evaluation of a technical bid shall be conducted in three stages, as set out in Part II of the Fourth Schedule.

(3) In this regulation quality-based selection means an evaluation method that uses quality as the primary factor in a process under which technical bids are evaluated without access to financial bids and a financial evaluation is undertaken only for the best technical bid.

#### **45. Evaluation by fixed budget selection**

(1) Under the fixed budget selection evaluation method, the procuring entity shall indicate its available budget, and evaluation shall be considered as follows-

- (a) a bidder shall be required to provide, within the stated budget, the best possible technical and financial bids, in separate envelopes; and
- (b) the bidder with the evaluated technical bid of the highest quality, which is within the stated budget, shall be recommended to be awarded the contract.

(2) The schedule of requirements (otherwise referred to, in the bid documents, as the terms of reference), prepared by the procuring entity, shall contain all the necessary detail to portray the sufficiency of the budget for the performance, by a bidder, of the expected tasks as shall be contained in the contract.

(3) The procedure for the fixed budget selection evaluation of a technical and financial bid shall be conducted in three stages, as set out in Part III of the Fourth Schedule.

(4) In this regulation "fixed budget selection" means an evaluation method that recommends the bidder with the best technical bid which is within the budget.

#### **46. Evaluation by least cost selection supplies - and works**

(1) The least cost selection-supplies and works evaluation method shall be used to identify the lowest priced bid, which meets all the commercial and technical requirements of the procuring entity.

(2) Unless otherwise expressly stated in the bidding document, a bid for the least cost selection-supplies and works method shall require the use of a single envelope submission method.

(3) Recommendation shall be made for the award of contract to the bid which is-

- (a) qualified;
- (b) technically compliant;
- (c) lowest priced; and
- (d) responsive.

(4) The procedure for the least cost selection-supplies and works evaluation of a technical bid shall be conducted in three stages, as set out in Part IV of the Fourth Schedule.

(5) In this regulation, and for the purposes of regulation 47, "least cost selection-supplies and works" means an evaluation method that recommends the lowest price bid which meets the commercial and technical requirements of the procuring and disposing entity.

#### **47. Evaluation by least cost selection - services**

(1) The least cost selection-services evaluation method shall be used to identify the lowest priced bid, which meets all the commercial and technical service requirements of the procuring entity.

(2) The least cost selection-services evaluation method shall require the use of separate sealed envelopes for submission of technical and financial bids.

(3) The procedure for the least cost selection-services evaluation of a technical bid shall be conducted in three stages, as set out in Part V of the Fourth Schedule.

#### **48. Evaluation by qualification selection**

(1) The qualification selection evaluation method shall be used for small assignments, of costs as may be determined by the procuring and disposing entity, for which the need for

preparing and evaluating competitive bids is not justified.

(2) The procuring entity, for the purpose of soliciting bidders under the qualification selection method shall-

- (a) follow a two stage process;
- (b) prepare the terms of reference;
- (c) request bidders to supply expressions of interest and information concerning their experience and competence relevant to the assignment; and
- (d) establish a short-list.

(3) The procedure to be followed for the qualification selection evaluation method shall be conducted in two stages, as set out in Part VI of the Fourth Schedule.

(4) In this regulation "qualification selection" means a method of procurement used in the selection of a bidder based exclusively on the quality of the proposal without reference to price.

#### **49. Amendment of bid details**

(1) Any amendment to a bidding document by a bidder, including an amendment of the bid price, shall not be permitted after the date and time of bid closing.

(2) A procuring entity shall reject the bid of any bidder who attempts to make or who has made amendments to his or her bid, as provided in subregulation (1), after the date and time of bid closing and the matter shall be reported to the procuring entity or the Board.

(3) Every bidding document shall contain the prohibition against amending the bid as provided in subregulations (1) and (2).

#### **50. Clarification of bids received**

(1) A procuring entity may, in writing, request clarification on any bid received prior to tender closure from any person connected to the bid and such person shall, as soon as practicable, provide a written response.

(2) No amendments to the substance of the bid, including amendment of the bid price, shall be sought, offered or permitted after the clarification referred to in subregulation (1).

#### **51. Negotiations for open, restricted and quotation biddings**

(1) No negotiations shall be held by a procuring entity with any bidder who has tendered a bid to be considered under-

- (a) open bidding;
- (b) restricted bidding; or
- (c) quotations procurement,

until after a decision on the preferred bidder has been made and approval of the negotiation document has been given by the Board, Ministerial Committee, or District Tender Committee under subregulation (2).

(2) The Evaluation Committee shall give an approval of the negotiation document by-

- (a) producing an evaluation report containing a clear recommendation for an award of contract, and
- (b) providing details of the nature of the proposed negotiations, listing the points that are to be clarified or discussed and the objectives to be attained in the negotiation document; and
- (c) having the accounting officer or his or her representative approve the negotiation document prior to any negotiations taking place.

(3) The procuring entity shall be represented at the negotiations, held with the preferred bidder, by at least three staff members who may negotiate the terms of the contract, but such staff members shall not commit the procuring entity to any contractual terms prior to confirming any such terms with the accounting officer or his or her representative.

(4) The staff representing the procurement entity, at the negotiations, shall submit minutes of the meeting and report, in writing, to the Ministerial Committee, on the success of the negotiations in attaining the objectives set out on the negotiation document.

- (5) The Ministerial Committee may-
  - (a) approve the outcome of the negotiations in their entirety;
  - (b) request further negotiations on specific points; or
  - (c) reject and cancel the negotiations in their entirety.
- (6) The results of any approved negotiations shall be incorporated into the contract document.
- (7) No condition of award shall require the bidder, under any circumstances, to-
  - (a) undertake any further responsibility not specified in the bidding documents; or
  - (b) amend the bid price or otherwise modify the bid.
- (8) The following requests, communications or confirmation shall be in writing-
  - (a) request for amendments to the terms of a bid affecting the responsibilities and tasks defined in the bidding documents; and
  - (b) communication or confirmation of all subsequent and supplementary discussions or meetings.

## **52. Negotiations under direct procurement method**

(1) A procurement entity shall not hold negotiations to consider a bid under the direct procurement method unless a written bid has been received and evaluated.

(2) Approval of the negotiation document shall be given in accordance with the following procedure-

- (a) the procuring entity shall issue a written bidding document based on the standard documentation, modified, as necessary, to suit the requirements, the value and the circumstances of the particular procurement;
- (b) a bidder shall be required to submit a written bid in accordance with the terms of the bidding document;
- (c) the Evaluation Committee shall evaluate the bid received to determine its compliance with the bidding document and undertake an analysis of value for money of such bid by comparing the bid price with prices previously obtained through competitive procedures in respect of similar procurement, where applicable, or a breakdown analysis of current component costs for base items, freight and insurance elements and taking into account the circumstances and value of the procurement;
- (d) the procuring entity shall provide details of the nature of the proposed negotiations listing the points that are to be clarified or discussed and the objectives to be attained in a negotiation document; and
- (e) the Ministerial Committee shall obtain the Board's approval of the negotiation document prior to any negotiations taking place.

(3) The procuring entity shall be represented, at the negotiations held with the bidder, by at least three staff members who may negotiate the terms of the contract, but such staff members shall not commit the procuring entity to any contractual terms prior to confirming any such terms with the Evaluation Committee.

(4) The staff representing the procurement entity, at the negotiations, shall submit minutes of the meeting for approval and report, in writing, to the Ministerial Committee, on the success of the negotiations in attaining the objectives set out on the negotiation document.

(5) The Board or any of its committees may -

- (a) approve the outcome of the negotiations in their entirety;
- (b) request further negotiations on specific points; or
- (c) reject and cancel the negotiations in their entirety, and shall give reasons for the action taken.

(6) The results of any approved negotiations shall be incorporated into the contract document.

## **53. Award of contracts**

(1) The bidding documents shall state the procedure to be followed for the award of

contract.

(2) The exchange of letters of offer and acceptance between the procuring entity and the successful bidder shall constitute the act of placement of the contract.

(3) No communication in any form, that would bind a procuring entity to a contract, shall be issued by the procuring entity unless such communication has received the prior approval of the Board, its committees or such other authority or person to whom the Board has delegated the power to approve communications.

(5) Each procuring or disposing entity shall conclude a contract by the use of -

- (a) the standard form of conditions of contract approved for use by the Board; or
- (b) the contract documents stipulated in the tender documents if the documents referred to in paragraph (a) cannot be used.

## **PART V**

### ***Choice of Procurement Methods (regs 54-61)***

#### **54. Choice of procurement methods**

(1) A procuring and disposing entity shall use such procurement method as is provided for in these Regulations.

(2) The choice of procurement method shall be on the basis of the -

- (a) estimated value of the requirements; or
- (b) circumstances pertaining to the requirement.

(3) The estimated value of the requirement shall be the main criterion in determining the choice of procurement method and the choice shall be made in accordance with the guidelines.

#### **55. Open domestic bidding**

(1) Except as provided for in these Regulations, a procuring or disposing entity shall use the open domestic bidding method.

(2) A procuring and disposing entity may request the Board for permission to use a procurement procedure other than the open domestic bidding method where the circumstances for the bid are not provided for under the provisions of these Regulations.

(3) The open domestic bidding method shall be open to all bidders following the advertisement of a bid notice in the *Gazette* and at least one newspaper of wide circulation in Botswana.

(4) The Board, in consultation with the Ministerial Committee or the District Committee, as the case may be, shall, in line with the provisions of the procurement, determine the cost of bidding documents that are to be sold to prospective bidders.

(5) Nothing shall prevent a resident foreign or international bidder from participating in the open domestic bidding subject to registration requirements.

#### **56. Open international bidding**

(1) The open international bidding method may be used in place of the open domestic bidding where -

- (a) optimal competition may be enhanced with foreign bidders participation;
- (b) non-resident foreign bidders would increase value for money; or
- (c) the technical complexity of the procurement requirement requires the participation of non-resident foreign bidders.

(2) An advertisement for the submission of bids for the open international bidding method shall be published in the *Gazette* and in the appropriate foreign or international publications or professional or trade journals with a wide international circulation and shall be open to all bidders.

(3) The Board, in consultation with the procuring entity, shall, in line with the provisions of the guidelines, determine the cost of bidding documents that are to be sold to prospective bidders.

(4) Nothing shall prevent a domestic bidder from participating in an open international bidding.

#### **57. Restricted international bidding**

(1) The restricted international bidding method may only be used with the prior written authority of the Board, where-

- (a) the supplies, works or services are available only from a limited number of providers;
- (b) there is insufficient time for an open bidding procedure due to an emergency situation;
- (c) the estimated value of the procurement does not exceed the threshold stated in the guidelines;
- (d) other exceptional circumstances justify a departure from open bidding; or
- (e) foreign providers are included in the short-list of bidders.

(2) The invitation to bid under subregulation (1) shall be addressed to a limited number of potential bidders without advertising the opportunity in a bid notice in accordance with regulation 56 (2).

#### **58. Restricted domestic bidding**

(1) The restricted domestic bidding method may be used where-

- (a) the supplies, works or services are available only from a limited number of providers;
- (b) there is insufficient time for an open bidding procedure due to an emergency situation;
- (c) the estimated value of the procurement does not exceed the threshold stated in the procurement; or
- (d) other exceptional circumstances justify a departure from open bidding.

(2) The invitation to bid under subregulation (1) shall be addressed to a limited number of potential bidders without advertising the opportunity in a bid notice in accordance with regulation 56 (2).

#### **59. Quotations proposals procurement**

(1) The quotations proposals procurement method may be used where-

- (a) there is insufficient time for an open or restricted bidding procedure due to an emergency situation;
- (b) the estimated value of the procurement does not exceed the threshold stated in the guidelines; or
- (c) other exceptional circumstances justify a departure from open or restricted bidding.

(2) In quotations proposals procurement, a written bidding document is addressed to a limited number of potential bidders without publicly advertising the opportunity.

(3) A procuring entity shall obtain at least five bids as far as is practicable.

#### **60. Micro procurement**

(1) The micro procurement method may be used where the estimated value of the procurement does not exceed the threshold stated in the guidelines.

(2) In the micro procurement method, the selection of a supplier shall be conducted on a sole supplier basis without competition and without the requirement of the following-

- (a) bidding documentation;
- (b) written bid; and
- (c) signed contract document.

(3) The procuring entity shall obtain any supporting document such as the original copy of an invoice or receipt denoting the supplies procured and the price paid and annotated with the name of the official procuring the supplies.

(4) The procuring entity shall be responsible for ensuring that value for money is obtained to the extent practical under this procurement method.

(5) Any person responsible for micro procurement made under this regulation shall report such procurement to the Ministerial Committee within 30 days of such procurement.

#### **61. Direct procurement**

(1) The direct procurement method may be used where the selection of supplier is conducted on a sole supplier basis without completion, such as where-

- (a) there is insufficient time for any other procurement method due to an emergency

- situation;
- (b) the supplies, works or services are available from only one provider;
- (c) an existing contract could be extended for additional supplies, works or services of a similar nature and no advantage could be obtained by further competition, provided the prices on the extended contract are reasonable;
- (d) additional supplies, works or services are required to be compatible with existing supplies, works or services and it is advantageous or necessary to purchase the additional supplies, works or services from the original supplier, if the prices of the additional contract are reasonable;
- (e) it is essential or preferable to purchase additional supplies, works or services from the original supplier to ensure continuity for downstream work, including continuity in technical approach, use of experience acquired or continued professional liability, if the prices on the additional contract are reasonable; or
- (f) it is justified in the circumstances.

(2) When direct procurement is used under paragraphs (c), (d) or (e) of subregulation (1), the value of the new supplies, works or services shall generally be less than the value of the original or existing contract and the original contract shall have been awarded through a competitive process.

(3) A procuring entity shall use the appropriate documents, from the documentation issued by the Board, modified as necessary for the requirements of the procurement.

(4) A direct procurement contract shall be in writing in a contract form as provided in the documentation referred to under subregulation (3).

(5) The procuring entity shall not commence any procurement process under the direct procurement method prior to the Board signifying its-

- (a) acceptance of the full justification given by the Contracts Committee for the necessity for the use of method; and
- (b) approval of use of the method.

(6) The procurement process, under direct procurement, shall be subject to the procurement requirements, as far as practicable, provided in Part III.

(7) The Board may award a bid for a procurement under this regulation if it is satisfied that the procurement has been sufficiently demonstrated to be of value for money.

## **PART VI**

### **Procurement of Supplies (regs 62-68)**

#### **62. Policy of standardisation**

(1) In this regulation, policy of standardisation means a policy of standardisation which has been approved by Cabinet as contained in a Cabinet Directive currently in force.

(2) A procuring and disposing entity shall not use a policy of standardisation for any of its procurement requirements without the prior approval of the Board.

(3) The Board shall approve a standardisation policy for use by a procuring and disposing entity, that has been approved by Cabinet in relation to the proposed procurement activity and which shall be accompanied by statements verifying-

- (a) the technical, economic and logistical case for standardisation;
- (b) the case for the selection of the proposed standardised supplies, including their advantages over alternative supplies;
- (c) projections for future procurement of the object of standardisation;
- (d) plans to ensure transparency and value for money in the procurement of the standardised supplies; and
- (e) any other information relevant to the proposed standardisation policy.

(4) Upon due consideration of a recommendation made to the Board under subregulation (2), the Board may-

- (a) approve the recommendation; or

- (b) reject the recommendation, and state, in writing, the grounds for its approval or rejection thereof.

(5) An approval for the use of a policy of standardisation shall be for such period as the Board may determine, after which period the policy shall be reviewed by the Board.

(6) Where a procuring entity determines the need for the continued use of a policy of standardisation after the period of approval has expired, the Accounting Officer shall submit the following information to the Board, at least 14 days before such expiration, to support the application for continued use of the policy-

- (a) an updated technical, economic and logistical statement of the standardisation, indicating any changes since the previous application;
- (b) an updated statement of the selection of the proposed standardised supplies, including the advantages of such supplies over alternative supplies, indicating any changes since the previous application;
- (c) the original projections for procurement, the actual volume and value of procurement during the period of the policy and projections for future procurement of the object of standardisation;
- (d) plans to ensure transparency and value for money in the procurement of the standardised supplies; and
- (e) any other information relevant to the proposed continuation of the policy.

(7) The Board may approve or reject the application for the continued use of the policy of standardisation, and where the Board rejects such application it shall state, in writing, the grounds for such rejection.

### **63. Statement of requirements for procurement of supplies**

The statement of requirements for the procurement of supplies shall be defined by the specification of the requirements, and such specification shall contain a complete, precise and unambiguous description of the supplies required and shall include, where appropriate-

- (a) a generic, physical functional or performance description of the qualities, including any environmental or safety features, required of the subject of the procurement;
- (b) dimensions, symbols, terminology, language, packaging, marking and labelling of the supplies required; and
- (c) the national or international standard, where available, or the standards adopted and approved by the Board after consultation with the Botswana Bureau of Standards.

### **64. Bidding documents**

Subject to these Regulations and the guidelines, bidding documents for each individual procurement requirement for supplies shall specify the terms and conditions applicable and any other information that may be required, and shall be accompanied by the-

- (a) specification and list of supplies required;
- (b) level and form of bid security required, if any;
- (c) level and form of performance security that will be required, if any;
- (d) validity of bids required;
- (e) bid submission method;
- (f) currency or currencies in which bids are to be submitted;
- (g) procedure for conversion of prices to a single currency for evaluation purposes, including the source and date of exchange rates to be used;
- (h) currency in which the contract price will be paid;
- (i) payment terms, including any advance payment, stage payments or payment retention;
- (j) basis of prices required, either fixed or variable, and if variable, the method for calculating variations;
- (k) method of payment;
- (l) documentation required for payment;
- (m) delivery terms required in accordance with INCOTERMS;



- (n) delivery period required;
- (o) inspection or tests required, if any;
- (p) insurance policy or statement requirements, if any;
- (q) warranty required, if any; and
- (r) evaluation methodology and criteria.

#### **65. Pre-qualification for supplies**

- (1) A pre-qualification for supplies shall be-
  - (a) set out in accordance with this regulation;
  - (b) open to all providers who shall be invited to participate by means of a pre-qualification notice advertised in a newspaper of wide circulation in Botswana; and
  - (c) held on a given date following the advertisement referred to in paragraph (b).
- (2) A procuring entity shall use appropriate documents, issued by the Board, for purposes of a pre-qualification for supplies in all the proceedings.
- (3) The documents for the pre-qualification for supplies shall contain details of the scope of the procurement and a clear statement of the requirements and criteria for pre-qualification.
- (4) The pre-qualification period shall be no less than 14 days.
- (5) A procuring entity shall require a provider to submit a written and sealed pre-qualification offer of interest to bid.
- (6) The bidder selected as a provider for a pre-qualification bid shall be the bidder having the highest standard of capability and resources determined on the basis of-
  - (a) experience and past performance on similar contracts;
  - (b) capabilities with respect to personnel, equipment and manufacturing facilities;
  - (c) the financial position; and
  - (d) any other relevant criteria specified in the pre-qualification document.
- (7) A procuring entity shall assess a pre-qualification submission in accordance with the requirements and criteria set out in the pre-qualification invitation document and determine the selection of providers in accordance with such criteria.
- (8) A procuring entity shall direct the invitation for a pre-qualification bid to all providers who submitted a pre-qualification submission and who meet the requirements of the pre-qualification criteria.

#### **66. Least cost selection - supplies evaluation**

- (1) A procuring entity shall use the least cost selection-supplies evaluation method for the evaluation of supplies.
- (2) Where a procuring entity determines that an evaluation method provided in these Regulations would be more appropriate for a particular supplies contract it intends to conclude than the evaluation method it is required to use, the procuring entity shall request the authorisation of the Board to use such other evaluation method.

#### **67. Delivery terms**

Except as otherwise prescribed in the form of contract included in the tender documents, delivery terms shall be determined in accordance with INCOTERMS and as may be specified in the guidelines.

#### **68. Inspection**

- (1) A procuring entity shall, where applicable, ensure that the following inspection tests are carried out-
  - (a) inspection of supplies;
  - (b) sample inspection of items at a factory;
  - (c) witnessing of factory tests of equipment;
  - (d) operational inspection of on site tests; or
  - (e) inspection of quality control management systems.
- (2) Where need is established for the inspection requirements referred to under subregulation (1) the procuring entity may, for the purpose, engage a provider under the

methods and procedures providing for the procurement of services and on such conditions as shall be determined by the value and complexity of the inspection.

## **PART VII**

### ***Procurement of Works (regs 69-72)***

#### **69. Statement of requirements for procurement of works**

(1) The statement of requirements for the procurement of works shall be interpreted in accordance with-

- (a) the scope of works;
- (b) the bill of quantities; or
- (c) both the scope of works and the bill of quantities.

(2) The scope of works shall contain a clear, unambiguous and precise description of the works required and may include-

- (a) a background narrative to the works required;
- (b) the objectives for the works required;
- (c) a list of specific tasks to be performed;
- (d) the supervision requirements and the line of authority to be followed;
- (e) specific administrative arrangements;
- (f) the duration of the works that are to apply;
- (g) the standards required to be derived from-
  - (i) national or international standards, where available,
  - (ii) the standards adopted and approved by the Board after consultation with the Botswana Bureau of Standards, or
  - (iii) the relevant industry standards, as appropriate to the works; and
- (h) such other information as may be necessary to ensure a bidder has sufficient information to submit a responsive bid.

#### **70. Drafting of bidding documents for works**

Subject to these Regulations and the guidelines, bidding documents for each individual procurement requirement for works shall specify the terms or conditions applicable and any other information that may be required, and shall be accompanied by the-

- (a) specifications, drawings and bill of quantities;
- (b) level and form of bid security required, if any;
- (c) level and form of performance security required, if any;
- (d) validity of bids required;
- (e) bid submission method;
- (f) drawings or other documentation required;
- (g) currency or currencies in which bids are to be submitted;
- (h) procedure for conversion of prices to a single currency for evaluation purposes, including the source and date of exchange rates to be used;
- (i) currency in which the contract price will be paid;
- (j) type of contract, including, but not limited to lump sum, time-based or unit prices;
- (k) payment terms, including any advance payments, stage payments or payment retention;
- (l) basis of prices required, either fixed or variable, and, if variable, the method for calculating variations;
- (m) method of payment;
- (n) documentation required for payment;
- (o) schedule of completion;
- (p) functions and authority of the engineer, architect or contract manager, if any;
- (q) inspection or tests required, if any;
- (r) insurance cover required; and
- (s) evaluation method and criteria.

## **71. Pre-qualification for works**

- (1) A pre-qualification for works shall be-
  - (a) set out in accordance with this regulation;
  - (b) open to all providers, who shall be invited to participate by means of a pre-qualification notice advertised in a newspaper of wide circulation in Botswana; and
  - (c) held on a given date following the advertisement referred to in paragraph (b).
- (2) A procuring entity shall commence a pre-qualification process for all works tenders by using the Model Pre-qualification Guidelines and Model Documentation issued by the Board.
- (3) The documents for the pre-qualification for works shall contain details of the scope of the procurement and a clear statement of the requirements and criteria for pre-qualification.
- (4) The pre-qualification period shall be no less than 14 days.
- (5) A procuring entity shall require each provider to submit a written and sealed pre-qualification offer of interest to bid.
- (6) The procuring entity shall only pre-qualify bidders who have the highest standard of capability and resources determined on the basis of-
  - (a) experience and past performance on similar contracts;
  - (b) capabilities with respect to personnel, equipment and manufacturing facilities;
  - (c) financial position; and
  - (d) any other relevant criteria specified in the pre-qualification notice.
- (7) A procuring entity shall assess a pre-qualification submission in accordance with the requirements and criteria set out in the pre-qualification invitation document and determine the selection of providers in accordance with such criteria.
- (8) A procuring entity shall direct the invitation for a pre-qualification bid to-
  - (a) all pre-qualification bidders who submit responses and who meet the requirements of the pre-qualification; or
  - (b) the providers referred to in paragraph (a) together with such number of bidders appropriate to ensure effective competition for the bid.
- (9) A pre-qualification list shall be valid for a period not exceeding 12 months.

## **72. Evaluation methods for works**

- (1) A procuring entity shall use, as the basis of evaluation of works tenders, either the-
  - (a) quality and cost method; or
  - (b) least cost method.
- (2) Quality and cost based selection may be used where-
  - (a) the works are difficult to define in the bill of quantities; or
  - (b) specific operational considerations have a significant importance in the success of the works, such as the-
    - (i) technical quality of management and workforce,
    - (ii) speed of mobilisation,
    - (iii) plant availability,
    - (iv) current workload; or
    - (v) other similar factors.
- (3) Where a procuring entity determines that an evaluation method, other than a method provided in these Regulations, would be more appropriate for a particular works contract it intends to conclude, it shall request the authorisation of the Board to use such alternative evaluation method.

## **PART VIII**

### ***Procurement of Services (regs 73-76)***

## **73. Statement of requirements for procurement of services**

- (1) The statement of requirements for the procurement of services shall be interpreted in accordance with the terms of reference.
- (2) The terms of reference shall contain a clear, unambiguous and precise description of

the services required and shall include, where appropriate-

- (a) a background narrative for the services required;
- (b) the objectives of the services required together with a list of targets to be achieved by the service provider;
- (c) a list of specific tasks or duties to be performed;
- (d) a list of material to be delivered at the end of the assignment or outputs against which the achievements of the services can be measured;
- (e) the management reporting lines of the service provider to the procuring entity;
- (f) assignment duration, specific administrative arrangements and reporting requirements that are to apply; and
- (g) the relevant industry standards for approaching and implementing an assignment.

#### **74. Drafting of bidding documents for services**

Subject to these Regulations and the procurement guidelines, bidding documents for each individual procurement requirement for services shall specify the terms or conditions applicable and any other information that may be required and shall be accompanied by the-

- (a) terms of reference and expected input of key personnel, where applicable;
- (b) level and form of bid security required, if any;
- (c) level and form of performance security that will be required, if any;
- (d) validity of bids required;
- (e) bid submission methodology;
- (f) currency or currencies in which bids are to be submitted;
- (g) procedure for conversion of prices to a single currency for evaluation purposes, including the source and date of exchange rates to be used;
- (h) currency in which the contract price will be paid;
- (i) basis of prices required, either fixed or variable, and if variable, the method for calculating variations;
- (j) method of payment;
- (k) type of contract and payment terms, including, but not limited to lump sum, time-based or percentage contract and an indication of whether advance payments are permitted;
- (l) duration and timing of inputs;
- (m) deliverables or outputs required; and
- (n) evaluation method and criteria.

#### **75. Pre-qualification for services**

(1) A pre-qualification for services shall be-

- (a) open to all providers, who shall be invited to participate by means of a pre-qualification Notice, advertised in the *Gazette* and in a newspaper of wide national and international circulation; and
- (b) held on a given date following the advertisement referred to in paragraph (a).

(2) A procuring entity shall use appropriate documents, issued by the Board, for purposes of a pre-qualification Notice.

(3) The Notice for the pre-qualification for services shall contain details of-

- (a) the scope of the procurement and a clear statement of the requirements and criteria for pre-qualification; and
- (b) a statement of the capabilities and resources required from the provider in terms of the service contract.

(4) The pre-qualification period shall be no less than 14 days.

(5) A procuring entity shall require each provider to submit a written and sealed pre-qualification offer of interest to bid.

(6) The procuring entity shall only pre-qualify bidders who have the highest standard of capability and resources determined on the basis of-

- (a) experience and past performance of similar contracts;

- (b) capabilities with respect to personnel, equipment and manufacturing facilities;
  - (c) financial position (excluding price quotations); and
  - (d) any other relevant criteria specified in the pre-qualification Notice.
- (7) A pre-qualification list shall be valid for a period not exceeding 12 months.

#### **76. Evaluation methods for services**

(1) A procuring entity shall use an evaluation method provided in these Regulations for the procurement of services.

(2) The quality and cost based selection evaluation method may be used for professional services where the terms of reference are well defined and prospective bidders have been selected on the basis of a pre-qualification procedure.

(3) The quality based evaluation method may be used for professional services for-

- (a) highly specialised assignments for which-
  - (i) it is difficult to define precise terms of reference and the required input from the consultant,
  - (ii) the procuring entity expects each consultant to demonstrate innovation in their bid, and
  - (iii) prospective bidders have been selected on the basis of pre-qualification procedure;
- (b) assignments that have a high downstream impact and in which the objective is to have the best experts; or
- (c) assignments that can be carried out in substantially different ways, such that bids will not be comparable and in which the value of the services depends on their quality.

(4) The fixed budget selection evaluation method may be used for professional services when the assignment is simple and can be precisely defined, and when the budget is fixed

(5) The least cost selection-services evaluation method may be used for assignments of a standard or routine nature where well established practices and standards exist.

(6) A procuring entity shall first obtain the approval of the Board before using any other evaluation methodology.

### **PART IX**

#### ***Administrative Review (regs 77-79)***

#### **77. Claim for compensation for contravention of legal provisions**

(1) A person who is aggrieved by any decision of the Board or of any of its committees, pursuant to matters arising under section 103 of the Act, may-

- (a) submit a complaint by following the review procedures of the Board, set out in regulation 78; and
- (b) if that person is dissatisfied with the final decision reached when the review procedures of the Board under paragraph (a) are exhausted, apply to the Independent Committee for a review of the decision.

(2) The following matters shall not be subject to the review referred to in subregulation

(1)-

- (a) the selection of a method of procurement;
- (b) the choice of an evaluation procedure for such procurement;
- (c) a decision by the Board or its committee to reject all bids; and
- (d) a refusal by the procuring entity to respond to an unsolicited offer of an interest to bid.

#### **78. Procedure for claiming compensation**

(1) A person who submits a complaint, under regulation 77 (1) shall do so in writing, to the Secretary of the Board.

(2) The complaint referred to in subregulation (1) shall contain particulars of the precise grounds of the complaint and be accompanied by documentary evidence of loss, in support any monetary claim.

(3) The Board shall cause the procurement proceeding in process to be suspended

immediately upon receipt of a complaint in terms of subregulation (1) where-

- (a) the Board has not made an award of a bid; and
- (b) a letter has not been issued indicating the commencement of the contract.

(4) No complaint shall be considered by the Board unless such complaint is submitted within 14 days of the date the bidder comes to the knowledge of the complaint.

(5) The Board shall inform all the bidders participating in the procurement proceedings, to which the complaint relates, of the circumstances leading to the complaint, as soon as possible after the receipt of the complaint.

(6) Where the Board fails to arrive at a mutually agreed settlement of the complaint with the bidder within 14 days of the submission of the complaint, a dispute shall be declared, and the Secretary of the Board shall refer the dispute to the Independent Committee stating the-

- (a) reasons for the referral of the dispute; and
- (b) grounds upon which the Board denies liability, where liability is denied.

(7) Where the Secretary to the Board fails to refer the dispute to the Independent Committee, in terms of subregulation (6), the bidder who is party to the dispute may, within seven days from the date the Secretary was required to have referred the dispute, refer the dispute to the Independent Committee.

(8) Any bidder whose interests are, or could be affected, by the review proceedings, that may be held in relation to the complaint, shall have a right to participate in the review proceedings.

(9) Any decision on the complaint arrived at by the Board shall, within five days, be furnished to any of the parties that participated in the review proceedings.

#### **79. Procuring entity to be notified of complaint**

(1) Upon receipt of a complaint under regulation 77, the Board shall, immediately, forward a written notice of the complaint to the procuring entity and such notice shall require the procuring entity to suspend any further action in the procurement proceedings to which the complaint relates until the Board, or where appropriate, the Independent Committee has settled the matter.

(2) A written complaint submitted under regulation 77, to the Board, shall not be based on frivolous evidence or circumstances and shall contain a declaration of contents, of which, if proven, demonstrate that where the procurement proceedings are not suspended-

- (a) the bidder will suffer irreparable harm;
- (b) it is probable that the complainant shall succeed; and
- (c) disproportionate harm shall be caused to the procuring entity or to the other bidders.

(3) The total period of suspension under subregulation (2) shall not exceed 60 days.

(4) Any decision taken by the procuring entity and the Board and the grounds and circumstances of such decision shall be made part of the record of procurement proceedings to be kept by the procuring entity and the Board.

### **PART X**

#### **General (regs 80-97)**

#### **80. Contract pricing**

(1) Except as otherwise provided in the conditions of contract included in the tender documents, a procuring and disposing entity shall place contracts based on fixed and firm prices for a procurement that is to be completed within 12 months from the placement of the contract.

(2) A procuring and disposing entity may place contracts with a price adjustment provision for procurement requirements that will not be completed within 12 months from the placement of a contract.

(3) The Board shall provide procuring and disposing entities with advise in connection with internationally accepted practices in relation to pricing standards for differing procurement requirements.

#### **81. Price adjustment**

(1) Any provision relating to price adjustment may be included in any contract exceeding 12 months, where it is more economical for a procuring and disposing entity to accept the inflation risk than to pay the additional cost for the supplier to accept the risk.

(2) Where a price adjustment provision is included in a contract referred to in subregulation (1), the method for calculating the adjustment, and any restrictions or conditions on that adjustment, shall be clearly stated in the bidding documents.

(3) Any price adjustment shall be calculated by use of pre-defined formula, which separates the total price into components, such as labour, equipment, material and fuel, which are adjusted by price indices specified for each component:

Provided that if the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment.

(4) The formula referred to in subregulation (3), the price indices, any correction factors and the base date for application shall be clearly stated in the bidding documents and any resulting contract.

(5) The formula referred to in subregulation (3) and the price indices shall be appropriate to the type of procurement and the source of the inputs and shall use industry standards wherever possible.

(6) Where no industry standards are, or other appropriate formula is, available, a procuring and disposing entity shall use the sample formula specified in the Fifth Schedule.

(7) Any request for price adjustment shall be submitted to the Board or its committees not more than 90 days from the time the circumstances upon which the price adjustment is based arise.

## **82. Payment terms**

A bidding document and any resulting contract shall detail the payment terms that shall apply, and the payment terms shall specify the-

- (a) payment method;
- (b) payment structure;
- (c) payment documents;
- (d) payment period; and
- (e) payment currency.

## **83. Payment method**

(1) A procuring and disposing entity shall agree with the provider on the method of payment that shall apply to any resulting contract.

(2) Where a bidder proposes a method of payment, the bidder shall be instructed to include the full costs thereof in the bid price.

(3) The method of payment shall be comprehensively defined in the resulting contract including the payment of the costs associated with the method preferred by the provide.

(4) The method of payment under any contract entered into in terms of these Regulations shall be acceptable to the Bank of Botswana.

## **84. Payment structure**

(1) A procuring and disposing entity shall consider and state in the bidding documents and the resulting contract the payment structure for each procurement.

(2) The structure and amount of payments shall be determined for each procurement requirement by best practices, and such payment structures may include-

- (a) advance payments;
- (b) stage (or phased) payments, which shall be linked to specific deliverable or milestones and may be stated in percentage terms of the defined amount or specific amounts;
- (c) regular interim payments, which shall be linked to specific contract events, such as installations or warranties; and
- (d) retained payments, which shall be linked to specific contract events, such as

installation or warranties.

#### **85. Advance payments**

(1) Except, as otherwise specified by government policy, and where best practices dictate, no contract shall be entered into by a procuring and disposing entity which require an advance payment.

(2) Except, as otherwise provided by government policy, where an advance payment is determined to be consistent with best practices, an advance payment security shall always be required and the requirement for a security shall be stated in the bidding document in accordance with regulation 30 (2)(e).

(3) An advance payment shall be recovered from subsequent payments due to the provider, which shall be subject to reduction in equal installments over a period not exceeding fifty percent of the contract period.

(4) An advance payment may be made for such activities as-

- (a) mobilisation costs in respect of the provision of works;
- (b) start up costs in respect of the provision of services; and
- (c) certain circumstances in respect of the provision of supplies, such as items that have to be specially or custom manufactured.

#### **86. Interim or stage payments**

(1) Where the practices dictate, a contract may be entered into by a procuring and disposing entity in which interim or stage payments are permitted.

(2) Where interim or stage payments are permitted, they shall comply with the following conditions-

- (a) payments shall be linked to specific and verifiable deliverables, contract events, time periods or work, which must be stated in the bidding documents and resulting contract;
- (b) individual payments shall not exceed the cost or value of the deliverable, time period or work to which it is linked;
- (c) payments may require the provision of a payment security where, during the delivery of the works, services or supplies, risk or title remained with the provider; and
- (d) where a payment security is determined to be appropriate, the provisions of regulation 30 (2)(e) shall apply.

#### **87. Retained payments**

(1) Where a procuring and disposing entity has determined that retained payments are appropriate, the contract shall detail-

- (a) the percentage or amount of the total contract value to be retained;
- (b) the period or the event at which the retention shall be released; and
- (c) the documentation that shall evidence or certify the period or event in paragraph (b).

(2) A payment security may be permitted to be substituted for a retention payment in accordance with regulation 30 (2)(e).

#### **88. Payment security**

(1) No payment shall be made to a provider or in respect of deliverables due against works, services or supplies contracts without receipt of the deliverables detailed in the contract.

(2) Where a payment is made prior to receipt of deliverables-

- (a) a payment security shall always be required and the requirement for a security shall be stated in the bidding documents;
- (b) the security shall be in a form and from an institution that is acceptable to the Bank of Botswana;
- (c) the security shall be in the format provided by the Board and provided in the bidding documents; and
- (d) the security provided by the provider shall be valid for an agreed period beyond the final expected transaction date of the resulting contract or expected release date, as appropriate.



## **89. Payment documents**

(1) A procuring and disposing entity shall clearly state, in the bidding document, the documents against which each payment is to be made.

(2) The documents referred to in subregulation (1) may include, but not limited to, documentation certifying the-

- (a) delivery of the requirement or the receipt of the requirement by the consignee in accordance with delivery terms of the contract;
- (b) itemised list of the requirements within packages delivered;
- (c) insurance coverage of the delivered items;
- (d) successful inspection of the delivered items;
- (e) origin or eligibility of the delivered items;
- (f) payment of particular costs specified in the contract, such as duties, levies, taxes that may be due and payable by the provider on the delivered items;
- (g) acceptance of installation or commissioning by the user of the delivered items;
- (h) receipt of reports, manuals, guides, or other documentation required as a deliverable against a contract;
- (i) completion of works or services required against a contract; and
- (j) receipt of payment due to sub-contractors.

(3) Payment documentation from a provider shall always require an original invoice from the provider certifying the payment due.

## **90. Payment period**

(1) A procuring and disposing entity shall be responsible for organising payment to be made to the provider within 30 days of the certification of payment request.

(2) Except as otherwise provided in the tender document, the payment period shall be 30 days of the date of certification of invoice.

(3) Except as may be otherwise authorised by the Board, no payment to a contractor shall be ceded.

## **91. Payment and payment delays**

(1) A procuring and disposing entity shall ensure that all payment requests are processed promptly within the payment period specified in the contract.

(2) A payment request shall be made by a provider to a procuring and disposing entity in accordance with the terms of the contract placed by the procuring and disposing entity.

(3) Upon receipt from a provider, of a payment request, the procuring and disposing entity shall, within five days of the date of receipt of the request, examine the payment request and ascertain if it is correct, accurate and in accordance with the terms of the contract.

(4) If the payment request is correct, accurate and in accordance with the terms of the contract, the procuring and disposing entity shall, within five days of the date of receipt of the payment request, certify it for payment and instruct the competent official to make full payment in accordance with the terms of the contract.

(5) If the payment request contains errors or discrepancies, is supported by incorrect or incomplete documentation or is in any other way not in accordance with the terms of the contract, the payment request shall not be certified as correct, and no payment shall be made.

(6) A payment request which is not certified as correct shall, within five days of the date of receipt of the request, be returned to the provider, detailing fully the reasons the presentation cannot be certified for payment.

(7) Where a payment request has been returned, the provider shall be entitled to present a new or amended payment request, which shall be treated in the same way as the original payment request.

(8) The procuring and disposing entity shall be responsible for organising payment to be made to the provider within 30 days from the date of certification of any payment request as correct, unless the payment has been varied in the special conditions of the contract.

(9) A delay in payment to a provider shall attract interest at the prevailing commercial bank overdraft rate or such rate as may be stated in the bidding document, on a daily basis, for each day after the due date for payment.

(10) Notwithstanding the provisions of subregulation (3), the querying by a procuring and disposing entity of any part of a payment invoice from a provider shall not delay payment of the unchallenged portion of the invoice to the provider.

#### **92. Currency for payment and limitations thereon**

(1) A bidding document shall state any limitation on the currency of bidding or the currency of payment that may apply to a procurement proceeding or resulting contract.

(2) Unless otherwise stated in the solicitation or contract documents, the currency for bidding and payment shall be-

- (a) Botswana Pula, for works, services and supplies originating in Botswana; and
- (b) the currency of the expense or the currency of the providers country, for works, services or supplies originating outside Botswana or for imported parts or components of works, services or supplies originating outside Botswana, if such currency is a major trading currency.

#### **93. Export and import licences**

Unless otherwise provided by the delivery terms stated in a bidding document-

- (a) a contract for procurement requirements that require export licences shall be the responsibility of the provider, but the procuring and disposing entity shall render any assistance necessary for the provider to process any application for export licences;
- (b) a contract for procurement requirements that require import licences shall be the responsibility of the importer, but the procuring and disposing entity shall render any certification necessary to the importer to process any applications for import licences.

#### **94. Insurance and indemnity**

(1) A procuring and disposing entity shall ensure that insurance or indemnity cover is arranged to cover each procurement requirement, and the appropriate provisions shall be included in the bidding document and the draft contract.

(2) Where applicable, insurance or indemnity cover shall be arranged with Botswana insurance companies.

#### **95. Contract amendments**

(1) Where a contract needs to be amended in order to change the original terms and conditions, a contract amendment shall be issued to the provider.

(2) A contract amendment shall be prepared, approved and issued in the same manner as the original contract and shall require the prior approval of the Board or any of its competent committees.

(3) A contract amendment shall be prepared by the procurement and disposal entity.

(4) No contract amendment shall be issued prior to-

- (a) approval being obtained from the Board or any of its competent committees;
- (b) funding being committed in the full amount of the amended contract price over the required period of the revised contract; and
- (c) approval being obtained from all necessary bodies after the Board or any of its competent committees approval.

(5) A contract amendment for additional quantities of the same items shall use the same unit prices as the original contract.

(6) No individual contract amendment shall increase the total contract price by more than 15 per cent of the original contract price.

(7) Where a contract is amended more than once, the cumulative value of all contract amendments shall not increase the total contract price by more than 25 per cent of the original contract price.

#### **96. Variation or change order to contract**

(1) A contract variation or change order may be issued by the competent official, without the Boards or any of its competent committees approval only where the variation or change order is within the contingency element of a bid, or such limit as the Board may allow.

(2) Notwithstanding the provisions of subregulation (1), any additional funding required for a variation or change order shall be committed.

(3) A contract may be varied in accordance with a compensation event or the issue of a variation or change order or similar document, as provided for in the contract.

(4) A variation or change order shall only be permitted in accordance with the terms and conditions of the existing contract and shall be authorised by the competent official, as defined in the contract.

(5) A contract which provides for a variation or change order shall include a limit on such variation or change order, which limit shall not be exceeded without the issue of a contract amendment.

#### **97. Contract amendments, variations or change orders**

In this Part-

- (a) "contract amendment" means a change to the terms and conditions of an awarded contract; and
- (b) "contract variation" or "change order" means a change to the price, completion date or statement of requirements of a contract to facilitate adaptations to anticipated events or changes in requirements.

### **PART XI**

#### **Disposal of assets (regs 97-122)**

#### **98. Application of rules on disposal of public assets**

(1) All activities relating to disposal of public assets shall be carried out in accordance with the rules set out in the Act, these Regulations and the guidelines.

(2) The provisions of these Regulations, in respect of procurement, shall apply to activities relating to the disposal of public assets, where appropriate.

(3) These Regulations shall not apply to public assets which are subject to the provisions of the Public Enterprises Evaluation and Privatisation Agency.

#### **99. Records of disposal of public assets**

(1) A procuring and disposing entity shall maintain records on its disposal proceedings of contracts management for a period of seven years from the date of a decision to terminate the disposal action, or the date of contract completion, whichever is the later, except where a contract is ongoing or is challenged, in which case the records shall be kept for an additional year after the completion of the contract or the settlement of the dispute, whichever is the earlier.

(2) The following records of a procuring and disposing entity shall be open to inspection by the competent authority during working hours-

- (a) all records relating to the disposal process;
- (b) all records relating to contracts management;
- (c) all records of the Board or any of its committees; and
- (d) any records of the Accounting Officer which relate to disposal, contracts management, disagreements with the Board or its competent committee, investigations of complaints or any other matter related to the Act or these Regulations.

(3) Every disposal of public assets shall contain the following documents, where appropriate-

- (a) the request to initiate disposal proceedings;
- (b) a copy of the published invitation notice, if any;
- (c) a copy of the bidding documents and any amendments or clarifications thereto, and any additional information such as an auctioneer's catalogue or general descriptive literature;
- (d) the details of any visits to inspect the assets by potential bidders;

- (e) the records of bid openings;
- (f) copies of all bids evaluated and any clarifications issued and responses received;
- (g) the evaluation report, if any;
- (h) minutes of any meetings related to the disposal, including negotiations;
- (i) the notice of award to the successful bidder, if any;
- (j) the contract document, if any;
- (k) all documents related to contract management, including, but not limited, to receipt of payment records and handing over certificates;
- (l) a copy of the update to the procuring and disposing entity's assets register;
- (m) all correspondence between the procuring and disposing entity and bidders, auctioneers or third party disposal agents; and
- (n) all submissions to the Board or its competent committee and all decisions related to the disposal method, approval of bidding documents, approval of evaluation reports, approval of negotiations and contract award, approval of contact documents and any decision to suspend or cancel disposal proceedings.

#### **100. Disposal planning**

(1) Assets to be disposed of shall be grouped in contracts or lots in a manner which will attract the maximum possible competition.

(2) Where assets are to be disposed of through public auction, a procuring and disposing entity shall maximise the number of assets to be disposed of at one time in order to reduce the administration and transaction costs.

(3) A procuring and disposing entity may pool assets for purposes of common disposal.

#### **101. Initiation of disposal requirements and approval for disposal**

(1) The user department shall initiate the disposal process.

(2) Disposal requirements shall be documented using such format as the Board may prescribe.

(3) Disposal of assets shall be approved by the Board or its competent committee.

(4) Approval to commence disposal proceedings shall be evidenced by the signature of the Accounting Officer on the standard form documenting disposal requirements or by an official authorised by the Accounting Officer to so certify.

(5) A specific reference number shall be allocated to each disposal requirement at the initiation stage, using the referencing system given in the guidelines, and all documentation related to the disposal requirement shall state the appropriate reference number from the asset register.

#### **102. Selection of disposal method**

A procuring and disposing entity shall select one of the disposal methods specified in this Part.

#### **103. Valuations**

(1) A procuring and disposing entity shall obtain a valuation of the assets to be disposed of, prior to the commencement of any disposal proceedings.

(2) Notwithstanding the provisions of subregulation (1), no valuation of assets is required where the cost of the valuation is likely to be in excess of the money expected to be realised through the disposal process.

(3) Where required by existing legislation, the valuation of assets to be disposed of shall be done by the competent authority.

(4) A procuring and disposing entity shall use the valuation of assets to determine a reserve price, where appropriate, which shall be the minimum sale price of the asset.

#### **104. Description of assets**

(1) A bidding document or notice and any information made available to prospective bidders shall normally specify that the assets are sold on an "as is" where "is" basis and shall disclaim all further liability after sale.

(2) Any additional information, such as an auctioneer's catalogue, shall be for information purposes only and shall not be considered as a bidding document.

(3) Notwithstanding the provisions of subregulation (1), a procuring and disposing entity shall include as full a description as possible of the assets to be disposed of and shall ensure that the information is accurate and not misleading.

(4) The description of the assets to be disposed of must address, where appropriate, the risk and cost associated with the dismantling and removal of assets upon conclusion of the disposal proceedings.

(5) No warranty shall be offered on the assets to be disposed of.

(6) Notwithstanding the provisions of subregulation (5), a procuring and disposing entity may, in exceptional circumstances, offer a warranty on the assets to be disposed of where the increase in the price received for the assets is likely to be greater than any costs associated with providing the warranty.

### **105. Bidding documents**

(1) A bidding document shall be drafted using the standard form issued by the Board.

(2) A bidding document shall include-

- (a) a description of the assets to be disposed of;
- (b) a statement that the asset is sold on an "as is" where "is" basis or any alternative basis for sale;
- (c) the location of the assets and arrangements for potential bidders to inspect the assets;
- (d) the deadline, location and method for submission of bids;
- (e) the arrangement for the bid opening;
- (f) the qualification requirements to be met by bidders, if any;
- (g) the method for evaluating bids and awarding a contract;
- (h) the conditions of sale, if any;
- (i) the requirements for payment of the sale price and handing over arrangements;
- (j) a statement confirming that the risk and cost of dismantling and removal of the assets shall be the responsibility of the successful bidder; and
- (k) details of any reservation scheme in operation.

(3) A procuring and disposing entity may sell solicitation documents.

(4) A procuring and disposing entity shall record the issue or sale of bidding documents using the standard form issued by the Board.

(5) A procuring and disposing entity shall publish public invitation notices in at least one newspaper of wide circulation in Botswana.

### **106. Advertisement and bidding periods**

(1) Where the solicitation of bids is by invitation notice only, the period between the advertisement of the invitation notice and the date for bidding shall be a minimum of 10 days to allow sufficient time for potential bidders to inspect the assets.

(2) Where the solicitation of bids is by invitation notice and bidding document, the advertising period shall be a minimum of four days.

(3) Where written bids are required, the bidding period shall be specified in the section of the bidding document, taking into account the following factors-

- (a) the need to allow sufficient time for potential bidders to inspect the assets prior to bidding;
- (b) the level of detail required in the bids; and
- (c) the time required for preparation and delivery of bids to the procuring and disposing entity.

### **107. Inspection of assets**

(1) A procuring and disposing entity shall ensure that potential bidders are offered a reasonable opportunity to inspect the assets to be disposed of before the date or deadline for bidding.

(2) An arrangement for the inspection of the assets to be disposed of shall be included in the invitation notice and in the bidding documents, where appropriate.

#### **108. Format of bids**

(1) A bid may be either-

- (a) oral, in case of auctions; and
- (b) written, in all other cases.

(2) Where a bid is written, the procuring and disposing entity shall require the bidder to submit a sealed, written bid.

(3) A bidding document shall contain instructions to bidders on-

- (a) the format and documentation required in a bid;
- (b) the procedure for signing and authorising bids; and
- (c) the number of copies of bids to be submitted, which shall be one original bid, marked ORIGINAL, and a specified number of copies, marked COPY.

#### **109. Submission of bids**

(1) Where a bid is oral, the procedure for bidding shall be specified by the auctioneer in accordance with normal auction practices.

(2) Where a bid is written, it shall be submitted in a plain outer envelope, securely sealed in such a manner that opening and resealing cannot be achieved undetected.

(3) A bidder may choose their preferred method of envelope sealing, but the procuring and disposing entity shall reject any envelope, at the opening, that is unsealed.

(4) A bidding document shall contain instructions on the details of labeling and references to be detailed on each envelope, which shall include at least-

- (a) the disposal reference number;
- (b) the name of the bidder;
- (c) the words "WITHDRAWAL" or "REPLACEMENT", where bids are being withdrawn or replaced; and
- (d) the words "NOT TO BE OPENED BEFORE THE BID OPENING".

#### **110. Withdrawal of bids**

(1) A bidder may withdraw a written bid at any time before the deadline for submission of bids.

(2) A withdrawal of a bid shall be by submission of a letter notifying the procuring and disposing entity of the withdrawal, which letter shall be authorised and submitted in the same way as the bid.

(3) A withdrawal letter in respect of a bid shall be opened, read out and recorded at the bid opening.

(4) A bidder who withdraws their bid may submit a new bid in accordance with the provisions of the bidding document.

(5) A submitted bid may be amended at any time before the deadline for submission of bids.

(6) An amendment of a bid shall be by the withdrawal of the original bid and the submission of a new bid.

(7) An oral bid shall not be withdrawn, except where a notice of withdrawal, as provided for in subregulation (2), is given by the bidder to the procuring and disposing entity within a period of 48 hours of the bidding.

#### **111. Bid closing process**

(1) Where written bids are required, the receipt of bids and the bid closing process shall be in accordance with the provisions of regulation 38.

(2) Every bid closing shall be recorded.

#### **112. Bid opening process**

(1) Where written bids are required, the bid opening may be either by way of-

- (a) public bid opening; or

(b) non public bid opening.

(2) The bid opening process shall be in accordance with the provisions of regulation 38.

(3) Every bid opening shall be recorded.

(4) Except where otherwise provided for in these Regulations, a procuring and disposing entity shall not declare the best evaluated bid or contract award at the bid opening or any re-bidding procedure.

### **113. Evaluation methodology**

(1) The evaluation of bids shall be based either-

(a) on price only; or

(b) on price and other factors, subject to subregulation (3).

(2) The evaluation of bids based on price only shall be the preferred evaluation methodology.

(3) Additional factors may be taken into consideration in the evaluation of bids, where-

(a) there are end-user restrictions;

(b) there are export restrictions; or

(c) there is need to attach conditions to the sale.

### **114. Re-bidding due to identical bids**

(1) Where written bids have been requested and the highest priced bid has been submitted by more than one bidder, the procuring and disposing entity shall arrange a re-bidding procedure, where only the bidders who submitted identically priced bids are invited to submit a revised bid.

(2) No bidder, other than those who submitted the identical highest priced bids, shall be permitted to submit a revised bid or participate in the re-bidding procedure in any way.

(3) The revised bid referred to in subregulation (2) shall contain a revised price only, and the bidders shall not be permitted to change, in any way, the terms and conditions, technical details, documentation or any other aspect of their original bid, other than the price.

(4) The revised bid shall be submitted in writing and sealed, in the same way as the original bid.

(5) The bidders shall be given a reasonable period of time prior to the deadline for submission of their revised bid.

(6) Where evaluation is based on price only in accordance with regulation 115, and it is reasonable to conduct and conclude the evaluation immediately in the presence of bidders at a public bid opening, the procuring and disposing entity may, if the bidders concerned so agree, conduct the rebidding procedure immediately.

(7) The bid opening procedure for the revised bids shall be the same as for the original bids.

(8) The evaluation of the revised bids shall be conducted in the same manner as the original evaluation, except that the prices contained in the revised bids shall replace the original prices.

(9) Notwithstanding the provisions of subregulation (8), any second bid which contains a price lower than the original bid price shall be rejected under this regulation.

(10) Where identical highest priced bids are received during a re-bidding procedure, a further re-bidding procedure shall be held in accordance with this regulation.

(11) Where it is subsequently discovered that any error was made in the original evaluation, including, but not limited to, errors in correcting arithmetic errors or in the application of an exchange rate, and that bidders had not submitted identical highest priced bids, the re-bidding procedure shall be declared null and void and the revised bids shall not be taken into consideration.

### **115. Evaluation based on price only**

(1) Where the evaluation, in respect of an asset to be disposed of, is based on price only, the contract shall be awarded to the bidder with the highest price.

- (2) Where written bids are received, the evaluation team shall-
- (a) correct any arithmetic errors;
  - (b) convert the bids to a common currency; and
  - (c) compare the bid price with the valuation of the asset or reserve price, where appropriate.

(3) Where it is reasonable to conduct and conclude the evaluation immediately in the presence of bidders at a public bid opening, the procuring and disposing entity may do so for the purpose of establishing whether the highest priced bid has been submitted by more than one bidder and a rebidding procedure is necessary in accordance with regulation 114.

(4) Notwithstanding the provisions of subregulation (3), a procuring and disposing entity shall not declare the best evaluated bid or contract award at the bid opening or any re-bidding procedure.

#### **116. Evaluation based on price and other factors**

(1) Where the evaluation is based on price and other factors, the eligibility requirements or evaluation criteria and methodology shall be stated in the bidding document.

(2) The eligibility requirements referred to in subregulation (1) shall be evaluated on a pass or fail basis.

(3) A procuring and disposing entity may include nationality as an eligibility requirement.

(4) Compliance with other evaluation criteria shall be evaluated on a pass or fail basis, wherever possible.

(5) Notwithstanding the provisions of subregulation (4), compliance with other evaluation criteria may include an evaluation of the relative merits of each bid in exceptional circumstances, but the use of such evaluation criteria shall be fully justified and approved by the Board or its competent committee prior to the issue of the bidding documents.

(6) The evaluation under this regulation shall use the following methodology-

- (a) preliminary examination to assess the eligibility of bidders on a pass or fail basis, rejecting any bidders who fail to meet the eligibility criteria;
- (b) application of any other evaluation factors in the manner stated in the bidding document;
- (c) price evaluation to-
  - (i) correct any arithmetic errors,
  - (ii) convert the bids to a common currency, if necessary, and
  - (iii) compare the bid price with the valuation of the assets or reserve price, where appropriate.

(7) A recommendation for a contract award shall be in accordance with the methodology in the bidding documents.

(8) A contract award shall be recommended to the bidder with the highest price, which meets the eligibility requirements and passes the evaluation criteria, subject to any reservations in regard to the valuation or reserve price.

(9) Notwithstanding the provisions of subregulation (8), where the evaluation criteria include an evaluation of the relative merits of each bid in accordance with subregulation (5), a contract award shall be recommended to the bidder with the best evaluated bid, in accordance with the methodology stated in the bidding document.

#### **117. Evaluation teams and reports**

(1) Where bids are oral under the public auction method, no evaluation team or evaluation report shall be required.

(2) Notwithstanding the provisions of subregulation (1), the name of the successful bidder and the contract price shall be reported to the Board or its competent committee.

(3) Where written bids are received, the evaluation shall be conducted by an evaluation team, in accordance with the provisions of these Regulations.

(4) Where bids are written, an evaluation report shall be produced and submitted to the



Board or its competent committee for approval, prior to contract award.

(5) Where evaluation is on the basis of price only, the evaluation report shall detail-

- (a) the price of each bid opened;
- (b) the correction of any arithmetic errors and the conversion to a common currency, if necessary;
- (c) a comparison of the price of the bid with the valuation or reserve price, if any, and an assessment of whether the bid price offers the best available return for the procuring and disposing entity;
- (d) a statement of the best evaluated bid;
- (e) a recommendation as to whether negotiations are needed prior to the award of the contract; and
- (f) a recommendation for an award of the contract or any reservations in regard to the valuation or reserve price.

(6) Where evaluation includes factors, other than price, the evaluation report shall detail-

- (a) whether a bidder was eligible or not eligible;
- (b) the results of the application of any other evaluation criteria relevant to public interest;
- (c) the price of each bid opened;
- (d) the correction of any arithmetic errors and the conversion to a common currency, if necessary;
- (e) a comparison of the price of the bid against the evaluation criteria and whether the bid offers the best available return for the procuring and disposing entity;
- (f) a statement of the best evaluated bid;
- (g) a recommendation as to whether negotiations are needed prior to the award of the contract; and
- (h) a recommendation for an award of the contract or any reservations with regard to the valuation or reserve price.

#### **118. Negotiations under competitive methods**

(1) Post-bid negotiations may be undertaken where-

- (a) the highest bid falls short of the reserve price, valuation or anticipated sale price of the assets; or
- (b) there is a need to negotiate the conditions of sale.

(2) Following approval of the evaluation report, the procedure for negotiation shall be as follows-

- (a) the evaluation team shall detail the nature of the proposed negotiations, listing the points that are to be clarified or discussed and the objectives to be obtained in a negotiations plan;
- (b) the Board or its competent committee shall approve the negotiation plan prior to any negotiations taking place;
- (c) negotiations shall be held with the best evaluated bidder, with at least three members of staff of the procuring and disposing entity present, except that the members of staff of the procuring and disposing entity, at the negotiations, shall not commit the procuring and disposing entity, to any arrangement, but shall seek the approval of the Board or any of its committees prior to confirming any agreement reached;
- (d) the negotiations team shall report, in writing, to the Board or any of its committees on the achievements of the negotiations in relation to the objectives of the negotiation document and shall submit minutes of the meeting. The report shall state whether the negotiation objectives have been substantially achieved and shall contain a recommendation to-
  - (i) proceed with the contract award to the recommended bidder, incorporating the agreements reached during negotiations,
  - (ii) revise the negotiation objectives and hold further negotiations, or

- (iii) terminate the negotiations, reject the bidder and invite the next ranked bidder for negotiations.
- (3) The Board or any of its committees may-
  - (a) approve the recommendations;
  - (b) request further negotiations on specific points,
  - (c) reject the recommendations and give reasons therefor; or
  - (d) cancel the negotiations in their entirety.
- (4) The results of any approved negotiations shall be incorporated into the contract document.
- (5) If negotiations are commenced with the next ranked bidder, the procuring and disposing entity shall not reopen earlier negotiations and the original bidder shall be informed of the reasons for termination of the negotiations.

#### **119. Negotiations under direct negotiation**

- (1) Under direct negotiation, negotiations are not permitted until after a written bid has been received and evaluated.
- (2) The procedure for negotiation, under direct negotiation, shall be-
  - (a) the procuring and disposing entity shall issue a written request for a bid;
  - (b) submission of a written bid shall be required;
  - (c) the evaluation team shall evaluate the bid received for compliance with the written invitation, compare the bid price with the professional valuation and apply any other evaluation criteria;
  - (d) the evaluation team shall detail the nature of the proposed negotiations, listing the points that are to be clarified or discussed and the objectives to be obtained in a negotiations plan;
  - (e) the Board or any of its committees shall approve the negotiations plan prior to any negotiations taking place;
  - (f) negotiations shall be held with the bidder, with at least three members of staff of the procuring and disposing entity present except that the members of staff of the procuring and disposing entity shall not, at the negotiations, commit the procuring and disposing entity to any arrangements, but shall seek the approval of the Board or any of its committees prior to confirming any agreement reached;
  - (g) the negotiations team shall report, in writing, to the Board or any of its committees on the achievements of the negotiations in relation to the objectives of the negotiations document and shall submit minutes of the meeting; and
  - (h) the Board or any of its committees may-
    - (i) approve the outcome of the negotiations in their entirety,
    - (ii) request further negotiations on specific points, or
    - (iii) reject and cancel the negotiations in their entirety.

(3) The results of any approved negotiations shall be incorporated into the contract document.

#### **120. Failure to reach the reserve price**

- (1) Where the best evaluated bid is less than the reserve price, the Board or any of its committees, in consultation with the Accounting Officer, may-
  - (a) obtain a further valuation from an independent source;
  - (b) negotiate the price with the best evaluated bidder;
  - (c) arrange for new bids to be submitted;
  - (d) use an alternative method of disposal, which is likely to obtain a higher price; or
  - (e) sell the assets at the reduced price;
- (2) In deciding on the appropriate action to be taken under subregulation (1), the Board or any of its committees and the Accounting Officer shall take into consideration-
  - (a) the difference between the best evaluated bid and the valuation or reserve price; and

- (b) the likely costs of the action.

#### **121. Award of contract**

An award of contract shall-

- (a) in the case of a public auction, be by a declaration of the successful bidder at the time of bidding; or
- (b) in the case of all other methods of disposal, be by a decision of the Board or any of its committees.

#### **122. Contract placement**

(1) Where a contract award is by a decision of the Board and its competent committee, a contract placement shall be by the issue of a contract document to the successful bidder.

(2) The contract document shall be as specified in the bidding document.

(3) No communication, in any form, that would bind the procuring and disposing entity to a contract with the provider shall be permitted prior to approval of the award of contract by the Board or any of its committees.

(4) The contract document shall include-

- (a) the price to be paid by the successful bidder;
- (b) any subsidiary, linked assets to be included in or excluded from the sale;
- (c) the date for delivery or collection of the assets;
- (d) who is responsible for transporting the asset;
- (e) the hand-over procedure and any documentation to be transferred;
- (f) the mechanism and date for payment of the contract price; and
- (g) who is responsible for any legal obligations linked to the assets.

(5) All contract awards shall be advertised by publication of a notice on the procuring and disposing entity's procurement and disposal notice board using the specified format.

(6) Where a bidder fails to make payment, in accordance with the terms of the disposal contract, the contract may be terminated, and a contract may be entered into with the next best bidder, if such bidder is known.

### **PART XII**

#### ***Methods for disposal of public assets (regs 123-138)***

#### **123. Selection of disposal method**

(1) A procuring and disposing entity shall select one of the following disposal methods-

- (a) public auction;
- (b) sealed bidding;
- (c) direct negotiations;
- (d) trade-in;
- (e) transfer to another procuring and disposing entity;
- (f) conversion or classification of assets into another form; or
- (g) destruction of assets.

(2) A procuring and disposing entity shall, when selecting a disposal method for an asset, take into account the following factors-

- (a) the potential market value of the asset;
- (b) the volume of the asset;
- (c) the number and location of potential bidders;
- (d) the location of the asset;
- (e) any restrictions on export or end-users;
- (f) national security or public interest issues;
- (g) legal or human rights issues;
- (h) environmental considerations;
- (i) the trade-in value of the asset; and
- (j) the possibility of transferring the asset to another procuring and disposing entity.

#### **124. Conditions for use of public auction**

(1) Disposal by public auction shall be used where there is a high volume of low value assets for which there is a large number of potential bidders and there are no conditions, end-user or export restrictions attached to the sale.

(2) Disposal by public auction may also be used where-

- (a) there is a large number of potential bidders for unusual or high value assets; or
- (b) there is a variety of assets to be disposed of in one location and an onsite auction could be arranged to avoid transport costs.

#### **125. Conditions for use of public bidding**

Disposal by public bidding may be used-

- (a) for high-value or unique assets;
- (b) for assets located in remote areas;
- (c) for assets that have a geographically dispersed potential market;
- (d) for assets with end-user or export restrictions attached to their sale; or
- (e) where conditions need to be attached to the sale, or post bid negotiations may be required.

#### **126. Conditions for use of direct negotiations**

(1) Disposal by direct negotiations may be used where-

- (a) the market is limited and a single buyer who is willing to pay the reserve price has been identified;
- (b) national security, public interest, legal or human rights issues or environmental considerations are served by selling to a particular company, group or individual;
- (c) a potential buyer is the tenant, occupier or the asset at the time the decision to dispose of the asset is made and it would be reasonable to give that person or body first option to buy the asset at the market rate;
- (d) assets are located on a potential buyer's premises on a hire or free use basis and it would be reasonable to give that person or body first option to buy the asset at the market rate.

(2) A detailed justification for the use of direct negotiation shall be approved by the Board of the competent committee prior to the commencement of disposal proceedings.

#### **127. Conditions for use of trade-ins**

(1) Disposal by trade-in may be used where the trade-in of surplus assets to offset the purchase price of new items provides a convenient, economic and efficient way to upgrade equipment.

(2) Notwithstanding the provisions of subregulation (1), trade-in shall not be used where it would prevent the operation of open and fair competition or reduce value for money in the procurement and disposal process.

#### **128. Conditions for use of disposal by transfer to another procuring and disposing entity**

(1) Disposal by transfer to another procuring and disposing entity may be used where another procuring and disposing entity is able to make further use of the asset.

(2) The cost of disposal by transfer from one procuring and disposing entity to another shall be agreed between the two procuring and disposing entities concerned.

(3) The transfer referred to in subregulation (1) may be at no cost if it is uneconomical to charge for the asset.

#### **129. Conditions for use of disposal by conversion or classification of assets into another form**

Disposal by conversion or classification of assets into another form may be used-

- (a) on grounds of national security or public interest, legal or human rights issues or environmental considerations; or
- (b) where the asset has no residual value in its current form, but some sale value can be obtained through conversion or classification into another form.

### **130. Conditions for use of disposal by destruction of assets**

Disposal by destruction of assets is the least favoured method of disposal, but may be used-

- (a) on the grounds of national security or public interest, legal or human rights issues or environmental considerations; or
- (b) where the asset has no residual value and it cannot be transferred to another procuring and disposing entity or converted or classified into another form with any value.

### **131. Public auction**

(1) The disposal process under public auction shall follow the disposal process set out in subregulations (2) to (15).

(2) Any submission to the Board or any of its committees in respect of disposal by public auction shall be made in such format as the Board may prescribe.

(3) When undertaking disposal by public auction, the procuring and disposing entity shall appoint a professional auctioneer to conduct the process on its behalf.

(4) Any valuation of assets to be disposed of by public auction may be done by the auctioneer, who will be responsible for disposing of the assets.

(5) Bids relating to assets for disposal by public auction shall be solicited through a notification of public auction using such format as the Board may prescribe.

(6) No formal bidding documents shall be issued in relation to assets for disposal by public auction, and any additional information, such as an auctioneer's catalogue shall be for information purposes only and shall not be considered a bidding document.

(7) Bids in relation to assets for disposal by public auction shall be oral and the procedure for bidding shall be specified by the auctioneer in accordance with normal auction practices. There shall be no minimum bidding period.

(8) Bids, at a public auction, shall be evaluated on the basis of price only.

(9) Negotiations shall not be permitted under the disposal by public auction method.

(10) The contract shall be awarded to the bidder offering the highest price, as determined by the auctioneer, and the successful bid shall be declared at the auction.

(11) A written contract document shall not be required under disposal by public auction.

(12) The successful bidder shall be required to pay at least 50 per cent of the contract price, immediately after the award of contract.

(13) The successful bidder shall be required to pay the balance of the contract price within five days of the award of contract.

(14) Where a bidder fails to make payment, in accordance with subregulations (12) and (13), the contract may be terminated.

(15) The disposal process followed for public auction, shall be based on standard documentation approved by the Board.

### **132. Appointment of an auctioneer**

(1) When undertaking disposal by public auction, the procuring and disposing entity shall appoint a professional auctioneer to conduct the process on its behalf, and such auctioneer shall be licensed.

(2) An auctioneer shall be appointed using the appropriate procurement method for services, which method shall take into account such criteria as-

- (a) the auctioneer's commission rates;
- (b) the locations of the auctioneers and transport costs for the assets to be disposed of;
- (c) the auctioneer's facilities;
- (d) the auctioneer's ability to achieve optimum returns;
- (e) the past performance and integrity of the auctioneer;
- (f) the viability of the auctioneer's business; and
- (g) the provision of any performance bond in the format and form required by the procuring and disposing entity

(3) The appointment of an auctioneer shall be confirmed through a written contract, which shall include the following-

- (a) the commission rate and any other fees payable to the auctioneer and the payment terms;
- (b) the method and timing for payment of proceeds to the procuring and disposing entity;
- (c) responsibility for and payment of any transport costs, including costs for any assets returned unsold;
- (d) the date on which, or the period within which, the auction will be held; and
- (e) the information and any conditions of sale to be included in the auction notice, auctioneer's catalogue or any similar document.

(4) The procuring and disposing entity shall ensure that a receipt is received for all assets delivered to, or collected by, the auctioneer.

### **133. Public bidding**

(1) The disposal process under public bidding shall follow the disposal process set out in subregulations (2) to (13).

(2) Any submission to the Board or any of its committees in respect of disposal by public bidding shall be made using such format as the Board may stipulate in the guidelines.

(3) Bids shall be solicited by the publication of a public invitation notice using such format as the Board may prescribe, indicating that interested bidders may obtain the bidding document from the procuring and disposing entity.

(4) Bidding documents may be sold under public bidding:

Provided that the cost of the documents shall be calculated to cover only the cost of copying and issuing the documents and shall not include any element of profit for the procuring and disposing entity.

(5) The minimum bidding period under public bidding shall be 10 days.

(6) The procuring and disposing entity shall require the bidder to submit sealed, written bids.

(7) The bid opening process shall be a public bid opening in accordance with the provisions of these Regulations.

(8) Evaluation based on price only shall be the preferred evaluation methodology under public bidding.

(9) Evaluation based on price and other factors may be used, in public bidding, in accordance with these Regulations.

(10) Post-bid negotiations may be undertaken under public bidding in accordance with the conditions and procedures in these Regulations.

(11) Contract award shall be by a decision of the Board or its competent committee in response to a recommendation from the procuring and disposal entity.

(12) Contract placement shall be by way of issue of a contract document to the successful bidder

(13) The standard documentation used and disposal process followed for public bidding shall be in accordance with such format and process as the Board may prescribe.

### **134. Direct negotiations**

(1) The disposal process under direct negotiations shall follow the disposal process set out in subregulations (2) to (13) of this regulation.

(2) Submissions to the Board or any of its committees, in respect of disposal by direct negotiations, shall be made in such format as the Board may prescribe.

(3) A valuation shall always be obtained where an asset is to be disposed of through direct negotiation.

(4) A bid, under direct negotiations, shall be solicited through the issue of a written bidding document which shall be based on the appropriate standard document.

(5) There shall be no minimum bidding period for disposal by direct negotiation.

(6) The procuring and disposing entity shall require the bidder, under direct negotiations, to submit a sealed, written bid.

(7) The bid opening process under direct negotiation shall be a non-public bid opening in accordance with these Regulations.

(8) Evaluation based on price only shall be the preferred evaluation methodology under direct negotiation.

(9) Evaluation based on price and other factors may be used, under direct negotiation, in accordance with these Regulations.

(10) Post-bid negotiations may be undertaken under direct negotiations in accordance with these Regulations.

(11) Contract award shall be by a decision of the Board or its competent committee in response to a recommendation from the procuring and disposal entity.

(12) Contract placement shall be by way of issue of a contract document.

(13) The standard documentation used and the disposal process followed for direct negotiations shall be in accordance with such format as the Board may prescribe.

### **135. Trade-in**

(1) A procuring and disposing entity shall obtain a valuation of the asset where the asset is to be disposed of through trade-in.

(2) Under disposal by trade-in, the disposal process shall be an integral part of the relevant procurement process and shall follow the procurement rules in Part III.

(3) A procuring and disposing entity shall, during the disposal process, use the appropriate procurement method in accordance with the provisions of Part V:

Provided that the estimated trade-in value shall not be deducted from the estimated value of the procurement in selecting the appropriate procurement method.

(4) A procuring and disposing entity shall obtain an approval from the Board or any of its committees to include the trade-in requirement in the procurement prior to the commencement of the procurement proceedings.

(5) The bidding document and any invitation notice, where an asset is to be disposed of through trade-in, shall clearly state that the procurement involves a trade-in arrangement.

(6) The bidding document, where an asset is to be disposed of through trade-in, shall be drafted using the appropriate procurement document issued by the Board.

(7) The advertisement of the opportunity, issue of solicitation documents, bidding period and the receipt and opening of bids, where an asset is to be disposed of through trade-in, shall be in accordance with these Regulations.

(8) The evaluation of bids where an asset is to be disposed of through trade-in, shall be done in the appropriate methodology for the procurement requirement.

(9) The trade-in value offered for the asset to be disposed of through trade-in shall be included in the financial evaluation only in the manner stated in the bidding document.

(10) The evaluation of the trade-in offers shall be clearly stated in the evaluation report.

(11) Where factors, other than price, need to be taken into account in the disposal process, disposal by trade-in shall not be used.

(12) Negotiations may be permitted in accordance with the relevant rules on procurement.

(13) An award of contract shall be in accordance with the relevant rules on procurement.

(14) The contract document shall be in the form of the procurement document issued by the Board.

(15) Responsibility for contracts management of the procurement contract and the disposal element shall be clearly defined within the procuring and disposing entity, and where separate staff are responsible for each element, they shall work together, as appropriate.

(16) The standard documentation used and disposal process followed in trade-in shall be in accordance with such format as the Board may prescribe.

### **136. Transfer to another procuring and disposing entity**

(1) Submissions to the Board or any of its committees in respect of disposal by transfer to another procuring and disposing entity shall be made in such format as the Board may prescribe.

(2) Where disposal is by transfer to another procuring and disposing entity, the arrangements for the transfer shall be discussed and agreed between the two entities.

(3) The agreement referred to in subregulation (2) shall include-

- (a) the cost to be paid by the beneficial entity, which cost may be none if it is uneconomic to charge for the asset;
- (b) any subsidiary, linked assets to be included in or excluded from the transfer;
- (c) the date for the transfer;
- (d) responsibility for transporting the asset;
- (e) the hand-over procedure and any documentation to be transferred;
- (f) the mechanism and date for payment for any cost; and
- (g) who is responsible for any legal obligations linked to the asset.

(4) The arrangements for the transfer to another procuring and disposing entity shall be confirmed in writing using such format as the Board may prescribe and such arrangements shall be approved and signed by the accounting officers of both procuring entities.

(5) The recipient procuring and disposing entity shall issue an authorised receipt of the assets to the originating procuring and disposing entity.

(6) The standard documentation used and disposal process followed for transfer to another procuring and disposing entity shall be in accordance with such format and process as the Board may prescribe.

### **137. Destruction of assets**

(1) Submissions to the Board or any of its committees in respect of disposal by destruction of assets shall be made using such format as the Board may prescribe.

(2) Where disposal is by destruction of assets, the procuring and disposing entity shall either-

- (a) undertake the destruction itself; or
- (b) identify the competent authority or an appropriate provider to undertake the destruction.

(3) A procuring and disposing entity shall obtain approval from the accounting officer prior to the destruction of an asset being undertaken.

(4) The method of destruction of an asset under disposal by destruction of assets shall be appropriate to-

- (a) the assets being disposed of; and
- (b) the circumstances giving rise to the destruction, including any grounds of national security or public interest.

(5) A signed certificate of destruction shall be obtained from the authorised official within the procuring and disposing entity, competent authority or provider and shall be kept as part of the record of disposal proceedings.

## **FIRST SCHEDULE CERTIFICATE OF AVAILABILITY OF FUNDS FOR PROCURING PURPOSES**

*(regulation 7(4))*



1. I ..... the Accounting Officer for the Ministry of ..... do hereby certify that funds amounting to P..... (x) required for the procurement activity stated in paragraph 2 below are available by virtue of having been provided for in the:
- 1.1. approved estimates for the year and forming part of the vote awarded by Parliament on the .....; or
- 1.2. draft estimates approved by Cabinet on the .....as evidenced by the attached statement of the Permanent Secretary, Ministry of Finance and Development Planning.
- 2 The above stated funds are available to finance the procurement activity entitled which is to the purpose of .....

CERTIFIED by the Accounting Officer (or his/her Authorised Representative)

this ..... day of .....200.....

.....	.....
Name	Signature

WITNESS: .....	.....
Name	Signature

OFFICIAL STAMP:

*Note:* (x) the amount of the funds must be stated numerically and in words.

**SECOND SCHEDULE**  
**PROCUREMENT REQUIREMENTS**  
*(regulation 27 (1))*

Procurement Number					
Entity Name	Department Name	Budget Year	Sequence Number	Bid Number	Com

Subject of Procurement		Location/Site	
------------------------	--	---------------	--

Item No	Description (A detailed description of the works, services or supplies)	Quantity	Unit of Measure	Estimated Unit Cost

Currency.....  
Estimated Total Cost

Funds Availability

Head No.	Sub Head	Item	Description

Signatures are required below to certify that (1) the works, services or supplies described above are required and that the statement of Requirements is granted to proceed with the procurement and that (3) funds are available or budgeted for the requirement.

(1) (Confirmation of Need)  
(Originating officer)

(2) (Procurement requisition)  
(Authorising Officer/Director)

(3) Confirmation of Fund  
Accounting Officer unless

Signature:.....

.....

.....

Name:.....

.....

.....

Position:.....

.....

.....

Date:.....

.....

.....

**THIRD SCHEDULE**  
**PRE-QUALIFICATION REQUIREMENTS**  
*(regulation 28 (4))*  
**PART I**  
**CONTRACTOR'S STATEMENTS OF EXPERIENCE**

1. Name of company/firm: .....
- Contact person:.....
2. Mailing address of company/firm: .....
- Physical address of company/firm: .....
- Telephone No. .... Fax No.....
3. State of organization: ..... Date established: .....
4. Any Licenses held: .....
5. Officers or principals of company/firm: .....
- .....
- .....
- .....
6. Have Principals ever had licenses suspended? If yes, attach explanation. ....
7. Has company/firm ever been suspended from a project? If yes, attach explanation. ....
8. Has firm ever been denied pre-qualification or disqualified from bidding public procurement or asset disposal proceedings? ..... If yes, attach explanation.
9. In the past five years, has your company/firm filed a claim on public procurement or asset disposal proceedings? Yes ..... No .....
- Litigation? Yes ..... No ..... If yes, attach a brief explanation and results of each claim or litigation.
10. In the past five years, has a claim been filed against your company/firm on a public works project? Yes ..... No .....
- Litigation? Yes ..... No ..... If yes, attach a brief explanation and results of each claim or litigation.
11. Experience record of company/firm and staff (attach record which includes name, position and years of experience):
- .....
- .....
- .....
- .....

12. Provide the following information for all public works and private sector construction projects completed within the past five years for individual contracts over P100,000, **Names and references must be current and verifiable.** Attach additional sheets that contain all the information. List projects in chronological order, most recently completed project first.

Name of Project and Location

Owner of Project

Total Value of Construction (include contract award amount and any other charge)

Completion Date

Owner reference (include name, current phone no., and fax no.)

**PART II**  
***CONTRACTOR'S FINANCIAL STATEMENT***

(The certificate of a Public Accountant must be attached. Complete report prepared by Accountant may be substituted.)

STATEMENT DATE: .....

**ASSETS**

*Current Assets*

1.	Free and unrestricted, cash on hand .....	P .....	
2.	Notes receivable .....	P .....	
3.	Accounts receivable from completed contracts .....	P .....	
4.	Sums earned on incomplete contracts .....	P .....	
5.	Other accounts receivable .....	P .....	
6.	Advances to construction joint ventures .....	P .....	
7.	Material in stock not included in Item 4 .....	P .....	
8.	Short term investment (realisable within a year .....	P .....	
9.	Vehicles .....	P .....	
10.	Other current assets .....	P .....	
	Subtotal of Current Assets .....		P .....

*Fixed and Other Assets*

11.	Land and Buildings .....	P .....	
12.	Construction Plant and Equipment .....	P .....	
13.	Furniture and Fixtures .....	P .....	
14.	Investments of a non-current nature .....	P .....	
15.	Other non-current assets .....	P .....	
	Subtotal of Fixed and Other Assets .....		P .....
	Total of Assets .....		P .....

## LIABILITIES

### *Current Liabilities and Provisions*

Notes payable.....	P.....
16. Accounts payable .....	P.....
17. Bank overdrafts/cash credit .....	P.....
18. Taxes, fees, rent, rates, etc. payable to public or local Authorities.....	P.....
19. Other current liabilities .....	P.....
Total of Current Liabilities .....	P.....

### *Other Liabilities and Reserves*

20. Long-term loans and advances from banks.....	P.....
21. Long-term loans and advances from others.....	P.....
22. Debentures.....	P.....
23. Bonds.....	P.....
24. Real estate encumbrances .....	P.....
25. Equipment obligations secured by equipment .....	P.....
26. Other non-current liabilities.....	P.....
27. Reserves .....	P.....
Subtotal of Current Liabilities and Reserves.....	P.....

### *Capital and Surplus*

28. Capital stock, paid up .....	P.....
29. Surplus (or net worth) .....	P.....
30. Capital Reserves.....	P.....
31. Other Reserves.....	P.....
Subtotal of Capital and Surplus.....	P.....
Total Liabilities and Capital .....	P.....

### *Contingent Liabilities*

32. Liabilities of notes receivable, discounted or sold .....	P.....
33. Liabilities on accounts receivable pledged, assigned or sold .....	P.....
34. Liability as guarantor on contract or on accounts of others .....	P.....
35. Other contingent liabilities .....	P.....
Total Contingent Liability .....	P.....

## **PART III**

### ***CERTIFICATE OF PUBLIC ACCOUNTANT***

(Certification prepared, signed and included in report prepared by Accountant may be substituted.)

1. FOR AN AUDIT OF A FINANCIAL STATEMENT, COMPLETE THIS PART.

I/we have examined the financial statement of.....

..... as of .....  
(Contractor) (Date)

Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying financial statement included on pages to inclusive, sets forth fairly the financial condition of .....  
..... as of ..... ,  
(Contractor) (Date)

in conformity with generally accepted accounting principles.

..... (Print Name of Firm) ..... (Accountant must sign here)

..... (Telephone Number) ..... (License Number/state)

2. FOR A REVIEW ONLY OF A FINANCIAL STATEMENT, COMPLETE THIS PART

I/we have reviewed the accompanying financial statement of.....

..... as of .....  
(Contractor) (Date)

The information included in the financial statements is the representation of the management of the above firm.

Based on (our) review with the exception of the matter(s) described in the following paragraph(s), (we are) not aware of any material modifications that should be made to the accompanying financial statement in order for them to be in conformity with generally accepted accounting principles.

..... (Print Name of Firm) ..... (Accountant must sign here)

..... (Telephone Number) ..... (License Number/state)

**Note:** This review consists principally of inquiries of management and appropriate analytical procedures applied to this financial data. It is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objectives of which is the expression of an opinion regarding financial statements as a whole. Accordingly, we have not expressed such opinion.

**Special note to Accountant:**

The above certificate should be issued by an independent public accountant or statutory auditors of the

firm, who are not in the employ of the company/firm and not Directors, Partners or co-owners of the company /firm.

**FOURTH SCHEDULE**  
**PART I**  
**QUALITY AND COST BASED SELECTION EVALUATION STAGES**

*(regulation 43 (3))*

**STAGE ONE**

**Evaluation**

The evaluation of a bid shall be conducted, following the opening of a technical bid, by-

- (a) conducting a preliminary examination to determine whether or not a bid is qualified and to determine its responsiveness to the terms of the bidding document; and
- (b) failing and eliminating from further evaluation a bid determined to be non-responsive and non-qualified.

**STAGE TWO**

**Technical Evaluation**

1. The technical evaluation of a bid shall be conducted by means of-
  - (a) evaluating each bid against the technical evaluation criteria;
  - (b) marking, on a scale of 1 to 100 each criterion; and
  - (c) weighing of the marks attained by each technical bid and recording them as technical scores.
2. (1) The technical evaluation of a bid shall be conducted in accordance with the following procedure-
  - (a) the procuring entity shall normally divide the criteria into sub-criteria to assist in the assessment of technical bids;
  - (b) each bid shall be compared to the minimum qualifying technical mark, and a bid which does not reach the minimum shall be eliminated from further evaluation;
  - (c) the bidding document shall state the technical evaluation criteria, the weights and the minimum qualifying mark;
  - (d) the procuring unit shall prepare a technical evaluation report of the technical bids received and such report shall-
    - (i) substantiate the results of the evaluation,
    - (ii) describe the relative strengths and weaknesses of the bids,
    - (iii) indicate which bids are recommended to proceed to the cost evaluation, and (iii) be approved by the evaluation committee prior to the cost evaluation;
  - (e) the following weights are indicative, under paragraph 1 (c), and may be adjusted to the specific circumstances of the procurement-

Specific experience:	5 to 10 points
Methodology proposed:	20 to 50 points
Key personnel:	30 to 60 points
Transfer of knowledge:	0 to 10 points
Participation by nationals:	0 to 10 points
Total	100 points
  - (f) all records relating to the evaluation, such as individual mark or score sheets shall be retained until completion of the procurement.
3. Abidder who has secured the minimum qualifying mark shall be notified and be advised of the date and time set for the opening of financial bids, in accordance with the following-
  - (a) the opening date of financial bids shall not be sooner than two weeks following the notification date;
  - (b) financial bids shall be opened publicly; and
  - (c) the name of the bidder, the technical score and the bid price shall be read out at the public opening.

**STAGE THREE**

**Cost Evaluation**

1. (1) A cost evaluation of a bid shall be conducted by reviewing the-
  - (a) financial bids to correct any arithmetic errors; and
  - (b) conversion of bids to a single currency as stated in the invitation to bid.

- (2) For the purposes of evaluation, cost shall exclude local taxes, but shall include other reimbursable expenses, such as travel, translation, printing of the report or secretarial expenses.
2. (1) Abid shall be rated by giving a financial score of-
  - (a) 100 to the bid with the lowest cost; and
  - (b) an inversely score, proportional to the lowest bid cost, to other bids.
- (2) Alternatively a directly proportional cost or other methodology may be used in allocating a mark for the cost, provided that such methodology is fully described in the Invitation to Bid.
3. (1) The total score shall be obtained by-
  - (a) weighting the technical and cost scores; and
  - (b) adding the technical and cost scores together to obtain the combined score.
- (2) The weight for the cost shall normally be between 10 and 20, but, in no case shall it be greater than 30 points out of a total of 100.
- (3) The weight for the cost score shall be chosen by considering the-
  - (a) complexity of the assignment; and
  - (b) the relative importance of the technical aspect of the bids.
- (4) The method proposed for the weighting of the costs and technical scores shall be stated clearly in the invitation to bid.
- (5) The bidder obtaining the highest total score shall be recommended for an award of a contract, subject to any negotiations that may need to be held, and such negotiations shall be carried out in accordance with the provisions of these Regulations.

## **PART II**

### **QUALITY-BASED SELECTION EVALUATION STAGES**

*(regulation 45 (2))*

#### **STAGE ONE**

##### ***Preliminary Examination of Technical Bid***

1. Following the opening of a technical bid, a preliminary examination shall be conducted to determine-
  - (a) whether a bidder has qualified, on the basis of having passed or failed the selection, for the bid; and
  - (b) the responsiveness of bids to the terms of the bidding document.
2. Abid that fails to qualify or that is found to be non-responsive to the terms of the bidding document shall be eliminated from further evaluation.

#### **STAGE TWO**

##### ***Technical Bid Evaluated Against Technical Evaluation Criteria***

1. A technical evaluation of a bid shall be conducted-
  - (a) to evaluate each technical bid against the technical evaluation criteria; and
  - (b) following the same method of evaluation as that utilised for the QCBS selection.
2. (1) The Evaluation Committee shall prepare a technical evaluation report of the technical bids received, which shall-
  - (a) substantiate the results of the evaluation;
  - (b) describe the relative strengths and weaknesses of the bids; and
  - (c) indicate which bid is recommended to proceed to the Cost Evaluation.
- (2) The technical evaluation report shall be approved by the Contracts Committee prior to the Cost Evaluation.

#### **STAGE THREE**

##### ***Cost Evaluation***

1. A cost evaluation shall be conducted by the-
  - (a) bidder who submitted the best evaluated technical bid being invited to submit a financial bid, where only technical bids were submitted; or
  - (b) opening of the financial bid of the bidder who submitted the best evaluated technical bid, where both technical and financial bids were submitted under the dual envelope method.
2. The financial bid shall be negotiated by the procuring entity in accordance with the provisions of these Regulations.

## **PART III**

### **FIXED BUDGET SELECTION EVALUATION STAGES**



(regulation 46 (3))

### **STAGE ONE**

#### ***Preliminary Examination***

1. Following the opening of a technical bid, a preliminary examination shall be conducted to determine-
  - (a) Whether a bidder has qualified, on the basis of having passed or failed the selection for the bid; and
  - (b) the responsiveness of bids to the terms of the bidding document.
2. A bid that fails to qualify or that is found to be non-responsive to the terms of the bidding document shall be eliminated from further evaluation.

### **STAGE TWO**

#### ***Technical Bid Evaluated Against Technical Evaluation Criteria***

1. A technical evaluation of a bid shall be conducted-
  - (a) to evaluate each technical bid against the technical evaluation criteria; and
  - (b) following the same method of evaluation as that utilised for the QCBS selection.
2. (1) The Evaluation Committee shall prepare a technical evaluation report of the technical bids received, which report shall-
  - (a) substantiate the results of the evaluation;
  - (b) describe the relative strengths and weaknesses of the bids; and
  - (c) indicate which bid is recommended to proceed to the Cost Evaluation.(2) The Evaluation Committee shall prepare and approve a technical evaluation report prior to the commencement of a cost evaluation.
3. (1) Each bidder shall be advised of the date and time set for the opening of the financial bids.  
(2) Financial bids shall be opened publicly and at the public opening there shall be publicly read out the-
  - (a) name of the Bidder;
  - (b) technical score; and
  - (c) bid price.

### **STAGE THREE**

#### ***Cost Evaluation***

1. A cost evaluation shall be conducted, and any bid that exceeds the budget shall be eliminated.
2. Subject to any negotiations that may need to be held, the bidder who has submitted the highest ranked technical bid, of bids submitted within the budget, shall be recommended for the award of contract.
3. Negotiations shall be carried out in accordance with the provisions of these Regulations.

### **PART IV**

#### ***LEAST COST SELECTION SUPPLIES AND WORKS EVALUATION STAGES***

(regulation 47 (4))

### **STAGE ONE**

#### ***Preliminary Examination***

1. A preliminary examination of a bid shall be conducted to determine-
  - (a) whether a bidder has qualified, on the basis of having passed or failed the selection for the bid; and
  - (b) the responsiveness of bids to the terms of the bidding document.
2. A bid that fails to qualify or that is found to be non-responsive to the terms of the bidding document shall be eliminated from further evaluation.

### **STAGE TWO**

#### ***Technical Evaluation***

A technical evaluation shall be made to determine technical compliance with the specification or scope of works in the bidding document, only for bids that have, in terms of paragraph 1 of Stage One-

- (a) qualified;
- (b) been responsive.

Technically non-compliant bids shall be eliminated from further evaluation.

### **STAGE THREE**

#### ***Cost Evaluation***

1. A cost evaluation only of technically compliant bids shall be conducted to-
  - (a) correct arithmetical errors; and
  - (b) convert bids to a common currency.
2. An evaluation committee may regard a bid as responsive or technically compliant if it contains-
  - (a) minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bidding documents;
  - (b) errors or oversights that are capable of being corrected without touching on the substance of the bid.
3. Any minor deviations shall be-
  - (a) quantified, to the extent possible;
  - (b) appropriately taken account of in the evaluation and comparison of bids; and
  - (c) clearly stated in the evaluation report.
4. The evaluation committee shall prepare an evaluation report of the bids received, which shall contain details of the-
  - (a) results of the evaluation;
  - (b) reasons for the rejection of any bids; and
  - (c) recommendation for the award of contract.

## **PART V**

### **LEAST COST SELECTION SERVICES-EVALUATION STAGES**

*(regulation 48 (3))*

#### **STAGE ONE**

##### ***Preliminary Examination***

1. A preliminary examination shall be conducted to determine-
  - (a) whether a bidder has qualified, on the basis of having passed or failed the selection for the bid; and
  - (b) the responsiveness of bids to the terms of the bidding document.
2. A bid that fails to qualify or that is found to be non-responsive to the terms of the bidding document shall be eliminated from further evaluation.

#### **STAGE TWO**

##### ***Technical Bid Evaluated Against Technical Evaluation Criteria***

1. A technical evaluation of a bid shall be conducted-
  - (a) to evaluate each technical bid against the technical evaluation criteria; and
  - (b) following the same method of evaluation as that utilised for the QCBS selection.
2. A bidder who does not secure the minimum qualifying score shall be eliminated from the evaluation.
3. The evaluation committee shall prepare a technical evaluation report which shall be approved by the contracts committee prior to the cost evaluation.
4. (1) Bidders who have secured the minimum qualifying mark shall be notified and be advised of the date and time set for the opening of the financial bids.
  - (2) The opening date of the financial bids shall be a date two weeks after the notification date referred to in subparagraph (1).
  - (3) Financial bids shall be opened publicly, and, at the public opening, there shall be publicly read out the-
    - (a) name of the bidder;
    - (b) technical score; and
    - (c) bid price.

#### **STAGE THREE**

##### ***Cost evaluation***

1. (1) A cost evaluation shall be conducted by reviewing the-
  - (a) financial bids to correct any arithmetic errors; and
  - (b) conversion of bids to a single currency as stated in the invitation to bid.
  - (2) For the purposes of evaluation, cost shall exclude local taxes, but shall include other reimbursable expenses, such as travel, translation, printing of the report or secretarial expenses.
2. (1) Subject to any negotiations that may need to be held, the bidder who has submitted the highest ranked technical bid, of bids submitted within the budget, shall be recommended for the award

- of contract.
- (2) Negotiations shall be carried out in accordance with the provisions of these Regulations.

**PART VI**  
**QUALIFICATION SELECTION EVALUATION STAGES**

(regulation 49 (3))

**STAGE ONE**

***Expressions of Interest Evaluation***

1. The procuring entity shall-
  - (a) evaluate the expressions of interest together and with any supporting information; and
  - (b) select a bidder with the most appropriate qualifications and references, to whom the contract is to be awarded.
2. The Evaluation Committee shall-
  - (a) prepare a technical evaluation report of the expressions of interest received; and
  - (b) submit the technical evaluation report to the Contracts Committee for its approval.
3. The procuring entity shall not proceed to Stage Two of the evaluation procedure before obtaining the approval of the Contracts Committee.

**STAGE TWO**

***Cost Negotiations***

1. The procuring entity shall request the selected bidder to negotiate the terms of the contract for the provision of the services.
2. Negotiations shall be carried out in accordance with the provisions of these Regulations.

**FIFTH SCHEDULE**

**PRICE ADJUSTMENT FORMULA TO BE USED BY PROCURING ENTITIES WHERE NO  
INDUSTRY STANDARDS ARE AVAILABLE**

(regulation 81 (6))

Prices payable to the supplier, as stated in the contract, shall be subject to adjustment during performance of the contract to reflect changes in the cost of labour and material components in accordance with the formula:

$$P1 = P_0 \left( a + \frac{bL1}{L_0} + \frac{cM1}{M_0} \right) - P_0$$

In which:

- |       |   |   |
|-------|---|---|
| P1    | = | adjustment amount payable to the supplier   |
| P0    | = | contract price (base price)   |
| a     | = | fixed element representing profits and overheads included in the contract price and generally in the range of 5 to 15 per cent. |
| b     | = | estimated percentage of labour component in the contract price  |
| c     | = | estimated percentage of material component in the contract price  |
| Lo,L1 | = | labour indices applicable to the contract on the base date and date adjustment.   |
| Mo,M1 | = | material indices for the major raw material as applicable to the contract on the base for adjustment, respectively.             |

The coefficients a, b and c shall be specified by the purchaser in the bidding documents unless otherwise determined by the procuring entity. The sum of the three coefficients shall be one in every application of the formula. The bidder shall indicate the source of the indices and the base date indices in its bid. The base date is 30 days prior to the deadline for submission of the bids. The date of adjustment is.....weeks prior to the date of shipment (representing the mid-point of the period of manufacture).

Either party may invoke the above price adjustment formula subject to the following further conditions: Price adjustment will be applied only if the resulting increase or decrease is more than 2 per cent of the contract price.

No price adjustment shall be allowed beyond the original delivery dates unless specifically stated in the extension letter. As a rule, no price adjustment shall be allowed for periods of delay for which the supplier is entirely responsible. The purchaser will, however, be entitled to any decrease in the price of the goods and services subject to adjustment. The total adjustment under this clause shall be subject to a ceiling of plus or minus ten per cent to the contract price.

If the currency in which the contract price Po is expressed is different from the currency of the labour and material indices, a correction factor will be applied to avoid incorrect adjustments to the contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.

No price adjustment shall be payable on the portion of the contract price paid by the supplier as advance payment.

## **PUBLIC PROCUREMENT AND ASSET DISPOSAL (INDEPENDENT COMPLAINTS REVIEW COMMITTEE) REGULATIONS**

*(under section 130)*

*(31st March, 2006)*

### ARRANGEMENT OF REGULATIONS

#### REGULATIONS

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2. Interpretation

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18. Offence  
Schedule

S.I. 20, 2006

##### **PART I**

###### ***Preliminary (regs 1-2)***

#### **1. Citation**

These Regulations may be cited as the Public Procurement and Asset Disposal

(Independent Complaints Review Committee) Regulations.

## **2. Interpretation**

In these Regulations unless the context otherwise requires-

**"Board"** means the Public Procurement and Asset Disposal Board established under section 10 of the Act;

**"Independent Committee"** means the Independent Complaints Review Committee established under regulation 3;

**"member"** means a member of the Independent Committee appointed under regulation 3;

**"Secretary"** means Secretary of the Independent Committee appointed under regulation 8;

## **PART II**

### ***Establishment, Membership and Procedure of Independent Complaints Review Committee (regs 3-8)***

## **3. Establishment of Independent Committee**

(1) Pursuant to section 95 of the Act, there is hereby established a body to be known as the Independent Complaints Review Committee, which shall consist of five members appointed by the Minister.

(2) The Independent Committee shall consist of-

- (a) a Chairperson; and
- (b) four other members.

(3) A member of the Independent Committee shall be appointed for a period not exceeding five years.

(4) The Minister shall specify, when appointing members to the Independent Committee, such periods of appointment as ensure that the appointments of not more than one third of the members expire in any one year.

(5) In the absence of the Chairperson at any meeting the members present shall elect a Chairperson for that meeting from among themselves.

## **4. Disqualification from appointment**

(1) No person shall be appointed as a member of the Independent Committee or continue to hold office who has-

- (a) 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 discharged; or
  - (ii) made an assignment to, or arrangement or composition with, his creditors, which has not been rescinded or set aside; or
- (b) within the period of 10 years immediately preceding the date of his appointment or election, been convicted-
  - (i) of a criminal offence; or
  - (ii) outside Botswana of an offence which, if committed within Botswana, would have been a criminal offence, and sentenced to imprisonment for six months or more without the option of a fine, whether or not that sentence has been suspended, and for which he has not received a free pardon;
- (c) been convicted of an offence or dismissed from employment for an offence involving moral turpitude.

(2) The Minister shall suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that Committee member is so suspended he shall not carry out any duties or be entitled to any remuneration or allowances as a Committee member.

## **5. Removal and resignation**

(1) A member may resign from the Independent Committee by giving 30 days notice, in

writing, to the Minister.

(2) The Minister may remove a member from office if the Minister is satisfied that the member-

- (a) has been adjudged guilty of having acted improperly as a member of the Independent Committee; or
- (b) is inefficient;
- (c) has been found to be physically or mentally incapable of performing his or her duties efficiently, and the members medical doctor has issued a certificate to that effect; or
- (d) has failed to comply with the provisions of regulation 6 (1).

## **6. Disclosure of interest**

(1) Where a member is present at a meeting of the Independent Committee to which any matter is the subject of consideration and in which matter the member is directly or indirectly interested in a private capacity, the member shall forthwith upon the commencement of the meeting

- (a) disclose such interest and shall not, unless the Independent Committee otherwise directs, take part in any consideration or discussion of, or vote on, any question concerning that matter; and
- (b) recuse himself or herself from the meeting, unless the person is otherwise directed in terms of paragraph (a).

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member fails to-

- (a) disclose his or her interest in a matter before the Committee for consideration, in accordance with subregulation (1); or
- (b) recuse himself or herself from the meeting at which that matter is being considered, and the Independent Committee makes a decision which benefits the member, the decision shall be void to the extent to which it benefits that member.

(4) A person who contravenes the provisions of subregulation (1) commits an offence and is liable to a fine not exceeding P500 or for a term of imprisonment not exceeding one year or to both.

## **7. Procedure at meetings**

(1) Meetings of the Independent Committee shall be held at such times and at such places as the Chairperson may determine, and at least four ordinary meetings of the Independent Committee shall be held in each year.

(2) At least seven days notice shall be given of any meeting of the Independent Committee, except in the case of an emergency.

(3) Special meetings of the Independent Committee may be convened by the Chairperson when the Chairperson considers such meetings to be necessary or desirable, and shall be convened by him or her within one month on the request, in writing, of at least three members of the Independent Committee setting out clearly the purpose for which the meeting is to be convened.

(4) At any meeting of the Independent Committee any three members shall constitute a quorum.

(5) Decisions of the Independent Committee at any meeting shall be decided by a majority of the members present at that meeting, and where there is equality of votes the Chairperson, or the person acting as Chairperson at the meeting, shall have a casting vote.

(6) The Independent Committee may co-opt experts holding relevant qualifications and experience to participate in the deliberations of the Independent Committee, but such experts shall not vote on any motion before the Independent Committee.

(7) Except as may be otherwise provided in the Act and these Regulations, the Independent Committee shall regulate its own affairs and proceedings.

## **8. Secretary**

(1) The Minister shall appoint a public officer as secretary of the Independent Committee.

(2) The Secretary may require any person involved with public procurement and asset disposal to submit to the Independent Committee such information and data as the Independent Committee may consider necessary for the discharge of its functions.

### **PART III**

#### ***Complaints Procedure, orders and decisions of the Independent Committee (regs 9-14)***

## **9. Lodging of complaints**

(1) Subject to subregulation (2) the Independent Committee shall deal with any matter that arises in terms of section 103 (1) of the Act, such matter referred to in these Regulations as a complaint.

(2) The Independent Committee shall consider a complaint only where-

- (a) the complaint had, before submission to the Independent Committee, been submitted and considered under the review procedures of the Board and a decision of the Board had been made on the complaint; and
- (b) the complaint is lodged with the Independent Committee on application for review of the decision of the Board; and
- (c) the complaint is lodged in the format set out in regulation 10.

(3) A complaint shall be lodged with the Independent Committee not more than 14 days after the decision of the Board referred to in subregulation (2).

(4) A complaint fee equal to one per cent of the estimated tender value pertaining to the complaint shall be paid at the lodging of each complaint, except that in no case shall the complaint fee payable be less than P1,500 or more than P350,000.

(5) The complaint fee paid shall be refunded where the complaint, after consideration by the Independent Committee, is found to have merit in relation to its substance.

(6) Every complaint lodged shall be accompanied by a lodging fee of P250.

## **10. Complaint format**

(1) A complaint lodged with the Independent Committee under these Regulations shall be in Form 1, set out in the Schedule.

(2) The complaint shall be lodged together with copies of the following documents

- (a) the decision of the Board on the complaint;
- (b) the relevant set of bidding documents;
- (c) the bidding process set forth in the invitation to tender;
- (d) any document supporting the complaint that was submitted during the bidding process by the complainant; and
- (e) any other document pertinent to the case.

(3) Each complainant shall, where the complaint concerns the procurement or disposing procedures, adduce sufficient evidence to prove either or both of the following-

- (a) that the procurement procedures were contravened, or that the procuring entity acted unlawfully with respect to the procurement procedures;
- (b) that the complainant would have been awarded the procurement contract had there been no contravention of the procurement procedures or other unlawful act.

## **11. Consideration of complaint**

(1) The Independent Committee shall consider a complaint lodged in terms of these Regulations by-

- (a) making reference to-
  - (i) the Board and to its records and decision on the matter;
  - (ii) the procuring or disposing entity concerned and to its records and decision on the matter, if any;
  - (iii) any procuring or disposing entity and to its records;

- (b) seeking the advice of experts co-opted in terms of regulation 7 (6);
- (c) comparing the process of procurement under inquiry with previous procurement patterns that resulted in fraud or corruption or both; and
- (d) conducting such further investigations as may be necessary for the making of an informed judgment on the matter.

(2) The Independent Committee shall make its decision on the complaint, lodged in compliance with the provisions of these Regulations, within a period of not more than 30 days from the receipt of the complaint.

(3) A person appearing before the Independent Committee shall appear in person and not by means of legal representation.

#### **12. Interim order of Independent Committee**

(1) Subject to subregulation (2) where the Independent Committee deems it to be in the interest of a particular procurement project being inquired into under these Regulations to suspend the procurement process for the purpose of an inquiry and in relation to such contract

- (a) the Board has not made an award of the bid; and
- (b) a letter has not been issued to the successful bidder indicating the commencement of the contract,

the Independent Committee may order that the procurement process be suspended for a period not exceeding 21 days to enable the inquiry to be completed.

(2) The Independent Committee may, for purposes of an inquiry, suspend a procurement project based on a contract where the requirements of subregulation (1)(a) and (b) are not fulfilled only where an aggrieved party has adduced sufficient evidence to demonstrate that the execution of such a contract-

- (a) may cause substantial loss to the public revenue; or
- (b) will prejudicially affect the public interest.

#### **13. Matters not to be allowed**

(1) The Independent Committee may not, except after consulting the Board, allow-

- (a) a complaint that has been lodged to be withdrawn; or
- (b) the complainant to conclude an agreement with the procuring entity in respect of the complaint.

(2) In any case where the Independent Committee allows an application made in terms of subregulation (1), its decision shall be published by notice in the *Gazette* and the file containing all the documents pertaining to the case shall be made available for public inspection during business hours, on payment of a fee of P50.

#### **14. Decisions of Independent Committee**

(1) The Independent Committee shall, after considering the complaint in accordance with regulation 11, make a decision on the matter as follows-

- (a) uphold the decision of the Board and dismiss the complaint;
- (b) reject the decision of the Board and order the procuring entity to-
  - (i) do or redo an action or proceeding;
  - (ii) suspend procurement process in terms of regulation 12;
  - (iii) cancel the procurement proceedings; or
- (c) make a finding in favour of the complainant and award costs to the complainant that shall not exceed the commercial outlay for the preparation of a bidding package when the dispute relates to an award decision and less if the dispute is in respect of other complaints.

(2) If any allegation of fraud or bias is proved by the Independent Committee during the course of its enquiry, the Independent Committee shall order any person found guilty of the fraud or bias to be excluded from the procurement process that shall take place as a consequence of the decision of the Independent Committee under subregulation (1).

(3) The complainant shall be notified of the decision of the Independent Committee no



later than three days after the decision is officially made.

(4) The decision of the Independent Committee on any complaint shall be published by notice in the *Gazette*.

#### **PART IV**

#### **Miscellaneous (regs 15-18)**

#### **15. Referring complaints to other bodies**

The Independent Committee may refer or report any aspect of their decisions on any complaint to the Attorney-General, the Directorate on Corruption and Economic Crime or other authority for further action or inquiry.

#### **16. Register of persons found with fault**

(1) The Independent Committee shall establish a register of persons against whom fault was found in any inquiry under these Regulations.

(2) The register shall give a brief statement of the-

- (a) procurement project concerned; and
- (b) decisions of the Board and the Independent Committee regarding the person concerned.

(3) The register shall be kept by the Secretary of the Independent Committee and shall be open to the public for examination on payment of a fee of P50 during business hours.

#### **17. Fines**

The Independent Committee may, after consultation with the Board, order a complainant against whom fault has been established in an inquiry to pay such fine as the Independent Committee may consider appropriate.

#### **18. Offence**

Any person who submits or provides to the Independent Committee any information that such person knows to be false or documents that such person knows to have been falsified, commits an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months or to both.

### **SCHEDULE**

#### **FORMS**

#### **Form 1**

#### **COMPLAINT FORM**

(reg. 9)

#### **1. Particulars of complainant:**

1.1 Name of complainant company or firm: .....

1.2 Address of complainant company or firm: .....

Telephone number: .....

1.3 Name of complainant company or firm representative:.....

1.4 Address of complainant company or firm representative:.....

Telephone number: .....

#### **2. Procuring entity and procurement project**

2.1 Name and address of procuring entity: .....

2.2 Procurement number: .....

2.3 Description of project or goods being tendered: .....

2.4 Approximate value of the tender: .....

2.5 Tendering timetable:  
- when tenders were invited: .....

- closing date for tenders: .....
- date contract awarded (if applicable):.....

**3. Description of complaint and statement of what complainant thinks would be a reasonable solution to the complaint:**

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(Additional paper can be used or typed statement may be attached.)

**4. Documents submitted in support of complaint:**

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**Signed by** .....(Complainant Representative)  
**Company Date Stamp** .....  
**Received by** .....(Secretary of Independent Committee)  
**Independent Committee Date Stamp** .....