

Statutory Instrument No. 23 of 2023

PUBLIC PROCUREMENT ACT
(Act No. 24 of 2021)

PUBLIC PROCUREMENT REGULATIONS, 2023
(Published on 28th March, 2023)

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IN EXERCISE of the powers conferred on the Minister of Finance by section 150 of the Public Procurement Act, the following Regulations are hereby made —

PART I — *Preliminary*

Citation	1. These Regulations may be cited as the Public Procurement Regulations, 2023.
Interpretation	<p>2. In these Regulations, unless the context otherwise requires —</p> <p>“acquisition” means the acquisition of category 1 material to meet the requirements of equipment for future capability establishment using sound system engineering, project management and contracting methodologies;</p> <p>“authorised person” means a person who has been given authority by an Accounting Officer to access information;</p> <p>“award” means a decision by the Accounting Officer, or any other person of a procuring entity to which the Accounting Officer may delegate powers of adjudication and award a tender within specified financial ceilings, to determine the successful bidder;</p> <p>“best and final offer” means a revision of an offer submitted after a negotiation of a tender is completed that contain the bidder’s most favourable terms for price, service and goods to be delivered;</p> <p>“best practice” means in accordance with industry standards;</p> <p>“call off order” means an order placed by a procuring entity under general terms and pricing on a range of goods under a framework contract, without having to negotiate the terms every time;</p> <p>“contract amendment” means a change to the terms and conditions of an awarded contract;</p> <p>“contract variation” or “change order” means a change to the price, completion date or statement of the requirements of a contract to facilitate adaptation to any event or change in such requirements;</p> <p>“deviation” means to depart from a procurement process, procurement method or document provided in the Act;</p> <p>“direct procurement method” means a sole source procurement method for a procurement requirement where there are exceptional circumstances that prevent the use of competition;</p> <p>“dual envelope or package method” means a one stage-two envelopes method in which a bid is submitted in an outer sealed envelope or package containing two separately sealed and labelled envelopes or packages, marked and containing separate technical and financial proposals which are opened on different dates, in separate bid openings;</p> <p>“electronic” means in relation to technology, having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;</p> <p>“emergency procurement” means a procurement process carried out under circumstances which are urgent, unforeseeable and not caused by any dilatory conduct of a procuring entity;</p> <p>“expression of interest” means a qualification process wherein a bidder is invited to express an interest in providing works, services or supplies;</p> <p>“guidelines” mean any advice given by the Authority through any circular that may be issued to the procuring entities in accordance with section 8 (1) (j) of the Act;</p>

- “international contractor” means a bidder who is not registered as a contractor in accordance with the laws of Botswana and whose operations are not based in Botswana;
- “least cost selection” means a method of evaluation that recommends the lowest price of a bid which meets a technical requirement and a commercial requirement;
- “micro procurement” means the acquisition of a standard and low value works, services or supplies;
- “open domestic bidding” means a procurement method open to participation on equal terms by all service providers domiciled in Botswana;
- “open international bidding” means a procurement method open to competition and participation by all service providers through advertisement of a procurement opportunity which seeks to include an international contractor;
- “procurement method” means the procurement method provided for under section 52 of the Act;
- “procurement process” means the successive stages in the procurement cycle including any stage of the procurement process from planning to contract management;
- “quality and cost based selection evaluation” means an evaluation method that takes into account the quality and cost of a bid in a process under which a technical bid is evaluated without access to a financial bid;
- “records” means any documents or information relating to any stage of a procurement process and includes –
- (a) an electronic and manual archive containing the document or information relating to a procurement process; or
 - (b) a record received or kept by a public body, in the exercise of its functions;
- “request for quotations” means a simplified procurement 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 a solicitation document without any material deviation, reservation or omission from the terms, conditions and requirements of the solicitation document;
- “restricted domestic bidding” means the direct solicitation from a limited number of service providers domiciled in Botswana for the procurement of works, services or supplies;
- “restricted international bidding” means the direct solicitation from a limited number of service providers domiciled in Botswana or outside Botswana for the procurement of works, services or supplies;
- “single envelope or package submission method” means a one stage single envelope or package method in which a bid is submitted in a one sealed envelope or package which is opened on the specified date and time in a single bid opening;
- “standardisation” means standardisation of procurement of works, services or supplies;
- “statement of requirement” means a document prepared by a procuring entity providing a correct and competitive description of the subject of the procurement for the purposes of creating a fair and open competition;

“unsolicited bid” means a proposal that demonstrates substantial, technical or financial innovation, or meets an unidentified need submitted to a procuring entity for consideration in the absence of an invitation by the procuring entity; “user” means a procuring entity, system administrator, auditor, civil society organisation and any other user as may be approved by the Authority; and “user Department” means any department, division, branch or unit of a procuring entity, which initiates a procurement requirement and is the user of the procurement requirement.

Application of Regulations

3. (1) These Regulations shall apply to all public procurement, except procurement of works, services or supplies determined by the Minister to require a different procurement procedure or method, for purposes of national security or any other reason the Minister may deem reasonable.

(2) A dispute relating to the applicability of the Act shall, in writing and with any supporting document, be submitted to the Minister.

(3) The Minister shall make a decision on a dispute referred to the Minister in terms of this regulation within 21 days.

(4) Where the Minister fails to resolve a dispute referred to in terms of this regulation, the complainant may refer the dispute to the Tribunal.

PART II — *Accounting Officers and Procuring Entities*

Terms and conditions of delegation of functions of Accounting Officers

4. (1) An Accounting Officer may delegate procurement functions of a —
(a) procurement oversight unit and procurement unit to a user Department within a procuring entity; and

(b) procurement unit and user department to another procuring entity, or to a procurement agent or a procurement service provider.

(2) An Accounting Officer may delegate a procurement function of a procurement oversight unit or procurement unit to a department within a procuring entity, in terms subregulation (1), subject to any value limitations or any other exceptions where —

(a) the procuring entity has substantial procurement workload which would be effectively managed by the department;

(b) the procuring entity has a specialised procurement which would be effectively managed by the department;

(c) the department is not within the geographical location of a procurement oversight unit or procurement unit and a delegation would reduce costs, and reduce practical and logistical challenges;

(d) the department operates as an independent department and would effectively manage the delegated procurement function;

(e) it is cost effective to delegate;

(f) the structure of a procuring entity does not allow for the establishment of a procurement unit; or

(g) there are other reasonable circumstances that may arise.

(3) Where an Accounting Officer delegates a procurement function to a department within a procuring entity in terms of this regulation, he or she shall establish a —

(a) procurement oversight unit for the department; and

(b) procurement unit for the department.

(4) A procurement oversight unit referred to under subregulation (3) (a) and a procurement unit referred to under subregulation (3) (b) shall —

- (a) carry out the delegated procurement functions in accordance with the provisions of the Act;
 - (b) be responsible for the delegated procurement functions and any decisions made in the performance of such delegated procurement functions;
 - (c) submit consolidated reports on all procurement activities of a procuring entity to the procuring entity;
 - (d) liaise with the Authority on behalf of a procuring entity;
 - (e) advise a procuring entity on any matter relating to procurement;
 - (f) submit such reports as may be required to a procurement oversight unit of a procuring entity;
 - (g) give a copy of the minutes of all of its meetings to a procurement oversight unit of a procuring entity;
 - (h) seek advice and guidance on any matter relating to public procurement from a procurement oversight unit or procurement unit of a procuring entity; and
 - (i) request a procurement oversight unit or procurement unit to act on its behalf on matters requiring liaison with the Authority.
- (5) An Accounting Officer shall, where the Accounting Officer delegates his or her procurement functions under this regulation, ensure the independence and segregation of duties in accordance with the Act.
- (6) An Accounting Officer may, in writing, revoke any delegation of a procurement function to a procurement oversight unit or a procurement unit where —
- (a) the procurement oversight unit or a procurement unit fails to comply with the terms and conditions of the delegation, or the provisions of the Act;
 - (b) the circumstances of the delegation have changed;
 - (c) a malpractice is suspected, alleged or proved; or
 - (d) there are other reasonable circumstances.
- (7) An Accounting Officer shall not delegate any of the following functions of a procurement unit to a department within a procuring entity —
- (a) the preparation of any report required for submission to a procurement oversight unit or Accounting Officer;
 - (b) the provision of overall guidance on the development of procurement within the procuring entity;
 - (c) any recommendation to an Accounting Officer in respect of a delegation of a procurement function;
 - (d) the coordination of any procurement process of all departments of the procuring entity;
 - (e) the maintenance of a list or register of all awarded contracts; and
 - (f) the planning and management of all procurement activities or processes of the procuring entity.
- (8) An Accounting Officer may not delegate, in accordance with section 43 of the Act, the establishment of a —
- (a) procurement oversight unit; or
 - (b) procurement unit.
- (9) Where an Accounting Officer delegates his or her procurement functions under this regulation to an employee under a procurement oversight unit, or an employee under a procurement unit, such employee shall not, while exercising the delegated functions, be involved in any activity of the procurement oversight unit or procurement unit.

Delegation to
another
procuring
entity

(10) An Accounting Officer shall not assign an employee to a procurement oversight unit if the Accounting Officer delegates his or her functions to the employee.

5. (1) Subject to the provisions of the Act, an Accounting Officer may delegate an entire procurement process to another procuring entity where —

- (a) the delegating procuring entity does not have the capacity to enable it to comply with the provisions of the Act;
- (b) the Accounting Officer considers that it is economical or efficient to delegate the entire procurement process; or
- (c) there is any other circumstance that justifies the delegation.

(2) Notwithstanding subregulation (1), an Accounting Officer may delegate a limited procurement process to another procuring entity where —

- (a) the other procuring entity has employees that possess a specialised skill, expertise or experience in the subject matter of such procurement process;
- (b) a requirement relating to such procurement process is subject to common procurement;
- (c) a project is jointly implemented by both procuring entities;
- (d) it would be economical or efficient to delegate a procurement requirement; or
- (e) there is any other circumstance that justifies the delegation.

(3) For purposes of this regulation, “common procurement” means a procurement requirement that is in common use by more than one procuring entity.

(4) Where a procurement process has been delegated in terms of subregulation (2), the Accounting Officers shall agree on —

- (a) any process that may be excluded from a contract entered between the two procuring entities, in the case of a delegation of the entire procurement process;
- (b) the type of a requirement or project to be the subject of the contract referred to under paragraph (a), in the case of a limited delegation of a procurement process;
- (c) the mechanism for implementation of a procurement requirement;
- (d) the reporting, monitoring, procedures and responsibilities relating to the procurement process;
- (e) any limitations or exceptions to the contract referred to under paragraph (a); and
- (f) any cost to be paid.

(5) An agreement referred to under subregulation (3) shall be confirmed in writing, and signed, by the Accounting Officers.

(6) Where a limited procurement requirement is delegated to another procuring entity, the institutional arrangement for the approval of the limited procurement requirement shall be agreed upon by the Accounting Officers and may include —

- (a) the approval of a procurement oversight unit of a procuring entity that initiates such limited procurement requirement;
- (b) the approval of a procurement oversight unit of a procuring entity to which a limited procurement requirement is being delegated;
- (c) a limited procurement requirement that may be observed by a representative of a procurement oversight unit of a procuring entity that initiates the limited procurement requirement;

- (d) a limited procurement requirement that a representative of a procurement oversight unit of a procuring entity that initiates the limited procurement requirement may participate in the meetings of a procurement oversight unit to which such limited procurement requirement is being delegated; or
 - (e) a limited procurement requirement for approval by the procurement oversight units of the procuring entities.
- (7) An Accounting Officer shall submit a copy of the agreement referred to under subregulation (6) to the Authority.
- 6.** (1) A procurement agent or a procurement service provider appointed as such under section 44 of the Act shall not carry out the procurement functions of a procurement oversight unit and an Accounting Officer.
- (2) The procurement functions of a procuring entity that may be exercised by a procurement agent or a procurement service provider shall be to —
- (a) advise a user department on an individual procurement method or practice;
 - (b) recommend an appropriate procurement method; and
 - (c) prepare —
 - (i) a statement of any requirement or of terms of reference,
 - (ii) a solicitation document and clarification or amendment,
 - (iii) a contract document, and
 - (iv) any amendment to a contract.
- (3) The functions of a procuring entity relating to contract management that may be exercised by a procurement agent or a procurement service provider shall be to —
- (a) administer and manage a contract;
 - (b) report any departure from the terms of a contract to a procurement unit;
 - (c) prepare any change order in accordance with the terms of a contract; or
 - (d) certify an invoice for any payment to a contractor.
- (4) A procurement agent or a procurement service provider shall comply with a procurement process relating to the use of a standard tender document and with the guidelines issued by the Authority.
- (5) An Accounting Officer shall, where he or she appoints a procurement agent or a procurement service provider in terms of section 44 of the Act, to perform the functions under this regulation, the Accounting Officer and the procurement agent or the procurement service provider shall enter into an agreement specifying —
- (a) the type of a requirement or project that is subject to a contract;
 - (b) the mechanism for the implementation of the functions related to contract management;
 - (c) the mechanism for reporting, monitoring a procedure and responsibilities;
 - (d) any limitation or exception to a contract; and
 - (e) the conditions of payment of costs involved in contract management.
- (6) An agreement referred to in subregulation (5) shall be confirmed in writing and signed by —
- (a) an Accounting Officer and a procurement agent or a procurement service provider; or
 - (b) a representative of an Accounting Officer and a representative of a procurement agent or procurement service provider, duly authorised by the Accounting Officer or the procurement agent or the procurement service provider.

Outsourcing to
procurement
agent or
procurement
service provider

(7) An Accounting Officer shall not appoint the same procurement agent or procurement service provider to exercise procurement functions and functions relating to contract management where there is conflict of interest, or where conflict of interest is likely to arise.

(8) An Accounting Officer shall submit a copy of the agreement referred to under subregulation (6) to the Authority within 30 days.

(9) A procurement agent or procurement service provider shall perform the functions delegated to him or her without the involvement of an employee of a procuring entity.

(10) A procuring entity shall review and may approve the work done by a procurement agent or procurement service provider.

PART III — Evaluation Committees, User Departments, Central Agencies, etc.

Composition of
Evaluation
Committee

7. (1) The members of an Evaluation Committee shall be appointed by an Accounting Officer and shall consist of not less than three members, which may include a member who is not an employee of a procuring entity, where the expertise of such employee is required.

(2) Notwithstanding subregulation (1), the membership of an Evaluation Committee may include one or more members of a user Department, as may be appropriate, and any person involved in the preparation of a bidding document if the Accounting Officer considers it advantageous to the type and complexity of the procurement.

(3) In appointing the members of an Evaluation Committee, an Accounting Officer shall select persons who have skills, knowledge and experience relevant to procurement, which may include —

- (a) technical skills;
- (b) procurement or contracting skills;
- (c) accounting, financial management and analytical skills; and
- (d) law.

(4) The maximum number, and level of expertise, of members of an Evaluation Committee, shall depend on the value and complexity of a subject matter of procurement.

(5) An Accounting Officer shall appoint the Chairperson of an Evaluation Committee from amongst the members.

(6) The Vice Chairperson of an Evaluation Committee shall be elected by the members amongst their number.

(7) The Accounting officer shall appoint any person from the relevant procurement unit as the secretary of the Evaluation Committee but who shall not be a member of such Evaluation Committee.

(8) The secretary of the Evaluation Committee shall —

- (a) provide technical input in terms of compliance with the Act;
- (b) liaise with the Chairperson of the Evaluation Committee as may be directed by such members;
- (c) keep and maintain records of the attendance of the meetings of the Evaluation Committee, and take minutes of all deliberations of such Evaluation Committee;
- (d) ensure that all records, including any bid, are kept and maintained in a secured place, and shall provide any relevant information or document to the Evaluation Committee;

- (e) facilitate the official communication with a bidder, where clarification is required; and
 - (f) provide logistical support to the Evaluation Committee.
- 8.** (1) The functions of an Evaluation Committee shall be to —
- (a) conduct the compliance, technical and financial evaluation of a tender or a proposal to tender in line with the terms and conditions, and using the criteria, set out in the tender document within a period that may be specified by the Authority;
 - (b) exercise due diligence when evaluating a tender or a proposal to tender;
 - (c) seek clarification from a contractor on a tender or a proposal to tender being evaluated, through the secretary of the Evaluation Committee;
 - (d) prepare a consolidated report on any analysis of a tender, the final ratings assigned to each bid and make recommendations; and
 - (e) submit the consolidated report referred to in paragraph (d) to a procurement unit.
- (2) The functions of an Evaluation Committee to assess a bid and make recommendation shall not be delegated.
- (3) An Evaluation Committee shall, after completing an evaluation, prepare an evaluation report in Form A set out in Schedule 1.
- (4) An evaluation report referred to under subregulation (3) shall —
- (a) provide for the minutes of any meeting held to evaluate a tender or a proposal to tender, where applicable;
 - (b) describe the steps of an evaluation process highlighting the significant issues and the manner in which an Evaluation Committee reached its conclusions;
 - (c) provide for any decision made by an Evaluation Committee in the ranking of the substantially responsive bids and the rejection of nonresponsive bids;
 - (d) provide for a comment on the effectiveness and the ineffectiveness, if any, of a bidding process;
 - (e) make a recommendation on the outcome of an evaluation;
 - (f) be signed by every member of an Evaluation Committee; and
 - (g) submitted to a relevant procurement unit for quality.
- (5) A member of an Evaluation Committee shall exercise the functions of the Evaluation Committee independently from other members.
- 9.** An Evaluation Committee may, where it considers it necessary, through a procurement unit, co-opt any person whose presence at a meeting of the Evaluation Committee is deemed necessary to —
- (a) attend and participate in the deliberations at the meeting of the Evaluation Committee; or
 - (b) provide expertise or technical assistance in the evaluation process.
- 10.** (1) A user Department shall be responsible for the following within the Department —
- (a) for the formulation of a procurement requirement for works, services or supplies;
 - (b) for the preparation of a procurement plan provided under section 71 of the Act in the manner as may be determined by the Authority, for any requirement for which funds have been included in the approved budget of a procuring entity, and submit the procurement plan to a procurement unit for consolidation;

Functions of
Evaluation
Committee

Co-option of
advisory panel
of Evaluation
Committee

Functions of
user
Departments

Central
agencies for
common use
items

- (c) for the implementation of a procurement plan;
 - (d) for the strategic decision on whether or not the most economic and efficient procurement can be best achieved by separating contracts for each procurement;
 - (e) for the preparation of a budget estimate based on a prevailing market price and shall update the budget estimate from time to time;
 - (f) for the provision of a technical advice to a procuring entity;
 - (g) where required by an Accounting Officer, for the participation in the evaluation of a bid;
 - (h) where required by an Accounting Officer, to manage a contract under the supervision of a procurement unit;
 - (i) for the keeping and maintenance of any record of a contract management in accordance with a record management policy of a procuring entity; and
 - (j) for the preparation of any report required for submission to a procurement oversight unit or an Accounting Officer.
- (2) A user Department shall, in preparing a procurement plan referred to under subregulation (1), ensure that a correct method of procurement is used for each requirement of the procurement.
- (3) A user Department shall not procure works, services or supplies which are not included in a procurement plan without the approval of an Accounting Officer.
- 11.** (1) A central agency shall, for purposes of procurement of common use items in terms of section 51 (3) of the Act —
- (a) use a framework contract for a procurement of common use items based on the needs and demands of a procuring entity in accordance with these Regulations; and
 - (b) arrange for the procurement of common use items by a procuring entity through a framework contract.
- (2) A central agency may, from time to time, provide an opportunity to any new bidder to participate in a procurement process for common use items, and the name of any successful bidder shall be included in the list of service providers and suppliers.
- (3) A procuring entity shall, for purposes of procurement referred to in subregulation (1) —
- (a) by the end of the month of December every year, submit to a central agency, its provisional annual budget estimates of the required common use items, in accordance with the format provided by a central agency, which shall include a description, specification, statement of requirement and quantity, of the common use items;
 - (b) procure common use items from a bidder who has been awarded a framework contract by a central agency through the placement of a call off order prepared by a procurement unit and approved by an Accounting Officer; and
 - (c) submit to a central agency, a monthly report in terms of a format provided by the central agency;
- (4) A procuring entity shall, in accordance with a contract, prepare and place, a call off order to a bidder who has been awarded a framework contract, and shall —
- (a) make a payment for goods and services delivered and accepted;

- (b) make a claim for any damages caused by a delayed delivery of goods and services, or any other act; and
 - (c) report to a central agency any breach, or unsatisfactory performance.
- (5) A central agency may enter into a framework contract under this regulation with more than one service provider, where in the opinion of the central agency, one service provider cannot meet a requirement of a procuring entity.
- (6) A central agency shall consolidate a quarterly report submitted to the central agency by a procuring entity on a procurement made through a framework contract indicating, but not limited to, the name of the supplier, and description, quality and value of works, services and supplies, submit the quarterly report to the Authority.
- (7) A central agency shall, by Notice in the *Gazette*, publish a list of the names of the suppliers and service providers who have been awarded framework contracts.
- (8) A central agency shall make a determination on a report submitted by a procuring entity, detailing the performance of a contractor, and prepare an End of Activity Report with appropriate recommendations for submission to the Authority.

PART IV — *Selection and Methods of Procurement, etc.*

- 12.** (1) A procuring entity shall select a procurement method on the basis of —
- (a) an estimated value of a procurement requirement; or
 - (b) the circumstances pertaining to a procurement requirement.
- (2) An estimated value referred to under subregulation (1) (a) shall be the main criterion in the determination of a choice of a procurement method and the choice shall be made in accordance with the guidelines issued by the Authority.
- 13.** (1) A bidding period shall be for a duration as may be necessary to accommodate the —
- (a) location of a shortlisted or potential bidder and the time required for the delivery or transmission of a bid;
 - (b) level of detail required in a bid; or
 - (c) anticipated duration of a procurement process.
- (2) Notwithstanding subregulation (1), a minimum bidding period shall, unless otherwise determined by the Authority, be —
- (a) 20 days, in the case of an open international competitive bidding;
 - (b) 10 days, in the case of an open domestic bidding;
 - (c) five days, in the case of a selective tendering on the basis of a shortlist;
 - (d) five days, in the case of a direct appointment procurement;
 - (e) three days, in the case of a request for quotations; or
 - (f) 10 days, in the case of any other procurement method provided in the Act, except micro procurement which does not have a minimum bidding period.
- (3) A procuring entity shall consider the risk and complexity of a procurement, when determining the appropriate bidding period of each bid.
- (4) An Accounting Officer may authorise a shorter bidding period where justifiable and as may be appropriate.

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Open domestic
bidding method

14. (1) Except as may be provided in these Regulations, a procuring entity shall conduct procurement by means of an open domestic bidding method.

(2) A procuring entity shall, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish an invitation to tender, which shall be open to every bidder for the submission of a bid for the open domestic bidding method.

Open
international
bidding method

15. (1) A procuring entity may, with a written approval of an Accounting Officer, opt to conduct procurement by means of an open international bidding method instead of an open domestic bidding, where —

- (a) competition may be enhanced by the participation of an international contractor in the bidding process, where there is limited or no domestic capacity;
- (b) the participation by an international contractor may increase value for money for the procurement; or
- (c) the technical complexity of a procurement requirement requires the participation of an international contractor;

(2) A procuring entity shall, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media, Government portal, international publication, or professional or trade journal with international circulation, publish an invitation to tender, which shall be open to every bidder for the submission of a bid for the open international bidding method.

(3) Nothing shall prevent a local contractor from participating in an open international bidding.

Restricted
domestic
bidding method

16. (1) A procuring entity may, with a written approval of an Accounting Officer, conduct procurement by means of a restricted domestic bidding where —

- (a) the works, services or supplies are available from a limited number of service providers; or
- (b) there is an exceptional circumstance that justifies a departure from the selection of an open domestic bidding method.

(2) An invitation to tender under this regulation shall, in writing, be made to a limited number of bidders without publishing the invitation to tender in the manner provided in these Regulations.

(3) A procurement entity shall, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish a list of an approved shortlisted bidders, except shortlisted bidders of a sensitive and classified procurement.

Restricted
international
bidding method

17. (1) A procuring entity may, with a written approval of an Accounting Officer, conduct procurement by means of a restricted international bidding method where —

- (a) the works, services or supplies are available from a limited number of service providers; or
- (b) there is an exceptional circumstance that justifies a departure from the selection of an open international bidding method.

(2) An invitation to tender under this regulation shall, in writing, be made to a limited number of bidders without publishing the invitation to tender in the manner provided in these Regulations.

(3) A procurement entity unit shall, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish a list of approved shortlisted bidders, except shortlisted bidders of a sensitive and classified procurement.

18. (1) A procuring entity may conduct procurement by means of a request for a quotation method where the estimated value of a procurement does not exceed the threshold stated in the guidelines issued by the Authority.

Request for
quotation
method

(2) Where a request for quotation method is used, a procuring entity shall make an invitation to tender in written bidding document addressed to a limited number of bidders without publishing the invitation to tender in the manner provided in these Regulations.

(3) A procuring entity shall obtain at least five quotations as may be practicable.

(4) Notwithstanding subregulation (3), where it is not practicable and subject to a written justification, a procuring entity may obtain less than five quotations.

19. (1) A procuring entity may conduct procurement by means of a micro procurement method where the estimated value of the project is within the related micro procurement.

Micro
procurement
method

(2) In using a micro procurement method, a procuring entity may select a supplier on a sole supplier basis without competition and with the following requirements —

- (a) request for quotation;
- (b) quotation; and
- (c) purchase order.

(3) A procuring entity shall request a bidder for the original copy of an invoice or receipt denoting the works, services or supplies procured, and the price quoted and annotated with a name of the procuring entity procuring the works, services or supplies.

(4) A procuring entity shall ensure that value for money is obtained to the extent practical under a micro procurement method.

(5) An officer of a procuring entity, who is responsible for the conduct of procurement by means of a micro procurement method under this regulation, shall submit a monthly report to an Accounting Officer.

(6) An Accounting Officer shall submit a report referred to under subregulation (5) to the Authority in the manner determined by the Authority.

(7) The cumulative cost of a micro procurement in a year shall, except with the approval of the Authority, not exceed such percentage of an annual procurement budget as may be determined by the Authority.

(8) An informal sector may be exempted from the requirement under this regulation.

20. (1) A procuring entity may conduct procurement by means of a direct procurement method where the selection of a contractor is made on a sole supplier basis without competition and —

Direct
procurement
method

- (a) there is insufficient time to conduct procurement by means of any other procurement method due to an emergency occurrence;
- (b) the works, services or supplies are available from one contractor;
- (c) any additional works, services or supplies are required to be compatible with the existing works, services or supplies, and it is advantageous or necessary to purchase the additional works, services or supplies from the original supplier, and the price of such additional works, services or supplies is reasonable;

Request for
proposals with
competitive
negotiations
method

- (d) it is essential or preferable to purchase any additional works, services or supplies from the original supplier to ensure continuity for downstream work, including continuity in technical approach, use of experience acquired or continued professional liability, and the price on the works, services or supplies is reasonable; or
- (e) can be justified in any given circumstance.
- (2) A procuring entity shall not commence any procurement process under a direct procurement method without —
 - (a) justification to an Accounting Officer on the need to use a direct procurement method; and
 - (b) the approval of an Accounting Officer.
- (3) A procuring entity shall, by Notice in the Gazette, in a newspaper of national circulation, electronic media or Government portal, publish the name of a contractor who has been approved for direct procurement, except the name of a contractor who has been approved for sensitive and classified procurement.
- (4) An Accounting Officer may award a tender for a procurement under this regulation if he or she is satisfied that the procurement has been sufficiently demonstrated by a procuring entity to be of value for money.
- 21.** (1) A procuring entity shall request for an approval from an Accounting Officer to conduct procurement by means of a request for proposal with competitive negotiation method.
- (2) A procuring entity shall, after the approval of an Accounting Officer in terms of subregulation (1), invite the relevant bidder to submit a bid for a competitive negotiation.
- (3) An Evaluation Committee shall, where a request for proposal with competitive negotiation method is used —
 - (a) negotiate with a bidder on the recommendation of a procurement unit;
 - (b) evaluate a tender under this regulation; and
 - (c) prepare a report on the negotiation referred to under paragraph (a) and submit the report to a procurement unit for provisional opinion.
- (4) An Accounting Officer shall request any identified bidder to revise his or her bid by submitting the best and final offer within a period not exceeding seven days from the date of such request.
- (5) Any price revised in terms of subregulation (4) shall not compromise the quality and the specifications of the original tender.
- (6) The report referred to under subregulation (3) (c) shall —
 - (a) be submitted to an Accounting Officer by a procurement unit; and
 - (b) form part of records.
- (7) For purposes of this regulation, “request for proposal with competitive negotiations” means a method for negotiating the pricing, terms and conditions relating to a particular transaction.

Competitive
dialogue
method

- 22.** (1) A procuring entity shall request for an approval of an Accounting Officer to conduct procurement by means of a competitive dialogue method.
- (2) A procuring entity shall use a competitive dialogue method, in confidence, to discuss with any shortlisted bidder at a dialogue stage of a procurement process, the means by which the needs of the procuring entity can be met, before calling for a final bid.
- (3) A procuring entity shall in conducting procurement by means of a competitive dialogue method adhere to the following stages, a —

- (a) shortlisting stage, where a suitable bidder is selected, who meets the minimum eligibility standards for compliance, technical, financial and economic criteria;
- (b) dialogue with a bidder stage, which is a critical stage to the successful application of a competitive dialogue method, where the means of meeting the project objectives is discussed and negotiation is permitted; and
- (c) final tender stage, where a tender is submitted to a procuring entity after clarification, specification and fine tuning is permitted, and such clarification, specification and fine tuning do not change the basic features of the tender or a contract's key terms, do not risk distorting competition.

23. (1) A procuring entity may request for an approval of an Accounting Officer to conduct procurement by means of a reverse auction method. Reverse auction method

(2) A procuring entity may, after the approval of an Accounting Officer in terms of subregulation (1) conduct procurement by means of a reverse auction where —

- (a) it is feasible for the procuring entity to formulate a detailed description of the subject matter of a procurement;
- (b) there is a competitive market of suppliers or contractors anticipated to be qualified to participate in the reverse auction method, to ensure effective competition; and
- (c) the criteria to be used by the procuring entity in determining the submission is quantifiable, can be expressed in monetary terms.

(3) A procuring entity may use a reverse auction as a stage preceding an award of a tender in a procurement method, as may be applicable, where there is a tie in an offer.

(4) A procuring entity may conduct procurement by means of a reverse auction for an award of a contract in a framework contract with second stage competition.

(5) A reverse auction method shall apply to works, services and supplies which have a standard and comprehensive specification.

(6) A procuring entity shall ensure that a bidding under this regulation is completed within the period specified in an invitation to tender.

(7) A procuring entity shall submit a report on any procurement made under this regulation to a procurement unit for a professional opinion.

(8) A procurement unit shall, after considering the report referred to under subregulation (7), submit such report to an Accounting Officer for an award of a tender.

(9) In the event that a successful bidder declines an offer of an award made in terms of subregulation (8), the next lowest bidder shall be offered a tender, subject to a reserve price.

24. (1) A procuring entity may conduct procurement by means of an unsolicited bid method. Unsolicited bid method

(2) Where a procuring entity conducts procurement by means of an unsolicited bid method, a bidder assumes the responsibility for project preparation cost such as a pre-feasibility and feasibility study, design specification and any other related assessment.

(3) A procuring entity shall, when considering to conduct procurement by means of an unsolicited bid method, address the following major factors —

- (a) the ownership of any intellectual property rights to a project concept;

- (b) the interests of both parties in a project concept;
- (c) the cost effectiveness of a project concept by sole source negotiation of the detail of the project concept;
- (d) a transparent and competitive procurement process involving an unsolicited bid method; and
- (e) every unsolicited bid method is channelled into a transparent and competitive process where a bidder has a fair chance of winning a tender.

(4) A procuring entity may, in conducting procurement by means of an unsolicited bid method apply a swiss challenge system to allow for the submission of competing bids to a qualifying unsolicited proposal by another bidder, through a transparent procurement process.

(5) For purposes of subregulation (4), “swiss challenge system” means a system that recognises the investment made by a project proponent in preparing an unsolicited bid proposal to the requisite Outline Business Case standard, and the original proponent is given the right to counter-match the best offer and secure a contract.

Best and final
offer method

25. (1) A procuring entity may conduct procurement by means of a best and final offer method where the procuring entity presumes that a proposal received from a bidder ought to have been a better offer than the actual offer.

(2) Notwithstanding the generality of subregulation (1), a procuring entity shall conduct procurement by means of a best and final offer method —

- (a) in a large or complex procurement project;
- (b) where the procuring entity determines that none of the proposals submitted to such procuring entity —
 - (i) does not address the procuring entity’s procurement needs, and
 - (ii) is in some respect unclear deficient; or
- (c) where the procuring entity determines that the cost of all proposals is too high.

(3) A procuring entity shall use only one best and final offer method around.

Negotiated
procedure
method

26. (1) A procuring entity may conduct procurement by means of a negotiated procedure method in limited circumstances as may be determined without publishing an invitation to tender.

(2) A procuring entity shall, when conducting procurement by means of a negotiated procedure method, approach one or more suppliers seeking to negotiate the terms of a contract.

(3) A procuring entity may use a negotiated procedure method for works, services or supplies in any of the following cases where —

- (a) there is no tender or request to participate submitted to the procuring entity in response to any open bidding, restricted procedure or competitive procedure, under the Act, provided that the initial terms of a contract are not substantially altered and a report is submitted to the Authority upon request for submission;
- (b) a tender is considered to be not suitable or irrelevant to a contract, being incapable, without substantial changes, of meeting the procuring entity’s need and requirement as specified in the procurement documents;
- (c) a request to participate is considered to be not suitable where a contractor concerned is, or may be, excluded under the grounds for exclusion or does not meet the selection criteria;
- (d) the works, services or supplies can be supplied by a particular contractor for any of the following reasons —

- (i) that the purpose of the procurement under this regulation is for the creation or acquisition of a unique work of art or artistic performance,
 - (ii) where there is no competition for technical reasons,
 - (iii) for the protection of exclusive rights, including intellectual property rights, or
 - (iv) where there is no alternative or substitute and the lack of competition is not as a result of an artificial narrowing down of a procurement; or
 - (e) where necessary, due an emergency brought by events unforeseen by the procuring entity and not attributable to such procuring entity, and the duration for any open bidding, restricted procedure or competitive procedure for negotiation cannot be complied with.
- (4) A procuring entity may use a negotiated procedure method for a public supply contract —
- (a) where a product involved is manufactured purely for the purpose of a research, experimentation, study or development, and a tender that is awarded in relation to the product shall not include quantity production in order to establish the commercial viability of the product or to recover the research and development cost;
 - (b) for any additional delivery by the original supplier, which is intended either as a partial replacement of supplies or installations, or as an extension of the existing supplies or installations, where change of a supplier would oblige the procuring entity to acquire supplies with different technical characteristics that may result in incompatibility or disproportionate technical difficulties in operation and maintenance; or
 - (c) for supplies quoted and purchased on a commodity market; or
 - (d) for the of services or supplies on reasonable terms, from either a supplier which is winding up its business activities, or a liquidator in an insolvency procedure.
- (5) A procuring entity may use a negotiated procedure method for procurement, without the prior publication of an invitation to tender, for new works and services consisting of the repetition of similar works and services entrusted to the contractor the procuring entity awarded an original contract:
- Provided that such works and services are in conformity with a basic project for which the original contract was awarded but shall not exceed the applicable contract variation threshold.
- (6) A procuring entity shall, when using the negotiated procedure method, ensure that the basis project indicates the extent of possible additional works or services, and the terms and conditions under which the contract was awarded.
- (7) A procuring entity shall, as soon as the first project is put up for a tender, disclose the procuring entity's intention to use the negotiated procedure method, and consider the estimated total of any subsequent works or services.
- (8) For purposes of this regulation, “negotiated procedure” means a procurement process that uses negotiation with a selected supplier or service provider.

27. (1) A procuring entity may conduct procurement by means of an expression of interest method for the pre-qualification of a bidder for —

Expression of
interest method

- (a) the development of a supplier database; and
- (b) any complex or large contracts.

(2) A procuring entity shall, by Notice in the Gazette, in a newspaper of national circulation, electronic media or Government portal, international publication, or professional or trade journal with international circulation, publish an invitation to tender under this regulation, which shall state —

- (a) a brief outline of the assignment;
- (b) a brief description of a statement of requirement;
- (c) the required information to be submitted by an interested contractor; and
- (d) the duration of the assignment.

(3) A procuring entity shall, from any of the contractors who have responded to an invitation to tender under subregulation (2), shortlist a number of the contractors and directly invite such contractors to submit proposals on the bid.

(4) An invitation referred to under subregulation (3) shall include a request for proposal and the terms of reference.

Hackathon
method

28. (1) A procuring entity may conduct procurement by means of a hackathon method which is used for —

- (a) technology to achieve a given objective;
- (b) the recruitment of top talent for the provision of services and works;
- (c) expeditious solving of a problem; or
- (d) the growth of a business.

(2) A procuring entity that uses a hackathon method in the conduct of the procuring entity's procurement shall be such procuring entity that has —

- (a) a paying customer or any other form of motivation to participate in a bid;
- (b) a team or contractors that are willing to play a part in the hackathon method;
- (c) a problem to solve;
- (d) any agreed rules of engagement between the procuring entity and a contractor; and
- (e) a platform for the hackathon method, whether electronic or in person.

(3) A procuring entity shall, in conducting procurement by means of a hackathon method use a procurement process as follows —

- (a) comply with the registration requirements as part of the hackathon method; and
- (b) apply technical evaluation as part of the hacking duration.

Community
participation
method

29. (1) A procuring entity may conduct procurement by means of a community participation method where the procuring entity may involve a beneficiary community to participate in the delivery of services if such procuring entity considers that the beneficiary community shall contribute to —

- (a) the economy;
- (b) value for money;
- (c) the sustainability of the project; and
- (d) the socio-economic objectives.

(2) A community participation method may involve two approaches —

- (a) a direct participation of a beneficiary community; or
- (b) an organised participation of a beneficiary community through the appointment of a community based service provider.

(3) Where a procuring entity intends to use a community participation method for procurement, the procuring entity shall ensure that a project —

- (a) is aligned to such procuring entity's mandate and annual strategic procurement plan;

- (b) has positive socio-economic outcomes with a community as its main beneficiary;
- (c) requires the involvement of a community in part or in whole for its success and its continued implementation;
- (d) is included in the annual strategic procurement plan for such procuring entity; and
- (e) proposal is prepared in line with such procuring entity's annual strategic procurement plan, which shall set out the —
 - (i) key result areas and the specific roles of a beneficiary community; and
 - (ii) objectives, estimated budget and a beneficiary community.

(4) A procuring entity that uses a community participation method for the procurement of the delivery of services shall do so in accordance with the guidelines issued by the Authority.

(5) An Accounting Officer shall, for purposes of this regulation, appoint a project supervisor who may be the head of a user department, or a procurement agent or procurement service provider, where a procuring entity does not have capacity to supervise a project.

30. (1) A procuring entity may, on request to, and upon the approval of, an Accounting Officer, conduct procurement by means of an emergency procurement method where —

Emergency
procurement
method

- (a) the circumstances to procure permit the procuring entity to use an emergency procurement method, regardless of the estimated value of a requirement for a tender; or
 - (b) the procuring entity could not have foreseen an emergency, which may not be as a result of the negligence of such procuring entity.
- (2) Notwithstanding the generality of subregulation (1), a procuring entity may use an emergency procurement method where —
- (a) the country is either threatened by or confronted with a disaster, catastrophe, war or an act of God;
 - (b) life or environment may be compromised;
 - (c) the condition or quality of goods, equipment, buildings or capital works may deteriorate unless an action is urgently and necessarily taken to maintain the goods, equipment, building or capital works in its actual value;
 - (d) a commodity has been identified as a supply risk in the risk log of a procuring entity and such supply risk is a national or global risk; or
 - (e) a procurement lead-time involved is such that it will jeopardise the ability of the procuring entity to achieve any major objective where there may be a national or global risk of supply if a normal procurement method is used.

(3) A procuring entity may motivate its request referred to under subregulation (1) and in doing so, the procuring entity shall include a comprehensive justification on the need to use an emergency procurement method.

(4) Where a procuring entity conducts procurement by means of an emergency procurement method, the procuring entity shall ensure competition by bidders to the maximum extent practical in an emergency circumstance.

(5) A procuring entity shall, in an emergency situation and where practical, consider the use of any other procurement method before the procuring entity decides on the use of an emergency procurement method.

(6) A procuring entity shall, notwithstanding that an emergency arises outside working hours or working day, conduct a procurement under this regulation and in writing request an Accounting Officer to approve such procurement, stating the reasons for the emergency and the justification for a departure from any procedure provided under these Regulations.

(7) Where an Accounting Officer approves an emergency procurement method, a procuring entity shall, where applicable, prepare a plan to indicate the steps to be taken to prevent a similar event, and inform the Authority.

(8) A procuring entity may, for purposes of this regulation and in exceptional cases or where practical, deviate from the use of a standardised bidding document issued by the Authority.

(9) A procuring entity shall prepare any supporting document for a procurement under this regulation, and submit the supporting document to an Accounting Officer for approval.

(10) An Accounting Officer shall keep and maintain a log for every procurement made under this regulation and submit the log to the Authority.

(11) A submission referred to under subregulation (1) shall be made quarterly in every financial year.

(12) An Accounting Officer shall ensure that in conducting procurement by means of an emergency procurement method, the risk of fraud, inflated prices, conflict of interest, unfairness corruption or any other matter associated with the risk that comes with the emergency procurement method, is reduced or managed appropriately in accordance with the relevant laws.

31. (1) An Accounting Officer shall, where a procuring entity undertakes the procurement of highly sensitive works, services, supplies or any combination thereof, however classified, submit to the Authority, a restricted list of the category of restricted items referred to under section 54 (3) (a) of the Act, which shall include —

- (a) the justification for the restricted procurement of each category of the items on the restricted list;
- (b) the description and quantity of each category of the items required;
- (c) a budgetary provision; and
- (d) the proposed procurement method to be used for each category of the items and the justification of such procurement method.

(2) A restricted list referred to under subregulation (1) shall —

- (a) be in Form B set out in Schedule 1; and
- (b) form part of the strategic capital acquisition management plan as a special category for special projects in line with the national defence strategy.

(3) A procuring entity shall, where the procuring entity undertakes the procurement of highly sensitive works, services, supplies or any combination thereof, however classified, covering items that are subject to a direct procurement method provided under regulation 20, record the direct procurement method in the strategic capital acquisition management plan as an urgent procurement, and contract any additional life-cycle activity, where necessary, according to the policy, process and procedure for the acquisition of armaments to ensure the integrity of the system and value for money.

(4) A procuring entity that undertakes the procurement of highly sensitive works, services, supplies or any combination thereof, however classified, which fails to submit a restricted list to the Authority in terms of subregulation (1) shall be —

- (a) deemed to be conducting such procurement on the basis of an open list;
 - (b) subject to the requirements of procurement under the Act; and
 - (c) subject to an investigation relating to irregular expenditure.
- (5) An Accounting Officer shall appoint an integrated project team which shall consist of a representative from a —

- (a) user department who shall be the project officer; and
- (b) procuring entity responsible for contracting.

(6) An Accounting Officer shall submit a report quarterly, detailing the procurement of highly sensitive works, services, supplies or any combination thereof, by a procuring entity, to the Authority.

(7) An Accounting Officer shall, where a procurement need arises, which was not included in the restricted list referred to in subregulation (1), submit a supplementary restricted list to the Authority.

(8) Any procurement made under this regulation shall be monitored by the Authority to ensure that the procurement is in accordance with these Regulations.

32. (1) A procuring entity shall, where the procuring entity procures medicines and the related medical supplies, ensure that the procurement of such medicines and related medical supplies is in compliance with these Regulations.

Procurement of
medicines and
related medical
supplies

(2) An Accounting Officer shall establish an appropriate structure for the procurement quality assurance, logistics management, finance management, contract management, legal matters, operations or any other associated support structures for the provision of medicines and related medical supplies by a procuring entity.

(3) An Accounting Officer shall, when procuring medicines and related medical supplies —

- (a) use the latest standardised guidelines, for the efficient and effective procurement of medicines and related medical supplies in order to improve availability;
- (b) utilise pooled procurement regionally and internationally where available to reduce any costs associated with a procurement under this regulation; and
- (c) utilise pooled procurement and any other sources through development partners and supranational organisations.

(4) Notwithstanding subregulation (3) (b) and (c), an Accounting Officer shall ensure that a procuring entity procures locally manufactured works, services and supplies in accordance with Part XI of the Act.

(5) An Accounting Officer shall —

- (a) approve the variation of a contract relating to strength, pack size or artwork without going through a formal procurement process where there are similar alternative strength, pack size or artwork subject to consideration of a price;
- (b) implement a seamless accounting system to finance healthcare supply chain in order to avoid severance of the supply chain activities and associated inefficiencies;
- (c) place an order through commitment letters with a confirmed issuance of a Government purchase order for any confirmed quantity secured with a manufacturer;
- (d) identify and select key suppliers on periodic basis for critical lifesaving and quality improvement of medicines and related medical supplies in consideration of locally manufactured works, services or supplies; and

- (e) in utilising development partners, pooled procurement and supranational organisations referred to under subregulation (3) (c) and (d), request for approval from the Authority to, use any provided system, standard agreement, and derogate from using any standard document, which would ensure good procurement practice and sustainability.

PART V — Procedure and Processes of Procurement by Procuring Entities

Procurement planning

33. (1) A procuring entity shall make a proposal for an annual or periodic procurement planning and integrate the proposed annual or periodic procurement planning with the applicable budget processes, based on any approved or indicative budget, as may be appropriate.

(2) A procuring entity shall revise or update a procurement plan, as may be necessary, after the approval of a budget for a financial year.

Contents of annual procurement plan

34. (1) An annual procurement plan for each financial year shall include —

- (a) a detailed breakdown of the works, services or supplies required by a procuring entity and their priority, and an indication as to whether it will be necessary to carry out a prior study for a tender of such works, service or supplies;
- (b) a schedule of the delivery of the works, services or supplies, and the implementation or the completion date for such works, services or supplies required by a procuring entity;
- (c) an indication of the items that can be aggregated for procurement as a single package or for procurement through any applicable arrangement for common use items;
- (d) an estimate of the cost of each package of works, services or supplies required by a procuring entity, and the details of the budget available and the sources of funding;
- (e) information on the rules applicable to a procurement where the procurement is not subject to the provisions of the Act;
- (f) an indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the completion of the procurement, taking into account the applicable approval requirements; and
- (g) any other information as the Minister may determine, after the approval of the Minister.

(2) An annual procurement plan referred to in subregulation (1) shall be submitted by an Accounting Officer to the Authority in Form C set out in Schedule 1.

Aggregation of procurement requirements

35. (1) A procuring entity may aggregate a procurement requirement, as may be necessary, in order to achieve the economies of scale.

(2) A procuring entity shall, in deciding whether an aggregate is necessary, consider all the relevant factors, including the —

- (a) items that are of a similar nature and are likely to attract the same bidders;
- (b) items that will be ready for bidding at the same time, and when delivery, implementation or completion shall be required by the procuring entity;
- (c) optimum size and type of contract to attract the most responsive competition, taking into account the market structure for the items required by the procuring entity;

- (d) need to apply any reservation to promote the participation of a local supplier, local manufacturer or producer, or a target citizen;
- (e) items that will be subject to the same bidding requirements and the terms of a contract;
- (f) potential by a procurement to realise savings or transaction cost, or facilitate a contract management by the procuring entity;
- (g) preferential and reservation scheme in order to promote economic empowerment and locally manufactured or produced works, service or supplies;
- (h) capacity and strength of a bidder;
- (i) development of a supplier, particularly a local manufacturer or producer, or a targeted citizen, in order to strengthen and enhance competition;
- (j) different supply chain management and inventory management strategy in order to promote the business of a local manufacturer or producer, or a targeted citizen, and to manage business cost; or
- (k) accessibility to an international manufacturer or preferred supplier, an international procurement agent or foundation, supranational organisation, a development partner or a pooled procurement, where works, services or supplies are not available in Botswana.

36. (1) A procuring entity may, upon the approval of the Accounting Officer, divide a procurement requirement, which can be procured as a single contract, into several lots to be tendered together, where it is anticipated that an award of several separate contracts may result in the best overall value for the procuring entity.

Division of procurement requirement into lots

(2) The Accounting Officer may approve a division of 1000 Words a requirement into separate lots where the division is likely to increase the number of the responsive bids.

(3) A procuring entity shall not divide a procurement into lots —

- (a) where an award of several separate contracts would create a challenge of compatibility or inter-changeability between items purchased as separate lots;
- (b) where an award of several separate contracts would invalidate or otherwise restrict any supplier's warranty or liability; or
- (c) where an award of several separate contracts would increase the cost of servicing, maintenance or similar requirement.

37. (1) A procurement requirement shall be initiated by a user department using a procurement requisition in Form D set out in Schedule 1, which shall include —

Initiation of procurement process

- (a) a statement of the procurement requirement;
- (b) the estimated value of works, services or supplies; and
- (c) the detail of the funds budgeted for the procurement requirement, including any funds from future budget for any multi-year contract or donor.

(2) A user department shall, in preparing a statement of a procurement requirement, seek technical advice as may be necessary.

(3) A user department shall, in estimating the value of works, services or supplies, ensure that the estimation is realistic and based on an up-to-date information relating to economic and market conditions.

38. (1) An Accounting Officer shall approve a requisition to procure by a user Department before the initiation of a procurement process.

Approval of requisition to procure

(2) The approval of a requisition referred to in subregulation (1) shall include confirmation of the —

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

(3) A requisition approved in terms of this regulation shall be submitted by a user Department to a procurement unit to initiate a procurement process.

(4) A procurement unit shall ensure that adequate funds are budgeted for a procurement process prior to the initiation of the procurement process, taking into account all costs involved in such procurement process, including any funds required for the publication of any notice.

(5) The costs involved in a procurement process may, in addition to a total contract price, include the following —

- (a) a contingency plan, including any anticipated contract variation, exchange rate fluctuation or allowance for price adjustment;
- (b) the costs relating to the successful delivery of a procurement requirement for which a procuring entity is liable, including freight, insurance, customs clearance, inland delivery, import tax or duty, inspection, installation or any costs relating to a service or maintenance agreement;
- (c) the costs relating to a facility, service or resources to be provided by a procuring entity, particularly costs on office space or communication facility for a procurement agent or procurement service provider;
- (d) the cost of any linked contract, which is necessary for the successful implementation of the procurement process; and
- (e) any other costs such as levies or value added tax, or costs deemed to be justifiable by a procuring entity.

(6) Where a procuring entity initiates a procurement process for a multi-year contract or a framework contract, the procuring entity shall ensure that funds for the —

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

Availability of funds

39. (1) A procuring entity shall ensure that funds are available for procurement, and shall, in Form E set out in Schedule 1, confirm the availability of such funds before commencing a procurement process.

(2) Notwithstanding subregulation (1), a procuring entity may commence a procurement process for a scheduled or routine activity if the procuring entity is certain of the availability of funds for such activity.

Standardisation of procurement

40. (1) A procuring entity may submit a proposal for the standardisation of works, service or supplies to the Authority for approval.

(2) A proposal referred to in subregulation (1) shall include —

- (a) the technical, economic and logistical justification for the standardisation of works, services or supplies;
- (b) the justification for the choice of the proposed standardisation of works, services or supplies;
- (c) a projection for future procurement of the object of the standardisation of works, services or supplies;
- (d) any plan to ensure transparency and value for money in procurement of the standardised works, services or supplies; and
- (e) any other information that may be relevant to the proposed standardisation of works, services or supplies.

(3) An approval of a standardisation of works, services or supplies in subregulation (1) shall be for such period as the Authority may determine, and after the period lapses, a procuring entity shall review the standardised works, services or supplies.

(4) Where a procuring entity decides to continue with a standardised works, services or supplies after a period referred to in subregulation (3), the procuring entity shall, in writing within 14 days, submit its proposal to continue with the standardised works, services or supplies to the Authority for approval, accompanied by —

- (a) an updated technical, economic and logistical justification of the proposed continuation of such standardised works, services or supplies, indicating any change;
- (b) an updated justification for the choice of such standardised works, services or supplies, including the advantage, if any, of the standardised works, services or supplies and any change since the application of such standardised works, services or supplies;
- (c) the original projection for procurement, the actual volume and value of the procurement of such standardised works, services or supplies during the period of the validity of the standardised works, services or supplies, and future procurement of the object of such standardised works, services or supplies;
- (d) any plan to ensure transparency and value for money in the procurement of such standardised works, services or supplies; and
- (e) any other information that may be relevant to the proposed continuation of such standardised works, services or supplies.

(5) The Authority shall, after receipt and upon consideration of a proposal referred to under subregulations (1) and (4) —

- (a) approve the proposal, and in writing, state the grounds for the approval of the proposal; or
- (b) reject the proposal, and in writing, state the grounds for the rejection of the proposal.

41. (1) A procuring entity may categorise works, services or supplies of a similar or related nature where such categorisation is practicable and may not cause unreasonable delay in a procurement process.

Categorisation
of works,
services or
supplies

(2) A procuring entity may, in categorising works, services or supplies, appoint a procurement agent or a procurement service provider, or request any other procuring entity, to perform the services involving such categorisation.

(3) A procuring entity may unbundle the categorisation of works, services or supplies in order to enhance the participation of a targeted citizen in accordance with the Economic Inclusion Act.

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(4) A procuring entity shall debit a procurement requirement to different vote sub-heads which shall only be combined into one tender where all costs of a procurement can be easily identified and separately debited.

(5) A procuring entity shall not divide a procurement into separate tenders for the purpose of avoiding a domestic or an international competitive bidding or selection, except where unbundling is allowed to enable the participation of a citizen.

(6) A procuring entity shall develop a supply chain management strategy that shall deliver a long-term value for the procuring entity by ensuring that the acquisition and the delivery of works, services or supplies is effective, responsive and cost-effective, and by delivering innovative solutions.

- (7) A categorisation of works, services or supplies shall —
 - (a) include a tailored acquisition process;
 - (b) incorporate technology and innovation, or a consideration to minimise waste, such improved packaging and production, and take-back schemes; and
 - (c) include a cost-effective delivery method with a solution that promotes best value for money.
 - (8) A procuring entity shall —
 - (a) analyse spend category and volume of works, services or supplies;
 - (b) engage in regular analysis of the needs of a user and of a supply market;
 - (c) create value to improve the total cost ownership and consider quality, innovation, the safety of supply and risk management;
 - (d) adopt a proactive stance in the development of a category strategy; and
 - (e) assign a responsibility and process for the development and implementation of a category strategy, including the responsibility to involve a stakeholder and to manage a contract.
 - (9) A procuring entity shall be responsible for defining the relevant strategy for the category of the procuring entity.
- 42.** (1) A procurement entity shall, when considering a potential source for any procurement requirement, consider all relevant factors, including —
- (a) the competitiveness of a domestic, regional or an international market for the works, services or supplies in order to ensure value for money;
 - (b) the likely interest of a domestic, regional or an international bidder, given the size and nature of a procurement requirement;
 - (c) whether an item should be purchased from a manufacturer, or from distributor or agent;
 - (d) any restriction relating to existing copyrights, intellectual property rights, patent or proprietary rights;
 - (e) whether there is a functionally equivalent works, services or supplies which would meet the needs of a procuring entity;
 - (f) any applicable law that restricts any potential source;
 - (g) the need for compatibility or inter-changeability with any existing works, services or supplies;
 - (h) the requirements for the service and maintenance of any item purchased and any restriction related to the conditions of warranty;
 - (i) any impact on conditions of warranty or the liability of a supplier, where an alternative supplier is used for additional work or continued work;
 - (j) any potential benefit, particularly the use of any experience acquired or any saving in the mobilisation of costs;
 - (k) any applicable international agreement or obligation; and
 - (l) the complexity of the supply chain and the availability of a commodity in the local market.
- (2) Any recommendation to use a limited number of suppliers or a single source as the criterion for determining the choice of a procurement method shall include a —
- (a) comprehensive analysis of the market for the required works, services or supplies;
 - (b) detail of the relevant factor referred to in subregulation (1);
 - (c) statement that no other source could be used to open a procurement requirement to a more competitive procurement method; and

- (d) justification for restricting the number of potential sources.
- 43.** (1) A procuring entity may use a pre-qualification process where — Pre-qualification
of bidders
- (a) the works, services or supplies required by the procuring entity are highly complex, specialised or require a detailed design or methodology;
 - (b) an evaluation is detailed and the evaluation is of a large number of bids, which would require an excessive time and resources from the procuring entity;
 - (c) the quality and the performance is of primary importance for the supply, of works, services or supplies, or of equipment, or the supplier's back up and maintenance service is critical; or
 - (d) a shortlist of capable bidders is required for bidding.
- (2) An Accounting Officer shall, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish information relating to a pre-qualification, which shall include —
- (a) the name and address of a procuring entity;
 - (b) the nature, quantity and location of works to be undertaken, the nature and location of services to be provided, or the nature, quantity and place of the delivery of the supplies;
 - (c) the completion of works, the timetable for the provision of services, or the desired or required time for the delivery of supplies;
 - (d) the criteria and procedure to be used for the evaluation of the qualification of a bidder;
 - (e) the price, currency and terms of payment for the pre-qualification document;
 - (f) the means of obtaining a pre-qualification document and the place from which the pre-qualification document may be obtained;
 - (g) the language in which a pre-qualification document shall be available;
 - (h) the place, manner and deadline for the submission of an application for pre-qualification;
 - (i) a minimum bidding period as may be applicable; and
 - (j) any other information as the Accounting Officer may consider necessary.
- (3) An Accounting Officer shall approve a pre-qualification document before the pre-qualification document is issued to a bidder.
- (4) Any invitation for a pre-qualification issued in terms of this regulation, which has not been approved by an Accounting Officer shall not be invalid.
- (5) Where a procuring entity undertakes a pre-qualification, the qualification of a bidder by the procuring entity shall be based on compliance and technical requirements, including —
- (a) the experience and past performance of the pre-qualification applicant;
 - (b) the pre-qualification applicant's knowledge of the labour laws;
 - (c) the capability of the pre-qualification applicant with respect to personnel, equipment and construction or manufacturing facility;
 - (d) the financial position of the pre-qualification applicant;
 - (e) any commitment of the pre-qualification applicant; and
 - (f) the compliance by the pre-qualification applicant with any legal requirement.
- (6) A procuring entity shall, after receipt of a pre-qualification application, evaluate the pre-qualification application in accordance with these Regulations.

PART VI — *Standardised Bidding Packages and Bidding Processes*Bidding
documents**44.** (1) A procuring entity shall state its procurement requirement for works, services or supplies in —

- (a) writing, in the standardised bidding package and contract issued by the Authority in terms of section 56 (1) of the Act; and
- (b) accordance with the type, value and relative complexity of the procurement requirement.

(2) A bidding document issued by a procuring entity in terms of section 56(4) of the Act shall include —

- (a) an invitation to tender and an instruction on the —
 - (i) preparation and submission of a bid,
 - (ii) date, time and address for receipt of a bid,
 - (iii) place and time of a bid opening,
 - (iv) non-refundable cost of a bid document,
 - (v) pre-bid meeting or site visit where necessary,
 - (vi) reservation scheme that may be applicable,
 - (vii) requirements for registration,
 - (viii) contact person, and
 - (ix) any other information that may be necessary;
- (b) a returnable form;
- (c) the general conditions of a contract or a statement of the general conditions that shall apply;
- (d) the special conditions of a contract;
- (e) an integrity agreement in Form F Set out in Schedule 1;
- (f) a statement of a procurement requirement or scope of work, or terms of reference or bill of quantities;
- (g) a schedule of a procurement requirement and a price schedule;
- (h) a statement of the qualification documentation to be provided by a bidder;
- (i) the contract form, a statement of the contract or an order document that shall apply;
- (j) the arrangement for securities, guarantees or any other document of security, where required; and
- (k) an instruction to a bidder to indicate the kind of information the bidder would not want to be disclosed by the procuring entity to a third party.

(3) The Minister shall, by Notice in the Gazette, in a newspaper of national circulation, electronic media or Government portal, publish a schedule of the cost of a bidding document that shall be sold to a prospective bidder.

Selection of
standardised
bidding package**45.** (1) A user Department shall select a type of a standardised bidding package and contract as part of a procurement planning process, taking into account the —

- (a) nature, value and complexity of a procurement requirement;
- (b) need to offer an equitable contract to every bidder to ensure effective competition;
- (c) need to maximise value for money and minimise risk for a procuring entity;
- (d) likelihood of any delay or unforeseen circumstances requiring contract variation;
- (e) need for effective contract management and cost control; and
- (f) resources available for the monitoring of a contract.

(2) A procurement oversight unit shall recommend the use of an applicable type of a standardised bidding package and contract from among the types of the standardised bidding packages issued by the Authority.

46. (1) A tender document shall state the period for which a bid shall remain valid. Validity of bids

(2) The validity period of a bid shall be calculated from the closing date of the submission of the bid and shall remain in force until the close of a business on the last day of the validity period of such bid.

(3) A procuring entity shall, when determining the duration of the validity period of a bid, allow sufficient time to enable the procuring entity to —

- (a) undertake an evaluation, post-qualification and negotiation;
- (b) conduct adjudication and make an award of a tender;
- (c) allow a bidder to challenge a decision by such procuring entity to award a tender, before a contract is concluded; and
- (d) prepare a letter of acceptance or a contract, and obtain the necessary approval before the issuance of the letter of acceptance or contract, within the validity period of a bid.

(4) A procuring entity shall, where necessary, request for an approval of an Accounting Officer for the procuring entity to request, in writing, a bidder to extend the validity period referred to under subregulation (2) for a minimum period to complete the processes referred to under subregulation (3), before the expiry of the validity period of a bid.

(5) A bidder may extend the validity period of a bid before a decision by a procuring entity to award a tender is made.

(6) A procuring entity shall, where a bidder extends the validity period of a bid, not permit the bidder to change the price or any other detail of the bid.

(7) An Accounting Officer shall, when considering a request from a procuring entity in terms of subregulation (4), take into account and weigh several factors including, but not limited to —

- (a) the amount of time that has passed following the closure of a tender;
- (b) the nature of the procurement;
- (c) public interest in the procurement;
- (d) the stage of the procurement;
- (e) whether a cancellation of a tender may result in the prejudice of a bidder;
- or
- (f) whether a bidder stands to suffer any prejudice due to an extension of the validity period of a bid.

(8) Where a bidder refuses to extend the validity period of, or revalidate, a bid, upon the request of a procuring entity, the bidder's bid shall be disqualified from further evaluation without forfeiting the security of such bid, where applicable.

47. (1) A procuring entity shall define a statement of a procurement by specification of the procurement requirement, and such requirement specification shall contain a complete, precise and description of such procurement requirement, and shall include, where appropriate — Statement of procurement requirement

- (a) a specification issued without a reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item;
- (b) in the case where there is insufficient precise or intelligible way of characterising a procurement requirement except by the use of a reference under paragraph (a), a specification issued with such reference which shall include the words "or equivalent" and serve as a benchmark during an evaluation process;

Pre-bid
meetings and
site visits

- (c) in the case where a standardisation of works, services or supplies is adopted by the procuring entity, a specification issued with a reference under paragraph (a);
- (d) a dimension, symbol, terminology, language, packaging, marking and labelling of the supplies required in accordance with industry standards issued by the Authority under the Act;
- (e) the national or international standard, where available, or the industry standards referred to under paragraph (d); and
- (f) specific description of a procurement requirement based on the needs of an existing infrastructure.

(2) A bidding document shall state, where applicable, the mandatory certification issued by the relevant authority.

48. (1) A procuring entity may hold a pre-bid meeting or conduct a site visit in order to allow a potential bidder to either seek clarification or have access to a project site.

(2) A procuring entity shall include in a bidding document, an arrangement for a pre-bid meeting or a site visit, and such meeting or visit may be virtual, digital, electronic or physical interaction, as may be applicable.

(3) A procuring entity shall give a potential bidder reasonable notice of any pre-bid meeting or site visit, within a specified validity period of a bid, and where necessary, the procuring entity shall extend the period of such notice.

(4) A procuring entity shall hold a pre-bid meeting or a site visit for such time as may be reasonable for a bidder, in order to enable the bidder to consider any additional information that may be necessary in the preparation of a bid.

(5) A bidder may, in a pre-bid meeting or site visit, request a procuring entity for an additional time, and the procuring entity may consider such request and communicate the decision to all participating bidders.

(6) A procuring entity shall cause proper minutes of a pre-bid meeting or site visit to be taken and recorded, and a copy of such minutes shall be provided to a bidder who has been issued with a bidding document.

(7) A procuring entity shall manage and be in charge of a pre-bid meeting or site visit.

PART VII — Procedure for Tender Submission, Tender Opening and Evaluation, De-Briefing of Bidder and Cancellation of Procurement Process

Methods of
submission of
bids

49. (1) A bidding document shall contain an instruction on the method of the submission of a bid, which shall be —

- (a) a single envelope or package submission, in which a tender document containing the financial and technical offer of a bidder is submitted together in one sealed envelope or packaging;
- (b) a dual envelope or package submission, in which the technical offer from the bidder is placed in one sealed envelope or package marked “technical offer”, and the financial offer from a bidder is placed into a second sealed envelope or package marked “financial offer”; or
- (c) any other submission as may be determined by the Authority.

(2) A bidding document shall state that a bid shall be firmly bound, submitted in an envelope or package, securely sealed in such manner that does not allow for the envelope or package to be easily opened and resealed.

(3) A bidder may, subject to subregulation (2), use a preferred method of sealing of an envelope or a package.

(4) A procuring entity shall, during a bid opening, reject any envelope or package that is not sealed in such manner as provided under subregulation (2).

(5) A bidding document shall contain an instruction on the detail of the labelling and a reference to be written out on each envelope or package which shall include —

- (a) a procurement reference number and description;
- (b) the name, telephone number and postal address of a bidder;
- (c) the technical or financial information of a bidder; and
- (d) an original tender document clearly marked “ORIGINAL”, and two copies of the original tender document each clearly marked “COPY”, of the bid submission.

(6) A contractor who responds to a tender shall submit one original copy of a bid document to be used by an Evaluation Committee, and two duplicate copies of the bid document, one copy to be used by a procurement oversight unit and one copy to be photocopied for use by an evaluator.

50. (1) A bidding document shall contain an instruction for the time, date and place for the submission of a bid.

Receipt of bid
and bid opening

(2) A procuring entity shall ensure that the closing date to bid falls on a working day, and where a closing date to bid falls on a Saturday, Sunday or a public holiday, the procuring entity shall allow a bid document to be submitted at a time originally stipulated in the Tender Notice.

(3) In addition to any other procurement requirement in a bid document, a procuring entity shall immediately return a bid document submitted after the closing date to bid to the bidder, unopened and marked “late bid document”, together with a date and time on which the procuring entity received the bid document.

(4) A procuring entity shall extend the closing date to bid where the procuring entity provides sufficient evidence that there is need for such extension to an Accounting Officer, or as the case may be, where there is sufficient time to publish an amendment notice before the closing time to bid.

(5) The procedure for an opening of a bid shall be —

- (a) a public opening of a bid which may be witnessed by a representative of a bidder, either virtually or physically, or through a live streaming as may be determined by a procuring entity; or
- (b) an private opening of a bid which shall be witnessed by at least three members of staff of a procuring entity, including one staff member of a procurement oversight unit.

(6) Notwithstanding subregulation (5), a procuring entity shall allow any interested representative of a bidder and the general public to attend every opening of a bid.

(7) A procuring entity shall —

- (a) keep and maintain a record of the —
 - (i) opening of a bid in single envelope or package, in Form G set out in Schedule 1,
 - (ii) opening of a bid for technical offer in dual envelope or package, in Form H set out in Schedule 1, and
 - (iii) opening of a bid for financial offer in dual envelope or package, in Form I set out in Schedule 1; and

- (b) in the case of a private opening of a bid, avail to a representative of a bidder a copy of the record referred to in paragraph (a).
- Withdrawal of bids**
- 51.** (1) A bidding document shall include an instruction that a bidder may withdraw, modify or replace a bid by notice to an Accounting Officer at any time before the closing date to bid, for the approval of the Accounting Officer.
- (2) A withdrawal, modification or replacement of a bid referred to in subregulation (1) shall be opened, read and recorded at the opening of the bid in accordance with the guidelines issued by the Authority.
- (3) A bidder who wishes to withdraw, modify or replace a bid shall do so in writing, and submit in the same manner as the submission of a bid, in an envelope or package marked “WITHDRAWAL”, “MODIFICATION” or “REPLACEMENT”.
- (4) The re-submission of a bid shall be marked “REPLACEMENT BID” or “SUPPLEMENTARY BID” on the outer envelope or package.
- Evaluation process**
- 52.** (1) An Evaluation Committee shall —
- (a) evaluate a bid received in accordance with a tender document;
- (b) evaluate a bid received to determine compliance with bidding document, technical responsiveness and undertake an analysis of value for money of the bid; and
- (c) during an evaluation of a bid, not consider any factor that is not expressly provided for or national standard specification in a tender document unless there are extenuating circumstances to use an industry standard.
- (2) An Evaluation Committee shall, when analysing value for money, where applicable, compare bid prices previously obtained through a competitive procedure in respect of a similar procurement, or a breakdown analysis of any current component costs for a base item, freight and insurance elements, taking into account the circumstances and the value of the procurement.
- (3) An Evaluation Committee shall, during the evaluation of a bid, carry out a preliminary examination of the bid to determine whether —
- (a) a bid has met all the requirements for tender compliance and the bidding document has been properly signed;
- (b) where a bidder has failed to submit, or has submitted incomplete administrative documents or information as may be guided by the Authority, the Evaluation Committee shall request the bidder to submit such documents or information within five days; and
- (c) the required securities have been provided.
- (4) An Evaluation Committee shall assess a bid to determine any substantial response to a procurement requirement of a tender document.
- (5) A bid shall be considered to be substantially responsive if it conforms to all the terms, conditions and specifications of a tender document without any material deviation.
- (6) A decision of an Evaluation Committee shall be made through an agreement by all members or the majority members of the Evaluation Committee.
- (7) Where a member of an Evaluation Committee does not agree with a decision of the majority members of the Evaluation Committee, such Evaluation Committee shall ensure that an evaluation report indicates the disagreement.
- (8) An Evaluation Committee shall keep and maintain an individual score sheet or evaluation sheet as a record of a evaluation process, and shall submit the individual score sheet or evaluation sheet with a consolidated report to a procurement unit.

(9) An evaluation report shall be signed by all members of an Evaluation Committee in attendance.

(10) An evaluation report shall —

- (a) set out the reasons upon which the consideration of a preferred bidder is based; and
- (b) together with the original bidding document, be submitted to a procurement unit by an Evaluation Committee for quality examination and if satisfied, the procurement unit shall forward the evaluation report and the bidding document to a procurement oversight unit for pre-adjudication.

(11) An Evaluation Committee may conduct an electronic evaluation in accordance with the National Electronic Procurement Regulations.

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(12) An Evaluation Committee may, in determining a preferred bidder, where applicable and in accordance with a bidding document consider the following, the —

- (a) reasonableness of the bid price, subject to any existing reservation and preferential scheme applied;
- (b) total life cost where applicable;
- (c) time for the delivery of the supplies;
- (d) completion of works or the provision of services;
- (e) functional characteristics of the works or supplies;
- (f) terms of payment and of guarantees in respect of works, services or supplies; and
- (g) any other relevant factors.

(13) Where a price of a bid is expressed in two or more currencies, an Evaluation Committee shall convert the price of the bid to the Botswana Pula currency, for purposes of evaluating and comparing all bids before the Evaluation Committee.

(14) An Evaluation Committee shall, when converting a currency in terms of subregulation (16) use the exchange rates provided by the Bank of Botswana established under the Bank of Botswana Act, as may be applicable to any similar transaction at the time of the closing of a tender.

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(15) A material deviation to commercial terms and conditions by a bid shall justify a rejection of the bid by an Evaluation Committee, and such material deviation shall include —

- (a) the failure to submit a completed form of offer and acceptance, and price schedules or bill of quantities, by an authorised person;
- (b) the failure by a bidder to comply with the requirements for eligibility;
- (c) the failure by a bidder to submit a security for a tender as specified in a tender document;
- (d) the inability by a bidder to meet the critical delivery schedule or work schedule as specified in a tender document, where such schedule is a crucial condition which the bidder should comply with;
- (e) the failure by a bidder to comply with the minimum experience criteria as specified in a tender document;
- (f) a condition in a tender which limits the responsibility of a bidder to accept an award of the tender;
- (g) the inability of a bidder to accept a price adjustment formulae of a tender document;
- (h) a refusal by a bidder to accept a correction of an arithmetical error made pursuant to a tender document;

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- (i) a bidder who demands a price adjustment where a fixed price of a tender is invited;
- (j) a bidder who subcontracts in a substantially different amount or manner than that permitted by a procuring entity; or
- (k) any other relevant factors.

(20) An Evaluation Committee shall examine every bid for substantial response to a technical requirement of a bidding document, and where a bid does not conform to the technical requirement the Evaluation Committee shall make a recommendation to reject the bid for —

- (a) failure by a bidder to bid for the required scope of work as instructed in the bidding document;
- (b) failure by a bidder to meet technical requirement, particularly where the bidder offers a different type of equipment or material from the specified equipment or material, plant capacity of the bidder is well below the specified minimum, or the equipment of the bidder is unable to perform any basic function for which it is intended; or
- (c) any other reason related to technical requirements.

(21) An employee of a procuring entity who took part in the preparation of a bidding document may participate in an evaluation of a bid where the employee's expertise is required, and at the first meeting of an Evaluation Committee, an Accounting Officer shall ensure that all members of the Evaluation Committee are available for the duration of the evaluation according to a work plan of such Evaluation Committee.

Clarification of
bids during
evaluation
process

53. (1) An Evaluation Committee may, in writing, request a bidder for clarification of a bid received by a procuring entity from the bidder who shall, provide a written response to the Evaluation Committee.

(2) Any amendment to the substance of a bid, including the amendment of the price of a bid, shall not be sought, offered or permitted after the clarification referred to in subregulation (1).

(3) Any engagement between an Evaluation Committee and a bidder shall be in writing and the Evaluation Committee shall not entertain any informal communication, meeting or any other contact with the bidder.

(4) An Evaluation Committee shall handle every request for clarification of a bid through an official communication channel within a procuring entity, and the Evaluation Committee shall not allow any direct dealing between such Evaluation Committee and a bidder.

Evaluation of
single envelope
or package bid

54. (1) An Evaluation Committee shall evaluate a bid according to the compliance, technical and financial requirements stated in a tender document.

(2) A technical bid and a financial bid shall be submitted in a single envelope or package.

(3) A bidder who is successful in the compliance evaluation stage shall proceed to the technical evaluation stage, and a bidder who is successful at the technical evaluation stage shall proceed to the financial evaluation stage.

(4) A financial evaluation stage shall take into consideration any reservation or preference scheme.

(5) An Evaluation Committee shall prepare an evaluation report which encompasses the three stages referred to under subregulation (3) and submit the evaluation report to a procurement unit.

55. (1) A bidder shall submit to a procuring entity, a technical bid and a financial bid in separate envelopes or packages.

Evaluation of
dual envelope
or package bid

(2) An Evaluation Committee shall examine a bid for compliance and responsiveness.

(3) A bidder who is successful in a compliance evaluation stage shall proceed to a technical evaluation stage.

(4) An Evaluation Committee shall prepare a technical evaluation report and submit the technical evaluation report to a procurement unit.

(5) An Accounting Officer shall, after the approval of a technical evaluation report, authorise the opening of a financial bid.

(6) After the approval referred to under subregulation (5), a procuring entity shall, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish the outcome of a technical adjudication within three days of the outcome.

(7) An Accounting Officer shall sign and submit a letter to a successful bidder and a bidder who has not been successful indicating the outcome of a tender and the reasons of the outcome.

(8) An Evaluation Committee shall evaluate a financial bid by strictly adhering to the financial evaluation criteria set out in a tender document.

(9) A financial evaluation stage shall take into consideration any reservation or preference scheme.

(10) An Evaluation Committee shall prepare a financial report and submit the financial report to a procurement unit.

(11) A procuring entity shall, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish the outcome of a tender adjudication within three days of the outcome.

(12) A procuring entity shall, after the publication of an award decision referred to under subregulation (11), allow a cooling-off period in accordance with section 104 of the Act.

(13) An Accounting Officer shall sign and submit a letter to a successful bidder and a bidder who has not been successful indicating the outcome of a tender.

(14) A procuring entity shall, where a bidder requests for de-brief, provide the bidder with de-brief in accordance with these Regulations.

(15) An Accounting Officer shall, where a contractor has not lodged a complaint during a cooling-off period, proceed to award the tender.

(16) An Accounting Officer shall, where a contractor has lodged a complaint during a cooling-off period, resolve the complaint within 14 days of the receipt of such complaint, before he or she proceeds with a procurement process in accordance with these Regulations.

(17) A procuring entity shall —

(a) upon receipt of a letter of acceptance from a bidder, place a contract with a successful bidder; and

(b) immediately return an unopened financial submission by a bidder whose bid failed to proceed to the financial evaluation, to the bidder.

56. (1) Except as otherwise provided in these Regulations, an amendment to a bid, including an amendment of a price of a bid, shall not be permitted after the closing date of the bid.

Change of
details of bids

(2) Notwithstanding subregulation (1), an Evaluation Committee may correct an arithmetical error in a bid document where —

- (a) there is a discrepancy between a unit price and the total price that is obtained by multiplying the unit price and the quantity, and such unit price shall prevail, and the total price shall be corrected accordingly;
- (b) there is a discrepancy between an amount in words and an amount in figures, and the amount in words shall prevail; or
- (c) applicable, a reservation or preference scheme is to be applied to a corrected price of a bid.

(3) Notwithstanding subregulation (1), a procuring entity may correct any minor error or oversight in a bid that is capable of being corrected without changing the substance of the bid

(4) The procedure for the correction of an arithmetical error in a bid referred to under subregulation (2) shall be provided in a bidding document.

(5) Any arithmetic correction made to a bid shall, where necessary, be quantified, noted and taken into account in an evaluation of the bid.

(6) An Evaluation Committee shall, immediately after correcting a bid in terms of subregulation (2), inform a bidder of such correction, and where the bidder does not accept the correction, the Evaluation Committee shall disqualify the bid.

Ad hoc de-briefing committee

57. (1) An Accounting Officer shall appoint an *ad hoc* de-briefing committee for each specific procurement.

(2) An *ad hoc* de-briefing committee shall consist of a minimum number of three members who shall include —

- (a) a member from an Evaluation Committee;
- (b) a representative from a procurement oversight unit;
- (c) a representative from a user Department; or
- (d) an additional member, who may be a representative from a procurement unit.

Functions of ad hoc de-briefing committee

58. (1) An *ad hoc* de-briefing committee shall conduct a de-brief for a specific procurement of a procuring entity.

(2) After a procuring entity has informed a bidder of the outcome of a bid, the *ad hoc* de-briefing committee shall —

- (a) meet with such bidder for the de-briefing; and
- (b) at the meeting referred to in paragraph (a), inform such bidder that —
 - (i) only the bidder's bid will be discussed,
 - (ii) such meeting is not a forum to debate the merits of a decision to award a tender,
 - (iii) such meeting shall not be used to raise any complaint, and
 - (iv) the bidder may lodge any complaint, in writing, with the Accounting Officer in accordance with these Regulations.

(3) An *ad hoc* de-briefing committee shall take and record minutes of any meeting of the *ad hoc* de-briefing committee, which shall be signed by the attendants of the meeting, and be kept as part of a procurement record.

(4) The minutes of a meeting of an *ad hoc* de-briefing committee shall be available to a bidder upon the bidder's request.

Choice of method of evaluation

59. (1) An evaluation of a bid shall be conducted in accordance with any procedure relating to the evaluation of a bid provided under these Regulations and relevant to a particular procurement.

(2) A choice of an evaluation method under these Regulations shall be relevant to a particular procurement project and shall take into account the —

- (a) complexity of a procurement project; and
- (b) nature of procurement of works, services or supplies.
- (3) A choice of an evaluation method shall be conducted in accordance with such procedure relating to a particular evaluation method.
- (4) Where a procuring entity wishes to use an evaluation method other than the one provided under these Regulations, the procuring entity shall first obtain an approval of the Authority to use such method.

60. (1) An Evaluation Committee shall conduct a quality and cost based selection evaluation method by —

Evaluation by
quality and cost
based selection

- (a) taking into account the quality and the cost of a bid in a process under which a technical bid is evaluated without access to a financial bid; and
- (b) stating, in an invitation to tender, the relative weight to be given to the quality and the cost component of the evaluation, which shall depend on the nature of an assignment.
- (2) A bid which is to be evaluated by a quality and cost based selection evaluation method shall be submitted using the dual envelope or package submission method.
- (3) The procedure for conducting a quality and cost based selection evaluation of a technical bid shall be as follows —
 - (a) after the opening of a bid, the evaluation shall be conducted through —
 - (i) a preliminary examination to determine whether a bid is qualified and responsive to the terms of a bidding document, and
 - (ii) the elimination of a bid from further evaluation, which has been determined to be non-responsive and not qualified;
 - (b) by means of —
 - (i) evaluating a bid against a technical evaluation criteria,
 - (ii) marking, on a scale of 1 to 100, each criterion, and
 - (iii) weighing the mark attained by a technical bid and recording such mark as a technical score;
 - (c) a tender document shall divide the criteria into sub-criteria to assist in the assessment of a technical bid;
 - (d) a 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;
 - (e) to state, in a bidding document, the technical evaluation criteria, the weights and the minimum qualifying mark;
 - (f) an Evaluation Committee shall prepare a technical evaluation report of a technical bid received and the report shall —
 - (i) substantiate the results of an evaluation,
 - (ii) describe the strength and weakness of a bid,
 - (iii) indicate which bid is recommended to proceed to the cost evaluation, and
 - (iv) be approved by an Accounting Officer prior to the cost evaluation;
 - (g) a bidder who has secured the minimum qualifying mark shall be notified and be advised of the date and time set for the opening of a financial bid, in terms of the following —
 - (i) the opening of the financial bid shall not be sooner than five days following the notice date,
 - (ii) a financial bid shall be opened in public, and
 - (iii) the name of the bidder, the technical score and the price of the bid shall be read out at the opening of the financial bid;

- (h) a cost evaluation of a bid shall be conducted by —
 - (i) reviewing a financial bid to correct any arithmetic error,
 - (ii) where applicable, the conversion of a bid to a single currency as stated in an invitation to tender,
 - (iii) evaluating a financial bid,
 - (iv) assessing the reasonableness and completeness of a price, and
 - (v) applying preferential treatment where applicable;
- (i) a bid shall be rated by giving a financial score of —
 - (i) 100 to the bid with the lowest cost, and
 - (ii) an inversely score, proportional to the lowest bid cost, to other bids;
- (j) a directly proportional cost or other methodology may be used, as an alternative, in allocating a mark for the cost:
 Provided that such methodology is fully described in the invitation to tender;
- (k) the total score shall be obtained by —
 - (i) weighing the technical score and cost score, and
 - (ii) adding the technical score and cost score together to obtain a combined score;
- (l) the weight for the cost shall be between 10 and 20 points, and shall not be greater than 30 points out of a total of 100;
- (m) the weight for the cost shall be chosen by considering the —
 - (i) complexity of the assignment, and
 - (ii) relative importance of the technical aspect of a bid;
- (n) the method proposed for the weighting of cost and technical score shall be stated clearly in an invitation to tender;
- (o) a bidder obtaining the highest total score shall be recommended for an award of a contract; and
- (p) an Evaluation Committee shall prepare a financial evaluation report of a financial bid evaluated and indicate which bidder is recommended for an award of a tender.

Evaluation by
quality based
selection

61. (1) A quality based selection evaluation method shall be a method used for the evaluation of a technical bid conducted against a set criteria on a merit point system to determine the best technical bid without access to a financial bid and shall include an evaluation of the —

- (a) quality of the bid which shall be the primary factor to be considered; and
 - (b) cost of the bid which shall apply only to the best technical bid.
- (2) The procedure for quality based selection evaluation of a technical bid shall be conducted in the following manner —
- (a) after the opening of a bid, an Evaluation Committee shall conduct a preliminary examination to determine —
 - (i) whether a bidder has qualified on the basis of having passed a selection for the bid, and
 - (ii) the responsiveness of a bid to the terms of bidding document;
 - (b) a bid that fails to qualify or that is found to be non-responsive to the terms of a bidding document shall be eliminated from further evaluation;
 - (c) a technical evaluation of a bid shall be conducted —
 - (i) to evaluate each technical bid against the technical evaluation criteria, and

- (ii) by comparing a bid to the minimum qualifying technical mark and a bid which does not reach the minimum to be eliminated from further evaluation;
 - (d) an Evaluation Committee shall prepare a technical evaluation report of a technical bid received, which shall —
 - (i) substantiate the result of an evaluation,
 - (ii) describe the strength and weakness of the bid,
 - (iii) indicate which bid is recommended to proceed to the cost evaluation, and
 - (iv) approved by an Accounting Officer prior to a cost evaluation;
 - (e) a cost evaluation of a bid shall be conducted for opening a financial bid of a bidder who submitted the best evaluated technical bid, where a technical bid and a financial bid were submitted in a dual envelope or package submission method;
 - (f) a financial bid shall be negotiated by a procuring entity in accordance with the provisions of these Regulations; and
 - (g) an Evaluation Committee shall prepare a financial report and indicate which bidder is recommended for an award of a tender.
- (3) A tender shall be awarded to a bidder with the highest technical score and a reasonable price.

(4) For purposes of this regulation, “quality based selection evaluation” means an evaluation method that uses quality as the primary factor in a process under which a technical bid is evaluated without accessing a financial bid, and a financial bid shall be conducted only for the best technical bid.

62. (1) A procuring entity shall, when using a fixed budget selection evaluation method, indicate its available budget, and the evaluation shall be conducted in the following manner, a bidder —

Evaluation by
fixed budget
selection

- (a) shall be required to provide, within a stated budget, the best possible technical bid and financial bid, in separate envelopes or packages; and
 - (b) with the evaluated technical bid of the highest quality, which is within a stated budget, shall be recommended to be awarded a contract.
- (2) A schedule of requirements or terms of reference which shall be prepared by a procuring entity shall contain the necessary detail to portray the sufficiency of the budget for the performance, by a bidder, of the expected task as shall be contained in a contract.
- (3) The procedure for a fixed budget selection evaluation of a technical bid shall be conducted in the following manner —
- (a) after the opening of a technical bid, an Evaluation Committee shall conduct a preliminary examination to determine —
 - (i) whether a bidder has qualified on the basis of having passed a selection for the bid, and
 - (ii) the responsiveness of a bid to the terms of bidding document;
 - (b) a bid that fails to qualify or that is found to be non-responsive to the terms of a tender document shall be eliminated from further evaluation;
 - (c) an Evaluation Committee shall prepare a technical evaluation report of a technical bid received, which shall —
 - (i) substantiate the result of an evaluation,
 - (ii) describe the strength and weakness of the bid,
 - (iii) indicate which bid is recommended to proceed to the cost evaluation, and

Evaluation by
least cost
selection works
and supplies

- (iv) approved by an Accounting Officer prior to the commencement of a cost evaluation;
 - (d) a procuring entity shall advise a bidder that has passed the technical stage of evaluation of the date and time set for the opening of a financial bid;
 - (e) the opening of a financial bid shall not be sooner than five days following the notice date;
 - (f) a financial bid shall be opened in public and at the opening of the bid, a procuring entity shall read out the —
 - (i) name of a bidder,
 - (ii) technical score, and
 - (iii) price of the bid;
 - (g) an Evaluation Committee shall conduct a cost evaluation and shall eliminate a bid that exceeds the budget;
 - (h) subject to any negotiation that may be held between a procuring entity and a bidder, the bidder who submits the highest ranked technical bid, amongst submitted bids that are within the budget, shall be recommended for an award of a tender; and
 - (i) any negotiation shall be made in accordance with the provisions of these Regulations.
- (4) For purposes of this regulation “fixed budget selection evaluation” means an evaluation method that recommends a bidder with the best technical bid which is within a given budget.
- 63.** (1) A procuring entity shall use the least cost selection works and supplies method to identify the lowest price of a bid which meets a technical and commercial requirement of a procuring entity.
- (2) Unless otherwise expressly stated in a tender document, a bid evaluated in terms of this regulation shall require the use of a single envelope or package submission method.
- (3) An Evaluation Committee shall make a recommendation for an award of a tender to a bid that is —
- (a) qualified;
 - (b) technically compliant;
 - (c) responsive to the terms of a bidding document; and
 - (d) has the lowest price.
- (4) The procedure for the least cost selection works and supplies evaluation of a bid shall be conducted in the following manner —
- (a) an Evaluation Committee shall carry out a preliminary examination of a bid to determine —
 - (i) whether a bidder has qualified on the basis of having passed the eligibility criteria for the bid, and
 - (ii) the responsiveness of the bid to the requirements of a tender document;
 - (b) an Evaluation Committee shall eliminate a bid that fails to qualify or that is found to be non-responsive to the requirements of a tender document from further evaluation;
 - (c) an Evaluation Committee shall conduct a technical evaluation to determine any technical compliance with a specification or scope of works in a tender document, only for a bid that, in terms of a preliminary examination, has qualified and has been responsive;

- (d) an Evaluation Committee shall eliminate a bid that is not in compliance with a technical requirement from further evaluation;
 - (e) an Evaluation Committee shall carry out a cost evaluation on a bid that is compliant with a technical requirement to —
 - (i) correct an arithmetical error,
 - (ii) convert a price of a bid to Botswana Pula currency, where applicable,
 - (iii) assess whether there is any omission of, or deviation from, the technical requirement,
 - (iv) assess whether a price of a bid is reasonable, and
 - (v) apply preferential treatment where applicable; and
 - (f) an Evaluation Committee shall prepare a detailed evaluation report of a bid received, which shall include —
 - (i) the result of an evaluation,
 - (ii) the reason for the rejection of any bid, and
 - (iii) a recommendation for an award of a tender.
- (5) A tender shall be awarded to a technically compliant bidder with the lowest reasonable price.

64. (1) An Evaluation Committee shall use the least cost selection services method to identify the lowest priced bid which meets any technical and commercial service requirement of a procuring entity.

Evaluation by
least cost
selection
services

(2) The least cost selection services method shall require the use of a single envelope or package.

(3) The procedure for the least cost selection services evaluation of a technical bid shall be conducted as follows —

- (a) an Evaluation Committee shall conduct a preliminary examination to determine —
 - (i) whether a bidder has qualified on the basis of having passed the selection for the bid, and
 - (ii) the responsiveness of the bid to the requirements of a bidding document;
- (b) an Evaluation Committee shall eliminate a bid that fails to qualify or that is found to be non-responsive to the requirements of a bidding document from further evaluation;
- (c) an Evaluation Committee shall conduct a technical evaluation by evaluating a technical bid against the technical evaluation criteria;
- (d) an Evaluation Committee shall eliminate a bidder who does not secure the minimum qualifying score from further evaluation;
- (e) an Evaluation Committee shall, in writing, inform and advise a bidder who has secured a minimum qualifying score, of the date and time for the opening of a financial bid;
- (f) a financial bid shall be opened in public and at the opening of the bid, a procuring entity shall publicly read out the —
 - (i) name of a bidder,
 - (ii) technical score, and
 - (iii) price of the bid;
- (g) an Evaluation Committee shall carry out a cost evaluation by —
 - (i) correcting any arithmetic error,
 - (ii) converting a bid to a single currency as may be stated in a tender document, and

Evaluation by
qualification
selection
method

- (iii) assessing whether the price of a bid is reasonable and complete;
- (h) subject to any negotiation that may be held between a procuring entity and a bidder, the bidder who submits the lowest priced bid, amongst submitted bids that meet the qualifying score or minimum requirements, shall be recommended for an award of a tender; and
- (i) an Evaluation Committee shall prepare a detailed evaluation report which shall be approved by an Accounting Officer.

65. (1) A procuring entity shall use a qualification selection evaluation method for a simple and small assignment as may be determined by a procuring entity, where the need for the preparation and evaluation of a competitive bid is not justified.

(2) A procuring entity shall, for the purpose of soliciting a bidder under a qualification selection method —

- (a) follow a two stage process;
- (b) prepare the terms of reference;
- (c) request a bidder to supply an expression of interest and information concerning the bidder's experience and competence relevant to an assignment;
- (d) prepare a short list of bidders; and
- (e) select a bid with the most appropriate qualification and reference.

(3) A procuring entity shall request a selected bidder to submit a combined technical and financial bid and shall invite the selected bidder to negotiate a contract.

(4) The procedure for a qualification selection evaluation method shall be conducted as follows —

- (a) a procuring entity shall —
 - (i) evaluate the expression of interest together with any supporting information, and
 - (ii) select a bidder with the most appropriate qualification and reference to whom a tender is to be awarded; and
- (b) an Evaluation Committee shall —
 - (i) prepare a technical evaluation report of an expression of interest received from a bidder, and
 - (ii) submit a technical evaluation report referred to under subparagraph (i) to an Accounting Officer for approval;
- (c) a procuring entity shall not proceed to stage two of an evaluation provided under paragraph (b) before obtaining the approval of an Accounting Officer;
- (d) a procuring entity shall request a selected bidder to negotiate the terms of a contract for the provision of the services; and
- (e) any negotiation shall be carried out in accordance with the provisions of these Regulations.

(5) For purposes of this regulation, “qualification selection” means a method of evaluation used in the selection of a bidder based exclusively on the quality of a proposal without reference to a price.

Cancellation of
tender

66. (1) A procurement unit shall not cancel a tender without the prior approval of an Accounting Officer.

(2) A procurement unit shall submit a written request to an Accounting Officer to authorise the initiation of a process to cancel a procurement process, and the request shall state —

- (a) the reason for a cancellation by the procurement unit to cancel a tender;
 - (b) the status of the procurement process; and
 - (c) whether a new procurement process is recommended and if so, provide the justification for the recommendation.
- (3) Where an Accounting Officer has approved the cancellation of a tender, a procurement unit shall, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish such cancellation.
- (4) A procurement unit shall avoid a cancellation of a tender as far as may be practicable, and shall consider to cancel a tender where —
- (a) a procurement need has ceased to exist or has changed significantly;
 - (b) due to unforeseen circumstance, the funding of a tender is insufficient for a procurement;
 - (c) there is a significant or material change to either the scope or a requirement of the tender, including the bidding conditions, the conditions of a contract or any other detail;
 - (d) all bids received are not responsive;
 - (e) there is evidence of collusion amongst bidders;
 - (f) it is in the public interest to cancel the tender;
 - (g) there is evidence of a corrupt practice by any person involved in a procurement;
 - (h) there has been a violation of the conditions of the tender during a tendering period;
 - (i) there has been a contravention of the provisions of the Act; or
 - (j) there are any other circumstances compelling the procurement unit to cancel the tender.
- (5) A procuring entity shall, where a tender is cancelled prior to the opening of a bid, return the bid to a bidder, unopened.
- (6) Where a cancellation of a tender is due to a procuring entity's omission, the procuring entity shall refund a bidder the cost of buying a bidding document and, where applicable, allow the bidder to participate in a re-tender at no cost.

PART VIII — *Procedure for Negotiation of Contracts and Award of Tenders*

- 67.** (1) A procuring entity shall, before an award of a tender, immediately invite a preference bidder for negotiation. Negotiation of contracts
- (2) A procuring entity shall, in an invitation referred to under subregulation (1), inform a bidder of any information in the proposal of the bidder, which requires further negotiation.
- (3) The negotiation referred to under subregulation (2) may include a discussion on —
- (a) the comments made by a bidder on the scope of services;
 - (b) the manpower or human capital engaged by a bidder;
 - (c) a work programme proposed by a procurement agent or a procurement service provider; and
 - (d) any inherent risk relating to a contract.
- (4) The discussions referred to under subregulation (3) shall not substantially alter the original terms of reference or the requirements of a contract:
- Provided that the final negotiation terms will be incorporated in the contract reference and the agreed methodology shall be incorporated in a "Description of Services" which shall form part of the contract.

(5) A key employee proposed for replacement of another employee shall have qualifications and experience equal to or better than the key employee initially proposed.

(6) Any financial discussion shall be limited to a negotiation by a contractor withholding tax liability or any other issues relating to tax that may not be clear in a bid.

(7) A procuring entity shall, where a discussion in terms of this regulation fails to result in an acceptable contract, terminate or cancel the procurement process or negotiation.

(8) A procuring entity shall inform a contractor of the reasons for the termination of a procurement process or negotiation.

Award of tender **68.** (1) A bidding document shall state the procedure to be followed for an award of a tender.

(2) An issuance of an acceptance letter to a successful bidder shall —

(a) constitute an act of the placement of a contract; and

(b) be after the observance of a cooling-off period and the resolution of a complaint, if any.

(3) A procuring entity shall, within 21 days, sign a contract with a bidder who has been awarded a tender after the lapse of a cooling off period, where there is no complaint lodged with an Accounting Officer in terms of section 104 of the Act.

(4) A procuring entity shall, where a successful bidder fails to sign a contract, or fails to provide any required security for the performance of the contract, with the approval of an Accounting Officer, withdraw an award decision in accordance with these Regulations.

(5) A procuring entity shall not issue a communication in any form that would bind the procuring entity unless an Accounting Officer has approved the issuance of the communication.

(6) After the approval referred to under subregulation (5), a procuring entity shall, by Notice in the Gazette, in a newspaper of national circulation, electronic media or Government portal, publish an award decision of a tender within three days of the outcome.

(7) A procuring entity shall, after the publication of an award decision referred to under subregulation (11), allow a cooling-off period in accordance with section 104 of the Act.

(8) A procuring entity shall, where a debriefing has been requested by a bidder, provide the debriefing to the bidder in accordance with these Regulations.

(9) An Accounting Officer shall sign and submit a letter to a successful bidder and a bidder who is has not been successful indicating the outcome of a tender and the reasons of the outcome.

(10) An Accounting Officer shall, where a contractor has not lodged a complaint during a cooling-off period, proceed to award the tender.

(11) An Accounting Officer shall, where a contractor has lodged a complaint during a cooling-off period, resolve the complaint within 14 days of the receipt of such complaint, before he or she proceeds with a procurement process in accordance with these Regulations.

(12) A procuring entity shall, upon receipt of a letter of acceptance from a bidder, place a contract with a successful bidder.

Types of
contracts and
pricing
approaches

69. A procuring entity may use any type of a contract and any approach of pricing provided for in these Regulations, or any other type of a contract authorised by the Authority.

70. (1) A procuring entity may use a lump sum contract for works, services or supplies where the content, duration and output of a contract are well defined. Lump sum contracts

(2) A lump sum contract shall consist of a fixed total price for the performance of the contract.

(3) A procuring entity shall, subject to the conditions of a contract, pay a contractor a fixed lump sum price of the contract irrespective of the actual quantity, time or work required for the performance of such contract.

(4) Any payment under a lump sum contract shall be dependent on the specified output, deliverable or event, which may include but not limited to —

- (a) the delivery of supplies in accordance with the appropriate delivery documentation specified in the contract;
- (b) the installation or commissioning of supplies;
- (c) the milestones in any works or services;
- (d) the provisional or final acceptance of works, services or supplies;
- (e) a report or recommendation;
- (f) the completion of any drawing, bill of quantity, activity schedule or solicitation documents;
- (g) any software programme; or
- (h) any workshop or training programme.

71. (1) A procuring entity may use a —

- (a) time-based contract for services, where the scope and duration of a contract is difficult to define; or
- (b) measured works contract for works, which are not well defined, likely to change in quantity or specification, or where difficult or unforeseen site condition is likely to occur.

Time-based or
measured works
contracts

(2) Any payment under a time-based contract or a measured works contract shall be for the actual quantity delivered or performed, using a fixed unit price for different items specified in a contract.

(3) A payment for a contract of services shall be based on —

- (a) the agreed fee rate for a specified period of time, for either a nominated personnel or a certain type or grade of personnel; and
- (b) any reimbursable item such as transportation and subsistence allowance, using either the actual expense or any agreed unit price.

(4) A payment for a contract of works shall be based on any agreed rate for various items of works, as may be priced by a contractor in the bill of quantity.

(5) A time-based contract and a measured works contract shall include a maximum total contract amount, which may include a contingency amount for any unforeseen work, and a procuring entity shall not exceed the maximum amount without the authority of an Accounting Officer.

(6) A procuring entity shall monitor a time-based contract and measured works contract closely to ensure that progress of the contract, and that a payment claimed by a supplier is appropriate, and in accordance with such contract.

72. (1) A procuring entity may use a rate contract for works, services or supplies — Rate contracts

- (a) where an item is required by the procuring entity on a “call off” basis, and the quantity and time of the requirement cannot be defined in advance; or
- (b) to reduce a procurement cost or lead time for any item which is continuously required by the procuring entity over a period of time, by having the item available on a “call off” basis.

C.112

	<p>(2) A payment under a rate contract shall be for the actual quantity delivered or performed during the period of time covered by the contract, and using a fixed unit price specified in such contract.</p> <p>(3) A rate contract may include an estimated quantity or value of a contract but shall not commit a procuring entity to purchase the estimated quantity or value of the contract.</p> <p>(4) A rate contract shall specify an arrangement for obtaining any specific requirement during the period of the contract on a “call off” basis or by using a purchase order.</p>
Framework contracts	<p>73. (1) A procuring entity may use a framework contract for works, services or supplies which shall operate for an agreed period —</p> <p>(a) where an item is required by the procuring entity on a “call off” basis, and the quantity and time of the requirement cannot be defined in advance; or</p> <p>(b) to reduce a procurement cost or lead time for any item which is continuously required by the procuring entity over a period of time, by having the item available on a “call off” basis.</p> <p>(2) A payment under a framework contract shall be for the actual quantity delivered or performed during the period of time covered by the contract, using a fixed unit price specified in such contract.</p> <p>(3) A framework contract may commit to the purchase of a minimum quantity or value of a contract, or to the purchase of any similar requirement from a supplier, where necessary or preferable, to obtain a competitive price, and may specify a maximum quantity or value of the contract to be purchased under the contract.</p> <p>(4) A framework contract shall specify an arrangement to obtain a specific requirement during a period of the contract, using a purchase order as may be required by a procuring entity.</p>
Percentage based contracts	<p>74. (1) A procuring entity may use a percentage based contract on works and services where a fee is paid directly to an estimated or actual cost such as the value of a contract.</p> <p>(2) A percentage based contract shall define a total cost from which the percentage is to be calculated and paid.</p> <p>(3) A percentage contract may include —</p> <p>(a) a fixed target cost;</p> <p>(b) any minimum or maximum fee;</p> <p>(c) a sliding scale of fees; or</p> <p>(d) a hybrid encompassing paragraph (a), (b) or (c).</p>
Cost reimbursable and target price contracts	<p>75. (1) A procuring entity may use a cost reimbursable or target price contract for any —</p> <p>(a) emergency works or services where there is insufficient time to calculate any cost involved; or</p> <p>(b) high risk works where it is economical for a procuring entity to take the risk of the variation of a price than to pay a contractor to accept the risk, or where a contractor does not accept such risk.</p> <p>(2) Any payment for a cost reimbursable contract and a target contract shall be for —</p> <p>(a) the actual cost of the works or services, as may be indicated in a receipt and any other necessary document; and</p> <p>(b) a fee or profit as may be specified in a contract.</p>

76. (1) A procuring entity may use a retainer contract or a success fee contract where a procurement agent or a procurement service provider is required to make preparations in the sale or merger of a company or statutory body, particularly in the privatisation of a public body.

Retainer and
success fee
contracts

(2) The remuneration of a procurement agent or a procurement service provider may include a retainer fee and a success fee, the success being expressed as a percentage of a sale price of the company or the statutory body.

77. (1) An indefinite delivery contract —

Indefinite
delivery
contract or
price
agreement

(a) shall be used where a procuring entity requires an “on call” specialised services to provide advice on a particular activity, the extent and time of which cannot be defined in advance; or

(b) may be used to retain, an advisor for the implementation of any complex project, an expert adjudicator in a dispute resolution panel, an institutional reform, a procurement advice, a technical troubleshooting, or any other, for a period of 12 months or more.

(2) A procuring entity and an advisor, expert or institution, referred to under subregulation (1) shall agree on a unit rate to be paid to the advisor, expert or institution and such payment shall be made on the basis of the time used by such advisor, expert or institution.

78. (1) A procuring entity shall use a contract document included in the applicable standard bidding document issued by the Authority.

Contents of
contract

(2) A contract document referred to in subregulation (1) shall state the type of a contract and the key terms of the contract which shall apply to a procurement.

(3) A contract document shall include the terms and conditions of a contract, and in particular —

(a) the general conditions of a contract, or a statement of the general conditions which shall be applicable to the contract;

(b) the special conditions of a contract;

(c) a statement that the special conditions of a contract shall prevail over the general conditions of the contract and the order of priority of any other contract documents;

(d) a description of the works, services or supplies purchased by a contract, including any technical requirement, quantity and delivery or completion schedule, based on a statement of any requirement included in the bidding document and a bid of a supplier, subject to any modification that may be agreed upon by a procuring entity and the supplier;

(e) the total contract price, and where applicable, any condition applicable to the variation, adjustment, modification or recalculation of the actual price;

(f) the condition for payment, including a payment period, schedule, currency and any document required;

(g) any requirement for securities;

(h) the procedure agreed for the resolution or settlement of any dispute;

(i) any other key contract terms as may be required by a bidding document, including a warranty, insurance, subcontract, an inspection and acceptance, completion of a contract, delays in the performance or nonperformance, force majeure and, variation, modification and termination of the contract; and

(j) any information relating to a policy of Government on fraud and corruption, including the suspension of a bidder.

- (4) The pricing of contract shall be in accordance with a particular contract chosen to be used by a procuring entity under these Regulations.
- Change in circumstances of contractors
- 79.** (1) In the event that there is a change in the circumstances of a contractor, which materially affect the capacity of the contractor to successfully deliver the required and scheduled output, such contractor shall inform a procuring entity within the period specified in a contract, or within five days where a period has not been stated in a contract.
- (2) A procuring entity shall, where a contractor requests a procuring entity to allow for the change referred to in subregulation (1), in consultation with a procurement unit submit the request, together with the recommendation of the procurement unit to an Accounting Officer for a decision.
- (3) For purposes of this regulation, “change in the circumstances of a contractor” includes a material change in the capacity of the contractor to execute a contract in terms of finance, employees or personnel, equipment or any other change that was not originally agreed between a procuring entity and such contractor.
- (4) A procuring entity shall consider an immediate termination of a contract upon the occurrence of one or more of the following events, where —
- Cap. 42:01
- (a) the business of a contractor ceases to operate;
- (b) a resolution is passed for the liquidation of the business of a contractor, or the business of the contractor is placed under a provisional or final liquidation in terms of the Companies Act;
- Cap. 42:02
- (c) a statutory manager is appointed to manage the affairs of the business of a contractor under judicial management;
- (d) a contractor is declared insolvent in terms of the Insolvency Act;
- (e) a contractor undergoes a change of ownership, merger or acquisition;
- (f) a contractor loses key personnel or a key employee and fails to replace the personnel or employee with the equivalent or better personnel or employee within a specified period; or
- (g) any other circumstance which may hinder the performance of a contractor to deliver according to the contract.

PART IX — Conditions for Deviation from Applicable Procurement Method, Procurement Process, etc.

- Deviations
- 80.** (1) A procuring entity shall, in Form J set out in Schedule 1 apply to the Authority to deviate from the use of a procurement method, procurement process, rule or a bidding document.
- (2) An application for a deviation made in terms of subregulation (1) shall include —
- (a) a statement of a procurement method, procurement process, rule or a bidding document to be used by a procuring entity;
- (b) the justification for deviation from a procurement method, procurement process, rule or a bidding document, including a justification of any exceptional requirement, market condition or international standard or practice which regulate a procurement requirement;
- (c) a justification of any proposed alternative procurement method, procurement process, rule or a bidding document, including a summary of how the proposed alternative differs from a standard procurement method, procurement process, rule or a bidding document;

- (d) a statement of whether the deviation is required for a single procurement requirement or for a number of procurement requirements of the same and the period of time applicable to such deviation; and
 - (e) any other relevant information as may be required by the Authority.
- (3) The Authority shall consider an application in terms of this regulation and make a decision within 10 days from the receipt of the application.

(4) The Authority may approve an application made in terms of this regulation, as submitted or with any modification or condition, or reject an application and state the reasons for the rejection.

(5) An approval by the Authority of an application made under this regulation shall state whether the approval is for a single procurement requirement or for a number of procurement requirements of the same class.

(6) A procuring entity may submit an application for the renewal of a deviation from a procurement method, procurement process, rule or a bidding document in accordance with subregulations (1) and (2).

81. (1) The Authority shall keep and maintain a register of any deviation approved in terms of these Regulations.

Monitoring and
profile analysis
of deviations

(2) The register referred to in subregulation (1) shall include any information necessary for the Authority to —

- (a) monitor compliance with any condition of a deviation;
- (b) assess the effectiveness of any deviation; and
- (c) analyse any trend in a profile of a deviation.

(3) The Authority may, where a procuring entity fails to comply with any condition of a deviation, require an Accounting Officer to take steps to ensure compliance, or, in writing, revoke the deviation and provide a reason for such revocation.

(4) The Authority shall analyse any trend in a profile in terms of subregulation (2) (c) to determine whether —

- (a) any changes are required to any tender document;
- (b) additional circular which provide further guidance on a particular matter should be issued; or
- (c) any additional tender document is required to meet a particular need of a procuring entity.

82. (1) A procuring entity shall, where the procuring entity is required by an external obligation or an international agreement to use an alternative procurement process, in Form K set out in Schedule 1 apply to the Authority for an approval to use the alternative procurement process.

Alternative
procurement
process relating
to external
obligations

(2) An application referred to in subregulation (1) shall be accompanied by a justification for the application and a supporting information with a copy of an external obligation or international agreement.

(3) The Authority shall consider an application under this regulation and make a decision within 10 days of the application.

83. (1) A user Department shall, in Form L set out in Schedule 1, request an Accounting Officer to approve a retroactive procurement process, including a procurement within a micro procurement threshold.

Retroactive
procurement
activities

(2) An Accounting Officer shall assess the nature of a request to approve a retroactive procurement in order to —

- (a) determine whether the procurement was due to an urgent requirement or an emergency arising from any special circumstance provided under these Regulations; and

- (b) ascertain whether a procuring entity has received the benefit of the works, services or supplies prior to approval.
- (3) A procurement unit shall analyse a request from a user Department made in terms of this regulation and ascertain whether the request is reasonable before the procurement unit submits such request to an Accounting Officer.
- (4) An Accounting Officer shall, before approving a request made by a user Department in terms of this regulation, consider the request on its own merit.
- (5) An Accounting Officer shall consider a request made in terms of this regulation on any circumstance based on urgency or emergency where there is an —
 - (a) urgent matter involving public safety or security to protect life or the environment; or
 - (b) incident of a health hazard.
- (6) A procurement unit shall submit a request made in terms of this regulation to an Accounting Officer within seven days from the date of receipt of the request.
- (7) A procurement unit shall —
 - (a) confirm that the works, services or supplies procured were not in stock or under any existing framework contract or similar arrangement;
 - (b) within seven days of the occurrence of a procurement process, prepare a brief report for submission to an Accounting Officer, which shall include any detailed information of a requirement; and
 - (c) submit any invoice and any other related document.
- (8) An Accounting Officer shall report any retroactive procurement to the Authority within 14 days of authorising the procurement.

PART X — *Reservation and Preferential Treatment*

Requirements
for reservation
and preference
schemes

- 84.** (1) An Accounting Officer shall, where there is an international agreement or a reservation and preference scheme, which favours a citizen or a citizen contractor, or local contractor, bring the international agreement or reservation and preference scheme to the attention of the citizen or a citizen contractor, and cause advantage to be taken of such international agreement or reservation and preference scheme.
- (2) An Accounting Officer shall, in ensuring that the agreement or scheme referred to under subregulation (1) is brought to the attention of a citizen or citizen contractor, or local contractor, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish information relating to such agreement or scheme, and include the same information in a bidding document.
- (3) A procuring entity shall, where applicable, in accordance with any existing reservation or preference scheme, limit participation in a procurement process to a category of contractors in order to —
- (a) ensure the development of a citizen or citizen contractor, or local contractor; or
 - (b) comply with any agreement which requires the subcontracting of a contract to a citizen or citizen contractor, or local contractor.
- (4) Where a procuring entity limits participation in a procurement process in terms of this regulation, the procuring entity shall provide —
- (a) a statement to that effect, in either a tender document or pre-qualification notice, or both; and

(b) information on how either the reservation or preference scheme, or both, shall be applied.

(5) An procuring entity shall allow certain price preference which does not affect a price of a tender, but which is taken into account when calculating the comparative price as stipulated in a tender document.

(6) A procuring entity shall take into consideration, existing reservation and preference scheme as may be issued by the Minister from time to time.

(7) The issuance of a tender document to which a reservation or preference scheme is applicable, without the inclusion of the reservation or preference scheme shall not be valid.

85. (1) An Accounting Officer shall ensure that a tender document of a procuring entity include a mandatory requirement as a preliminary evaluation criteria specifying that a successful bidder shall — Skills transfer

(a) transfer a skill on technology or any other skill to a citizen or citizen contractor, or local contractor, through the training, mentoring and participation of the citizen or citizen contractor, or local contractor; and

(b) reserve an employment opportunity in works, consultancy services and non-consultancy services including a professional at a management level in accordance with the guidelines as may be issued by the Authority.

(2) A procuring entity shall, in addition to the mandatory requirement referred to in subregulation (1), ensure that a tender document includes an additional mandatory requirement that the bidding document shall provide for a local content plan to transfer skills under this regulation.

(3) A local content plan referred to in subregulation (2) shall include —

(a) a position reserved for an employment of a citizen or targeted citizen;

(b) capacity building and competence development programme for a citizen or targeted citizen;

(c) a time frame within which to provide an employment opportunity;

(d) a demonstrable effort for accelerated capacity building of a citizen or targeted citizen;

(e) a succession plan and management; and

(f) a plan demonstrating a linkage with any local industry, which ensures that an input is, sourced from locally manufactured article, material and supplies, partially mined or produced in Botswana, or where applicable, have been assembled in Botswana.

(4) An Accounting Officer shall, in the case of an international open bidding, and where competition does not meet the requirements of this regulation, cause a report to be prepared detailing proof of the inability to meet such requirements and measures to be taken to ensure compliance, and submit the report to the Authority to issue a waiver.

86. (1) Where a primary contractor has entered into a contractual arrangement with a citizen subcontractor, in terms of section 81 of the Act, a margin of preference in an evaluated price of a tender shall be applied in terms of section 73 of the Act. Subcontracting

(2) A citizen subcontractor referred to in subregulation (1) shall demonstrate the —

(a) technical expertise;

(b) capability; or

(c) competence to perform or execute the contract.

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Timely
payment for
performed
contracts

87. A procuring entity shall, after the certification of works, performed contract services or supplies, pay immediately or within the period provided in the contract.

Reservation
schemes

88. (1) A reservation scheme shall have as its objective, the development of a business owned by a citizen or citizen contractor, or local contractor, by reserving procurement for the citizen or citizen contractor, or local contractor.

(2) The application of a reservation scheme and the eligibility of a contractor who qualifies for the reservation scheme shall be stated in a tender document and a pre-qualification notice.

(3) The Authority shall, in consultation with the Economic Empowerment Office and a procuring entity, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish an estimated cost for the procurement of works, services or supplies to be reserved for a citizen or citizen contractor.

(4) An Accounting Officer may prepare a report detailing proof that a procuring entity is unable to purchase works, services or supplies manufactured locally, and submit the report to the Authority.

Preference
schemes

89. (1) A preference scheme shall have as its objective, the development of a business owned by a citizen or citizen contractor, or local contractor, by giving the business a competitive advantage in deducting a specified margin from an evaluated price of a bidder who is eligible for the preference scheme during an evaluation of a financial bid.

(2) A preference scheme for a bid offering goods manufactured, mined, extracted or grown in Botswana shall have as its objective, the development of the manufacturing industry by giving the bid a competitive advantage in deducting a specified margin to an evaluated price of a bid which is eligible for the preference scheme during an evaluation of a financial bid.

(3) Any instrument, document or bidding package relating to a preference scheme shall state —

- (a) eligibility for the margin of preference in terms of ownership, location of a bidder or production facilities, origin of labour, raw material or component, extent of subcontracting or association with a citizen, or any other relevant factor;
- (b) the document required as proof of eligibility for the margin of preference; and
- (c) the percentage of the margin of preference and the manner in which it shall be applied during an evaluation.

(4) The information referred to in subregulation (3) shall be provided for in a tender document.

(5) A percentage for a preference to be applied under subregulations (1) and (2) —

- (a) shall be set by the Minister in consultation with the Economic Empowerment Office established under the Economic Inclusion Act and a procuring entity; and
- (b) may be reviewed from time to time.

Promotion and
support of
innovative
products

90. (1) A procuring entity shall, in accordance with section 76 (2) (f) of the Act, promote innovation, local technology and the commercialisation of a procurement process through the procurement of any innovative product that is in the public interest —

- (a) where there is proof of a concept, relating to, and the supply of, the innovative product; and

- (b) to develop the procurement support system for the innovative product.
- (2) The Authority shall provide for a guideline on a method to be used to promote the procurement of an innovative product under this regulation.
- (3) The Authority may, where an innovative product designated as such under subregulation (2) fails to continue to meet any standard set by an Accounting Officer for such designation, revoke the designation.
- 91.** (1) Subject to section 72 of the Act, a citizen or citizen contractor shall be given one reservation or preference scheme at a time for a procurement process. Single preference for bidders
- (2) An evaluation of a bid relating to a reservation and preference scheme shall use the highest benefit that a bidder may be given to avoid benefiting more than once.
- 92.** (1) A procuring entity may unbundle a category of works, services or supplies in a practicable quantity, in order to ensure the maximum participation of a citizen or citizen contractor, or local contractor. Unbundling of tenders
- (2) A procuring entity may, when unbundling a tender in accordance with subregulation (1), lot works, services or supplies in a quantity that is affordable to a targeted citizen participating in a procurement process, and such lot shall not be interdependent.
- 93.** (1) A procuring entity may require security for a tender, as may be applicable. Security for tender and performance bond
- (2) A procuring entity shall not require security from a 100% citizen owned micro, small and medium enterprise participating in a procurement process with reservation scheme, unless otherwise determined by the Minister.
- 94.** (1) A procuring entity may use a rota system for a low value standardised and provision of works, services and supplies. Award of tenders based on rota system
- (2) A procuring entity may use a rota system for the procurement of works, services and supplies in accordance with the guidelines issued by the Authority.
- (3) A procuring entity shall use a database kept and maintained by a competent authority.
- (4) A procuring entity shall award a low value standardised and common supply of works, services or supplies sequentially, based on a list such that each bidder under this regulation is afforded the opportunity to be awarded a tender.
- (5) A procuring entity shall ensure that a bidder selected for works, services or supplies shall not have the same shareholding, ownership, membership or directors, as a previously awarded bidder.
- (6) For purposes of this regulation, “rota system” means a system of awarding tenders on a rotational basis following a sequential list of prequalified bidders one after the other and no awarded bidder is considered until the list is completed.
- 95.** (1) The application of a reservation and preference scheme shall be monitored by the Authority in accordance with the provisions Act. Monitoring and evaluation
- (2) The Authority shall request a procurement entity to submit a report on the implementation of a reservation or preference scheme.
- 96.** (1) A requirement relating to a beneficial owner shall be in Form M set out in Schedule, and shall be included in a tender document. Beneficial owners
- (2) A procuring entity shall verify the information relating to a requirement referred to under subregulation (1) with the relevant competent authority.
- (3) Where there is a change relating to a beneficial owner, a procuring entity shall be informed of the change within two days from the date such change occurred, in order to ensure compliance with the conditions of an award of a tender.

Primary
contractors and
subcontracting

(4) During a tender process, a change relating to a beneficial owner shall not have taken place six months before the floating of a tender, and not within 12 months after the commencement of the contract, except by operation of law.

(5) A beneficial owner shall not submit more than one bid in a tender.

97. (1) Where a procuring entity deems it feasible to allow for subcontracting, the procuring entity shall do so in order to develop skills and the contracting capacity of a 100 per cent citizen owned micro, small and medium enterprise.

(2) Where there is subcontracting, a primary contractor shall be required to subcontract a percentage of the total value of works, services or supplies to a citizen or citizen contractor, or local contractor.

(3) Where a procuring entity deems it feasible to subcontract in terms of subregulation (1), the procuring entity shall, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish a tender with a specific condition that a successful bidder shall subcontract a minimum of the threshold to be determined by the Minister.

(4) A subcontracting under this regulation shall be made in one or more of the following methods —

- (a) domestic subcontracting, where a bidder selects a subcontractor to engage in the contract;
- (b) nominated subcontracting, where a procuring entity selects a subcontractor through a competitive process and instructs a bidder to engage the selected subcontractor; or
- (c) selected subcontracting, where a procuring entity, in consultation with a primary contractor, selects a subcontractor in terms of a requirements of a contract.

PART XI — *Procedure, Rules and Thresholds for Management, Amendment or Variation of Contracts*

Contract
management
and
responsibilities

98. (1) An Accounting Officer shall ensure effective contract management within a procuring entity through a procurement unit, and shall be responsible for monitoring and coordination of contract management in order to ensure —

- (a) that there is progress and timely completion of works, services and supplies in accordance with the terms of the contract;
- (b) the management of any deviation of a contract by a contractor, including the implementation of any amendment or variation of a contract under these Regulations;
- (c) that a contractual obligation is discharged in accordance with the contract;
- (d) a monthly submission, review and analysis of the implementation of a contract progress report, including any other related report, and quarterly performance review report, from a project team; and
- (e) the submission of a report referred to in paragraph (d) to the Accounting Officer.

(2) The report referred to in subregulation (1) (d) shall be in a manner determined by the Authority.

(3) A procuring entity shall, where an agreement to remedy an irregularity in the performance of a contractor cannot be reached, inform the contractor, and may in addition, invoke the proceedings for dispute resolution as may be provided in a contract.

(4) A procuring entity may, in the event that a contractor fails to provide works, services or supplies in terms of the contract —

- (a) withhold payment of any moneys retained;
- (b) call for any performance security if such security has been furnished by the contractor; or
- (c) terminate the contract.

99. (1) An Accounting Officer shall designate an employee within a procurement unit, who possesses the skill and experience in contract management, as a contract manager for any awarded contract. Contract manager

(2) A contract manager shall be responsible for —

- (a) the monitoring of the performance of a contractor in order to ensure that a delivery or performance obligation is met, or any action required to be taken is taken by an Accounting Officer in the event that the obligation is not met;
- (b) ensuring that a contractor submits any required document;
- (c) ensuring that a procuring entity meets any of its payment and any other obligation under a contract;
- (d) ensuring that there is adequate cost, quality and time control, as may be necessary;
- (e) the preparation of any required contract variation after the approval of an Accounting Officer;
- (f) the submission of any required amendment to a contract;
- (g) the management of any handover or acceptance procedure;
- (h) the submission of any recommendation for the termination of a contract;
- (i) for preparation of a periodic contractor review progress report;
- (j) the keeping and maintenance of a project risk register to monitor any identified risk to a contract, and mitigation plan;
- (k) ensuring that a contract is complete before the closing of the contract file and the preparation of an end of activity report in Form N set out in Schedule 1;
- (l) ensuring that a record for the management of a contract is kept and maintained;
- (m) ensuring that a contractor and a procuring entity comply with a contract and the provisions of the Act;
- (n) the submission of information on the status and progress of a contract;
- (o) the management of the drafting and generating of contracts.

(3) A contract manager shall, when performing his or her responsibilities under this regulation hold a review meeting periodically or as may be necessary to review the performance of a contract, deliberate on the way forward and prepare the reports referred to under subregulation (3).

(4) The review of a contract referred to under subregulation (4) shall consider the following —

- (a) the timeline for the performance of a contract;
- (b) the cost and quality performance;
- (c) the risk analysis;
- (d) the operational effectiveness;
- (e) whether the procedure for delivery is appropriate; and
- (f) any other relevant information.

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Inspection of
works, services
and supplies

- 100.** (1) A procuring entity shall have the right to inspect works, services or supplies at any reasonable time or place, including —
- (a) during manufacture or construction;
 - (b) before shipment;
 - (c) on delivery or completion; or
 - (d) before final acceptance.
- (2) A contractor shall ensure that a procuring entity's right of inspection is extended to a subcontractor.
- (3) A procuring entity may —
- (a) observe a test conducted by a supplier or subcontractor under the supplier's or subcontractor's own quality control procedure;
 - (b) conduct its own inspection; or
 - (c) employ an independent third party to undertake a technical inspection.
- (4) A contract shall state any requirement relating to an inspection, including —
- (a) the type of inspection to be conducted and the standard to be met;
 - (b) the location for inspection;
 - (c) the person to carry out the inspection;
 - (d) the date the inspection is to be conducted;
 - (e) the person responsible for the payment of the various costs of inspection;
 - (f) any notification or documentation required from a supplier relating to an inspection;
 - (g) whether any sample provided for inspection shall be provided for free of charge to a contractor; and
 - (h) where works or services fail, a supplier shall be liable for the rectification of any defect at his or her own expense and the cost of any additional inspection required.

Inspection and
acceptance of
works, services
and supplies

- 101.** (1) A procuring entity shall before accepting any works, services or supplies, or signing any interim or completion certificate, supplies receipt note or any related document, ensure that —
- (a) the correct quantity or input of works, services or supplies has been received;
 - (b) the works, services or supplies meet the technical standard defined in a contract;
 - (c) the works, services or supplies have been delivered or completed on time, or that any delay has been noted;
 - (d) any required deliverable has been submitted; and
 - (e) any required manual or document has been received.
- (2) Any works, services or supplies delivered shall, where applicable, be inspected, sampled and tested by a procuring entity and the works, services or supplies shall not be accepted if they are not compliant with the terms of a contract.
- (3) Any works, services or supplies that do not meet the terms and conditions of a contract shall, in writing, be rejected by a procuring entity in accordance with the terms and conditions of the contract.
- (4) A contractor shall be responsible for any cost and expense incurred due to a rejection of works, services or supplies referred to in subregulation (2).
- (5) Any supplies rejected shall be collected by a contractor from the premises of a procuring entity within a specified time in accordance with a contract.

- 102.** (1) A contract shall specify the —
- (a) grounds on which the contract may be terminated;
 - (b) procedure to be applicable to the termination of the contract; and
 - (c) any other implication that may arise from the termination of the contract.
- (2) Subject to subregulation (1), a contract manager may, in consultation with the legal office of a procuring entity, recommend to an Accounting Officer for the termination of a contract.
- (3) A recommendation referred to in subregulation (2) shall state —
- (a) any ground for the termination of a contract;
 - (b) any action which has been taken to avoid the termination of a contract; and
 - (c) a cost, if any, which a procuring entity shall be liable after the termination of a contract.
- (4) An Accounting Officer may approve or reject a recommendation referred to in subregulation (2).
- (5) Where an Accounting Officer has approved the termination of a contract, such termination shall be done in accordance with the terms of the contract.
- (6) An Accounting Officer shall, where a contract is terminated, authorise the payment for the value of the works, services or supplies completed less any advance payment received by a contractor up to the date of a notice of termination.
- (7) An Accounting Officer shall, where the Accounting Officer approves a recommendation referred to in subregulation (2), inform a contractor of such decision.
- 103.** (1) A procuring entity may terminate a contract for convenience with the approval of an Accounting Officer.
- (2) A procuring entity shall, where a contract is terminated for convenience, pay a contractor any undisputed amount due under the contract.
- 104.** (1) A procurement unit shall, where a contract needs to be amended in order to change the original terms and conditions of the contract, issue a contract amendment taking into account any change in circumstances of both parties to the contract.
- (2) A procurement unit shall —
- (a) prepare a contract amendment in consultation with the legal office of a procuring entity and submit the contract amendment to an Accounting Officer for approval; and
 - (b) after the approval referred to under paragraph (a), issue the contract amendment in the same manner as the original contract.
- (3) A contract amendment shall be initiated by either of the parties.
- (4) A procurement unit shall not issue a contract amendment before —
- (a) the approval referred to in subregulation (2) (a); and
 - (b) money being committed in the full amount of a price of the amended contract over the required period of such amended contract.
- (5) A contract amendment for any additional quantity of the same item shall use the same unit price as the original contract or a new price according to any subsequent increase in the price during the course of the contract.
- (6) An amendment or cumulative amendment, of a contract, may be increased by up to 25 per cent of the original price of a contract with a prior approval of an Accounting Officer.

Termination of contracts

Termination of convenience

Contract amendments

C.124

Variation of contracts

105. (1) A variation of a contract may be issued by a procuring entity with the approval of an Accounting Officer including where the variation is within a contingency element of the contract, or such limit as the Accounting Officer may allow.

(2) Where a variation exceeds the contingency element, the variation may be increased by up to 25 per cent of the original contract price.

(3) A contract may be varied according to a compensation event or any matter relating to the variation of the contract provided in such contract.

(4) A variation of a contract shall only be permitted in accordance with the terms and conditions of the existing contract and shall be authorised by an Accounting Officer.

(5) Any money that has been committed under any contingency plan included in the total contract value may be used —

(a) to cover any variation in cost according to any formula stated in the contract; or

(b) for any additional works or services that are considered to be necessary by a procuring entity.

Contract pricing

106. (1) A procuring entity shall, subject to any condition of a contract which has been included in a tender document, place the contract on a fixed price for a procurement that is to be completed within 12 months from the date of the commencement of such contract.

(2) A procuring entity may place a contract with a price adjustment provision for a procurement requirement with a duration of more than 12 months.

(3) The Authority shall provide a procuring entity with advice in connection with internationally accepted practice in relation to a pricing standard for any procurement requirement.

Price adjustment

107. (1) A provision relating to a price adjustment may, subject to a condition of a contract, be included in the contract whose duration exceeds 12 months, where it is more economical for a procuring entity to accept the inflation risk than to pay an additional cost for a supplier to accept the risk.

(2) Where a provision relating to a price adjustment is included in a contract referred to in subregulation (1), a method for calculating the price adjustment, and any restriction or condition on such price adjustment, shall be clearly stated in a bidding document.

(3) A price adjustment shall be calculated by the use of a 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 currency of the money to be used for payment 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) A formula, price index, correction factor referred to in subregulation (3), and a base date for application shall be clearly stated in a bidding document and resulting contract.

(5) A formula and a price index referred to in subregulation (3) shall be appropriate to the type of procurement, the source of an input and shall use the industry standards wherever possible.

(6) A procuring entity shall, where there are no industry standards, or any other appropriate formula available, use the sample formula specified in this regulations.

(7) A request for a price adjustment shall be submitted to a procuring entity by a contractor, not more than three months from the time the circumstances upon which the price adjustment is based arise.

(8) A procuring entity shall, where there is a statutory price adjustment, pay an adjusted price to a contractor from the effective date of the statutory price adjustment, upon submission by the contractor of a request for such payment.

108. (1) A bidding document and any resulting contract shall detail the payment terms that shall apply to the contract, and such payment terms shall specify the —

- (a) method of payment;
- (b) payment structure;
- (c) payment document;
- (d) period of payment; and
- (e) currency of money used for payment.

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

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

(2) A payment structure and an amount of payment shall be determined for each procurement requirement by best practices, and the payment structure may include —

- (a) an advance payment;
- (b) a phased payment, which shall be linked to a specific deliverable and may be stated in percentage terms of a defined amount or specific amount;
- (c) a regular interim payment, which shall be linked to a specific contract event, such as an installation or a warranty; and
- (d) any retained payment, which shall be linked to a specific contract event, such as an installation or a warranty.

110. (1) Subject to the provisions of the Public Finance Management Act, and where best practices dictate, a procuring entity shall not enter into a contract which requires an advance payment.

(2) Where an advance payment is determined to be consistent with best practices, an advance payment security shall be required and the requirement for a security shall be stated in a bidding document.

(3) An advance payment may be made for any activity including —

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

(4) Notwithstanding subregulations (1) and (2), an advance payment may, with the approval of an Accounting Officer, be made for works, services or supplies without the requirement for advance payment security, where —

- (a) such payment is required in accordance with an industry practice; or
- (b) there is a special circumstance with a justifiable reason.

(5) An advance payment shall be recovered from any subsequent payment due to a contractor, which shall be subject to a reduction in equal installment over a period not exceeding 50 per cent of the period of a contract

111. (1) A contract may, where best practices dictate, be entered into by a procuring entity in which an interim or a phased payment is permitted.

(2) A procuring entity shall, where an interim or a phased payment is permitted, comply with the following conditions —

- (a) a payment shall be linked to a specific and verifiable deliverable, contract event, time period or work, which must be stated in a bidding document and the resulting contract;
- (b) any individual payment shall not exceed the cost or value of a deliverable, time period or work to which it is linked;
- (c) a payment may require the provision of the payment security where, during the delivery of the works, services or supplies, risk or title of such works, services or supplies remained with the contractor; and
- (d) where the payment security is determined to be appropriate, the provisions of these Regulations shall apply.

Retained
payments

112. (1) Where a procuring entity has determined that a retained payment is appropriate, a contract shall provide —

- (a) a percentage or amount of a total value of the contract to be retained;
- (b) the period or event at which the retention shall be released; and
- (c) any document that shall be used as proof of, or certify, the period or event referred to in paragraph (b).

(2) A payment for a security may be substituted for a retained payment in accordance with subregulation (1).

Payment of
security

113. (1) A payment shall not be made to a contractor or in respect of any deliverable due against works, services or supplies contract without the receipt of the deliverable as provided in the contract.

(2) Where a payment is made before receipt of a deliverable —

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

Payment
documents

114. (1) A procuring entity shall state, in a bidding document, a document against which a payment is to be made.

(2) A document referred to in subregulation (1) may include information certifying the —

- (a) delivery of a requirement or receipt of a requirement by the consignee in accordance with the delivery terms of a contract;
- (b) itemised list of the requirements within any package delivered;
- (c) insurance coverage of a delivered item;
- (d) successful inspection of a delivered item;
- (e) origin or eligibility of a delivered item;
- (f) payment of a particular cost specified in a contract, such as duty, levy or tax that may be due and payable by a contractor on any item delivered;
- (g) acceptance of installation or commissioning by a user of any item delivered;
- (h) receipt of any report, manual, guide 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 any subcontractor.

(3) A payment documentation from a contractor shall include an original invoice from the contractor certifying the payment due.

115. (1) A procuring entity shall be responsible for organising any payment to be made to a contractor within 30 days of the certification of a payment request. Payment period

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

(3) A payment to a contractor shall, unless with the approval of an Accounting Officer, not be ceded.

116. (1) A procuring entity shall ensure that any request for a payment of a contract is processed promptly within the payment period specified in the contract. Payment and payment delays

(2) A contractor shall submit an invoice to a procuring entity for payment in accordance with the terms of a contract.

(3) If an invoice referred to in subregulation (2) has an error or any discrepancy, is supported by incorrect or incomplete documentation or is in any other way not in accordance with the terms of a contract, the request shall not be certified as correct, and a payment shall not be made.

(4) An invoice which is not certified as correct shall, within five days of the date of receipt of the invoice, be returned to a contractor, detailing the reasons such invoice cannot be certified for payment.

(5) Where an invoice has been returned, a contractor shall be entitled to submit a new or amended payment invoice to a procuring entity, which shall be treated in the same manner as the original invoice.

(6) A delay in payment to a contractor shall attract interest at the rate to be determined by the Minister.

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

117. (1) A bidding document shall state any limitation on a currency of money to be used in a bidding or the currency of money to be used for payment that may apply to a procurement process or resulting contract. Currency of money used for payment and related limitations

(2) Unless otherwise stated in a bidding document or contract, the currency of money to be used for bidding and payment of a contract shall be —

- (a) Botswana Pula, for works, services and supplies; and
- (b) a convertible currency for works, services or supplies originating outside Botswana.

118. Unless otherwise provided by the terms of a delivery stated in a bidding document, a contract for a procurement requirement that involves an — Export and import licence responsibility

- (a) export licence shall be the responsibility of a contractor to ensure the availability of the export licence, and a procuring entity shall provide any assistance necessary for the contractor to process any application for the export licence; and
- (b) import licence shall be the responsibility of a contractor, and a procuring entity shall render any certification necessary to the contractor to process any application for the import licence.

119. (1) A procuring entity shall, where applicable, ensure that insurance or indemnity cover is arranged to cover each procurement requirement, and the appropriate provision shall be included in a bidding document and the resulting contract. Insurance or indemnity

Currency
fluctuations

(2) Where applicable, insurance or indemnity cover shall be arranged with an insurance company registered in Botswana.

120. (1) A payment shall be made by a procuring entity in the currency stated in the contract.

(2) Where a payment to a contractor is to be made in Botswana, as may be provided in a contract, and the contractor is required to remit all or part of the payment outside Botswana, the contract amount in Botswana currency shall be paid to such contractor less or plus, as the case may be, an amount as specified on the contractor's invoice representing any of the following exchange rate movement, any –

- (a) fluctuation which may have occurred between the date of conversion to Botswana currency as reflected in a bidding package and bid, and a date of invoice:

Provided that the invoice date is not more than 10 days later than the date of the delivery or shipment; and

- (b) further fluctuation in the exchange rate, which may occur between a date of invoice and the actual date of remittance outside Botswana:

Provided that such further fluctuation is more than 5 per cent, and the remittance is made within 10 days of the date of such contract or purchase order, as may be applicable.

(3) Any claim by a contractor for an exchange rate movement shall be accompanied by the following documentation –

- (a) a copy of the relevant invoice;
- (b) a copy of the bank remittance advice;
- (c) a copy of the purchase order or contract;
- (d) import documents stamped by the relevant competent authority; and
- (e) any other information which may be reasonably requested by the contract manager.

(4) Failure by a contractor to provide the information referred to in subregulation (3) may delay or invalidate a claim.

(5) Where a contractor fails to comply with a requirement of a contract affecting the admissibility of the contractor's claim, the cost of the exchange rate movement shall be borne by such contractor.

Performance
security

121. (1) A procuring entity shall, where applicable, require a contractor to submit a performance security or professional indemnity to guarantee the proper performance of a contract.

(2) Notwithstanding subregulation (1), the services or supplies from a micro, small and medium enterprise shall be exempt from the requirement of a performance security or professional indemnity to guarantee the proper performance of a contract.

(3) A procuring entity shall specify in a tender document any requirement with respect to an issuer and the nature, form, amount and other principal terms and conditions of the required performance security.

(4) A contractor shall, within a period provided in a tender document, after receipt of a notice of acceptance, furnish a procuring entity with a performance security in accordance with the terms of a contract and in the form provided in the tender document.

(5) A procuring entity may require a contractor to submit the performance security in any format provided by the Authority.

(6) A procuring entity shall, where an amendment of a contract after signature is necessary, and the amendment is effected, require a contractor to provide an additional performance security to cover any cumulative increase of more than 10 per cent of a price of the contract.

(7) A performance security shall be kept by a procuring entity until the completion of a contract and shall be released after the issuance of the certificate of acceptance of a final report or certificate of completion of works, services or supplies, if there is no claim filed against a contractor, contract guarantor or surety company.

PART XII — *Ethics and Transparency in Public Procurement*

122. (1) An Accounting Officer and an employee of a procuring entity shall disclose any direct or indirect interest in any company with which such the procuring entity proposes to deal with, and declare any other conflict of interest at any point during a procurement process in Form 0 set out in Schedule 1.

Declaration of
interest

(2) An employee of a procuring entity who discloses any direct or indirect interest in a company referred to in subregulation (1) shall not take part in any consideration or discussion of, or vote on any issue relating to, a procurement involving the company, unless an Accounting Officer directs otherwise.

(3) A disclosure of interest under this regulation shall be recorded in the manner determined by the Authority.

(4) An employee of a procuring entity who, at any time before or during a procurement process, discovers that he or she has or may have a conflict of interest shall, in writing declare such interest and record the declaration in manner determined by the Authority.

(5) A declaration of direct or indirect interest by an Accounting Officer shall be referred to the Accounting Officer's supervisor for direction on how to proceed.

123. (1) Any information relating to a procurement process shall not be disclosed to any bidder or person who is not involved in the procurement process unless such disclosure is required by law or court order.

Confidentiality
relating to
procurement
process

(2) An employee of a procuring entity, a procurement agent or a procurement service provider, or any other resource person solicited to advise the procuring entity in a procurement process, who is likely to become aware of a proprietary and confidential information of a bidder and the bidder's business shall sign and be bound by confidentiality in Form P set out in Schedule 1, and shall not disclose such information to any person other than an authorised person.

(3) A procuring entity shall not disclose any information which has been submitted to the procuring entity by a bidder, which the bidder has designated confidential, and which includes a technical or trade secret, and any confidential aspect of a tender.

(4) A procuring entity may impose on a bidder, a requirement to protect any confidential information which the procuring entity makes available to the bidder during a procurement process.

124. (1) A bidder shall indicate in a bid, which information the bidder considers confidential and whose disclosure shall be prejudicial to the interest of the Government or the interest of a contractor or private party.

Declassification
of information

(2) Where a bidder fails to indicate which information is confidential in terms of subregulation (1), any information not indicated as such may be subject to declassification after two years following an award of a tender.

C.130

Publication of
decisions

125. A procuring entity shall, for purposes of transparency, impartiality and fairness, in a system referred to in section 8 (1) (f) of the Act, and by Notice in the Gazette, in a newspaper of national circulation, electronic media or Government portal, publish any —

- (a) decision arising from a complaint and challenges dealt with by the procuring entity;
- (b) record of a bid opening including any detail relating to the bid;
- (c) any adjudication decision regarding a procurement activity except on procurement of highly sensitive works, services, supplies or any combination thereof, however classified; and
- (d) any other decision or information as may be determined by the Authority.

PART XIII — *Maintenance of Records by Procuring Entities*

Maintenance of
records

126. (1) A procuring entity shall keep and maintain, or cause to be kept and maintained, a procurement record which shall include —

- (a) a request to initiate procurement proceedings;
- (b) a copy of any published advertisement or shortlist;
- (c) a pre-qualification and bidding document, and any amendment or clarification to the pre-qualification and bidding document;
- (d) a record of a bid opening;
- (e) a copy of a record of an evaluated bid and a response on any clarification requested;
- (f) an evaluation report;
- (g) a contract;
- (h) any document related to a contract management, including contract payment and contract performance, warranty, bank guarantee and any claim;
- (i) minutes of a meeting related to any procurement, including a negotiation;
- (j) any correspondence between a procuring entity and a bidder;
- (k) any submission to an Accounting Officer;
- (l) any decision of an Accounting Officer related to a procurement, including —
 - (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 proceeding; and
- (m) any other record relating to procurement.

(2) A record referred to in subregulation (1) shall be made available to any person authorised by an Accounting Officer to access the record or any part of such record.

(3) A person who wishes to make a copy of a record referred to in subregulation (1) shall, in writing, be authorised by an Accounting Officer to make the copy, and such copy shall be certified and indexed, and the original shall be retained by a procuring entity.

(4) A procuring entity shall keep and maintain a record of a procurement and contract management referred to under subregulation (1) (h) for at least five years from the date of a decision to terminate the contract or the date of expiration of the contract, except where there is a dispute relating to such contract in which case the record shall be kept for an additional year after the expiration of the contract or the settlement of the dispute, whichever comes later.

(5) An Accounting Officer shall not transfer an original copy of any record except by an order of court.

127. (1) A procuring entity shall keep and maintain a contract record which may include — Contract records

- (a) the signed contract including any signed contract amendments;
- (b) any variation issued under the contract;
- (c) any post contract documentation relating to the fulfillment of an obligation under the contract, particularly any copy of a bank guarantee or advance payment guarantee;
- (d) the minutes of any meeting related to the contract management, including technical progress meeting, progress of such contract or any review meeting;
- (e) any document with proof of any delivery of supplies or completion certificate in relation to the contract for works or services;
- (f) any copy of any invoice for works, services or supplies including any work paper verifying the accuracy of any payment claimed and any detail of the actual payment authorised by a contract manager;
- (g) any copy of cumulative payment worksheet with proof of the management of any payment made;
- (h) any copy of any claim made by a contracts manager on behalf of the procuring entity in respect of any warranty, non-warranty, short supply, damage and any other claim upon a supplier or upon the procuring entity;
- (i) any correspondence between the procuring entity and contractor supervising consultant or engineer; and
- (j) any submission and decision on any approval related to a contract management, including the authorisation of any contract amendment.

(2) Any contract record kept and maintained in terms of this regulation may be accessible to any person authorised by an Accounting Officer.

(3) An Accounting Officer shall not transfer an original copy of a contract record except by an order of court.

128. A procuring entity shall, for every contract or framework contract submit a written report on an awarded tender to the Authority, in the manner to be determined by the Authority. Requirement for reporting

129. (1) An Accounting Officer shall, through a procurement unit, provide for the safe keeping of any procurement record of a procuring entity by ensuring that the procurement record is kept safe and secure, in accordance with an applicable record management guideline or policy. Safe keeping of documents

(2) Any securities, negotiable document or any other financial instrument received by a procuring entity shall be deposited by the responsible employee of the procuring entity in a secure place for safe keeping as may be authorised by an Accounting Officer.

(3) Any copy of an original record or document referred to in subregulations (1) and (2) shall be kept in a procurement record by a procuring entity, annotated with information on the location of the original record or document and the date of receipt of the original record or document.

C.132

Access to documents relating to procurement

130. (1) Any person who wishes to access any document or database in terms of section 83(2) of the Act shall, on request, be given access to the document or database, upon payment of a fee provided by the Authority within 10 days of the submission of such request.

(2) A document or database referred to in in subregulation (1) shall be made available in the manner to be determined by the Authority.

(3) Any other information or record relating to procurement which is not subject to section 83(2) of the Act shall be made accessible to an authorised person.

PART XIV — Procedure for Monitoring and Compliance by Authority

Procurement, contract and performance audits

131. (1) The Authority shall audit a procuring entity at any time and where the circumstance requires, select a project or contract of interest within the procuring entity for the audit, in accordance with a criteria to be determined by the Authority.

(2) The Authority shall, before conducting an audit referred to in subregulation (1), inform a procuring entity on its intention to audit the procuring entity, and on the objective, and the audit scope and audit criteria to be used for the audit, and provide other information as may be relevant for such purpose.

(3) A procuring entity shall, in order to enable the Authority to efficiently carry out an audit, make available any document or record required for the audit under this regulation in a timely manner.

(4) The Authority shall, upon completion of an audit and before issuing the final audit report, submit in writing to a procuring entity, its preliminary findings of the audit.

(5) A procuring entity shall submit a detailed response to the preliminary findings of an audit to the Authority within 14 days of receiving such findings.

(6) The Authority shall prepare a final report, taking into consideration the response from a procuring entity, if any.

(7) The Authority shall submit the audit report to a procuring entity and the Ministry responsible for finance, together with a recommendation of the Authority if any.

(8) The Authority shall make audit report available to and accessible by the public upon payment of a fee set out in Schedule 2.

Reporting to Authority by procuring entities

132. A procuring entity shall submit a report to the Authority in the manner to be determined by the Authority, on the following —

- (a) an annual procurement plan;
- (b) a procurement plan adherence;
- (c) an awarded contract and implementation of the contract;
- (d) the implementation of a reservation and preference scheme;
- (e) any complaint heard and the results from the hearing of such complaint;
- (f) an end of activity report;
- (g) any retroactive approval; or
- (h) any other report as required by the Authority.

Compliance enforcement

133. (1) The Authority shall prepare a statistic on any contract signed by a procuring entity, in order to understand the status of public procurement and formulate and implement effective procurement policy.

(2) The Authority shall provide for the manner of reporting and request a procuring entity to provide information necessary to prepare statistic on any contract.

(3) A procuring entity shall, upon receipt of a request to provide an information on a statistic referred to in subregulation (2), submit the information within 14 days of the request.

(4) A procurement oversight unit shall, in the manner to be determined by the Authority, prepare a report on any tender awarded by a procuring entity and submit the report to an Accounting Officer.

(5) The report referred to under subregulation (4) shall include information on whether the provisions of the Act have been complied with.

(6) An Accounting Officer shall, upon receipt of a report in terms of subregulation (4), submit a copy of the report to the Authority within 14 days of such receipt.

(7) The Authority may, upon receipt of a report under this regulation, if the Authority considers it necessary, request an Accounting Officer to submit a report or any other relevant information on any procurement implemented in contravention of the Act, within 14 days after such receipt, for review and necessary action.

(8) A report referred to under subregulation (7) shall be in the manner determined by the Authority.

PART XV — *Procedure for Investigations by Authority*

134. (1) The Authority may undertake an investigation of a procurement activity on the basis of the following — Investigations

- (a) information from a report, audit finding and inspection under these Regulations;
- (b) referral of any matter by a Public Oversight Agency; or
- (c) any other information received by the Authority.

(2) Subject to the provisions of the Act, the Authority may request any employee of a public body or any other person, who, in its opinion, is able to assist in an investigation of any matter, to furnish information and produce any document under his or her control, and the information shall be submitted to the Authority within seven days from the date of the receipt of the request.

(3) The Authority shall, after conducting an investigation, produce a written report which shall include a finding of the investigation and a directive.

(4) The Authority shall submit a report referred to in subregulation (3) to an Accounting Officer and the Accounting Officer shall respond in writing to a directive on the report within 14 days from the date of the receipt of the directive, indicating any action to be taken and shall, in addition, prepare and submit to the Authority a report on the implementation status within three months from the date of receiving such directive.

135. (1) The Authority may, during, or after conducting, an investigation, cooperate with a Public Oversight Agency or any other authority responsible for public oversight, and establish a mechanism for the sharing of any information relating to the investigation. Cooperation
with Public
Oversight
Agencies

(2) Where a Public Oversight Agency carries out an investigation, the Public Oversight Agency shall cooperate with the Authority and share any information relating to the investigation with the Authority using a mechanism referred to in subregulation (1).

136. (1) The instrument of delegation provided under section 11 (3) (a) of the Act shall state — Delegation of
functions and
powers of
Authority

- (a) the delegated functions or powers;
- (b) the person to whom the delegation is made;
- (c) the date of commencement of the delegation;
- (d) the duration of the delegation, which may be a specified period of time or an unspecified period of time;
- (e) the limitations or exceptions to the delegation, if any; the requirements for reporting on the execution of the delegated functions or powers; and
- (f) that the delegation may, by written notice of the Authority, be revoked at any time.

(2) A person who wishes to appeal to the Authority against a decision made under a delegated function or power shall, within 14 days from the date of the communication of the decision, submit a written appeal to the Tribunal.

PART XVI — *Registration of Contractors*

Contractors' Register

137. (1) The Authority shall enter in the Contractors' Register, in respect of each contractor —

- (a) the name and qualification of a director or partner, key staff or employee who is technically qualified or experienced in the relevant category, where applicable;
- (b) in the case of an individual, his or her qualification, skill or experience;
- (c) duration of the registration;
- (d) type of the registration; and
- (e) any other particulars which the Authority may, from time to time, direct.

(2) A member of the public shall, in terms section 91 (2) of the Act, pay a fee set out in Schedule 2 to access the Contractors' Register.

(3) A contractor shall submit particulars of change of the contractor's registration in Form Q set out in Schedule 1 to the Authority.

(4) A contractor who fails to submit particulars referred to in subregulation (1) shall pay a penalty fee of P5 000 to the Authority.

Registration requirements

138. A contractor who wishes to be listed in the Contractors' Register shall be eligible for registration if the contractor meets the minimum registration requirement in respect of a class or category of registration as may be issued by the Authority, or any other requirement that the Authority may provide.

Application for registration

139. (1) A contractor may apply to the Authority in Form R set out in Schedule 1, upon payment of a fee set out in Schedule 2.

(2) An application referred to in subregulation (1) shall be accompanied by —

- (a) a certified copy of a certificate and any other relevant document relating to the qualification of a contractor for registration;
- (b) information proving that a contractor is a holder of the minimum technical qualification, skill and experience required by the Authority for the class of contract works, services or supplies in respect of the registration sought;
- (c) information on whether a contractor meets a requirement for the category of works, services or supplies for which the registration is sought; and
- (d) any other information that the Authority may require from time to time.

(3) An application for registration shall not be considered as duly completed for purposes of the Act unless information required by the Authority is submitted to the Authority by a contractor, an adjudication has been made on the application, and a certificate issued.

140. The Authority may, after receipt of an application for registration from a contractor, inspect the contractor's business.	Inspection of contractor's business
141. (1) The Authority shall, after an inspection referred to under regulation 140 prepare an inspection report.	Inspection report
(2) An inspection report under this regulation shall include the findings from the inspection in respect of the operations of a contractor's business relating to the application for registration in the Contractors' Register.	
142. The Authority shall consider an application by a contractor to be registered in the Contractors' Register and make its decision within a timeline determined by the Authority from the date of the receipt of the application, and such consideration may be in relation to —	Consideration of application for registration
(a) an approval of such application which meets a requirement for registration; (b) a rejection of such application; (c) the returning of such application where the application is incomplete or it does not comply with a requirement for registration; or (d) a refusal to register a contractor — (i) if an applicant has been convicted of an offence under the Act, (ii) if it is in the public interest to do so, or (iii) for any other reason as may be determined from time to time by the Authority.	
143. (1) A certificate of registration issued in terms of section 92 (3) (b) of the Act shall contain details as may be provided by the Authority from time to time.	Certificate of registration
(2) A certificate of registration under this regulation may be issued electronically.	
144. (1) Notwithstanding regulation 142 (d), the Authority may not register a contractor if in the opinion of the Authority the —	Refusal to register contractors
(a) contractor does not meet a requirement for registration in the Contractors' Register; or (b) contractor presents false information to the Authority.	
(2) The Authority shall give a contractor an opportunity to be heard before the Authority makes its decision in terms of subregulation (1).	
(3) The Authority shall, where it does not register a contractor under this regulation, communicate its decision, in writing, to the contractor within seven days of the date of such decision and shall state the reasons for such refusal.	
145. (1) A contractor may apply to the Authority for the upgrade of the contractor in Form S, or for the downgrade of the contractor in Form T, set out in Schedule 1, upon payment of a fee set out in Schedule 2.	Application for upgrading or downgrading
(2) The Authority shall, within 21 days after receipt of an application referred to in subregulation (1), process the application and inform the contractor of its decision.	
146. (1) The Authority may, in its decision referred to in regulation 145 (2) upgrade or downgrade a contractor and issue the contractor with a higher grade or lower grade where applicable.	Upgrading or downgrading of contractors
(2) The Authority shall, where it intends to upgrade or downgrade a contractor, give such contractor a 14 days' notice within which the contractor shall furnish reasons to not be upgraded or downgraded.	
(3) The Authority shall, after the period referred to in subregulation (2), consider the reasons furnished by a contractor and make a decision.	

- (4) The Authority shall, where a contractor fails to respond in terms of subregulation (2) —
- proceed to upgrade or downgrade the contractor;
 - inform such contractor in writing; and
 - enter the new grade and code in the Contractors' Register.
- Non-registration of citizen contractors in micro procurement** **147.** A procuring entity shall, with the written approval of the Authority, engage a contractor who is not registered to participate in procurement a process except a procurement process relating to —
- micro procurement;
 - informal sector;
 - international bidding for bidders not domiciled in Botswana; or
 - a Government policy,
- as the Authority may determine.
- Grading of contractors** **148.** (1) A contractor that is registered in the Contractors' Register shall comply with any grading guideline or rule issued by the Authority from time to time with respect to works, services or supplies.
- (2) The Authority may limit the participation of a contractor to a grade under which the contractor is registered in order to —
- achieve a fair and equitable distribution of procurement activities; or
 - promote the participation of a citizen in procurement.
- (3) A contractor shall be allowed to register only one company per sub code at a specific grade.
- Removal from Contractors' Register** **149.** (1) The Authority may at any time direct that the name of a contractor be removed from the Contractors' Register where the contractor —
- requests that the contractor's name be removed from the Contractors' Register, subject to the approval by the Authority;
 - fails to pay an annual subscription fee for two consecutive years;
 - no longer meets the registration criteria;
 - fails to comply with the Authority's terms and conditions for his approval;
 - has obtained registration by fraud or misrepresentation;
 - is a member of a professional body specified by law and the membership has been suspended or cancelled by a professional body;
 - has acted in contravention of the code of conduct set out in Schedule 3;
 - has been convicted of an offence, whether in Botswana or another jurisdiction —
 - in respect of which a sentence of imprisonment without an option of a fine may be imposed, or
 - involving dishonesty; or
 - is deceased.
- (2) The Authority shall not vary, amend or withdraw a registration of a contractor in the Contractors' Register unless the Authority has —
- afforded the contractor an opportunity to furnish reasons why the registration should not be varied, amended or withdrawn; and
 - informed the contractor of its intention to vary, amend or withdraw the registration.
- (3) Except in the circumstances specified in subsections (1) (a) and (2), the Authority shall inform a contractor of the removal of the name of the contractor from the Contractors' Register by a recorded delivery or a registered letter to the address appearing in the Contractors' Register against such contractor's name immediately before such removal.

(4) A contractor whose name has been removed from the Contractors' Register under this regulation shall, with effect from the date of the removal, cease to be registered for the purpose of the Act, and shall be obliged to immediately surrender to the Authority the certificate of registration for cancellation.

(5) Where a contractor has been de-listed from the Contractors' Register, the contractor shall not be re-registered under any other name.

150. (1) A contractor whose name has been removed from the Contractors' Register may apply to the Authority in Form U set out in Schedule 1, and upon payment of a fee set out in Schedule 2, for the restoration of the contractor's name in the Contractors' Register.

Restoration to
Contractors'
Register

(2) An application referred to in subregulation (1) shall be accompanied by —

- (a) proof that a contractor has complied with the registration requirements under the Act; and
- (b) a payment of arrears relating to the registration in the Contractors' Register, if any.

(3) The Authority may restore a contractor to the grade and code to which the contractor was previously registered under if such contractor satisfies the Authority that the contractor meets the requirements for re-registration in terms of subregulation (2).

151. The Authority may interface its registration system with any other platform provided by a competent authority to ensure that any change on information relating to a contractor is updated in accordance with the latest development.

Updating and
correction of
registration
system

152. (1) A fee for the registration of a contractor in the Contractors' Register shall be —

Registration
fees

- (a) as set out in Schedule 2; and
- (b) paid by the registered contractor according to such contractor's grade and code.

(2) A fee for the registration of a contractor in the Contractors' Register shall be due on the notification of the registration or re-registration and shall be payable to the Authority.

153. A subscription fee for a registered contractor —

Subscription
fees

- (a) shall be determined by the Authority;
- (b) may be reviewed annually by the Authority; and
- (c) shall be paid by the registered contractor to the Authority according to such contractor's grade or code.

154. A contractor shall, in terms of section 97 of the Act, apply for the renewal of a certificate of registration in Form V set out in Schedule 1 upon payment of a fee set out in Schedule 2.

Renewal of
registration

155. A contractor who is aggrieved by the decision of the Authority to, refuse to register the contractor, remove the contractor's name from, or any other decision relating to the registration of such contractor in, the Contractors' Register, may, in writing, appeal to the Tribunal within 14 days from the date of the decision and submit any document or information that may be relevant to the appeal.

Appeal of
decision of
Authority to
not register
contractors

PART XVII — *Suspension and De-listing of Contractors*

156. (1) The Authority shall establish a suspension and de-listing committee.

Suspension and
de-listing
committee

Operations of
suspension and
de-listing
committee

(2) The functions of the suspension and de-listing committee shall be to investigate whether a contractor complies with the code of conduct or terms of a contract.

(3) The suspension and de-listing committee shall consist of seven members appointed by the Authority.

(4) The Authority shall, by Notice in the *Gazette*, publish the appointment of the members of the suspension and de-listing committee, specifying the dates of their appointment and the period for which they are appointed to the suspension and de-listing committee.

157. (1) Notwithstanding the generality of regulation 156 (2), the suspension and de-listing committee shall, upon receipt of a complaint submitted to it by the Authority —

- (a) investigate the complaint by making reference to a —
 - (i) code of conduct set out in Schedule 3, or terms and conditions of a contract, and
 - (ii) procuring entity concerned and its records and decision relating to such complaint, if any;
- (b) where necessary, seek the advice of any person with expertise related to such complaint;
- (c) establish whether the conduct of a contractor is consistent with set practices of contractors in a similar field; and
- (d) conduct such further investigation as may be necessary to make an informed determination on such complaint.

(2) The suspension and de-listing committee may, at any stage of an investigation, hold a hearing with a contractor that is under investigation.

(3) The suspension and de-listing committee may summon any witness to appear before the committee to give evidence during an investigation.

(4) A contractor may bring its own witness to a hearing referred to in subregulation (3) and shall provide the suspension and de-listing committee with a list of the contractor's witnesses, if any, no later than five days before the date of the hearing.

(5) The suspension and de-listing committee shall, in writing, before a hearing under this regulation, furnish a contractor with the particulars of the complaint made against the contractor.

(6) The suspension and de-listing committee shall give a contractor an opportunity to reply to a complaint in terms of this regulation not later than five days after receipt of a notice to reply.

(7) The suspension and de-listing committee shall, after it has concluded an investigation and a hearing, and has made a determination, submit a recommendation on the complaint to the Authority within 10 days.

(8) A contractor required to appear before the suspension and de-listing committee shall appear in person.

Tenure of office
of members of
suspension and
de-listing
committee

158. A member of the suspension and de-listing committee shall be appointed for a period not exceeding four years on such terms and conditions as may be specified in the instrument of appointment shall be eligible for re-appointment for one further term not exceeding four years.

Meetings of
suspension and
de-listing
committee

159. The suspension and de-listing committee shall regulate its own proceedings in conducting its business.

160. A procuring entity may recommend to the Authority, the suspension, de-listing or debarring of a contractor —

- (a) where the contractor contravenes the code of conduct set out in Schedule 3;
- (b) where the contractor does not comply with the terms of a contract; or
- (c) where the conduct of the contractor is not consistent with set practices.

Grounds and sanctions for suspension, de-listing or debarring of contractors

161. (1) The Authority may, on its own volition or upon receipt of a written allegation made by or on behalf of any person alleging a misconduct by a contractor, institute an investigation into the conduct of the contractor.

Investigation into conduct of contractors

(2) The Authority may conduct an investigation in terms of subregulation (1) or refer it to a competent authority.

(3) The Authority shall, upon receipt of a written allegation against a contractor, by notice to the contractor, inform and give such contractor the grounds of the allegation.

162. (1) Any person may, in Form W set out in Schedule 1, submit an allegation on any conduct of contractor which contravenes the code of conduct set out in Schedule 3 or the terms of the contract to the Authority within 14 days of becoming aware of such conduct.

Submission of allegations to Authority

(2) A conduct of a contractor which contravenes the code of conduct, referred to in subregulation (1) shall arise from circumstances relating to the execution of the contract by the contractor.

(3) A person referred in subregulation (1) shall substantiate his or her allegation of under this regulation to the satisfaction of the Authority.

(4) The Authority shall, upon receipt of an allegation under this regulation, submit the allegation to the suspension and de-listing committee to be investigated.

163. (1) The Authority may, in exercising its powers and functions to investigate in terms of the Act, require a person to produce information, a document or any evidence concerning an investigation to determine any possible ground for the contravention of the provisions of the Act by a contractor.

Process of investigations on conduct of contractors

(2) A person required to produce information, a document or evidence under this regulation shall submit the information, document or evidence within 10 days from the date of receiving the request.

(3) The Authority may request a contractor against whom an allegation is made or who is being investigated, under these Regulations, to furnish the Authority, within a period specified by the Authority, an explanatory response to the allegation which shall be verified by an affidavit.

(4) The Authority may —

- (a) summon before it or before a unit that the Authority may designate for purposes of an investigation under this regulation, a contractor against whom an allegation is made or whose conduct may appear to the Authority to require an investigation;
- (b) call upon a contractor referred to in paragraph (a) to produce any document, contract, book, paper, specification, quantities or other writing in such contractor's control, relating to the complaint under investigation; and
- (c) hear any evidence and inspect any document which the Authority or a contractor may desire to present.

Investigation
officers of
Authority

(5) A contractor against whom an allegation is made in terms of these Regulations shall have the right to appear before the Authority and to be heard personally, and may call such evidence and produce such documents as may be relevant.

(6) A contractor who has been summoned in terms of this regulation commits an offence if the contractor fails without sufficient cause to —

- (a) appear before the Authority;
- (b) answer fully and satisfactorily to the best of such contractor's knowledge any question put to the contractor by the Authority; or
- (c) to produce any documents in possession, or under the control, of such contractor, required by the Authority to be produced.

164. (1) The Authority may, in conducting an investigation under the Act, as it may consider it necessary, appoint a person to be an investigation officer of the Authority, for purposes of carrying out the investigation.

(2) An investigation officer appointed as such under subregulation (1) shall, for the purpose of ascertaining whether the provisions of the Act are being complied with, have power at all reasonable times to enter into contractor's business premises, any site where construction works or services are being carried out, or any other location deemed relevant to the investigation, and make such enquiry or inspection as may be necessary for the purposes of an investigation.

(3) An investigation officer may, in the course of an investigation under these Regulations —

- (a) require information concerning the registration of a contractor, accreditation and certification of a construction worker and supervisor engaged by a contractor, or information regarding the payment of a levy, and any person required to give the information shall do so truthfully;
- (b) require any person to produce any records required to be kept under this Act, and may make a copy of such records; or
- (c) by notice in writing order the suspension of all or any part of the works in respect of which the provisions of the Act have not been complied with until the date of such compliance.

(4) An investigation officer shall, when exercising powers and functions under the Act, identify himself or herself by producing a written authorisation to exercise such powers and functions.

(5) An investigation officer shall, upon completion of an investigation, submit a written report with a recommendation to the Authority on an action to be taken.

Decisions of
Authority

165. (1) The Authority shall, on receipt of a recommendation of an investigation officer under regulation 164(5), make a decision and immediately, by a written notice, communicate its decision to a contractor, shareholder, director or key staff which may —

- (a) impose any of the following orders, or combination thereof, against the contractor —
 - (i) caution or reprimand such contractor in writing,
 - (ii) suspend such contractor for a specified period of time from participating in a procurement process,
 - (iii) suspend such contractor conditionally on any terms, pending the fulfilment by the contractor of the conditions of suspension,

- (iv) issue a remedial order, where such contractor is ordered to comply with a remedial measure within a specified time, failing which the contractor shall be suspended for a specified period of time from participating in a procurement process, or
 - (v) de-list and remove the contractor from the Contractors' Register; or
- (b) dismiss the complaint.
- (2) The Authority shall, from time to time issue the duration of suspension and de-listing under this regulation.
- (3) Where the Authority has suspended or de-listed a contractor in terms of section 100 of the Act, the —
 - (a) Authority shall revoke the certificate of registration issued under these Regulations, by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish the suspension or de-listing indicating the duration of such suspension or de-listing;
 - (b) Authority shall, in writing, inform a procuring entity that the contractor has been suspended or de-listed; and
 - (c) contractor shall, where applicable, within seven days of receipt of a decision of the Authority in terms of this regulation, submit to the Authority, the certificate of registration.
- (4) The Authority may, after making its decision under these Regulations, require a contractor to compensate a procuring entity of any proceeds or any other benefits received by the contractor relating to a contract with the procuring entity, which proceeds or benefit such contractor is not entitled to.
- (5) The decision of the Authority under this regulation shall be made within 30 days of receipt of a recommendation of the suspension and de-listing committee.
- 166.** A contractor that has been suspended or de-listed in terms of the provisions of the Act shall remain liable to fulfil the contractor's obligations under any contract they entered into with a procuring entity before they were suspended or de-listed except where fraud or corruption is established.
- 167.** (1) A procuring entity may, with the approval of the Authority, where a contractor has been de-listed and removed from the Contractors' Register in terms of the provisions of the Act, terminate, or continue with, a contract entered into with the contractor.
- (2) The Authority shall, in writing, inform a procuring entity of a decision referred to suspend or de-list a contractor and direct the procuring entity to terminate a contract.
- 168.** (1) The Authority shall keep and maintain a register of any suspended or de-listed contractors, which shall be available for access by the public.
- (2) The Authority shall upon the suspension or de-listing of a contractor enter the name and particulars of the contractor, including a shareholder, director and key staff, in the register referred to in subregulation (1), for a period to be determined by the Authority.
- 169.** (1) The Authority shall, upon the lapse of a suspension or de-listing period remove a contractor from the register of suspended or de-listed contractors.
- (2) A de-listed contractor may, where a period of de-listing lapses, apply in Form Y set out in Schedule 1, for the contractor to be removed from the register of suspended or de-listed contractor.

Suspended or de-listed contractors

Termination of de-listed contractors

Register of suspended or de-listed contractors

Reinstatement of contractors

C.142

(3) The Authority shall remove a contractor from the register of suspended or de-listed contractors within 15 days of the application referred to in subregulation (2), unless the Authority is satisfied that the contractor has not complied with any terms and conditions for restoration in the Contractors' Register in terms of these Regulations.

Appeal against
decision to
suspend or
de-list

170. (1) A contractor who is aggrieved by a decision of the Authority to suspend or de-list the contractor may, within 14 days of the date of the decision, appeal against such decision to the Tribunal.

(2) A contractor may apply for a stay of a decision of the Authority referred to in subregulation (1) simultaneously with an appeal.

PART XVIII — *Procedure for Lodging of Complaints and Appeals*

Procedure for
lodging of
complaints

171. (1) A contractor aggrieved in terms of section 104 (2) may submit to an Accounting Officer, a complaint in Form Z set out in Schedule 1.

(2) An Accounting Officer shall, within five days after receipt of a complaint referred to in subregulation (1), notify any other contractor participating in a procurement process to which the complaint relates, of such complaint and the grounds of the complaint.

(3) Any contractor whose interest is or could be affected by the review proceedings under this regulation shall have the right to participate in such review proceedings.

Suspension of
procurement
process

172. (1) Where an Accounting Officer has suspended a procurement process in terms of section 107 of the Act, the Accounting Officer shall —

(a) notify the complainant and any other contractor participating in the procurement process related to the complaint, pending the consideration of such complaint by the Accounting Officer; and

(b) suspend the procurement process for a period not exceeding 20 days.

(2) Where the suspension in terms subregulation (1) exceeds 20 days, the complainant may refer the complaint to the Tribunal.

Consideration
of complaints

173. (1) An Accounting Officer shall, in considering a complaint, examine or assess the —

(a) evidence including the information provided by the complainant; and

(b) information in the records kept by a procuring entity related to the complaint.

(2) Where two or more contractors from the same tender or procurement process lodge complaints, an Accounting Officer may consider the complaints simultaneously and respond to the respective contractors.

(3) A complainant shall, in terms of section 104 (3) of the Act, participate in the review proceedings in person.

(4) The law relating to admissibility of evidence shall not apply to review proceedings under these Regulations.

(5) An Accounting Officer may engage an expert to assist the Accounting Officer in the review proceedings, where applicable, and the opinion of the expert shall not be binding on such Accounting Officer.

Right to fair
hearing

174. (1) A bidder shall have the right to a fair hearing in review proceedings under these Regulations.

(2) Where the decision of an Accounting Officer is likely to result in the revocation of an award, or cancellation or re-evaluation of a tender, the Accounting Officer shall invite a bidder to a hearing and such Accounting Officer shall inform the bidder of any observation made and the possibility of an error, if any, in the awarding of a tender.

(3) An Accounting Officer shall give a bidder a period of not more than three days after the review proceedings, to submit a response on the findings of the Accounting Officer and to show cause why, an award should not be revoked, or a tender cancelled or re-evaluated, or why any other justifiable decision should not be made.

175. (1) An Accounting Officer shall, within 20 days after the review proceedings, make a written decision with respect to a complaint which shall indicate —

Decisions of
Accounting
Officer

(a) whether the complaint is upheld in whole or in part, or is rejected or dismissed;

(b) the reasons or grounds for the decision; and

(c) any corrective measure that may be taken.

(2) An Accounting Officer shall, after the period referred to in subregulation (1), submit a decision to the complainant and any other contractor participating or who participated in a procurement process related to the review proceedings.

(3) A decision of an Accounting Officer shall be binding on the complainant and any other contractor participating or who participated in a procurement process related to the review proceedings.

176. (1) An Accounting Officer shall, in determining the appropriate relief, consider all circumstances affecting the procurement process relating to the review proceedings.

Remedies by
Accounting
Officer

(2) An Accounting Officer may —

(a) annul in whole or in part the act complained of;

(b) forward the complaint to a procurement oversight unit or order a re-evaluation of a procurement process or tender, or any other relevant remedy; or

(c) order that the procurement process related to the review proceedings be terminated.

177. (1) An Accounting Officer shall, before appointing the members of an independent review panel in terms of section 110, ensure that such members are not involved in the procurement process related to the review proceedings.

Appointment of
independent
review panel

(2) In appointing the members of an independent review panel, an Accounting Officer shall, in relation to a procurement process related to the review proceedings, take into account the relevant or appropriate qualifications and experience of such members.

(3) Where an Accounting Officer has appointed an independent review panel, the independent review panel shall review a complaint and advise the Accounting Officer on the relevant action to be taken within a period not exceeding 10 days from the date of receipt of the complaint.

178. (1) Regulations 122 and 123 shall, with the necessary modifications, apply to the members of an independent review panel.

Disclosure of
interest and
confidentiality
by members of
independent
review panel

(2) A disclosure of interest by members of an independent review panel shall form part of a record of the review proceedings by the independent review panel.

C.144

Withdrawal of complaints

179. (1) A complainant may, by notice in writing to an Accounting Officer, withdraw a complaint at any time before a decision on the complaint is made.

(2) An Accounting Officer may, upon receipt of a notice referred to in subregulation (1), deem the complaint to be withdrawn.

(3) Where a complaint is withdrawn, an Accounting Officer shall immediately inform the complainant and any other contractor participating in the procurement process related to the withdrawn complaint.

(4) An Accounting Officer may, where the withdrawal of a complaint relates to a suspended procurement process, lift the suspension of the procurement process.

(5) A withdrawal of a complaint shall not be conditional.

PART XIX — Fees

Fees

180. (1) There shall be payable to the Authority such fees for its services as the Authority may, with the approval of the Board, determine from time to time.

(2) The Authority shall by Notice in the *Gazette*, in a newspaper of national circulation, electronic media or Government portal, publish fees for any service rendered by the Authority.

(3) A fee paid for any assessment shall not be refundable.

SCHEDULES

Schedule 1

Form A
(reg. 8 (3))**Evaluation Report**

Procuring entity's name: _____

Evaluation of tender no: _____

Short title of what is being procured: _____

Scope of tender: _____

This tender covers the design, supply, installation and commissioning/the purchase of/the appointment of Consultant for

a. Method of procurement (capture as per invitation to tender)

A formal open tender invitation was advertised in the local press and or international press; or

This was a selective/single sourcing tender restricted to suppliers/ contractors/ consultants approved by the Accounting Officer/ his or her representative on (date)
The pre-qualified consultant/ suppliers/contractors are:

1.

2.

b. Tender closing date and bid validity

The closing date for submission of bid proposals was The tender validity period was from the closing date of the tender and therefore the bids expires on

c. Brief background

Give a short synopsis of the circumstances leading up to the purchase/construction, or appointment of consultant, or provision of service and the reason for the purchase.

This paragraph should convey to the reader the necessity for the purchase and benefits to the procuring entity (PE) arising from the procurement action. Wherever applicable a cost benefit analysis is to be included. At the very least the benefits to the PE should be detailed.

The constitution of the evaluation committee should be stated here. At least three officers should evaluate the tender in line with the Public Procurement Regulations.

C.146

d. Tenders received

Here should follow a summary of all tender proposals received. This may be stated in a few lines, under paragraph headings, or summarised in a table such as the example below. The choice of presentation lies with the author and it depends on the method of submission of tender responses. Bid Opening Forms should be appended appropriately.

The choice of format will depend on that which is necessary to achieve clarity, and in order to create a neat presentation.

e. Summary of Tendered Prices

Tender No.	Contractor/Supplier/Consultant	Tendered Price (PULA)	Completion/Delivery Time (WEEKS)
1			
2			
3			

f. Evaluation criteria as per ITT

A summary of the evaluation criteria as per the RFQ/ITT should be stated. An ITT or sections of it can be annexed to the evaluation report.

In this section a short paragraph explaining the evaluation process should be covered and the ITT/Evaluation Criteria attached to the report for further details where necessary.

g. Tender evaluation

Procedure: The number of those in the evaluation committee and their positions and names should be stated.

Results: A short synopsis of the evaluation of the quotations or tenders detailing the process followed as per the criteria in the ITT/RFQ, including factors considered, price comparisons, cut-off points, financial vs. technical weighting, criteria for compliance check etc, and the reasons for the selection of the recommended supplier(s). The evaluation should clearly detail the findings under each stage of evaluation as set in the ITT as follows:

Compliance Check

The basis of disqualification of each bidder should be stated and all those proceeding to the next stage of assessment indicated.

Technical Evaluation

The scores from each evaluator should be stated, summed and averaged as the ITT dictates. A summary of comments on each bidder should be done.

Financial Evaluation

In this section the tenders should be brought to a common base in Pula (where appropriate), and the rates of exchange used, the date and source are to be indicated. Rates used should be as per the requirement of the ITT. Tendered rates subject to foreign exchange adjustment should be adjusted to the rates prevailing at the time of tendering. Where applicable a comparison should be made with previous price(s) paid and comment made on whether the prices/ price increases are considered fair and reasonable. In this section the evaluators should adjust tender prices where applicable applying price preferencing for purposes of comparison. Any arithmetical errors should be stated and the position taken.

Individual comments for each bidder should be consolidated into strengths and weaknesses of the bidder which constitute the findings of the evaluation Committee in addition to the scoring. Individual score sheets with annotations should be appended.

Conclusions: should be drawn which will lead up to the recommendation. In some instances it may be preferable to have the ANALYSIS and CONCLUSIONS under separate headings depending on the method of evaluation and what is procured. The basis of the recommendation should be in line with that under the ITT.

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

h. Recommendations

The recommendation will be similar to this:

It is recommended that the Accounting Officer make a decision (approve/reject/stand down/defer/etc)

i. the opening of financial proposals from

XYZ at a score of

ABC at a score of

DQL at a score of

As the bidders have met the cut-off point of _____ as stipulated in the ITT.

ii. The return of unopened financial proposals from companies XYZ as they failed to meet the cut-off point by scoring below, or

iii. It is recommended that the Accounting Officer approve;

- the award of a contract for the supply/provision/construction ofto XYZ Company who submitted the lowest, technically acceptable tender or who scored the highest, at a total cost of P inclusive of _____ taxes with a construction/ delivery period of weeks.
- The allocation of plots _____ measuring _____ for sale/lease on a _____ year Fixed Period State Grant/lease at a purchase price/ rental of _____ per annum to _____ who scores the highest.

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“RECOMMENDATIONS should reflect the VALUE OF TENDER, RECOMMENDED TENDERER and DURATION OF DELIVERY OF THE WORKS/SERVICES/SUPPLIES.”

i. Observations or opportunities for improvement

The report may contain general comments/observations that may be used for future improvements.

Evaluator's name	Signature	Date
Secretary's name	Signature	Date

The evaluation report shall be signed by all members of the Evaluation Committee in attendance and so are the score sheets.

Here should be listed the Annexure to your report so that the Adjudicator knows where to look for them further information such as:

Annexure A: ITT
Annexure B: Bids/Proposals
Annexure C: Bid Opening Forms
Annexure D: Evaluation Minutes and Individual Annotated Score sheets
Annexure E: Funds Approval Form
Annexure F: Declaration of Interest Form
Annexure G: Confidentiality Form
Annexure H: Integrity Agreement Form
Annexure I: Certificate of Availability of Funds

These annexure should be properly referred to in the body of the report.

Form B
(reg. 31(2) (a))

List of Restricted Items

S/No.	Item	Unit	Procurement method	Justification for use of classified procurement method

Name of procuring entity:.....

Name of the Accounting Officer:

Sign:..... Date:.....

Agreement by the Authority (Name):.....

Sign:.....

Date:.....

Form C
(reg. 34 (2))

Annual Procurement Plan

[illegible]

***Dates provided on the Procurement Plan are subject to review by the Procuring Entity

[illegible]

C.152

Form D
(reg. 37(1))

Procurement Requisition Form

Name of procuring entity:			
Name of user Department	Budget year and date	Sequence number	Open commitment and control record
			To Division
			To Finance and Development Planning

Statement of procurement requirement	
--------------------------------------	--

Item No.	Description (A detailed description of the works, services or supplies)	Quantity required	Unit of measurement	Estimated unit cost	Estimated total cost

Funds Availability:

Vote/ Head No.	Account	Cost centre	Project number	Source of funds	Balance remaining

Signatures are required below to certify that —

- (a) the works, services or supplies described above are required and that the statement of requirements is accurate;
- (b) approval is granted to proceed with the procurement; and
- (c) funds are available or budgeted for the requirement.

(1) Initiating Officer
(user Department)

(2) Confirmation of Funding
(Head of Finance/ Planning)

(3) Approval to Procure
**(Accounting Officer/
Delegated authority)**

Comment: _____

Signature: _____

Name: _____

Position: _____

Date: _____

Form E
(reg. 39 (1))

Availability of Funds

1. I
the Accounting Officer for the
..... (procuring entity) do hereby certify that funds
amounting to (Currency & Amount)..... (amount
in words.....)
required for the procurement activity stated in paragraph 3 below are available by virtue of
having been provided for in the:
 - 1.1 Approved budget for the financial year /.....;
 - 1.2 Confirmation of availability of funds: YES/NO; or
 - 1.3 Confirmation of availability of funds in Future (where there are no/insufficient/additional
funds): Date.....
2. Type of source of funds: recurrent/ development/ donation/ public private partnerships (delete
what is not applicable) as evidenced by the attached statement of the Accounting Officer.
3. Description of procurement:
.....
4. The above stated funds are available to finance the procurement of works/services/supplies
(delete what is not applicable) whose purpose is
.....
.....
5. Cost centre
6. Organisation and account code

Funds CONFIRMED by finance officer/planning officer:

..... Name Signature Date
---------------	--------------------	---------------

APPROVAL by the Accounting Officer (or delegated authority)

This day of 20.....

..... Name Signature
---------------	--------------------

C.155

Designation:

OFFICIAL STAMP:

Form F
(reg. 44(2)(e))

Integrity Agreement

Declaration on Ethical Conduct, Fraud and Corruption (applicable to the Bidders)

1. Pursuant to Section 56 (2) and (3) of the Act, a bidder shall complete and submit this form with a bid.
2. We the undersigned confirm the following in the preparation of our bid:
 - a. neither we, nor any of our employees, associates, agents, shareholders, consultants, partners, beneficial owners or associates have any relationship that could be regarded as a conflict of interest as set out in the bidding documents;
 - b. should we become aware of the potential for such a conflict, we will report it immediately to the procuring entity;
 - c. that neither we, nor any of our employees, associates, agents, shareholders, partners, beneficial owners, consultants or associates have entered into corrupt, fraudulent, coercive or collusive practices in respect of our bid or proposal; and
 - d. that no payments in connection with this procurement exercise have been made by us or our associates, agents, shareholders, partners, beneficial owners or associates to any of the staff, associates, consultants, employees or immediate family members of such who are involved with the procurement process on behalf of the Procuring Entity, Client or Employer.
3. We understand our obligation to allow the Government including the procuring entity and Authority to inspect all records relating to the preparation of our bid and any contract that may result from such, irrespective of whether we are awarded a tender or not.
4. In case of a successful bid, should we be found to be in breach of the integrity agreement, the procuring entity has the right to cancel the procurement including termination of any resulting contract at no cost or legal obligation on her part.

Authorised signature: _____

Name and title of signatory: _____

Name of bidder: _____

Date: _____

Address: _____

Phone number: _____

Fax number: _____

Email address: _____

Form G
(reg. 50(7)(a)(i))

Record of Bid Opening – Single Envelope or Package

Procuring entity: _____
User Department: _____

Tender number:			
Tender title:			
Closing date:	Day	Month	Year
Closing time:			

¹ Bid No.	² Name of bidder	³ No. of copies		⁴ Currency	⁵ Bid amount/ rate	⁶ Other items submitted
		O	C			

- ¹ Bids/quotes received shall be numbered accordingly
² Names in full of all the bids received
³ Number of copies received from each; **O** indicates Original and **C** indicates Copies
⁴ The currency of the quoted amount
⁵ Lump sum value of works/services/supplies where applicable
⁶ Record any other items submitted as per the tender requirement

[illegible]

C.158

We certify that:

- a. bids as noted in the above list and no others were received as per the stipulated time in the invitation to tender; and
- b. such bids were opened in our presence and marked appropriately by us on ---- /---- /20---

Department/Unit	Full names of officers present	Signature	⁷ Designation

⁷Official title of the participating personnel

Form H
(reg. 50(7)(a)(ii))

Record of Technical Proposal Opening – Dual Envelope or Package

Procuring entity: _____

User Department: _____

Tender number:			
Tender title:			
Closing date:	Day	Month	Year
Closing time:			

⁸ Bid No.	⁹ Name of bidder	¹⁰ No. of copies		¹¹ Finacial bid submitted	¹² Other items submitted
		O	C		

⁸ Bids/quotes received shall be numbered accordingly

⁹ Names in full of all the bids received

¹⁰ Number of copies received from each; **O** indicates Original and **C** indicates Copies

¹¹ Indicate with a 'Yes' or 'No' for Financial bid submitted

¹² Record any other items submitted as per the tender requirement

[illegible]

C.160

We certify that:

- a. bids as noted in the above list and no others were received as per the stipulated time in the invitation to tender; and
- b. such bids were opened in our presence and marked appropriately by us on ---- /---- /20---

Department/Unit	Full names of officers present	Signature	¹³Designation

¹³Official title of the participating personnel

Form I
(reg. 50(7)(a)(iii))

Record of Financial Opening – Dual Envelope or Package

Procuring entity: _____

User Department: _____

Tender number:			
Tender title:			
Closing date:	Day	Month	Year
Closing time:			

¹⁴ Bid No.	¹⁵ Name of bidder	¹⁶ No. of copies		Bid amount/rate	¹⁷ Other items submitted
		O	C		

¹⁴Bids/quotes received shall be numbered accordingly

¹⁵Names in full of all the bids received¹⁶Number of copies received from each; O indicates Original and C indicates Copies

¹⁷Record any other items submitted as per the tender requirement

[illegible]

C.162

We certify that:

- a. bids as noted in the above list and no others were received as per the stipulated time in the invitation to tender; and
- b. such bids were opened in our presence and marked appropriately by us on ---- /---- /20---

Department/Unit	Full names of officers present	Signature	¹⁸Designation

¹⁸Official title of the participating personnel

Form J
(reg. 80(1))

Application for Deviation from Use of a Procurement Method

Reference number:	
Name of procuring entity	
Name of applicant	Signature
Designation	Date
Project title	Location
Nature of requested deviation (<i>person, procurement activity, procuring entity</i>)	Estimated value
Exemption required for, and justification –	Single procurement
	Multiple procurement
	Period
Record of previous exemption to the current procurement (<i>if any</i>)	
Extent of non-compliance – how the deviation will be managed to prevent a compromise in the process:	
Relevant supporting documents (<i>Attach</i>)	
Decision by Minister	Approved: Not approved: Date: Signature:
If approved – date exemption period ends:	Indicate any conditions attached:

C.164

Form K
(reg. 82(1))

Application to Use Alternative Procurement Process

Reference number:	
Name of procuring entity	
Name of applicant	Signature
Designation	Date
Project title	Location
Basis of alternative procurement process required (<i>international agreement or external obligation</i>)	Estimated value
Nature of alternative procurement process (<i>use of SPB, application of the Act, e.t.c</i>)	
Alternative procurement process required for, and justification –	Single procurement
	Multiple procurement
	Period
Record of previous alternative procurement processes to the current project (if any)	
Extent of non-compliance – how the alternative procurement process will be managed to prevent a compromise in such procurement process:	
Relevant supporting documents (<i>attach</i>)	
Decision by Authority	Approved:
	Not approved:
	Date:
	Signature:
If approved – date the alternative procurement process period ends:	Indicate any conditions attached:

Form L
(reg. 83(1))

Request for Retroactive Approval

Procuring entity:

Part A: To be completed by user Department
Department
Project No. or title:
Date procurement undertaken:
Brief procurement description:
Planned or unplanned (<i>was the procurement part of the Annual Procurement Plan</i>):
Reasons for retroactive procurement:
Retroactive amount required for approval (Pula):
Availability of funds: (attach proof of availability of funds)
Proposed future corrective measures:
Accountable project officer:
<div style="display: flex; justify-content: space-between;"> <div> Name: Date: </div> <div> Sign </div> </div>

C.166

Head of user Department: Name: _____ Sign: _____ Date: _____	Comments and recommendation by head of user Department: _____
Part B: To be completed by the procurement unit	
Assessing officer (head of procurement unit): Name: _____ Signature: _____ Date: _____	Comments and recommendation by procurement unit:
Part C. To be completed by the procurement oversight unit	
Head of procurement oversight unit: Name: _____ Sign: _____ Date: _____	Comments and recommendation by procurement oversight unit:
Part D. To be completed by the Accounting Officer	
Name: _____ Sign: _____ Date: _____	Decision by the Accounting Officer:
Administrative action by Accounting Officer: 	

Form M
(reg. 96(1))

Declaration of Beneficial Owners

Declaration to establish beneficial owners of a citizen owned contractor or a joint venture with a non-citizen owned contractor

1. Declaration to establish eligibility for reservation and price preferences for citizen contractor and any other entity.

2. The declaration shall be signed by all contractors tendering for reserved contracts and contracts subject to preferences as a condition of each tender.

3. Definition —

The following definitions shall apply to this declaration:

a. citizen Contractor: a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Botswana;

b. control: the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of managerial and financial authority and power in determining the policies and directing the operations of the business;

c. beneficial Owner: means a natural person, who directly or indirectly through any contract, arrangement, understanding, relationship or otherwise —

- (i) in relation to an incorporated body, ultimately owns or has a controlling ownership or exercises ultimate effective control through positions held in the incorporated body or is the ultimate beneficiary of a share or other securities in the body corporate,
- (ii) in relation to a trust or other legal arrangement, is the settlor, trustee or ultimate beneficiary of the trust or legal arrangement or has the power, alone or jointly with another person or with the consent of another person, to —
 - dispose of, advance, lend, invest, pay or apply trust property or property of the legal arrangement,
 - vary or terminate the trust or legal arrangement,
 - add or remove a person as a beneficiary or to or from a class of beneficiaries,
 - appoint or remove a trustee or give another person control over the trust or legal arrangement, or
 - direct, withhold consent or to overrule the exercise of a power referred to in subparagraphs (i) – (iv),
- (iii) is the ultimate beneficiary of proceeds of a life insurance policy or other related investment services when an insured event covered by the policy occurs, or
- (iv) a transaction is conducted on his or her behalf;

d. net amount: the financial value of the Contract at the time of the award of the Contract, exclusive of sales tax which the law requires the Employer to pay to the Contractor; and

e. owned: Having all the customary incidents of ownership, including the right of disposition, and sharing in all the risks and profits commensurate with the degree of ownership interest or shareholding as demonstrated by an examination of the substance as well as the form of ownership arrangements.

4. The company operates banking and savings accounts, and the only authorised signatories are:

i.

 (Bank name and name of signatory) (OmangNo. /Passport)

ii.

 (Bank name and name of signatory) (Omang No. /Passport)

ii.

 (Bank name and name of signatory) (OmangNo. /Passport)

iv.

 (Bank name and name of signatory) (Omang No. /Passport)

5. I hereby provide a current list of beneficial owners for the company/partnership/ society/joint venture/ private foundation/statutory body, or any other (please specify)

	List of beneficial owners	Capacity in company	Nationality	Percentage
1				
2				
3				
4				
5				
6				

6. Undertakings:

The tenderer confirms that it is a citizen contractor and undertakes to remain a citizen contractor for the duration of the contract. I acknowledge that if after the award of this tender any of these declarations are found to be false then any contract(s) between ourselves and the procuring entity shall be terminated immediately and we may be barred from future tendering for Government services and liable to possible prosecution.

7. Sanctions relating to reserved treatment:

Any changes in ownership or control which violate the definition of a citizen contractor shall be sufficient reason for the procuring entity to terminate the contract.

8. All the beneficial owners, partners/directors/shareholders and Administrators of (name of company) have read this declaration and agree to its contents:

- a.* All the Beneficial owners, partners/directors/shareholders and Administrators hereby give consent and verification of the information provided above and understand that this may include but is not limited to the verification of assets, liabilities, accounts, bonds and undertake to notify the competent authorities of any change to the information provided in this declaration within seven (7) days of such occurrence; and
- b.* I understand and declare that each matter here deposed to is essential for the tender validity of (name of company)

NB: The procuring entity reserves the right to confirm the authenticity of the information provided above.

THUS SIGNED AND SWORN TO BEFORE ME COMMISSIONER OF OATHS AT
_____ ON THIS _____ DAY OF _____, 20____, AT
_____ AM/PM, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND
UNDERSTANDS THE CONTENTS OF THIS DECLARATION AND THAT IT IS BINDING
ON HIS CONSCIENCE.

COMMISSIONER OF OATHS

CAPACITY:

C.170

Form N
(reg. 99(2)(k))

End of Activity Report

All Procuring Entities shall submit to the Authority, in respect of each bid, an end of activity report not later than the date of final payment to the contractor.

1. Bidding Data		
Tender number:	Tender title:	Method of procurement: (open, restricted, direct etc.)
Date of publication:	Tender closing date:	Closing date extensions (if any) and reason(s):
2. Contract Details		
Procuring entity	User Department	Contract number
Contract title/ name: Contract type: (lump sum, unit rate or Time-based etc.)	Procurement category (<i>works/services/ supplies/PPP</i>)	Project performance Scope¹: No change/ change Cost: within/outside Time: within/ outside

¹Indicate whether the contract was completed as awarded, whether there was additional or reduced work (change of scope).

If there were changes in scope or additional orders then list the respective contract addenda and complete a separate form for each addendum.

Contractor name:	Contract award date	Contract date	
Sub-contractor/s name/s²:	Conditions for contract effectiveness (if any): e.g. site hand-over, submission of performance security, advance payment etc.	Contract effective date	
Contract original description (brief description of works/services/supplies/PPP)			
Contract final description (brief description of works/services/supplies/PPP at completion or termination of the contract)			
3. Cost Details			
Estimated contract cost (as per the procurement plan)	Original contract award amount	Variations if any	Causes of variations
Final contract amount at completion	Additional payments on contract price (if any)	Planned contract completion date	Actual contract end date

² Where sub-contractors are involved then list them here and complete a separate form for each sub-contractor.

4. Performance Details		
Performance indicators for contractor	Performance achievement Extent of Contractor's achievement against Performance Indicators	Sources of performance variation (Give further Explanations for deviations, if any, from stipulated contract performance indicators. Indicate if such variations were caused by the Contractor, the PE or any other reason)
a. Adherence to Technical Spec's/Drawings/TOR b. Delivery as per contract terms c. Changes in contract costs d. Changes in contract Scope (contract addenda) e. Adequate reporting and contractual relationships and qualified contractor's personnel f. any other	a. Quality Levels as per Tech'l Specs /Drawings/ Terms of reference): select one of: Poor/Satisfactory/Excellent b. Delivery as per contract deadlines: select one of: On-time/excusable delay/ non-excusable delay c. Cost Over-runs: select one of: inflation-related, design problems, supervision problems, force majeure d. Changes in contract scope: select one or more of: design problems, additional requirements, need to upgrade spec's of materials or equipment d. Quality of Progress Reports/Monthly statements and other Contractual dealings and Communications: select one of: Poor/Satisfactory/Excellent	
Overall performance score of the contractor with justifications: (excellent / good/satisfactory /poor)	Corrective measures taken (Action taken by a procuring entity and attach copies of correspondences) (Indicate claims if any)	Further action recommendation (Recommendation by a procuring entity)

Other comments (e.g. <i>Unethical behaviour: excessive claims, unauthorised changes in key personnel by a contractor etc.</i>)		
Prepared by: contract manager		
Name	Signature	Date
Approved by: Accounting Officer		
Name	Signature	Date
5. PPRA OFFICIAL USE ONLY		
Authority's report analysis	Further action	
Authority's decision		

NOTE:

1. Accounting Officers to ensure that project officers being transferred complete this form as interim activity report.
2. All procuring entities shall also use this form for reporting interim activity reports on all projects.

Form O
(reg. 122(1))

Declaration of Interest

Name:

Position held in organisation:

a. Nature of interest

Tick as appropriate:

i. ALREADY HAS PERSONAL INTEREST: ☐

ii. INTEND TO ACQUIRE PERSONAL INTEREST: ☐

iii. INDICATE TYPE OF INTEREST (*direct or indirect*):

b. Name of company/firm/entity:

c. Type of business relationship:

DIRECTOR: ☐

SHAREHOLDER: ☐

AGENT: ☐

OTHER: ☐

For "other", give reasons:

.....

d. Tender No. and title:

.....

e. Description of procurement activity:

.....

f. Recusal from adjudicating, evaluating, advising, handling or otherwise dealing with matter or attendance of a meeting when the procurement activity or tender was discussed?

If yes, give reasons:

g. Date of assignment on the matter or of a meeting when the procurement activity or tender was discussed:

Signature (Declarant):

Date:

Decision by Accounting Officer/authorised officer:

Important definitions

Direct interest- *where a member or employee of a public body or the immediate member of the family of the employee of a public body; holds position in, is an employee of, is a shareholder in or gives services for remuneration or reward to a company which is the subject of the interest.*

Immediate member of family- *means spouse, son, daughter, sibling, or parent of the member of employee of a public body.*

Indirect interest- *means an employee, agent, or nominee of a member or employee of a public body or his or her immediate member of family has a direct interest in a company.*

NOTE: The above definitions are given merely as a necessary guide from the Corruption and Economic Crime Act (Cap. 08:05), as amended. Members, Directors and employees are encouraged to always exercise caution and make appropriate declarations of interest even in circumstances where they have family relations that do not strictly fall within the definitions provided above.

Form P
(reg. 123(2))

Confidentiality Relating to Procurement Process

Name of declarant:

Identification document and number: Omang/Passport:

Position held in Organisation:

I, the undersigned hereby declare that —

1. I am aware of my obligation to abide by the requirements of confidentiality.
2. I know that I am obliged not to divulge any confidential information acquired by myself, or that came to my attention, by virtue of my involvement in any procurement process which is not publicly available.
3. I shall also respect the confidential nature of the opinions expressed in any procurement process I am involved in.
4. I undertake not to disclose such information even after my participation or association with the procurement process has ceased.
5. Should I receive confidential information in the course and context of my participation in the procurement process, I shall treat such information under conditions of strict confidentiality, and exclusively use it for the purpose for which it was made available to me and I shall not divulge to any third party.
6. The above implies that I the undersigned:
 - a. will not divulge, publish or otherwise make available to any third party information received during a procurement process, without prior written consent of an Accounting Officer or the Authority as applicable, during or after participation in the work of a procuring entity;
 - b. will not use information received during a procurement process for personal benefit or that of any third party;
 - c. will ensure safe storage of the confidential information and restricted information in my possession (physical and knowledge), applying appropriate security measures if the information is managed electronically and not retain the information for longer than needed for the completion of the assignment or procurement process; and
 - d. further that any unauthorised disclosure of confidential or restricted information in my knowledge or possession shall constitute a breach of this undertaking and may result in me being administratively sanctioned or prosecuted for such unauthorised disclosure.

7. Notwithstanding anything to the contrary, herein stated, confidential information may be disclosed by operation of the law.

DONE at _____ on the ____ of _____ 20__

Signature: _____

C.178

Form Q
(reg. 137(3))

Request for Change of Particulars of Contractor in Contractors' Register

Nature of change:	Selection (X)
1. Ceasing to operate (closing business, etc.)	
2. Change of information (shareholding/ directorship/ownership)	
3. Place of operation	
4. Change of key personnel (employee)	
5. Change of mandatory requirements (equipment/plant/machinery, etc.)	

Date of change of contractor's particulars:

Reasons of change:
.....
.....
.....

-----OFFICE USE-----

Authority: impact of change on the company codes status

DECISION:

Form R
(reg. 139(1))

Application for Registration in Contractors' Register

COMPANY DETAILS

Legal Entity:	
Unique Identification Number (UIN):	
Directors:	
Shareholders:	
Phone/Mobile number:	
Email address:	

DISCIPLINE:

TYPE OF APPLICATION: NEW

LIST OF CODES/SUBCODE APPLIED

SUPPORTING DOCUMENTS:

APPLICATION SUBMISSION AND ASSESSMENT FEES:

-----OFFICE USE-----

DATE RECEIVED.....

APPLICATION STATUS: ...

C.180

Form S
(reg. 145(1))

Application for Upgrade of Contractor

COMPANY DETAILS:

Company name:	
Unique Identification Number(UIN)	
Phone/Mobile number:	
Email address	

Current codes/subcode for upgrade	Codes to be upgrade to	Reasons or justifications

Provide attachments
Submit

-----OFFICIAL USE-----

Form T
(reg. 145(1))

Application for Downgrade of Contractor

COMPANY DETAILS:

Company name:	
Unique Identification Number (UIN):	
Phone/Mobile number:	
Email address:	

Current codes/subcode for downgrade	Codes to be downgrade to	Reasons or justifications

Provide attachments
Submit

-----OFFICIAL USE-----

C.182

Form U
(reg. 150(1))

Application for Restoration of Contractor's Name in the Contractors' Register

ENTITY DETAILS:

Entity name:	
Unique Identification Number (UIN):	
Phone/Mobile number:	
Email address:	

Reason(s) for removal from Contractors' Register:

Provide attachments
Submit

-----OFFICIAL USE-----

Action officer:

Name: _____

Designation: _____

Date: _____

Decision:

Approve/Reject/Defer

Form V
(reg. 154)

Application for Renewal of Certificate of Registration

COMPANY DETAILS

Legal Entity Name:	
Unique Identification Number (UIN):	
Directors:	
Shareholders:	
Phone/Mobile number:	
Email address:	

LIST OF CODES/SUBCODE APPLIED FOR RENEWAL

SUPPORTING DOCUMENTS:

APPLICATION SUBMISSION AND ASSESSMENT FEES:

-----OFFICE USE-----

DATE RECEIVED.....

APPLICATION STATUS: ...

C.184

Form W
(reg. 162(1))

Submission of Allegations to Authority

SUBMISSION OF ALLEGATIONS TO AUTHORITY (for reporting of an allegation of any conduct of a contractor which contravenes the code of conduct set out in schedule 3)

Date: DD/MM/YYYY

1. Details of the Informer:

Name of Company, firm or any other: _____

Postal Address: _____

Physical Address: _____

City/Town/Village: _____

Telephone number: _____

Mobile telephone number: _____

E-mail address: _____

2. Details of Defaulting Contractor (as applicable)

Name: _____

Postal Address: _____

Physical Address: _____

Telephone number: _____

Reference /Tender number (where applicable): _____

Subject matter (Title of tender etc)

Approximate value of tender (where applicable): _____

3. Timelines

Date of breach (if applicable):

4. Description of alleged breach:

5. Documents submitted in support of allegation (where applicable):

Signed by

Company date stamp:
Signature of the Informer

For official use only

Received by : _____
(Public Procurement Regulatory
Authority)

Authority Date Stamp:

C.186

Form X
(reg. 169(2))

Application to be Removed from Register of Suspended or De-listed Contractors

Regulation 177(1) and Regulation 197(2)

LEGAL ENTITY DETAILS

Entity Name:	
Unique Identification Number (UIN):	
Phone/Mobile number:	
Email address:	

REASON(S) FOR REMOVAL:

PROVIDE ATTACHMENTS
SUBMIT

-----OFFICE USE-----

ACTION OFFICER:

NAME: _____

DESIGNATION: _____

DATE: _____

DECISION:
Approve/Reject/Defer

Form Y
(reg. 171(1))

Lodging of Complaints

Date: DD/MM/YYYY

6. Details of the complainant:

Name of company, firm or any other: _____

Postal address: _____

Physical address: _____

City/Town/Village: _____

Telephone number: _____

Mobile telephone number: _____

E-mail address: _____

Status of complainant (prospective bidder/actual bidder)

7. Details of respondent (procuring entity/Authority)

Name of procuring entity: _____

Postal address: _____

Physical address: _____

Telephone number: _____

Reference/Tender number: _____

Subject matter (Title of tender etc)

Bid value of tender (where applicable): _____

C.188

3. Timelines

Date contract awarded (if applicable):

Date decision complained of was made or supposed to be made by Accounting Officer/
Authority (if applicable):

4. Description of complaint detailing the provision(s) of the Act or Regulations that have been breached and how they have been breached

5. The loss or injury to be/or likely to be suffered _____

6. Remedies being sought _____

7. Statement of what complainant thinks would be a reasonable solution to the complaint

8. Documents submitted in support of complaint:

Signed by

Company date stamp:
Signature of the
Complainant

For OFFICIAL USE only:

Received by: _____
(procuring entity/Authority)

Procuring entity/Authority's date stamp:

C.190

Schedule 2
(reg. 131(8), 137(3), 139(1), 145(1), 150(1) and 154)

Fees

Registration Fees Applicable to Works, Services Suppliers, Works & Service Providers

	Fees		
Submission (Applicable to all categories)	Normal application submission fee		P100.00
	Express application submission fee		P5000.00
		New Registration/ Re-registration/	Renewal
Certificate	Category	Fee per Sub Code	Fee per Sub Code
	100% Citizen	P100.00	P50.00
	Majority Citizen	P200.00	P100.00
	Minority Citizen	P500.00	P250.00
	100% Foreign	P1000.00	P500.00

Registration Fees Applicable to Works Category

	New Registration/ Re-registration/ (in Pula)	Renewal/Upgrading/ Downgrading (in Pula)
Category	Fee per Sub Code	Fee per Sub Code
OC (100% Citizen Only)	100	50
A (100% Citizen Only)	200	100
B (100% Citizen Only)	300	150
C (100% Citizen)	500	250
C (Majority Citizen)	600	300
D (100% Citizen)	750	375
D (Majority Citizen)	1000	500
D (Minority Citizen)	1500	750
E (100% Citizen)	1000	500
E (Majority Citizen)	1500	750
E (Minority Citizen)	2000	1000
E (100% Foreign)	3000	1500

NOTE: Youth owned contractors pays 50% per sub code.

- **100% Citizen-owned companies:** refers to companies whose shareholding is 100% owned by citizens
- **Majority Citizen – owned associations** refer to companies which come together in the form of an association/consortium to do a particular project/projects, and the shareholding of these individual companies are 51% or more owned by citizens, or where out of the total shareholding of all these individual companies 51% or more is owned by citizens
- **Majority Citizen – owned companies** refer to companies whose shareholding is 51% or more owned by citizens
- **Minority citizen – owned companies** refer to companies whose shareholding by citizen ranges from 25% to 50%.

Contractor Registration Fees**Work Assessment fees**

Proposed Service	Charge (Pula) per sub code
Contractor registration	
OC	300.00
A	600.00
B	900.00
C – 100% citizen	1500.00
C – Majority	1800.00
D – 100% citizen	2250.00
D – Majority	3000.00
D – Minority citizen	4500.00
E – 100% citizen	3000.00
E – Majority	4500.00
E – Minority citizen	6000.00
E – 100% foreign	9000.00

Service and Suppliers Assessment Fees

Services and Suppliers	Charge (Pula) per sub code
100% Citizens	300.00
Majority Citizens	600.00
Minority Citizens	1500.00
100% Foreign	3000.00

Normal Application Submission fee is P200.00 for both citizen and non-citizen

Annual subscription fee of P200.00

Penalty fees for failure to submit changes of P5000.00

Schedule 3
(reg. 102(8)(b), 149(1)(g), 157(1)(a)(i), 160(a) and 162(1),(2))

Code of Conduct of Contractors

1. GENERA.

- 1.1 A contractor shall ensure that a competent person carries out the contractual obligations of the contractor.
- 1.2 A contractor shall ensure that certified copies of all mandatory certificates, professional qualifications, accreditation and affiliation of employees are kept in the office and shall be made available to the Authority immediately upon request.
- 1.3 A contractor shall ensure that all relevant requirements are provided for in the procurement documents, that services and products are delivered on time in line with the procurement documents or service requirements.

2. DISCLOSURE OF INFORMATION

- 2.1 A contractor shall not disclose information acquired from or through its association or relationship with the Authority or its committees, a Government department or agency, which has not been made public on a potential or current service provider for the contractor's advantage, material gain and advancement.
- 2.2 A contractor, shall not use its, or his or her association or relationship (other than as allowed in the association agreement) with the Authority or its committees, or Government departments or agency for the contractor's advantage, material gain or advancement.

3. COLLUSION AND FRONTING

- 3.1 A contractor shall not manipulate his or her true shareholding; directorship, management, employees or financial resources in order to be compliant with the requirements of section 95 of the Act regarding classification of contractors in terms of ownership, etc.
- 3.2 A contractor shall not be involved in fronting, tokenism and window dressing practices during the tendering stage or while seeking registration into the register of contractors, under section 91 of the Act; for purposes of this code, the terms "fronting", "tokenism" and "window dressing mean the misrepresentation of a material fact of the ownership, management and control, as well as the skilled and specialist positions: of existence of a contractor in order to appear compliant with citizen reservation and citizen preferential treatment and for material gain, advancement of advantage in the procurement process.
- 3.3 A contractor shall not sublet or sub-contract without declaration at tender stage a disproportionate amount of works, or the core aspect of the assignment to a contractor who does not qualify for reservation or preferential treatment. This may also take the form of utilising the resources which include, equipment, facilities, material, financial, etc. of a contractor who does not qualify for reservation or preferential treatment. In this regard the true material benefit and advancement does not meaningfully and tangibly accrue to the contractor the due reservation or preferential treatment.
- 3.4 A contractor shall not have a prevalence of non-executive directors or tokenism whose qualification and experience does not correlate to the core business of the contractor. Passive ownership of an entity can also lead to some form of fronting.

- 3.5 A contractor shall not engage in any collusive practices that have a direct or indirect impact on the cost of engagement to the procuring entities.
- 3.6 A contractor shall not engage in any activity that gives one bidder an improper and unethical advantage over other bidders.

4. PROFESSIONAL CONDUCT AND INTEGRITY

- 4.1 A contractor shall not submit false information or falsified documents to the Authority in order to influence the decision of the Authority to register such contractor in the register of contractors under section 91 of the Act.
- 4.2 A contractor shall not submit false information or falsified documents during the tendering process in order to deceive a procuring entity or clients into believing that the contractor has capabilities and capacities to perform contracts which the contractor is not capable of doing by —
 - 4.2.1 Unauthorised use of one's name or using the name of another for purpose of public bidding.
 - 4.2.2 Withdrawal of a bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he or she had been adjudged as having submitted the lowest calculated responsive bid or highest rated responsive bid.
 - 4.2.3 Refusal or failure to post the required performance security within the prescribed time.
 - 4.2.4 Refusal to clarify or validate in writing its bid during post qualification within a period of seven days from receipt of the request for clarification.
 - 4.2.5 Any attempt by a bidder to unduly influence the outcome of the bidding in his or her favour.
 - 4.2.6 All other acts that tend to defeat the purpose of the competitive bidding, such as but not limited to contractors withdrawing from bidding or submitting letters of non-participation except for valid reasons.
 - 4.2.7 Failure of the contractor, solely due to his or her fault or negligence, to mobilise and start work or performance within the specified period in the Notice to Proceed ("NTP");
 - 4.2.8 Failure by the contractor to comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract. Lawful instructions include but are not limited to the following —
 - a. Employment of competent technical personnel and/or work supervisors,
 - b. Compliance to safety, health and environment requirements,
 - c. Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions,
 - d. Deployment of committed equipment, facilities, support staff and manpower, and
 - e. Renewal of the effective dates of the performance security after its expiration during the course of contract implementation.

- 4.2.9 Assignment and subcontracting of the contract or any part of the contract or substitution of key personnel named in the proposal without prior written approval by the procuring entity.
- 4.2.10 For the procurement of goods, unsatisfactory progress in the delivery of the goods by the manufacturer, supplier or distributor arising from his or her fault or negligence, or unsatisfactory or inferior quality of goods, as may be provided in the contract.
- 4.2.11 For the procurement of consulting services, poor performance by the consultant of his or her services arising from his fault or negligence. Any of the following acts by the consultant shall be construed as poor performance —
 - a. Defective design resulting in substantial corrective works in design or construction;
 - b. Failure to deliver critical outputs due to consultant's fault or negligence;
 - c. Specifying materials which are inappropriate, substandard, or way above acceptable standards; and
 - d. Allowing defective workmanship or works by the contractor being supervised by the consultant.
- 4.2.12 For the procurement of infrastructure projects, poor performance by the contractor or unsatisfactory quality or progress of work arising from his or her fault or negligence as reflected in the Contractor's Performance Evaluation System ("CPES") rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of the procuring entity shall be applied. Any of the following acts by the contractor shall be construed as poor performance —
 - a. Negative slippage of 15% and above within the critical path of the project due entirely to the fault or negligence of the contractor; and
 - b. Quality of materials and workmanship not complying with the approved specifications arising from the contractor's fault or negligence.
- 4.2.13 Wilful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach of the contract without lawful or just cause.
- 4.2.14 Submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.
- 4.2.15 Submitting the educational qualification documents and references of persons whom the contractor purports to be his or her employees when they are not, or without such persons' consent to the Authority or its committees; or
- 4.2.16 Overvaluing of the contractor's assets as well as overcharging of works/services/supplies by the contractor
- 4.2.17 A contractor shall meet his or her contractual obligations in the delivery of products and services.
- 4.2.18 A contractor shall ensure that he or she conducts himself or herself professionally during the procurement process and honours contractual commitments timeously and in a professional manner.
- 4.2.19 A contractor shall ensure that the contractor's obligations in terms of contracts with sub-contractors and agents are scrupulously and timeously met, particularly in regard to making payments.

- 4.2.20 A contractor shall not engage in unfair and unethical practices in dealings with subcontractors.
- 4.2.21 A contractor shall not make spurious claim for additional payment and extension of time.
- 4.2.22 A contractor shall not use an advance mobilisation loan for any purpose other than the intended purpose and that project.
- 4.2.23 A contractor shall perform the contractor's contract duties in an unbiased and conscientious manner, bearing in mind the legitimate interests of all parties to the procurement process and the public.
- 4.2.24 A contractor shall not abandon the work that such contractor is contracted to do.
- 4.2.25 A contractor shall not fail to deliver work to the expectations and obligations as provided by the contract under which the registered contractor is contracted without any valid reason.
- 4.2.26 A contractor shall ensure that he or she delivers or performs his or her obligations under the contract according to the specifications of his or her contract with a procuring entity.
- 4.2.27 In respect of any business dealing with procuring entity, the contractor must ensure that there is no conflict of interest and must declare and disclose any conflict of interest or potential conflict of interest.
- 4.2.28 The contractor shall ensure that it shall comply with and that persons associated with the contractor comply with all applicable laws and regulations with respect to the conduct of its business and further undertake that it shall not and shall ensure that persons associated with the contractor shall not undertake or be involved in, whether directly or indirectly, with any of the following activities:
 - a. fix prices or terms related to pricing;
 - b. engage in any anti-competitive activity;
 - c. rig a competitive bidding process;
 - d. engage in any money-laundering activity;
 - e. engaged in or has the reputation of engaging in corrupt, fraudulent, collusive, coercive, unethical or obstructive practices; or
 - f. has breached any confidentiality obligation towards the procuring entity.
- 4.2.29 The contractor undertakes that it shall furnish a copy of this Code of Conduct to persons associated with the contractor in so far as such persons associated with the contractor are or will be involved in the delivery or execution of the contract or project.

MADE this 23rd day of March, 2023.

PEGGY O. SERAME,
Minister for Finance.