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REGULATIONS

Made by the Minister under section 120 of the Public Procurement Act, 2015, (Act No. 9 of 2015)

PRELIMINARY

1. Citation and commencement.

- (1) These Regulations may be cited as the Public Procurement Regulations, 2021.
- (2) These Regulations come into operation on [*the day that the Public Procurement Act, 2015 comes into operation.*]

2. Interpretation.

- (1) In these Regulations—

“**Act**” means the Public Procurement Act, 2015;

“**Cabinet**” means the Cabinet of Ministers established by section 61 of the Constitution;

“**Constitution**” means the Constitution of Saint Lucia;

“**contract**” includes an agreement evidenced by the issue of a local purchases order;

“**deadline**” in relation to submission of tenders, proposals or quotations, means final date and time of submission;

“**Government**” means the Government of Saint Lucia;

“**Governor-General**” means the Governor-General of Saint Lucia;

“**invitation for tenders**” includes every document, attached to or incorporated by reference, in the invitation for tenders;

“**invitation to pre-qualify**” includes every document attached to, or incorporated by reference, in the invitation to pre-qualify;

“**Public Procurement Manual**” means the Manual on Public Procurement Procedures issued by the Director of Public Procurement under section 5(1)(b) of the Act;

“**Relevant Authority**” refers to the required authorising authority over a procurement based on the threshold values, being either the Central procurement board, procurement committee or the Accounting Officer

“**Request for proposals**” includes every document attached to, or incorporated by reference, in a request for proposal;

“**Request for quotations**” includes every document attached to, or incorporated by refer, in the request for quotations

“**responsive**”, in relation to a tender or proposal, means—

- (a) the tenderer fulfils the requirements of regulation 18;
 - (b) the tender complies with the terms and conditions set out in the tender documents; and
 - (c) the tender is responsive to the technical specifications detailed in the tender documents.
- (2) A person is ineligible to submit a tender, a proposal or an application in response to an invitation for tenders or to prequalify, request for proposals or to be awarded a contract for procurement of goods services or works if—
 - (a) the person is suspended or otherwise disqualified under the Act or these Regulations;
 - (b) the submission or award is unlawful under the laws of Saint Lucia;
 - (c) it is unlawful for the person to make an application to prequalify or the submission under the laws of Saint Lucia; or
 - (d) it is unlawful for the person to enter into a contract under the laws of Saint Lucia.
 - (3) When a matter or procedure is not provided for, or insufficiently provided for, under these Regulations, the matter or procedure shall be determined—
 - (a) subject to paragraph (b), by analogy with any matter or procedure which bears the greatest similarity; or
 - (b) in accordance with the procedures set out in the Public Procurement Manual.

Commented [d1]: Manual should point out that guidance from the attorney general should be sought on legal issues. Notwithstanding The Director and Procurement officers should be guided by procurement best practice as outlined in the UNCITRAL model

3. Non-applicability

Subject to these Regulations, Parts 2 shall not apply to procurements exempted under Section 4(2) of the Act and to the extent that such procurements are exempted under that Part.

4 Purpose

Pursuant to section 3 of the Procurement Act, the purpose of these Regulations is to operationalize the Public Procurement Act and associated amendments by facilitating procuring entities in acquiring goods, works and services to fulfill their procurement requirements in a manner compliant to the Act. These regulations seek to ensure that all the relevant aspects of the procurement law are incorporated into the procedures involved in the acquisition of goods, works and services and that the contracting process is concluded in accordance with the requirements of the Act. It also lays out the required documentation, recording keeping reporting procedures for ensuring accountability and transparency in the procurement process of the government.

PART 2

ADMINISTRATION

Division 1

5 Director of Procurement

Pursuant to section 5 and section 6 of the Act, the Director may delegate all or some of the powers and duties of the Director to other public officers employed within the Office of the Director of Procurement via written instruction.

Pursuant to section 5(2) of the Act, procurement to be undertaken by electron means shall include any means of facilitating the performance of the procurement process by computerised automation of the procurement process or parts of the process. This typically involves performing a procurement activity via the use of a computer to input, process, store, transmit and receive information.

Pursuant 5(3) Where electronic procurement systems are used, prior approval by the Director shall be required by a procuring entity.

The Director shall issue an approved user manual for any electronic procurement systems approved. The use of emails for tender submission shall only be permitted as outlined in the user manuals issued by the Director.

Pursuant to section 57(A) of the Act where an electronic procurement system is used, supplier registration can be facilitated via the electronic procurement system. The system shall ensure that all the conditions listed in 57A are adhered to.

Commented [d2]: consider repositioning to section corresponding with 57(A)

6 Audits by the Director

(1) Pursuant to section 6 (1) of the Act, the Director may carry out audits -

- (a) on their own initiative; or
- (b) where there are reasons to suspect that any procurement proceedings have been conducted in breach of the Act, these Regulations or the directions of the Board, order an audit in respect of the suspected breach of the Act, these Regulations or any directions of the Board.

(2) For the purposes of this Part, the Director shall, by instrument in writing, appoint a suitably qualified individual to conduct the Audit.

Commented [d3]: consider using engage or contract
Commented [R4R3]: You can put /use contract

(3) Nothing contained in this Part shall be construed to limit, reduce or restrict the authority of the Director of Audit to conduct any inspection under the Act or any other written law.

7. Powers of Auditor

Pursuant to 6 (1)(c) the Director may carry out an audit; where the director has appointed an audit of the procurement function the Auditor shall-

- (1) For the purpose of carrying out an audit in respect of any procurement proceedings, an auditor—
 - (a) shall have access to all books, records, returns, reports and other documents of the procuring entity or every other person who participated in the procurement proceedings, including documents kept and maintained by electronic means;
 - (b) may remove or make copies of any documents to which the auditor has access under paragraph (a);
 - (c) may require—

- (i) an employee or official of the procuring entity; or
 - (ii) an employee or official of a person who participated in the proceedings, to provide such explanations, information or assistance as the auditor considers necessary for the conduct of the audit; and
- (d) shall have such other powers as specified in the instrument of appointment.

(2) The powers of an auditor are subject to such conditions and limitations as the Director considers necessary.

8. Report of the Procurement Audit.

The Auditor shall, upon completion of his audit, prepare and submit to the Director a report in respect of the audit.

9. Determinations, directions etc. of the Director

(1) If, after considering the report of an audit, the Director is satisfied that there has been a breach of the Act, these Regulations or any authorised directions regarding procurement proceedings may, subject to sub-regulation (2)—

- (a) direct the procuring entity to take such actions as are necessary to rectify the breach or contravention;
- (b) cancel the procurement contract, if any;
- (c) terminate the procurement proceedings; or
- (d) prepare and submit a summary of the investigator's findings and recommendations to—
 - (i) the procuring entity and the Board,
 - (ii) the Attorney General, and
 - (iii) where applicable, the relevant constitutional Service Commission.

(2) Before the Director exercises any power under subsection (1), the Director shall give—

- (a) the procuring entity; and
- (b) any other person whose legal rights the Board believes may be adversely affected by the order, an opportunity to make representations in respect of the intended exercise of that power

10. The Public Procurement Unit (section 5 m)

In order to facilitate the functions outlined in section 10 of the Act, the accounting officer shall designate/appoint procurement officers to the Public Procurement Unit as required in section 9 of the act.

Procurement officers shall carry out the functions as detailed in Section 9 of the Act

The procurement unit ensures that all the procuring entities procurements are managed consistent with the Act, Regulations and the procurement manual issued by the Director

The public procurement unit must ensure that for proper functioning of the procurement unit all relevant authorities are provided with the necessary documentation required for their functioning.

The Procurement Unit is also required to ensure that contracts are executed as per terms outlined in the contract. Variances are to be highlighted to the Accounting officer with recommendations. For every contract agreement prepared and executed for the procuring entity, a contract assessment shall be prepared by the Public Procurement Unit using the template in schedule 3.

11. Procurement Officer

Pursuant to section 9 of the Act, the functions of the procuring entity shall be the responsibility of the accounting officer/permanent secretary. These functions may be delegated to the personnel appointed/assigned to the role of procurement officer. Each procuring entity shall designate/appoint a procurement officer or officers as deemed necessary to execute the required functionality.

12. Accounting Officers (section 10)

The accounting officer may delegate all the functions detailed in section 10 of the Act except section 10 (2) d. The procurement unit in carrying out its functions shall ensure that the accounting officer is able to comply with the provisions detailed in 10(2) of the Act.

Commented [d5]:
Actions Arising out of the Audit

Commented [d6]: due to the legal implications of this one I would rather see this determination delayed until the Attorney General advises

Commented [d7]: The manual should indicate that where any other law has been violated the matter shall be referred to the appropriate authority

Commented [d8]: the act defines procuring unit being within a procuring entity. Hence a procuring entity may have more than one procuring unit

13 Central Procurement Board

With respect to the functioning outlined in section 12(2) of the Act and subject to section 12(1) of the Act, and in respect of all tender documents relating to tenders to be opened, evaluated and awarded by the Board, the Board shall ensure the following:

- (a) the tender opening dates are in accordance to its meeting dates;
- (b) the bid validity period is sufficient to allow for evaluation, award and execution.

In keeping with 14 (4), the director, staff of the office of the director, and staff of the public procuring units shall not be members of the board. However, they shall be available to provide the board with all relevant information required in arriving at its decisions

14. Procuring entities to provide information to Central Procurement Board

- (1) Every procuring entity shall, in writing, provide to the Central Procurement Board such information relating to procurements as the Board may require.
- (2) For the purposes of this regulation—
 - (a) the Central Procurement Board shall, where requiring a procuring entity to provide information, specify the means and procedure to be used in providing the information; and
 - (b) the procuring entity shall provide the within 14 days of the receipt of such further days as may be agreed.
- (3) The members of the board shall be paid a stipend for attending meetings subject to prescribed rates
- (4) The secretary of the Procurement Board or an officer appointed by the Board shall be delegated the responsibility to serve as the secretariat to the Board in its application of the Act and associated regulations.
- (5) The Director shall serve as focal point in guiding the board in ensuring compliance to the Act.
- (6) The secretary is required to work with the Director to establish appropriate internal procedures for the Board.
- (7) These internal procedures and any updates as may be necessary periodically are to be presented to the Board for approval.
- (8) These approved procedures shall be issued to procuring entities to guide them in utilizing the boards functionality

Commented [d9]: given the amended composition I am not sure a stipend would be in order

Commented [d10]: procedures should also allow for the board to make estimates of its required, activities and expenditures

Division 3

PUBLIC PROCUREMENT COMMITTEE

15. Functions and powers of public procurement committee

- (1) For greater certainty, a public procurement committee as appointed in section 23 of the Act—
 - (a) Shall be the relevant authority for all procurements prescribed as intermediate in the Act
 - (b) may review recommendations for award of contracts within—
 - (i) the prescribed threshold, or
 - (ii) the threshold otherwise applicable to the department;
 - (b) shall ensure compliance with the relevant guidelines, procedures and policies relating to procurement;
 - (c) may review evaluations conducted by evaluation committees;
 - (d) may facilitate response to inquiries from prospective contractors;
 - (e) shall ensure compliance by the department with the reporting obligations relating to procurements; and
 - (f) may co-opt technical personnel as the public procurement committee considers necessary having regard to the nature of the procurement.
- (2) The Minister shall, on the recommendation of the Director, establish the monetary threshold for procurements to be awarded or approved by the public procurement committee.
- (3) The chairperson of the public procurement committee shall—
 - (a) convene meetings of the public procurement committee according to the needs of the department; and
 - (b) ensure that proper minutes of such meetings and records of procurements made or approved by the public procurement committee are kept and maintained.

- (4) The quorum of a meeting of the public procurement committee shall be a majority of the members.
- (5) The chairperson shall ensure that the —
- (a) every month, send or cause to be sent to the Director—
 - (i) a list of all contracts awarded by the public procurement committee,
 - (ii) a list of all procurements involving variations which exceed the original contract values by more than [5 per cent], and
 - (iii) details of each contract including the nature of the contract, the original contract values and the final contract values; and
 - (b) by not later than the 30th day of April in each year, send to the Director a report in respect of each procurement contract awarded by the public procurement committee during the previous financial year.
- (6) The report shall include—
- (a) the value, estimated if necessary, of the consideration payable under the contract;
 - (b) the nature of the procurement procedure which the public procurement committee used;
 - (c) where the public procurement committee used a restricted procedure, the particulars of the procedure;
 - (d) the principal category of goods, services and works procured; and
 - (e) the nationality and other particulars of the contractor or successful tenderer.
- (7) Without prejudice to sub-regulations (5)(b) and (6), a procuring entity shall send to the Director a report containing such information as the Director may outline in the procurement manual, or from time to time, require in respect of any procurement contract irrespective of its value.

16. Procurement by Procurement Committee.

- (1) Except as provided otherwise in the Act and these Regulations or in any special circumstances authorised by the Director, a public procurement committee shall authorize the procurement of goods, services and works of intermediate value by means of the competitive tendering procedure.
- (2) For greater certainty, a public procurement committee may—
- (a) accept any tender or a portion of any tender,
 - (b) reject all or any tender;
 - (c) where all tenders have been rejected, advise that—
 - (i) new tenders be issued, or
 - (ii) the department makes other arrangements to obtain the goods, service or works.
- (3) The procurement officer of every department shall ensure that—
- (a) tenderers are instructed to submit their tenders to the chairperson of the public procurement committee specified in the invitation for tenders, in sealed envelopes clearly and distinctly marked “[tenders for [insert particulars of tender] and the invitation number]”;
 - (b) the deadline for the submission of tenders to the public procurement committee are stated in the invitations for tender;
 - (c) immediately upon receipt, the envelopes containing the tenders are stamped with an official stamp and initialled by the secretary of the public procurement committee;
 - (d) the envelopes containing any tenders received after the deadline for submission of tenders are clearly marked to that effect by the secretary of the public procurement committee;
 - (e) the chairperson of the public procurement committee makes adequate arrangements for the secure custody of the tenders received;
 - (f) no tender is opened before the deadline for submission of tenders;
 - (g) tenders received after the deadline for submission of tender are disallowed, except the Board otherwise directs in very exceptional circumstances;
 - (h) the tenders are opened at the meeting of the public procurement committee convened to consider the tenders;

- (i) the tenders which are not disallowed, when opened, are numbered consecutively and initialled by the chairperson of the public procurement committee;
 - (j) until the public procurement committee makes a decision regarding the award of a contract, the contents of the tenders are communicated only to the officers responsible for dealing with them;
 - (k) the relevant details of the tenders received are recorded in the minutes of the meeting of the public procurement committee considering the tenders;
 - (l) in the case of the complex procurements, technical officers are present or called upon to advise the public procurement committee on any aspect of the tenders under consideration;
 - (m) the public procurement committee satisfies itself that every approved tenderer is competent to provide the goods, services or works required in accordance with the terms of his tender;
 - (n) the public procurement committee needs not necessarily accept the lowest tender, but if it does not do so, it shall record in the minutes of the meeting of the board held for that purposes the reason for accepting a higher tender;
 - (o) the public procurement committee notifies, in writing—
 - (i) the successful tenderer of his selection for the award of a contract, and
 - (ii) the unsuccessful tenderers of the non-acceptance of their tenders;
 - (p) the accounting officer concerned and the Director are informed of the details of the successful tender;
 - (q) arrangements are made for the publication of the award of the procurement contract in the *Gazette* or by electronic means; and
 - (r) if no tenders are submitted or received in respect of an invitation for tenders, the Chairperson of the Procurement committee is so informed.
- (4) The public procurement committee shall—
- (a) keep a record of the minutes of its considerations and decisions, and
 - (b) send copies of the minutes to the Director of Procurement and the Board.

17. Consideration of tenders and award of contracts.

- (1) A public procurement committee shall consider tenders in accordance with the Act and these Regulations.
- (2) Without prejudice to the generality of sub-regulation (1)—
- (a) the accounting officer of the department shall be responsible for advertising procurement opportunities which are to be considered by the public procurement committee; and
 - (b) the invitations for tenders must contain all necessary information regarding—
 - (i) the specifications and quantities of the goods or works required,
 - (ii) the instalments and the dates and place of delivery,
 - (iii) the details of packaging, and
 - (iv) any other particulars for the guidance of tenderers.
- (3) Where the Central Procurement Board is required to consider tenders for goods, services or works because—
- (a) the estimated cost of a procurement requirement in any one financial year exceeds the prescribed value; or
 - (b) the goods, services or works which are common user articles are required by more than one Ministry or department, the accounting officer shall submit a written application to the Central Procurement Board in accordance with sub-regulation (4).
- (4) The written application shall—
- (a) if possible, be submitted at least three months before the goods, services or as the case may be, the works are needed; and
 - (b) contain full details of the requirements and recommendations of the accounting officer respecting the manner and procedure for procuring the goods, services or works.
- (5) Where the Director is of the opinion that the goods, services or works are common user articles, the Director shall ascertain whether any other Ministry or department requires similar goods or other supplies.

Commented [d11]: this must be referred to the Director

Commented [C12]: bulk purchases

- (6) The Procurement Officer shall—
- (a) subject to the approval of the Board, make such arrangements or give such instructions as is considered fit respecting the advertising of notices for tenders to be considered by the public procurement committee; and
 - (b) send to the chairperson of the public procurement committee a copy of every notice of the invitation for tenders for the procurement of the goods.

Division 4

18 Tender evaluation committee

Pursuant to Section 26 of the Act

PART 2
PROCUREMENT PROCEEDINGS

Division 1

Procurement Plan

19. Procurement Plan

Pursuant to Section 39 of the Act

20. Standards to be met by specification.

1. Pursuant to section 41 of the Act, a procuring entity shall, in any specification it uses in respect of the procurement of goods, services or works—
 - (a) seek to obtain the best value for the purposes for which the procurement is intended;
 - (b) seek to encourage the maximum practicable competition in making the procurement; and
 - (c) ensure that the specification is not any more restrictive than is necessary to meet the objectives referred to in paragraphs (a) and (b).
2. Sustainable Procurement in Specifications

When developing specifications, procuring entities are to pay attention to the possibility of including established specifications and standards that seek to safeguard our environment, the well-being of our people, and maintaining the long-term interest of all parties involved. Where it is practical Procurement officers may include specification, which allow procurement to be conducted in a manner cognizant to minimize any adverse environmental impact arising from contract performance; make efficient use of public resources; improve social conditions; and, stimulate the market to further innovate sustainable production.

21. Management of procurement process.

- (1) A procuring entity shall be responsible for the conduct and management of the entire procurement process in relation to government contracts for which it is responsible.
- (2) Where, during the conduct of any procurement proceedings, a procuring entity selects the lowest evaluated substantially responsive tender and makes a determination in respect of the award of the procurement contract, or is notified by the relevant authority of an award, the procuring entity—
 - (a) where applicable, shall obtain the necessary approvals for the award of the contract;
 - (b) except in the case of direct procurement or as otherwise provided, shall not negotiate the award with the successful tenderer,
 - (c) shall not require the successful tenderer to provide performance security in excess of the sum specified in the tender documents;
 - (d) shall request the successful tenderer to return the signed contract, together with the required performance security within the time specified in the tendering documents;
 - (e) shall, without delay, notify in writing every unsuccessful tenderer of the non-selection of that tenderer; and
 - (f) shall send to the successful tenderer, in the manner and time specified, in the tendering documents—

Commented [d13]: this only applies to minor value, for intermediate and major value procurements, submissions are handled by the relevant authority

- (i) the notification of the award,
- (ii) a contract form, and
- (iii) a performance security form, indicating the amount of security.

- (4) The procurement officer of the procuring entity shall place in the procurement document file—
- (a) the record and minutes of the evaluation and determination referred to in sub-regulation (3); and
 - (b) the approvals obtained by the procuring entity under sub-regulation (2).

23. Advertisements and announcements.

- (1) A procuring entity—
- (a) shall advertise within Saint Lucia, procurement opportunities—
 - (i) in the *Gazette* and on the website of the procuring entity or the Government, and
 - (ii) where applicable, in any other media in the prescribed manner and format; and
 - (b) may advertise procurement opportunities in any print media having wide circulation within or outside Saint Lucia if the Board considers it necessary.
- (2) Where a procuring entity advertises procurement opportunities in any electronic media, the procuring entity shall—
- (a) ensure that the information posted is complete for the purposes for which it has been posted; and
 - (b) in the case of advertisement on the website of the Government, ensure that such information remains on that website until the deadline for the submission of tenders.
- (3) Subsections (1) and (2) do not apply to the extent that an advertisement or notice or publication of a procurement opportunity relates—
- (a) to national defence or security and is likely to adversely affect national security objectives; or
 - (b) in any manner, to the disclosure of information which is proprietary in nature or falls within the definition of intellectual property which is available from a single source.
- (4) Save and except as provided in the Act, these Regulations and the Public Procurement Manual, no communication shall take place between procuring entities and any supplier or contractor in respect of a procurement opportunity after the publication of the procurement opportunity.

Commented [d14]: recommend a central advert site

23. Cost of advertisements and announcements.

- (1) Where—
- (a) a procuring entity, by notice, invites members of the public to submit proposals for—
 - (i) the supply of articles,
 - (ii) the undertaking of works, or
 - (iii) any services in connection with such supply or undertaking; and
 - (b) such notice is advertised or any announcement in respect of such invitations is broadcast by any electronic means, the procuring entity shall meet the cost of the advertisement or announcement out of its own funds.
- (2) Every procuring entity shall make provision for the payment, out of the vote provided for advertisement and announcement under the control of the procuring entity, the cost of advertisement or announcements incurred in respect of the procurement of—
- (a) goods, works or services supplied to the procuring entity; or
 - (b) undertakings taken for the procuring entity.

Commented [d15]: make submissions

24. Standard tendering documents.

- (1) Pursuant to section 5(1)(c) of the Act, The Director shall prepare and cause to be prepared standard tendering documents in such manner as may be necessary and appropriate for the submission of tenders, proposals or applications for the procurement of goods, services or works.
- (2) A procuring entity shall—
- (a) use the relevant standard tendering documents having regard to the particular procurement procedure; and

- (b) immediately after the publication of the invitation for tenders, provide a set of standard tendering documents to any supplier or contractor, on request and, where applicable, upon payment of the prescribed fee.
- (3) Where goods, services or works are procured by means of the open competitive tendering procedure, the tendering documents shall include—
- (a) the invitation for tenders;
 - (b) the instructions to tenderers;
 - (c) the form of tender;
 - (d) the form of contract;
 - (e) the general or special conditions of contract;
 - (f) where applicable, the specifications and drawings or performance criteria;
 - (g) where applicable, the list of goods or bill of quantities;
 - (h) the delivery time or completion schedule;
 - (i) where applicable, the qualification criteria for the award of the contract;
 - (j) the tender evaluation criteria;
 - (k) where applicable, format of all securities required;
 - (l) the details of standards (if any) that are to be used in assessing the quality of goods, works or services specified; and
 - (m) any other detail not inconsistent with the Act and this sub-regulation which the procuring entity considers necessary.
- (4) Where, after the invitation for tenders or the issue of the tendering documents to prospective tenderers, any information becomes necessary for the preparation of tenders or for the evaluation of tenders, the procuring entity shall—
- (a) in a timely manner and on an equal opportunity basis, provide such information to the prospective tenderers to whom tendering documents were issued; and
 - (b) in a manner similar to the original advertisement, notify such tenderers of any change, addition, modification or deletion which becomes essential to be made to the tendering documents.
- (5) Notwithstanding this regulation, a procuring entity may continue to use tendering documents already in the use of the procuring entity—
- (a) to the extent that such tendering documents are not inconsistent with these Regulations, and
 - (b) until such tendering documents are replaced by the standard tendering documents.

25. Issuing tendering documents to suppliers

- (1) pursuant to section 64 of the Act, a procuring entity shall provide the tendering documents—
- (a) subject to paragraph (b), to every supplier, contractor or service provider responding to the invitation to tender; or
 - (b) if pre-qualification proceedings have taken place, to the suppliers, contractors or consultants which have been pre-qualified.
- (2) Where any supplier, contractor or service provider makes a request, within the allowable time, for tendering documents, supporting documents or additional information relating to the tendering documents, the procuring entity shall—
- (a) in the case of the tendering documents and supporting documents, supply the supplier, contractor or service provider with such documents within six days of receipt of the request; and
 - (b) where timely a request is made for the additional information relating to the tendering documents, supply every supplier, contractor or service provider to whom the tendering documents have been provided or supplied with such information not later than six days before the deadline for submission of tenders.
- (3) Procuring entities may, in writing, simultaneously request the selected tenderers—
- (a) to participate in procurement opportunities; and

- (b) furnish, with the written request, the tendering documents and supporting documents to the selected tenderers.
- (4) Subject to sub-regulation (5), proposals respecting requests to participate in contracts and tenders must be submitted by the most rapid means of communication possible.
- (5) Where a person submits a proposal in response to a request to participate in any procurement opportunity by telegram, telex, telephone or any other electronic means, the procuring entity may require the person to confirm the request by letter posted or dispatched before the deadline for submission of tenders, proposals or quotations, as the case may be.

26. Tendering Deadline.

- (1) Pursuant to section 66 of the Act, the Procuring unit shall, in respect of any procurement of goods, services or works—
 - (a) determine or calculate the deadline for the submission of tenders including applications for pre-qualification in accordance with this regulation;
 - (b) allow sufficient time reasonably required to complete and submit the tenders by the deadline for the submission of tenders; and
 - (b) specify, in the advertisement or notice of the procurement opportunity, detailed information respecting the proposed procurement and the collection and submission of tender documents.
- (2) The deadline for the submission of tenders shall be calculated from the date of first publication of the advertisement of the procurement opportunity—
 - (a) subject to paragraph (b), in the *Gazette*; or
 - (b) in the electronic media, if the advertisement is limited to the electronic media.
- (3) In calculating the submission deadline, the Board shall—
 - i. The time allowed for the preparation and submission of tenders shall be determined with due consideration of the particular circumstances of the procurement, its magnitude and complexity.
 - ii. Generally, the time period to be provided between the date of publication or invitation to tender and the date of submission shall be not less than
 - (a) 20 (twenty) days in the case of open competitive tendering and restricted tendering where the contract is advertised nationally;
 - (b) 40 (forty) days in the case of open competitive tendering and restricted tendering where the contract is advertised internationally.
 - iii. In the case of prequalification, a minimum period of 20 (twenty) days shall be provided for applications to prequalify.
 - iv. Where large works or complex items of equipment are involved, the procuring entity is encouraged to convene pre-tender conferences and arrange site visits.
- (4) Notwithstanding subsections (1), (2) and (3), no time limit shall apply to an emergency procurement.

27. Forms of communication.

- (1) Where a procuring entity commences any procurement of goods, services or works—
 - (a) by means of the open competitive tendering procedure or the request for proposals procedure, communication between the procuring entity and any person seeking a contract for the procurement shall be in writing; or
 - (b) by means of a restricted tendering procedure other than a request for proposals, communication between the procuring entity and any person seeking a contract for the procurement shall be—
 - (i) in writing; or
 - (ii) referred to and confirmed in writing.
- (2) Nothing in this regulation shall be construed to restrict or limit the authority of a procuring entity to communicate by electronic means, to the extent allowed under regulations made for the purpose or under the written directions of the Board, with any person seeking a contract for the procurement of goods, services or works.

Division 2**PROCUREMENT PROCEDURES FOR CONSULTANCY SERVICES**

28. Selection of procurement method.

- (1) Pursuant to section 45 (e) and (f) of the Act, the procuring entity shall select the appropriate method of selection for consultancy services having regard to—
 - (a) the nature, size and complexity of the assignment;
 - (b) the likely impact of the assignment respecting the assignment;
 - (c) technical and financial considerations; and
 - (d) the thresholds set out in the Public Procurement Manual and established in accordance with the circulars issued, from time to time, by the Minister.
- (2) The selection methods for consultancy service are—
 - (a) quality and cost-based selection;
 - (b) quality based selection;
 - (c) technical proposal-based selection;
 - (d) fixed budget selection;
 - (e) least cost selection; and
 - (f) individual consultant.

29. Quality and cost-based selection method.

- (1) A procuring entity which intends to use the quality and cost-based selection method shall comply with this regulation.
- (2) A quality and cost-based selection method is based on—
 - (a) the quality of the proposals; and
 - (b) the cost of the services to be provided.
- (3) The procuring entity shall use the quality and cost-based selection method where—
 - (a) the procuring entity can—
 - (i) precisely define the scope of work of the assignment, and
 - (ii) clearly and unambiguously specify the terms of reference respecting the work; or
 - (b) the procuring entity and the consultants can estimate with reasonable accuracy and precision—
 - (i) the staff time and the other inputs, and
 - (ii) related costs.
- (4) Without prejudice to sub-regulation (3), the quality and cost-based selection method is appropriate for assignments such as—
 - (a) feasibility studies and designs where—
 - (i) the nature of the investment is clear and well defined;
 - (ii) known technical solutions are being considered, and
 - (iii) the evaluation of the impacts from the project is not uncertain or too difficult to estimate;
 - (b) the preparation of detailed designs;
 - (c) supervision of construction of works and installation of equipment;
 - (d) technical assistance services and institutional development; and
 - (e) procurement and inspection services.
- (5) A request for proposals under the quality and cost-based selection method may indicate the estimated staff time required by the procuring entity to carry out the assignment, but such estimated staff time shall not bind the consultants who may propose the level of inputs which they consider appropriate.

- (6) Subject to sub-regulations (7) and (8), the interested consultants shall submit the technical and financial proposals using the one stage two envelope tendering process set out in regulation 40.
- (7) The procuring entity shall, immediately after the closing time for submission of proposals—
- open the technical envelopes;
 - keep the financial proposals sealed until the completion of evaluation of technical proposals and the report respecting the evaluation; and
 - upon completion evaluation of technical proposals and the report respecting the evaluation, disclose in public the technical scores simultaneously to the consultants who submitted proposals.
- (8) The procuring entity shall, after the disclosure of the technical scores under sub-regulation (7)(c)—
- evaluate the financial proposal of every consultant who submitted a responsive technical proposal which attains the minimum qualifying mark;
 - compute the combined evaluation score of the technical and financial proposals of each consultant by weighting and adding the quality and the cost scores; and
 - invite the consultant who obtains the highest combined score for negotiations, but the procuring entity shall not permit any negotiation respecting staff rates and other unit rates.

30. Quality based selection method.

- (1) A procuring entity which intends to use a quality-based selection method shall comply with this regulation.
- (2) A quality-based selection method is appropriate where—
- the downstream impact of the assignment is so large that the quality of the services becomes of overriding importance for the successful outcome of the project;
 - the scope of work of the assignment and the terms of reference are difficult to define because of—
 - the novelty or complexity of the assignment,
 - the need to select among innovative solutions, and
 - particular physical conditions;
 - the assignment can be carried out in substantially different ways, so that cost proposals may not easily be comparable; and
 - the introduction of cost as a factor of selection renders competition unfair.
- (3) The quality-based selection method is based on—
- an evaluation of the quality of the proposals; and
 - the subsequent negotiation of the financial proposals.
- (4) The procuring entity shall award the procurement contract to the consultant who submits the highest ranked evaluated responsive technical proposal.

31. Technical proposal-based selection method.

- (1) Where a procuring entity intends to use the technical proposal-based selection method, the procuring entity shall—
- comply with this regulation; and
 - specify in the request for proposals its estimate of the staff-months required for the assignment.
- (2) The procuring entity shall—
- base the technical proposal-based selection on its evaluation of the technical proposals of the proposed contractors only; and
 - upon completion of the evaluation of the technical proposal, invite the consultant with the highest-ranking evaluated responsive technical proposal to present its financial proposal.
- (3) Where the procuring entity requests consultants to submit the financial proposals at the same time as the technical proposals—
- the consultants shall submit the financial proposal and the technical proposal in separate envelopes; and

- (b) the procuring entity shall—
 - (i) keep the financial proposals secured until the completion of the evaluation of the technical proposal,
 - (ii) only open the financial proposal of the consultant with the highest-ranking technical proposal, and
 - (iii) subject to successful conclusion of negotiations with such consultant, return to the unsuccessful consultants their unopened financial proposals.

32. Fixed budget selection method.

- (1) A procuring entity may select consultants for the award of contracts under a fixed budget selection method if—
 - (a) the budget in respect of the consultancy services is fixed and cannot be exceeded; or
 - (b) the procuring entity can precisely assess the time and staff-month effort required from the consultants.
- (2) Without prejudice to sub-regulation (1), a procuring entity shall use the fixed budget selection method for well-defined and simple assignments with a low financial risk for the consultants including—
 - (a) sector studies, market studies and surveys of limited scope;
 - (b) simple pre-feasibility studies and review of existing feasibility studies;
 - (c) review of existing technical designs and tendering documents; and
 - (d) project identification for which the level of detail can be matched with the available funds.
- (3) The procuring entity shall, for the purpose of permitting consultants to present clear and responsive proposals, ensure that the terms of reference in respect of the assignment—
 - (a) are consistent with the established budget; and
 - (b) contain a well-specified scope of work.
- (4) For the purpose of awarding a contract under the fixed budget selection method, the procuring entity shall—
 - (a) ensure that the budget is compatible with the terms of reference;
 - (b) ensure that consultants will be able to perform the tasks within the budget;
 - (c) invite prospective contractors to submit their technical and financial proposals in separate envelopes; and
 - (d) disclose the available budget to selected consultants in the request for proposals.
- (5) Where a proposal does not cover any minor technical aspects set out in the terms of reference, the procuring entity shall calculate the evaluated price of that proposal by adding to the offered price, the estimated cost of the missing minor technical aspects.
- (6) The procuring entity shall—
 - (a) reject every proposal which exceeds the indicated budget after adjustments and corrections; and
 - (b) select the consultant who submits the highest ranked evaluated responsive technical proposal.

33. Least cost selection method.

- (1) A procuring entity may use the least cost selection method for small assignments of a standard or routine nature—
 - (a) where well-established practices and standards exist;
 - (b) from which a specific and well-defined outcome may be expected; and
 - (c) which can be executed at different costs.
- (2) The practices, standards, outcomes and costs referred to in sub-regulation (1) include—
 - (a) standard accounting audits;
 - (b) engineering designs or supervision of simple projects;
 - (c) repetitive operations, maintenance work and routine inspections; and
 - (d) simple surveys.
- (3) For the purposes of this regulation, the procuring entity shall—

- (a) subject to paragraphs (b) and (c), establish a minimum qualifying mark for quality
 - (b) indicate the minimum qualifying mark in the request for proposals; and
 - (c) set the minimum qualifying mark at approximately seventy-five to eighty per cent—
 - (i) to ensure quality, and
 - (ii) to avoid the risk of selecting low-cost proposals of poor or marginally acceptable quality.
- (4) The procuring entity shall—
- (a) invite consultants who have been selected from a list of pre-qualified consultants to submit their proposals;
 - (b) reject every proposal which attains a score which is less than the minimum technical qualifying mark; and
 - (c) for the purpose of awarding the contract, select the consultant with the lowest evaluated substantially responsive price.

34. Individual consultants.

- (1) A procuring entity may engage an individual consultant on contracts referred to in sub-regulation (2) for which—
- (a) the experience and qualifications of the individual shall be the dominant factors;
 - (b) no support from a home office is needed for the individual consultant; and
 - (c) teamwork or a multidisciplinary approach is not necessary.
- (2) The contracts referred to in sub-regulation (2) are contracts related to—
- (a) advisory services assignments; or
 - (b) technical opinions on specific matters, for which specialist individual knowledge is the most outstanding issue.
- (3) For the purpose of procuring the services of an individual consultant, the procuring entity shall—
- (a) prepare brief terms of reference for the assignment, including the scope of work and its estimated budget;
 - (b) request expressions of interest from suitable consultants, or advertise the contract opportunity, if necessary, requesting suitable consultants to submit their *curriculum vitae*;
 - (c) conduct an evaluation of the individual consultants who submit expressions of interest in respect of the assignment on the basis of their—
 - (i) academic qualification,
 - (ii) experience, and
 - (iii) knowledge of domestic conditions, where necessary; and
 - (d) select the successful consultant on the basis of the comparison of the qualification of that consultant with the qualifications of the other consultants.

35. Changes in terms of reference and other details.

- (1) The term of reference for a consultant may not be changed substantially.
- (2) The negotiations respecting—
- (a) any technical proposal shall cover minor aspects only; and
 - (b) any financial proposal shall not include any aspect respecting the rates of remuneration.
- (3) Notwithstanding sub-regulation (2)(a), negotiations respecting a financial proposal may, for purposes of compatibility with the work-plan and clarification of any tax liability, include minor re-arrangements of activities and staff.

36. Award of contract after previous consultancy contract

An architect or engineer who executes a contract for consultancy services, such as a feasibility study or design services in relation to an early phase of a project is ineligible—

- (a) to make or participate in an invitation to pre-qualify;
- (b) to submit a proposal; or

- (c) to be awarded a contract *for the execution of any works in respect of any consultancy services related to the prior consultancy services which were rendered.*

Division 2A

Goods Works and Services

37. Open competitive tendering to be default procedure.

- (1) Pursuant to section 57 of the Act, every procuring entity shall procure goods, services or works using open competitive tendering unless the procurement may be made more efficiently by restricted tendering, emergency procurement, direct procurement or minor value procurement.
- (2) Notwithstanding the estimated value of a procurement contract, where goods, services or works are procured by open competitive tendering procedure, such procurement shall be treated as procurement by open competitive tendering for the purposes of these Regulations.

Commented [d16]: RFQ,RFP can still be solicited using open tender

Commented [d17]: in other words one may also procure low values via open competitive method

38. Restricted Tendering

1. Pursuant to section 58 of the Act, a procuring entity may limit the number of participants in a procurement procedure.
2. A procuring entity selecting to limit participation in any way shall indicate the justification for imposing the limitation
3. The justification provided shall be in accordance with 58(1) and shall include the specific circumstances which qualifies
4. All justification shall be in writing and submitted to the relevant authority for approval
5. A copy of the approved justification shall be placed on the procurement file
6. Approval shall be obtained prior to the request being made to participants

39. Prequalification for Restricted Tendering

1. For the purposes of section 58(1)(d) of the Act, procuring entities may draw up a list of suppliers who have been subject to a general pre-qualification which is not limited to a particular contract.
2. To be enrolled on the list, bidders must establish that they meet the eligibility criteria of section 63 and the non-contract specific criteria of section 64.
3. Enrolment on the list shall constitute a presumption of eligibility pursuant to section 63 and general capacity pursuant to section 64 and will, subject to paragraphs (4) and (5) below, qualify listed bidders to participate in a restricted tendering procedure without further investigation.
4. When seeking to award a contract by way of restricted tendering, procuring entities may consider only the technical capacity of the listed bidders to fulfil the specific technical requirements of the contract in question.
5. Procuring entities may also invite bidders who are not listed but such bidders do not benefit from the presumption of eligibility in accordance with paragraph (3) and will be required to demonstrate their qualifications to participate in the procurement procedure.
6. The opportunity to enrol on the list shall be publicised by a notice of invitation for registration with the procuring entity at the beginning of every financial year setting out the qualifications required for registration in accordance with paragraph 2.
7. The annual notice enables listed suppliers to update their relevant information.
8. Notwithstanding the annual notice, the list shall always be open for enrolment of any interested party who complies with the requirements provided herein.
9. Submission of enrolment requests to the procuring entity initiated by an interested party shall be decided within fifteen (15) business days from receipt.

10. A decision to refuse the request for enrolment on the list shall be justified in writing to the bidder.

40. Direct Public Procurement

1. In accordance with section 52 of the act which details the circumstances where direct public procurement can be used. A procuring entity desirous of using direct public procurement shall prepare and submit a request for procurement via direct public procurement.
2. The request shall provide the following details-
 - a) The reason, as in 52(1), why the procurement cannot be done competitively
 - b) The availability of financing in estimate
 - c) The maximum expected value of the procurement
 - d) The justification for the vendor selected
 - e) Detailed description of goods, work or services required.
3. The Director, after confirming that the application conforms to the provisions of section 52 of the Act and this regulation, shall within 5 days of receipt of the request submit to the minister for approval
4. If the Director is not satisfied that the request does not conform to the provisions of the Act and this regulation, a written response shall be provided to the procuring entity detailing the area where conformity is lacking. Such a response shall be provided with 5 days of receipt of the request.
5. Notwithstanding the above sub-regulations, where Direct procurements are of a minor value, approval shall be sought from the accounting officer of the procuring entity
6. Upon receipt of approval for Direct Procurement, the procuring entity shall forward the relevant standard Request for Proposal, request or invitation to tender to the selected vendor. The vendor is required to make a submission to allow for a contract agreement to be prepared.
7. A copy of the approval granted shall be placed on the procurement file

Commented [C18]: the relevant authority

41. Emergency Public Procurement

1. In accordance with section 53 of the act which details the circumstances where emergency public procurement can be used. Procuring entities desirous of using the emergency procurement shall submit a written request detailing the following:
 - i. The nature of the emergency
 - ii. Details of the goods and services required
 - iii. The total expected value of the procurements to be undertaken
2. The request shall be submitted to the Minister and copied to the Director
3. Notwithstanding, when procurement is required in response to a declaration of a national disaster or a state of emergency, a procuring entity may use emergency procurement procedures as part of the response to such a declaration.
4. Emergency procurements may be required in the during such emergency or disaster periods but for a period not exceeding one month after the all clear has been issued.
5. A written report shall be submitted to the Minister detailing all procurements executed as part of the emergency response.
6. Procuring entities shall ensure that the procurements are required as a direct response to the emergency identified and its after-effects.
7. Emergency procurement procedures shall be issued by the Director as part of the procurement manual for procuring entities

42. Framework agreements.

(1) For the purposes of—

- (a) ensuring the continuity of routine supplies for established and customary services; and
- (b) minimising, eliminating or avoiding excessive purchases in the procurement of common user articles,

Accounting officers may submit to the Director recommendations respecting the procurement of such articles by means of a framework agreement.

- (2) The Director shall provide guidance on the preparation and processing of the contract documents in the case of every framework agreement.
- (3) A procuring entity may award a contract under a framework agreement without competition, but the procuring entity shall not use any framework agreement as a means to hinder, limit or distort competition in public procurement.

MINOR VALUE PROCUREMENTS

43. Application

This Part does not apply to any procurement having a value of less than the prescribed threshold when the procurement is made by open competitive tendering or competitive sealed proposals.

44. Competitive quotations to be default procedure for small procurements.

- (1) Pursuant to section 54 of the Act, a minor value procurement—
 - (a) may be made by competitive quotation if the estimated value of the procurement contract is less than the prescribed threshold; and the requirement is of a complex nature
 - (b) shall be made by request for quotations, unless the procurement is made as an emergency procurement or directly using a purchase order.
- (2) Notwithstanding sub-regulation (1), where—
 - (a) a procuring entity procures any goods, services or works as routine and continuous supplies; and
 - (b) in any financial year, the estimated aggregate value of such goods, services or works does not exceed ten thousand dollars, the procuring entity may procure such goods, services or works, directly using a purchase order without competition, after satisfying itself that the goods, services or works are of satisfactory quality and the prices are fair and reasonable.

45. Lists of prequalified small domestic enterprises.

- (1) The procuring entity may issue, to small domestic enterprises whose names appear on the list of pre-qualified small suppliers prepared and maintained in accordance with section 10 of the Act, requests for quotations for the procurement of goods, services or works or services or classes of works, goods or services.
- (2) Where a small domestic enterprise applies, in writing, to be placed on the pre-qualified list of small domestic enterprises, the applicant shall set out in the application such information as the procuring entity may request.
- (3) Regulation 25 applies, with such modifications as the circumstances require, to the pre-qualification of small domestic enterprises.

46. Requests for quotations.

- (1) The procuring entity shall, before it commences any minor value procurement by competitive quotations, ensure that an accurate estimated value of the procurement contract is prepared.
- (2) Where the estimated value of the procurement contract of a minor value—
 - (a) is [\$5,000] or greater but less than the prescribed threshold, the procuring entity shall, in writing, issue a request for quotations; or
 - (b) is less than [\$5,000], the procuring entity may—
 - (i) issue a written request for quotations, or
 - (ii) make an oral request for quotations.
- (3) Where the estimated value of the minor value procurement is less than the prescribed threshold but greater than [\$50,000]—
 - (a) the procuring entity shall document the justification for the selection of the procurement procedure; and
 - (b) the procuring entity shall—
 - (i) in writing give its justification in respect of the procurement procedure which he considers practicable in the circumstances, and
 - (ii) cause a copy of such justification to be placed in the procurement document file.

Commented [d19]: All RFQ's are done within the Threshold Minor value, hence Accounting officer has jurisdiction

Commented [d20]: Selection of method is not based on value of procurement

- (4) The Procuring entity shall ensure that reasonable notice of a written request for quotations is given before the deadline for the submission of quotations specified in the written request for quotations.
- (5) Where a procuring entity makes an oral request for quotations—
- every quotation submitted in response to such a request shall be in writing; and
 - the award of contract in relation to a quotation submitted in response to such a request shall be made to the person who submits the lowest evaluated substantially responsive quotation.
- (6) A written request for quotations shall include, without limitation—
- a quotation form;
 - a description of what is to be procured;
 - in the case of a small procurement of works or services, the contractual terms and conditions applicable to the procurement;
 - in the case of a small procurement of goods, any necessary contractual terms and conditions not implied by law;
 - information respecting—
 - the place where, the person to whom and the manner in which the quotation is to be submitted, and
 - the deadline for the submission of quotations; and
 - instructions to tenderers, which shall include, without limitation—
 - a statement to the effect that the award of contract will be made to the person who submits the lowest evaluated substantially responsive quotation,
 - a statement to the effect that the procuring entity is not bound to accept the lowest or any quotation submitted, and
 - the name, telephone and fax number and e-mail address of the procurement officer of the procuring entity who can be contacted in relation to the procurement.
- (7) The procuring entity shall, whenever reasonably possible, select the persons from whom written quotations are requested from the lists of pre-qualified potential contractors.
- (8) A procuring entity may—
- issue a written request for quotations which is selective; or
 - make an oral request for quotations which is selective.
- (9) For the purposes of this regulation, a request for quotations is selective—
- if the request for quotations is issued or made to not less than three persons selected by the procuring entity, whenever reasonably possible; and
 - such persons are the only persons who are entitled to submit quotations.

Commented [d21]: standard RFQ

47. Review, evaluation and award or rejection of quotations.

- (1) The procuring entity shall, without delay after the deadline for the submission of quotations specified in the request for quotations—
- review each quotation in accordance with the statement respecting the basis of award;
 - verify that the person who submits the quotation is eligible or, as the case may be; continues to be eligible;
 - prepare in writing a record of the review and the verification exercise; and
 - ensure that the procurement officer places a copy of the written summary in the procurement document file.
- (2) Subject to sub-regulation (3), the procuring entity may award a contract to the person who submits the lowest evaluated substantially responsive quotation.
- (3) The acceptance of a quotation shall be unconditional, except that such acceptance may be subject to the execution of a written contract.
- (4) Where a quotation is accepted—

- (a) subject to paragraph (b), the contract comes into existence when the contract is executed by both parties; or
 - (b) the issuance of a purchase order to the person submitting the quotation constitutes an award of contract, if the acceptance of the quotations is not subject to the execution of a contract.
- (5) Where the procuring entity rejects all quotations, the procuring entity shall, in writing and without delay, notify all persons who submitted quotations in response to a request for quotations of—
- (a) the decision of the procuring entity; and
 - (b) the reason for its decision.
- (6) The procurement officer of the procuring entity shall place in the procurement document file a copy of—
- (a) each contract which is executed under this regulation; and
 - (b) each purchase order under this regulation.

48. Record of persons participating in procurement by requests for quotations.

- (1) The procuring entity shall—
- (a) make a record of the names, address and telephone number of each person to whom a request for quotations is issued or made; and
 - (b) ensure that the procurement officer places a copy of the record in the procurement document file, without delay after the deadline for the submission of quotations.
- (2) The procuring entity or its delegate, in the presence of another public officer, shall—
- (a) make a record of the names, address and telephone number of each person submitting a quotation within the time specified for the submission of quotations; and
 - (b) ensure that the procurement officer places a copy of the record in the procurement document file.

49. Local purchases orders.

When the procurement process has identified a vendor to fulfil the procurement requirement, a purchase order, as prescribed by the Accountant General, shall be created to allow for the commitment of the funds for the procurement.

- (1) A procuring entity may procure goods, services or works by means of local purchases orders as provided for in the Regulations to Public Finance Management Act and in accordance with this regulation.
- (2) Where—
- (a) the public procurement committee does not receive or accept any tenders in respect of an invitation for tenders for domestic supplies; or
 - (b) a government contractor defaults in the performance of a contract; the accounting officer of the public procurement committee may make arrangements for the procurement of such supplies against local purchases orders issued in accordance with this regulation.
- (3) subject to the Finance Regulations, the local purchases order form shall—
- (a) be serially numbered and be completed in accordance with the instructions issued by the Director of Finance;
 - (b) be signed by the responsible accounting officer or by an officer authorised by him in writing to do so; and
- (4) The procurement officer of the department is responsible for ensuring that, before any local purchases order is issued to a supplier—
- (a) subject to sub-regulation (3), the local purchases order form—
 - (i) is given the correct code and subhead or other account to be charged,
 - (ii) has the name of the supplier or contractor,
 - (iii) contains the precise description of the supplies required including quantity, size, dimensions and other specifications, and
 - (iv) subject to paragraph (c), shows the price agreed with the supplier before purchasing;
 - (b) funds are available to meet the expenditure involved; and
 - (c) the prices on the local purchases order are—

Commented [d22]: PFM Regs

Commented [d23]: Accountant General

- (i) in accordance with the accepted prices in any current framework agreement for the supply of the goods concerned, or
 - (ii) fair and reasonable after comparison is made with similar articles or goods offered by other domestic suppliers of similar articles in accordance with the procedure set out in sub-regulations (5), (6) and (7).
- (5) Except where—
- (a) prices are fixed by government contracts; or
 - (b) goods and supplies can only be obtained from one supplier in Saint Lucia, the procuring entity shall only procure the goods and other supplies by means of a local purchases order from a supplier after the prices offered by the supplier have been compared, wherever possible, with prices of at least two other suppliers of similar goods and other supplies.
- (6) Without prejudice to sub-regulation (3), the accounting officer shall ensure that—
- (a) the local purchases order is not issued without information in respect of the price of the goods or with incomplete information in respect of price;
- (7) Sub-regulations (5) and (6) do not apply to the procurement of perishable foodstuffs for diets, but the procuring entity shall seek to obtain such supplies at the most advantageous prices available.
- (8) When a local purchases order is completed and signed in accordance with this regulation—
- (a) the procurement officer shall include as part of the contract to be sent to the supplier or contractor the local purchases order; and
 - (b) the supplier or contractor shall—
 - (i) attach a copy of the local purchases order to his bill for payment, and
 - (ii) retain a copy of the local purchases order for his or her records.
- (10) Where a procuring entity receives and inspects goods taken on charge—
- (a) the procurement officer of the procuring entity shall certify such receipt and inspection quoting the particulars of the local purchases order and the stores record folio on which the goods have been taken on charge; and
 - (b) the Accountant General shall not make or authorise payment to the supplier unless the particulars of the local purchases order is referenced on the bill of the supplier or contractor.

Division 3

Competitive Tendering and Competitive Sealed Proposals

Tender Procedures

50. Notice of invitation for tenders, etc

- (1) Subject to regulation 12, the procurement officer of the procuring entity shall, not less than twenty-one days before the deadline for submission of quotations, tenders, proposals or invitations to pre-qualify, publish a notice of the invitation for tenders, request for proposals or invitation to pre-qualify—
- (a) subject to paragraph (b), on the Government electronic procurement system if the system is operational; and
 - (b) in the *Gazette* and at least one newspaper of general circulation in Saint Lucia, if the Government electronic procurement system is not operational, but, where the procurement is international, the notice respecting the procurement opportunity may, in addition to the publication in paragraph (a) or (b), be published in such other media which in the opinion of the Board is likely to bring the notice of the attention of potential tenderers or applicants.
- (2) Without prejudice to sub-regulation (1), a notice of invitation for tenders, notice of request for proposals or notice of an invitation to pre-qualify may be published or brought to the attention of prospective tenderers or applicants by means of telephone, fax, post or email or in any other manner which the procuring entity considers appropriate.

51. Contents of notice of invitation for tenders, etc

- (1) Every notice of invitation for tenders, notice of request for proposals or notice of invitation to pre-qualify, as the case may be, shall contain—
- (a) a general description of what is to be procured and its number;

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- (b) particulars of the place at which and the time when copies of the invitation for tenders, request for proposals or invitation to prequalify may be obtained;
 - (c) particulars of the place at which, the manner in which and the person to whom tenders, proposals or applications to prequalify must be submitted;
 - (d) the deadline for the submission of tenders, proposals or applications;
 - (e) the day and time of the opening of tenders, proposals or applications;
 - (f) particulars of the place at which the opening of tenders or proposals will take place;
 - (g) the contractual terms and conditions applicable to the procurement;
 - (h) in the case of an invitation for tenders or request for proposals, the nature of the tendering or proposal process;
 - (i) the deadline for submission of tenders, proposals or applications to prequalify;
 - (j) the day, time and place for the opening of tenders, proposals or applications to prequalify;
 - (k) instructions to every tenderer which complies with these Regulations regarding—
 - (i) the evidence that such tenderer is eligible,
 - (ii) the submission of the tender, proposal or application in a sealed envelope,
 - (iii) the procedures for requesting the issue of an addendum,
 - (iv) the procedure for amending or withdrawing a tender, proposal or application,
 - (v) the amount and form of the tender or proposal security, if any, and a statement about when such security may be forfeited,
 - (vi) the requirement respecting the signing of the tender or proposal security acknowledgement form,
 - (vii) the amount and form of the performance security, if any,
 - (viii) the evaluation criteria which are to be used to evaluate the tenders, proposals or application,
 - (ix) in the case of a request for proposals, the process to be followed respecting the selection of the successful offeror,
 - (x) a statement of the basis on which a contract may be awarded,
 - (xi) if more than one contract may be awarded, a statement to that effect,
 - (xii) a statement that the procuring entity is not bound to accept the lowest or any tender or proposal submitted,
 - (xiii) a statement that the invitation for tenders or to pre-qualify or the request for proposal may be cancelled,
 - (xiv) if the scope or value of the proposed contract is likely to be varied, a statement to that effect and any particulars respecting the likelihood of the variation,
 - (xv) the requirement respecting the signing of the declaration of non- collusion,
 - (xvi) the name, telephone and fax number and email address of the procurement officer responsible for the procurement, and
 - (xvii) a statement that the award of the contract is subject to the right of complaint under section 83A of the Act and the right of review under section 84 of the Act;
 - (l) the name, telephone and fax number and email address of the procurement officer of the procuring entity; and
 - (m) such other information as is advisable in the opinion of the procuring entity or, as the case may be, given as an instruction by the board or Director.
- (2) The evaluation criteria referred to in sub-regulation (l)(d)(x)—
- (a) in the case of an invitation for tenders—
 - (i) shall relate to accuracy and precision of the description or specification respecting the works, goods or services being procured;
 - (ii) shall be objectively measurable, and

- (iii) may include, without limitation, price, pre-contract inspection or testing, delivery time, transportation costs, maintenance costs and life-cycle costs; and
 - (b) in the case of a request for proposals, shall relate to the relative importance of such matters as quality, availability and capability in relation to price.
- (3) The procurement officer of the procuring entity shall place in the procurement document file a copy of the notice of invitation for tenders, request for proposals and invitation to prequalify.

52. Availability of Tender documents.

- (1) Subject to sub-regulations (2), and (3), the Procurement Officer shall, on request by a person, furnish a copy of the tendering documents and supporting documents in respect of any notice of an invitation for tenders, request for proposals or invitation to prequalify which is issued.
- (2) Subject to sub-regulation (3), a fee is chargeable if before the issue of a notice respecting a procurement opportunity, the Procurement Officer, after consultation with the Board, determines that it is in the public interest to charge a fee for reproducing and supplying a copy of the relevant tendering documents and supporting documents.
- (3) Where a fee is charged, the fee shall not exceed the reasonable costs of reproducing and supplying a copy of tendering documents and supporting documents.
- (4) This regulation does not apply to procurements respecting national defence and security to the extent that such procurements are confidential.

53. Tender, proposal and performance securities.

- (1) Pursuant to section 70 of the Act, subject to this regulation, the procuring entity shall, in relation to any procurement of goods, services, determine whether—
 - (a) a performance security is required and, if so, the amount of the performance security; and
 - (b) a tender or proposal security is required and, if so, the amount of the tender or proposal security.
- (2) The procuring entity, in determining whether a tender or proposal security is required, shall consider the risk that a prospective tenderer is likely to neglect or refuse—
 - (a) to provide the required performance security within the time stipulated in the invitation for tenders and the estimated amount of the differential between the lowest tender or proposal and the next lowest tender or proposal; or
 - (b) to execute a written contract when required by or under these Regulations and the estimated amount of the differential between the lowest tender or proposal and the next lowest tender or proposal.
- (3) The procuring entity, in determining whether a performance security is required, shall consider the risk of default by a successful tenderer and the estimated cost of remedying the default.
- (4) Subject to sub-regulation (5), an invitation for tenders or request for proposals for works shall be accompanied by—
 - (a) a tender or proposal security in an amount not less than ten per cent of the tender or proposal, but where the tender or proposal permits more than one amount to be proposed, the highest of such amounts; or
 - (b) a performance security in the amount of not more than one hundred percent of the value of the contract award.
- (5) The tender security, proposal security or performance security shall be—
 - (a) a bank letter of guarantee in the form approved by the Director;
 - (b) a bank draft;
 - (c) a certified cheque; or
 - (d) such other applicable security in the form approved by the Director.
- (6) The procurement officer of the procuring entity shall—
 - (a) make a record of the determination under this regulation; and
 - (b) place such record in the procurement file.

54. Pre-qualification proceedings.

- (1) Pursuant to section 60 of the Act, a procuring entity may—

- (a) require potential tenderers to be pre-qualified as a condition for submitting a tender or proposal in response to an invitation for tenders or a request for proposals; or
 - (b) engage in pre-qualification proceedings before publishing an invitation to tender for the procurement of goods, services or works other than major or complex works having a value which is not less than the prescribed threshold.
- (2) The procuring entity may require the bidders to furnish evidence of their financial capacity to fulfil the requirements of the contract. The procuring entity shall set out the level of financial capacity required from the bidders in the tender documents. Such evidence may be furnished by:
- (a) Certified statements from bankers including, if necessary, details of available line of credits;
 - (b) Presentation of the bidder's balance sheet or extracts from the balance sheets for the last three years; and
 - (c) Overall turnover and the turnover in respect with civil works, supply of goods or services similar to those required in the contract for the three previous years.
- (3) The procuring entity shall indicate the references it requires in the bidding documents.
- (4) Depending on the nature, quantity and purposes of the goods, services or works, evidence of technical ability may be furnished by means of:
- (a) The professional and educational qualifications of the bidder and/or its managerial and supervisory staff and, in particular, of persons responsible for carrying out the particular works or services for the proposed contract;
 - (b) In the case of works: A list of works carried out over the last 3 years, together with certificates of satisfactory execution for similar works, issued by previous clients. Such certificates will indicate the value, date and site of the works and shall specify whether they were properly executed.
 - (c) In the case of goods and services: A list of supplied goods and services in the past 3 years with the sums, dates and purchasers (public and private). Such list is to be evidenced by certificates issued or signed by the purchaser.
 - (d) A list of the bidder's machinery, namely tools, plants and technical equipment, including quality control system directly carried out or by sub-contracting.
 - (e) In the case of goods: Detailed descriptions and/or types of goods to be supplied, which, if the procuring entity so requires, authenticity must be certified.
 - (f) In the case of goods incorporated into works: Certificates drawn up by official quality control institutes or agencies of recognized competence attesting conformity to specifications or standards for products. The procuring entity shall state in the bidding documents the references required.
- (4) Where a procuring entity decides to engage in pre-qualification proceedings, the procuring entity shall—
- (a) specify, in the standard pre-qualification documents, the criteria against which applications to pre-qualify are to be considered and determined;
 - (b) supply a set of pre-qualification documents to every supplier, contractor or consultant requesting such documents; and
 - (c) apply the criteria specified in the pre-qualification documents in considering and determining which suppliers, contractors or consultants are pre-qualified.
- (5) The pre-qualification documents shall contain—
- (a) the instructions to prepare and submit the application to pre-qualify;
 - (b) a summary of the main terms and conditions required for execution of the procurement contract;
 - (c) any documentary evidence or other information required to be submitted by suppliers, contractors or consultants to demonstrate their qualifications;
 - (d) information respecting the manner and place for the submission of the pre-qualification documents, including information respecting the deadline for the submission of applications;
 - (e) any other requirement, not inconsistent with the Act and these Regulations, which the procuring entity considers necessary for the preparation and submission of applications to pre-qualify and to the pre-qualification proceedings; and

- (f) such other prescribed information.
- (6) A procuring entity—
 - (a) may require a supplier, contractor or consultant to pay a fee for the supply of the pre-qualification documents, but such fee shall not exceed the costs of printing and providing the documents;
 - (b) shall respond, without delay, to any request for clarification of the pre-qualification documents made by a supplier, contractor or consultant who has submitted an application before the specified deadline for submission of applications;
 - (c) may require a supplier, contractor or consultant who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or consultant;
 - (d) shall, without delay, notify each supplier, contractor or consultant requested to demonstrate its qualifications again, whether or not the supplier, contractor or consultant satisfies that requirement; and
 - (e) shall disqualify any supplier, contractor or consultant who fails to demonstrate its qualification again if requested to do so.
- (7) The procuring entity shall ensure that applications to prequalify submitted to it are kept in a place where the applications are secure from being opened or tampered with until the day and time for the opening of applications.
- (8) After the completion of pre-qualification proceedings, the procuring entity shall, without delay and simultaneously, furnish the Central Procurement Board and each applicant a list containing the names of the suppliers, contractors or consultants which have been pre-qualified.

55. Eligibility of Tenderer

- (1) Pursuant to section 62 of the Act, a person is qualified to be awarded a contract for any procurement only if the person satisfies the following criteria—
 - (a) the person has the necessary qualifications, capability, experience, resources, equipment and facilities to provide what is being procured;
 - (b) the person has the legal capacity to enter into a contract for the procurement;
 - (c) the person is not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing;
 - (d) the procuring entity is not precluded from entering into the contract with the person under section 62 of the Act; and
 - (e) the person is not suspended or otherwise disqualified from participating in procurement proceedings under the Act.
- (2) The procuring entity may require a person to provide evidence or information to establish that the criteria under subsection (1) are satisfied.
- (3) The criteria under subsection (1) and any requirements under subsection (2) shall be set out in the tender documents or the request for proposals or quotations or, if a procedure is used to pre-qualify persons, in the documents used in that procedure.
- (4) Where a procuring entity intends to determine whether a person is qualified, the procuring entity shall make the determination using the criteria and requirements set out in the documents or requests described in subsection (3).
- (5) The procuring entity may disqualify a person for submitting false, inaccurate or incomplete information about his qualifications.
- (6) No person shall be excluded from submitting a tender, proposal or quotation in procurement proceedings except under this regulation and circumstances of restricted tendering.

56. Disqualification of contractors and suppliers.

- (1) A contractor, supplier or service provider who—
 - (a) fails to meet the standards or satisfy the eligibility requirements to participate in the procurement proceedings respecting a procurement of goods, services or works under the Act and the Regulations is disqualified from participating in the procurement proceedings; or
 - (b) is suspended under the Act or these Regulations is disqualified from participating in procurement proceedings during the period of suspension or debarment.
- (2) Where—

- (a) the procuring entity requests any tenderer to extend his tender security or, as the case may be, his proposal security; and
 - (b) the tenderer refuses or neglects to do so, the procuring entity may disqualify the tender or proposal of the tenderer or, as the case may be, the offeror.
- (3) Every procuring entity shall ensure that a person who is disqualified under the Act is not permitted to receive any procurement contract or otherwise participate, during the period of suspension, in procurement proceedings.
- (4) The Minister may, after consultation with the Director, issue directions, not inconsistent with the Act and these Regulations, respecting the disqualification standards and procedures in relation to suppliers, contractors and service providers.

57. Post-qualification proceedings.

- (1) Pursuant to section 74 of the Act, where there is no pre-qualification procedure for the procurement of goods, services or works, the procuring entity shall check the qualifications of the lowest evaluated substantially responsive tenderer against the criteria specified in the tendering documents.
- (2) Where the tender of the lowest evaluated substantially responsive tenderer does not conform to the specified criteria, the procuring entity shall reject the tender and check the qualifications of the next ranked tenderer against the specified criteria.
- (3) Where the tender of the next ranked tenderer is rejected, subsections (1) and (2) apply, with such modifications, adaptations and qualifications as the circumstances require, to the remaining evaluated substantially responsive tenders in the order of their ranking until a successful tenderer is determined, if any.

58. Information in respect of protection of employment.

A procuring entity may state, in the tendering documents, the contact or directory particulars of any person from whom any tenderer may obtain the appropriate information relating to—

- (a) the obligations of employers relating to employment protection provisions; and
 - (b) the working conditions which are in force in Saint Lucia, applicable to the performance of the contract.
- (2) The procuring entity shall, by notice in writing, request the tenderer to indicate that the tenderer or, as the case may be, the offeror in preparing the tender or offer has taken account of the statutory obligations of employers relating to employment protection provisions and the safe working conditions applicable to the performance of the contract.

59. Preparation of tenders, etc.

- (1) A tenderer, offeror or service provider—
- (a) may prepare tenders, proposals and applications to pre-qualify in respect of any procurement of goods, services or works—
 - (i) subject to sub-paragraph (ii), using the appropriate standard tendering documents supplied in accordance with regulation 15, or
 - (ii) when so directed by the procuring entity, by letter;
 - (b) shall, subject to sub-regulation (2) sign tenders, proposals and applications to pre-qualify in respect of any procurement of goods, services or works; and
 - (c) shall enclose the tender, proposal and application to pre-qualify in respect of any procurement of goods, services or works in a sealed envelope addressed to the procuring entity in accordance with this Division.
- (2) Where the tenderer, offeror or service provider is a company, partnership or business firm, the tenderer, offeror or service provider, as the case may be, shall cause the tenders, proposals and applications to pre-qualify in respect of any procurement of goods, services or works to be signed by a duly authorised officer or employee of the tenderer, offeror or service provider.

60. Time for preparing of tenders, etc.

- (1) For the purpose of these Regulations, the time allowed for the preparation of tenders or proposals—
- (a) is the period of time between whatever steps the procuring entity takes to bring the invitation for tenders or request for proposals to the attention of persons likely to submit tenders and the deadline for submitting tenders; and
 - (b) shall not be less than the minimum period specified for the purposes of these Regulations.
- (2) Where the preparation of tenders or proposals requires the examination of—
- (a) voluminous or lengthy technical specifications; or

(b) a visit to the site for the inspection of the voluminous or lengthy documents supporting the tendering documents, the procuring entity shall take such requirement into account when specifying the deadline for the submission of the tenders.

(3) Where the procuring entity amends the tendering documents under regulation 39 on a date which is less than seven days before the deadline for the submission of tenders or proposals set out in the tendering documents, the procuring entity shall specify a new deadline for submission of tenders, proposals or applications as may be necessary.

61. Submission of tenders and proposals.

(1) Pursuant to section 67 of the Act every tenderer responding to an invitation to tender shall submit a tender which—

- (a) is written in the English language;
- (b) is in a sealed envelope bearing the address specified in the tendering documents;
- (c) is signed by a duly authorized officer; and
- (d) complies with any other format specified in the tender documents.

(2) Subject to the Act, the Director may—

- (a) authorise the use of alternative methods respecting the submission of tenders; or
- (b) require invitations for pre-qualification to contain provisions allowing the submission of applications to pre-qualify or tenders by hand, mail or by courier at the option of the tenderer.

(3) The procuring entity shall—

- (a) deposit every tender submitted within the time specified for submission of tenders in a secured tamper-proof tender-box, room or other similar device; and
- (b) issue to the tenderer a receipt showing the date and time of submission of the tender.

62. Withdrawal and modification of tenders.

Pursuant to section 69 of the Act, a tenderer may modify, substitute or withdraw its tender after submission if, before the deadline for the submission of tenders, the tenderer submits to the relevant procuring entity a written notice of the modification, substitution or withdrawal, as the case may be.

63. Tender validity period.

(1) Pursuant to section 68 of the Act, every tender shall remain valid for the period of time, indicated in the tendering documents, which shall not be more than one hundred and eighty days.

(2) The validity period of a tender may be extended only with the agreement of the tenderer concerned.

(3) A tenderer who agrees to an extension of the validity period of its tender shall, where security was required for the original tender submission, furnish a corresponding extension of the tender security.

64. Amendment or withdrawal of tender, proposal or application to prequalify

(1) Pursuant to section 69 of the Act, and subject to this regulation, any tenderer, offeror or applicant for pre-qualification may amend or withdraw a tender, a proposal or an application, as the case may be, by submitting a notice of amendment or withdrawal to the procurement officer of the procuring entity not later than the deadline for submission of tenders, proposals or applications.

(2) Where the Government electronic procurement system is not in operation, the tenderer, offeror or applicant, as the case may be—

- (a) shall submit the notice of amendment or withdrawal in a sealed envelope conspicuously labelled to the following effect—
 - (i) in the case of an amendment to a tender, “amendment of tender submitted by [name of tenderer] in response to [invitation for tenders and its number]”,
 - (ii) in the case of an amendment to a proposal, “amendment of proposal submitted by [name of offeror] in response to [request for proposals and its number]”,
 - (iii) in the case of an amendment to an application, “amendment of application to prequalify submitted by [name of applicant] in response to [invitation to prequalify and its number]”,
 - (iv) in the case of a withdrawal of a tender, “withdrawal of tender submitted by [name of tenderer] in response to [invitation for tenders and its number]”,

- (v) in the case of a withdrawal of a proposal, “withdrawal of proposal submitted by [name of offeror] in response to [request for proposals and its number]”, or
 - (vi) in the case of a withdrawal of an application, “withdrawal of application to prequalify submitted by [name of applicant] in response to [invitation to pre-qualify and its number]”; and
 - (b) shall comply with any other conditions respecting amendment or withdrawal set out in the invitation for tenders, request for proposals or invitation to pre-qualify.
- (3) Where the Government electronic procurement system is in operation, the tenderer, offeror or applicant shall amend or withdraw a tender, a proposal or an application, as the case may be, as required—
- (a) by regulations made under the Act for that purpose; and
 - (b) in accordance with the rules or guidelines issued respecting the operation of that system.

65. Addenda by procuring entity.

- (1) Pursuant to section 65(3) of the Act, subject to sub-regulation (5) and the instructions of the relevant procuring entity, the procuring entity may, before the deadline for the submission of tenders or applications to prequalify, amend an invitation for tenders, a request for proposals or an invitation to prequalify—
- (a) by issuing an addendum, in writing, for that purpose and setting out in the addendum the nature and extent of the amendment; and
 - (b) by giving a copy of the addendum to each person to whom the invitation for tenders, request for proposals or invitation to prequalify was issued.
- (2) Each addendum issued under this regulation shall—
- (a) be numbered consecutively in ascending order commencing with the number “1”; and
 - (b) identify the invitation for tenders, request for proposals or invitation to prequalify which is amended by the general description of what is to be procured and the number of the procurement.
- (3) A copy of an addendum is sufficiently given to a person to whom the invitation for tenders, request for proposals or invitation to prequalify was issued if the copy of the addendum is sent—
- (a) by fax to the fax number furnished to and recorded by the procuring entity;
 - (b) by e-mail to the e-mail address furnished to and recorded by the procuring entity; or
 - (c) in such other manner as the person and the procuring entity may agree.
- (4) Where the procuring entity and a person agree to the giving of an addendum in accordance with sub-regulation (3) (c), the procuring entity shall—
- (a) make a written record of the agreement; and
 - (b) give a copy of the agreement to the other party to the agreement.
- (5) Where an invitation for tenders, request for proposals or invitation to pre-qualify is issued to a person after an addendum is issued, the addendum shall form part of the invitation or, as the case may be, the request.
- (6) Where a pre-tender or pre-proposal meeting is held, the procuring entity may issue an addendum setting out any understanding, clarification or other matter from the meeting.
- (7) Nothing in this regulation shall be construed to restrict or limit the power of the procuring entity to—
- (a) issue an addendum amending the deadline for the submission of tenders, proposals or applications to prequalify; or
 - (b) send, by electronic means, a notice respecting the issue or intended issue of the addendum to every person to whom the invitation for tenders, request for proposals or invitation to prequalify was issued.
- (8) The procurement officer of the procuring entity shall place in the procurement document file—
- (a) a copy of each addendum issued; and
 - (b) a copy of the record of any agreement referred to in sub-regulation (3)(c).

66. System regarding qualification criteria for award of contract.

- (1) Pursuant to section 63 of the Act, in the determination of an award, a procuring entity—

- (a) may, subject to regulation 39, establish criteria and rules for the operation of a system respecting the qualification of contractors, suppliers and service providers; and
 - (b) shall, on request, make the criteria and rules available to interested contractors, suppliers and service providers.
- (2) Where—
- (a) the criteria and rules for the operation of the system regarding the qualification of contractors, suppliers and service providers are updated, the procuring entity shall—
 - (i) communicate to the interested contractors, suppliers or service providers any updating of the criteria and rules, or
 - (ii) publish the updated criteria on the website;
 - (b) a procuring entity considers that the qualification system of certain other entities or bodies meets its requirements under sub-regulation (1)(a), the procuring entity shall communicate to interested contractors, suppliers or service providers the names of such other entities or bodies; and
 - (c) a procuring entity does not accept the qualification of any contractor, supplier or service provider, the procuring entity shall, within fifteen days from the date of the decision, inform the contractor, supplier or service provider of the non-acceptance and the reasons for the refusal.
- (3) A procuring entity shall—
- (a) subject to paragraph (b), inform contractors, suppliers and service providers of its decision as to qualification within a reasonable period; and
 - (b) if its decision as to qualification is likely to take longer than six months from the presentation of an application, within two months of the application, inform the contractors, suppliers or service providers of the reasons justifying a longer period and of the date by which its application will be accepted or refused.
- (4) A procuring entity, in making a decision as to qualification or the updating of the criteria and rules, may not—
- (a) impose on any contractor, supplier or service provider conditions of an administrative, technical or financial nature which are not imposed on any other contractor, supplier or service provider; and
 - (b) require tests or proof which duplicate objective evidence already available.
- (5) For greater certainty, a procuring entity must ground the reasons for any non-acceptance of qualification of a contractor, supplier or service provider on the criteria for qualification referred to in sub-regulation (1).
- (6) The procuring entity—
- (a) shall keep and maintain a written record of the qualified contractors, suppliers or service providers;
 - (b) may divide such record into categories, according to the type and nature of contract for which the qualification is valid;
 - (c) may remove the qualification of any contractor, supplier or service provider, only for reasons based on the criteria referred to in sub-regulation (2); and
 - (d) shall not end any qualification proceedings, without first notifying in writing the contractors, suppliers and service providers of its intention to end the qualification proceedings.
- (7) The notice referred to in sub-regulation (6)(d) shall contain the reason or reasons for ending the qualification proceedings.

67. Record of tenderers.

The procurement officer of the procuring entity shall—

- (a) make a record or cause a record to be made of the name, postal address, telephone and fax number and email address of all persons who requested or received a copy of an invitation for tenders, request for proposals or an invitation to prequalify; and
- (b) without delay after the deadline for the submission of tenders, proposals or applications to prequalify, ensure that a copy of the record is placed in the procurement document file.

Tendering stages

68. Single stage—one envelope tendering.

- (1) Pursuant to section 57 of the Act, the single stage one envelope tendering process shall be the main tendering process used for procurement by the open competitive tendering procedure.

(2) In the single stage one envelope tendering process—

- (a) each tender shall comprise one single envelope containing, separately, a financial proposal and a technical proposal, if any; and
- (b) all tenders received shall be opened and evaluated in the manner prescribed in the tendering documents.

69. Single stage–two envelope tendering.

(1) The single stage-two envelope tendering process shall be used where—

- (a) the tenders are to be evaluated on technical and financial grounds; and
- (b) price is taken into account after the evaluation of the technical proposal.

(2) In the single stage-two envelope tendering process—

- (a) the tender shall comprise a single package containing two separate envelopes each of which shall contain, separately, the financial proposal and the technical proposal;
- (b) the envelopes shall be marked as “FINANCIAL PROPOSAL” and “TECHNICAL PROPOSAL” in bold and legible letters so as to avoid confusion; and
- (c) initially, the relevant authority shall—
 - (i) open only the envelope marked “TECHNICAL PROPOSAL”, and
 - (ii) retain the envelope marked as “FINANCIAL PROPOSAL” without it being opened.

(3) The procuring entity, or the tender evaluating committee shall—

- (a) subject to sub-regulation (5), evaluate the technical proposal in a manner set out in the tendering documents, without reference to the price;
- (b) reject any proposal which does not conform to the specified requirements; and
- (c) inform the tenderers of the time, date and venue respecting the public opening of the financial proposals.

(4) During the evaluation of the technical proposals, the procuring entity or evaluation committee shall not permit any amendment to any technical proposal.

(5) Upon completion of the evaluation and approval of the technical proposals, the procuring entity or evaluation committee shall—

- (a) at a time within the tender validity period, publicly open the financial proposals of the technically accepted tenders only;
- (b) accept the tender found to be the lowest evaluated substantially responsive tender; and
- (c) return un-opened to the relevant tenderers the financial proposal of tenders found technically non-responsive.

70. Two-stage tendering process.

(1) Pursuant to section 59 of the Act, the two-stage tendering process shall be adopted in complex contracts where—

- (a) technically unequal proposals are likely to be encountered;
- (b) the procuring entity is aware of its options in the market, but for a given set of performance requirements, there are two or more equally acceptable technical solutions available to the procuring entity;
- (c) the procuring entity considers that it is impracticable to prepare a description of the goods, services or works to be procured;
- (d) it is not feasible for the procuring entity to fully define the technical or contractual aspects of the procurement to elicit competitive tenders; or
- (e) by reason of the complex nature of the goods, services or works to be procured, the procuring entity wishes, before deciding on the final technical specifications and contractual conditions—
 - (i) to consider various technical or contractual solutions, and
 - (ii) to discuss with prospective tenderers the relative merits of such technical or contractual solutions.

(2) In the first stage of the two-stage tendering process, the procuring entity/evaluation committee—

- (a) shall, in the tendering documents, outline—

- (i) the purpose, expected performance and broad specifications of the goods, services or works to be procured, and
 - (ii) the qualifications required to perform the contract;
- (b) shall call upon tenderers to submit technical tenders or proposals, without a tender price, and their comments on the proposed contract conditions;
- (c) shall, in accordance with the specified evaluation criteria, or via an evaluation committee, evaluate the technical proposal;
- (d) may engage any tenderer in discussions or negotiations with a view—
- (i) to understand the technical tender,
 - (ii) to indicate changes required to be made to any deficiencies or unsatisfactory technical features in the technical tender in order to make it acceptable, and
 - (iii) to permit the tenderer to revise his technical tender or make such changes so as to meet the requirements of the procuring entity; and
- (e) subject to sub-regulation (3), may—
- (i) revise, delete or modify any aspect of the technical requirements or evaluation criteria, or
 - (ii) add new requirements or criteria not inconsistent with this regulation.
- (3) Where a procuring entity revises, deletes or modifies any aspect of the technical requirements or evaluation criteria or adds new requirements or criteria not inconsistent with this regulation, the procuring entity shall—
- (a) simultaneously and on an equal basis, communicate such revision, deletion, modification or addition to all the tenderers; and
 - (b) allow the tenderers sufficient time to revise their tenders by incorporating the agreed changes, but such time shall not be less than—
 - (i) fifteen days, in the case of national competitive tendering, and
 - (ii) thirty days, in the case of international competitive tendering.
- (4) At the end of the first stage of the two-stage tendering process, the procuring entity—
- (a) may modify the technical specifications, evaluation criteria and contract conditions in order to maximise competition;
 - (b) may formulate an appropriate evaluation methodology in order to consider various options presented by the tenderers; and
 - (c) shall reject every tender which—
 - (i) does not, or cannot be changed to, meet the basic requirements, the minimum performance or the required completion time, or
 - (i) contains any other weakness which makes that tender substantially non-responsive.
- (6) In the second stage of the two-stage tendering process, the procuring entity/evaluating committee shall—
- (a) invite every tenderer, whose technical proposal or tender was not rejected and who is willing to conform his tenders to the revised technical requirements of the procuring entity, to submit a revised technical proposal and a financial proposal in accordance the revised tendering documents;
 - (b) in public, open the revised technical proposal and the financial proposal at a time, date and venue announced and communicated to the tenderers or specified in the revised tendering documents; and
 - (c) evaluate the revised technical proposal and the financial proposal in the prescribed manner; and
 - (d) accept the tender found to be the lowest evaluated substantially responsive tender.

71. Two stage-two envelope tendering process.

- (1) The two stage-two envelope tendering process shall be used for the procurement of such type of machinery, equipment or manufacturing plant where alternative technical proposals are equally responsive.
- (2) In the first stage of the two stage-two envelope tendering process—

- (a) the tender shall comprise a single package containing two separate envelopes each of which shall contain, separately, the financial proposal and the technical proposal;
- (b) the tenderers shall mark the envelopes as “FINANCIAL PROPOSAL” and “TECHNICAL PROPOSAL” in bold and legible letters so as to avoid confusion;
- (c) the procuring entity/relevant authority shall—
- (i) first open only the envelope marked “TECHNICAL PROPOSAL”,
 - (ii) retain the envelope marked as “FINANCIAL PROPOSAL” without it being opened,
 - (iii) discuss the technical proposals with the tenderers with reference to the procuring entity’s technical requirements,
 - (iv) following such discussions, allow the tenderers willing to meet the requirements of the procuring entity to revise their technical proposals, and
 - (v) allow tenderers not willing to conform their technical proposal to the revised requirements of the procuring entity to withdraw their respective tenders without their tender security being liable to forfeiture.
- (3) Where the procuring entity and the tenderers agree on the technical requirements, the procuring entity shall set a new deadline for the submission of the revised technical proposal and supplementary financial proposal.
- (4) In the second stage of the two stage-two envelope tendering process—
- (a) every tenderer willing to conform to the revised technical specifications and whose tender has not already been rejected shall submit a revised technical proposal and supplementary financial proposal, according to the technical requirements; and
 - (b) the procuring entity shall—
 - (i) open the revised technical proposal, the original financial proposal and supplementary financial proposal at a date, time and venue specified in the revised tendering documents,
 - (ii) evaluate such proposals in accordance with the evaluation criteria, and
 - (iii) accept the tender found to be the lowest evaluated substantially responsive tender.
- (5) For the purposes of this regulation, a procuring entity shall, in setting the deadline for the submission of the revised technical proposal and supplementary financial proposal, allow the tenderers sufficient time—
- (i) to incorporate the agreed changes in the technical proposal, and
 - (ii) to prepare the required supplementary financial proposal.

Commented [d25]: Procuring entity/Procurement committee/Board

Commented [d26]: an evaluation cttee, where one is appointed

Commented [d27]: manual to highlight that in matters of the board the procuring entity must be represented on the evaluation committee to ensure that the required actions by the PE can be done expeditiously

72. Opening tenders, proposals and applications to prequalify

- (1) Tenders, proposals and applications to pre-qualify shall be opened in accordance with section 72 of the Act and these Regulations; and
- (2) The procurement officer of the procuring entity shall—
 - (a) make a record of each action taken under this regulation; and
 - (b) place a copy of the record in the procurement document file.

73. Entitlement to attend opening session.

- (1) Every tenderer or his representative shall be authorised to attend the tender opening.
- (2) A relevant authority shall, in public, open every tender submitted—
 - (a) at the time and place specified in the tendering documents; and
 - (b) in such a manner which allows the relevant authority to communicate by any means, including electronic means, effectively and simultaneously with every authorised person attending or participating in the tender opening.
- (3) The time of tender opening shall—
 - (a) coincide with the deadline for the submission of tenders; or
 - (b) follow immediately after such deadline if this is necessary for logistic reasons.

- (4) During the opening of tenders, the relevant authority shall—
- (a) ensure that it communicates with the authorised procuring entity persons in such a manner which permits such persons to hear, see, observe or read the following information—
 - (i) the name of the tenderer,
 - (ii) the total amount of each tender,
 - (iii) any discount or alternative offered, and
 - (iv) where applicable, the presence or absence of any tender security;
 - (b) record the information referred to in paragraph (a); and
 - (c) on request, make a copy of the recorded information available to any authorised person.
- (5) The relevant authority shall not, at the tender opening session make, communicate, disclose or announce any decision regarding the disqualification or rejection of a tender.

74. Examination of tenders and proposals.

- (1) Pursuant to section 73 of the Act, a relevant authority through an evaluating committee shall, without delay, examine—
- (a) every tender or every application for pre-qualification which is opened to determine whether the tenderer is eligible; and
 - (b) every proposal which has been received and opened to determine whether—
 - (i) the offeror is responsive, and
 - (ii) the proposal is reasonably capable of acceptance.
- (2) During the examination of tenders, a procuring entity—
- (a) shall examine the tenders in order to determine whether they are complete and in accordance with the tendering documents;
 - (b) shall ascertain whether—
 - (i) the tendering documents are properly signed,
 - (ii) the documents required to establish the legal validity of the tendering documents have been furnished, and
 - (iii) where applicable, the required tender security has been furnished; and
 - (c) where a pre-qualification procedure is applicable, shall verify anew the qualifications of the lowest evaluated substantially responsive tenderer to take account of any change since the original pre-qualification.
- (3) Where—
- (a) a pre-qualification procedure is applicable; the procuring entity shall reject any tender received from a person other than a pre-qualified tenderer;
 - (b) a tender discloses an arithmetical error, the procuring entity shall correct the error and notify the tenderer of such correction, in writing;
 - (c) there is a discrepancy between figures and words—
 - (i) the amount in words shall prevail, and
 - (ii) the procuring entity shall correct the discrepancy and notify the tenderer of the correction, in writing;
 - (d) a tenderer refuses to accept a correction made under paragraph (b) or (c) or regulation 49(3)(c)—
 - (i) the procuring entity shall reject the tender, and
 - (ii) the tender security is liable to be forfeited; and
 - (e) there is a minor deviation in any tender that did not warrant rejection of the tender at an earlier stage, the tender evaluation committee shall quantify such minor variation in monetary terms, as far as possible.

Commented [d28]: Procuring entity may effect examination/evaluation through an evaluation committee

75. Errors, corrections, confirmation and withdrawal of tenders and proposals

- (1) Where a tender or proposal is submitted with a material error or mistake, the evaluating committee shall make a determination in respect of the error or mistake in accordance with this regulation.
- (2) The relevant authority shall not exercise any power in sub-regulation (3) or (4)(b) unless it has consulted the Director and the Attorney General.
- (3) Where before a contract is awarded, the relevant authority has reason to believe that a tender or proposal is submitted with an error, the relevant authority may, before a contract is awarded—
 - (a) request the tenderer to confirm the tender or proposal;
 - (b) permit the tenderer to withdraw the tender or proposal if—
 - (i) the error is a material error and cannot be corrected, without modifying the tender or proposal, or
 - (ii) the intent of the tender or proposal cannot be ascertained with certainty; or
 - (c) permit the tenderer to correct the error in the tender or proposal if the procuring entity is of the opinion that—
 - (i) it is clearly evident from examining the tender or proposal that the error is clerical in nature, or
 - (ii) there is clear and credible evidence of what the correct tender was intended to be and the error is of such a nature that a court of competent jurisdiction may reasonably grant relief in respect of the error.
- (4) Where a person—
 - (a) makes any alteration or erasure in any tender or proposal, the person shall, before submitting or resubmitting the tender or proposal, initial the alteration or erasure; and
 - (b) submits or re-submits to a procuring entity a tender or proposal which does not comply with paragraph (a), the procuring entity may reject the tender or proposal.
- (5) The relevant authority shall—
 - (a) make a record of every action and decision taken and made under this regulation; and
 - (b) ensure that the procurement officer of the procuring entity places a copy of the record in the procurement document file.

76. Evaluation criteria.

Every procuring entity shall specify, in detail, in the tendering documents—

- (a) the criteria to be considered for the purposes of tender evaluation;
- (b) the weighting assigned to each criterion; and
- (c) the manner in which each criterion shall be applied.

77. Evaluation, etc. of RFQ's, invitations for tender and to pre-qualify.

- (1) Pursuant to section 73 of the Act, evaluating committee shall, without delay—
 - (a) for the purpose of determining whether the tenders are responsive, evaluate the tender or application of every tenderer in accordance with the evaluation criteria and methodology set out in the invitation for tenders;
 - (b) ensure that the evaluated cost of each tender is compared with the evaluated cost of the other tenders to determine the lowest evaluated substantially responsive tender;
 - (c) in the case of an invitation for tenders, engage the tenderer who submits the lowest evaluated substantially responsive tender in such negotiations as permitted under regulation 57;
 - (d) prepare a report setting out the particulars of the results of the review and evaluation and its recommendation to the procuring entity; and
 - (e) after the preparation of the report, notify in writing each applicant and the relevant authority as to which applicants are pre-qualified and which applicants are not pre-qualified.
- (2) The relevant authority shall ensure that the evaluation committee, if any, does not consider any evaluation criteria other than the evaluation criteria set out in the invitation for tenders or pre-qualify.
- (3) The procurement officer of the procuring entity shall place a copy of the report prepared under sub-regulation (1) (d) in the procurement document file.

78. Evaluation, etc. of proposals.

- (1) For the purpose of determining whether any proposal is responsive, the evaluation committee—
 - (a) shall, subject to paragraph (b), evaluate the proposal of each offeror which is reasonably capable of acceptance in accordance with the evaluation criteria set out in the request for proposals; and
 - (b) shall not consider any evaluation criteria other than the evaluation criteria set out in the request for proposals.
- (2) The evaluating committee may, in accordance with the request for proposals, conduct discussions with offerors who submit responsive proposals.
- (3) A person who—
 - (a) has knowledge of information contained in any proposal; or
 - (b) conducts discussions with any offeror, shall not disclose any information in respect of such proposal or discussions to any other offeror, directly or indirectly, or to any person other than a person who needs to have knowledge of such information or discussions for the purpose of discharging his functions.
- (4) For the purpose of obtaining best and final proposals, the procuring entity shall—
 - (a) permit offerors referred to in sub-regulation (2) to revise their proposals after the discussions, but before any award of contract; and
 - (b) accord such offerors fair and equal treatment with respect to any opportunity for discussions, revision of proposals and submission of best and final offers, if such revision is provided for in the request for proposals.
- (5) The procuring entity shall prepare a report setting out the particulars of the procurement proceedings including—
 - (a) the results of the review, evaluation, discussions with offerors;
 - (b) the best and final proposals received; and
 - (c) its recommendation and decisions.
- (6) The procurement officer of the procuring entity shall place a copy of the report in the procurement document file.

79. Clarification of tenders.

- (1) Subject to this regulation, an evaluating committee may seek clarification from any tenderer to facilitate the evaluation of tenders, but a tenderer shall not be asked, required or permitted to change the price or substance of its tender;
- (2) The evaluating committee may require a tenderer to clarify its tender if—
 - (a) the tender submitted by the tenderer contains a minor variation; and
 - (b) the evaluating committee is of the opinion that the tenderer is likely to provide clarification to assist in the examination and evaluation of the tender.
- (3) Subject to any other provision to the contrary, the following shall be considered as minor deviations in a tender—
 - (a) the use of codes;
 - (b) the difference in standards or materials;
 - (c) alternative design or workmanship;
 - (d) modified liquidated damages;
 - (e) omission in minor items;
 - (f) discovery of arithmetical errors;
 - (g) sub-contracting that is unclear and questionable; and
 - (h) where applicable, different methods of construction.
- (4) During the evaluation of tenders, an evaluating committee shall not allow, invite or permit any tenderer to make any change—
 - (a) to the price or substance of its tender; or
 - (b) to an unresponsive tender so as to make the tender responsive.

80. Rejection of tenders.

- (1) An evaluating committee shall ensure that a tenderer responding to an invitation to tender submits the tender by or before the deadline for the submission of tenders; and
- (2) The evaluating committee shall reject—
 - (a) every tender received after the deadline for the submission of tenders;
 - (b) any tender showing a major deviation with respect to the factors set out in subsection (3); and
 - (c) the tender of any supplier or contractor who does not accept the correction of a minor deviation in that tender.
- (3) The following shall be considered as major deviations in a tender—
 - (a) with respect to the clauses in an offer—
 - (i) unacceptable sub-contracting, alternative design and price adjustment, and
 - (ii) where time is of essence, unacceptable time line;
 - (b) with respect to the status of the tenderer, a tenderer who is ineligible, uninvited or not pre-qualified;
 - (c) with respect to tender documents, an unsigned tender; and
 - (d) with respect to time, date and location for submission of tenders—
 - (i) a tender received after the date and time for submission of tenders as stipulated in the tendering documents, and
 - (ii) a tender submitted at the wrong location.
- (4) Where a tender is received which shows a major deviation, the evaluating committee—
 - (a) shall not consider the tender any further, if the tender has been opened; and
 - (b) shall return the tender unopened, if the tender is received unopened.
- (5) Where the evaluating committee rejects a tender, the procuring entity shall—
 - (a) not open the tender if the tender is received in a sealed envelope;
 - (b) return every unopened tender to the relevant tenderer.
 - (c) in writing, notify the tenderer of the rejection and the reasons for the rejection; and
 - (d) not permit the tenderer to amend the rejected tender so as to become compliant.

81. Return of tender and proposal securities.

Where—

- (a) a successful tenderer complies with the requirements respecting the execution of a contract and provision of a performance security, the procuring entity shall, without delay, return the tender or proposal securities to the unsuccessful tenderers; or
- (b) a procuring entity notifies the tenderers of its rejection of all tenders or proposals, the procuring entity shall, without delay, return the tender or proposal securities to the tenderers.

AWARD OF PROCUREMENT CONTRACTS**82. Award of procurement contracts.**

- (1) Pursuant to section 76 of the Act, subject to this regulation and regulations 49 and 54, a relevant authority may—
 - (a) after considering the report referred to in regulation 51 (1) (d) or 52 (5); and
 - (b) if it is satisfied that sufficient funds are available, award a contract to the tenderer who submits, on the basis of the evaluation criteria specified in the invitation for tender or the request for proposals, the lowest evaluated substantially responsive tender or proposal.
- (2) Where an invitation for tenders or a request for proposals provides for the subdivision of any procurement into lots, the procuring entity may make more than one award of contract in respect of an invitation for tenders or a request for proposals.

- (3) Save and except as provided otherwise, after the selection of the successful tenderer the procuring entity shall not conduct any negotiation with the successful tenderer or any other tenderer.
- (4) The relevant authority shall—
- (a) at least ten days before the award of the procurement contract, announce the results of the tender evaluation in the form of a report giving justification for the acceptance or rejection of tenders;
 - (b) in writing or in such manner as may be prescribed, simultaneously notify the successful tenderer and unsuccessful tenderers of the selection of the tender for the award of the procurement contract; and
 - (c) specify, in the notice, the name and address of the successful tenderer and the price of the procurement contract.
- (5) In the absence of a challenge by any unsuccessful tenderer—
- (a) subject to paragraph (b), within fifteen days of the date of service of the notice; and
 - (b) within seven days of the date of service of the notice, if participation in the procurement proceedings was limited to domestic suppliers, contractors and service providers, the relevant authority shall award the contract to the successful tenderer.
- (6) The procuring entity may require the successful tenderer to submit a performance security and sign the procurement contract within the period specified in the tendering documents.
- (7) Where the successful tenderer fails—
- (a) to sign the performance contract; or
 - (b) to provide the required security within the prescribed time limit, if required to do so, the relevant authority shall select another tenderer from among the remaining unsuccessful tenderers having valid tenders, and the provisions of this regulation shall apply, with such necessary modifications, adaptations and qualifications as the circumstances require, to the award of the procurement contract to that other tenderer.
- (8) Where a tenderer or an offeror who submits the lowest evaluated substantially responsive tender or proposal refuses or neglects to execute a contract or to furnish the performance security required by the invitation for tenders or, as the case may be, request for proposals, the relevant authority may—
- (a) reject the tender or proposal and effect a forfeiture of the related tender or proposal security of the tenderer;
 - (b) select the next ranked lowest evaluated substantially responsive tender or proposal; and
 - (c) award the contract to the tenderer who's tender or proposal is selected under paragraph (b).
- (9) The relevant authority—
- (a) shall not make its acceptance of a tender or proposal subject to any condition, other than that the acceptance shall be subject to the execution of a contract;
 - (b) shall, without delay, communicate in writing such acceptance to the successful tenderer; and
 - (c) shall not disclose to tenderers or to persons not officially concerned with the evaluation process—
 - (i) any recommendation concerning the award of a procurement contract, or
 - (ii) information relating to the examination, clarification and evaluation of tenders,until the successful tenderer is notified of his selection.
- (10) The procurement officer of the procuring entity shall place in the procurement document file a copy of the minutes or relevant excerpts of the minutes of the meetings respecting the actions taken under this regulation.
- (11) The procuring entity shall without delay publish, in such manner as may be prescribed, a notice of the award of every procurement contract.

Commented [d29]: should the board publish its awards

83. Negotiations with lowest tenderer.

Pursuant to section 75 of the Act, where, for the purpose of increasing or decreasing the scope or value of a proposed contract, an invitation for tenders or a request for proposals contains a statement to the effect that the procuring entity may engage any tenderer in negotiations, the procuring entity shall not engage in negotiations with any tenderer other than the tenderer who submits the lowest evaluated substantially responsive tender or proposal.

84. Notice to unsuccessful tenderers and offerors.

Where the successful tenderer has complied with the requirements of the invitation for tenders or as the case may be, the proposals respecting the execution of a contract and provision of a performance security, the procuring entity shall, without delay, communicate, in writing, its acceptance of—

- (a) a tender under these Regulations, simultaneously, to the successful tenderer and unsuccessful tenderers; and
- (b) a proposal under these Regulations, simultaneously, to the successful offeror and the unsuccessful offerors.

85. Debriefing unsuccessful tenderers and offerors.

(1) Pursuant to section 77 of the act, where, within thirty days of the publication of the notice referred to in regulation 56 (3), an unsuccessful tenderer who participated in a procurement proceeding submits to a procuring entity a request for debriefing in respect of the procurement proceedings, the procuring entity shall, promptly, inform the tenderer of the reasons for which its tender or, as the case may be, its application for pre-qualification was unsuccessful.

(2) Where a procuring entity conducts a debriefing of the tenderer, the procuring entity shall—

- (a) cause minutes of the debriefing to be made; and
- (b) ensure that the procurement officer places a copy of the minutes of the debriefing in the procurement document file.

Division 4 General**86. Lots**

Where a procuring entity intends to sub-divide any procurement into lots, the procuring entity shall take into account the following—

- (a) the economic aspect of the procurement, that is to say, whether the subdivision would restrict competition;
- (b) the technical aspect of the procurement, that is to say, the risks to render the execution of the contract technically difficult or expensive; and
- (c) the performance aspect of the procurement, that is to say, the capacity of the procuring entity to ensure co-ordination of the performance of the contract.

87. Rejection of all tenders and proposals.

Where a procuring entity rejects all tenders or proposals, the procurement officer of the procuring entity shall—

- (a) without delay, notify in writing all tenderers of the determination of the procuring entity and the reasons for the determination; and
- (b) place a copy of the minutes of the meeting of the procuring entity respecting the rejection of all tenders or proposals in the procurement document file.

88. Cancellation of procurement proceedings.

(1) Pursuant to section 80 of the Act, a procuring entity may, at any time before the selection of a successful tenderer, reject all tenders or cancel the procurement proceedings where—

- (a) all the tenders are non-responsive;
- (b) the value of the lowest evaluated tender is substantially above the applicable updated cost estimate;
- (c) the goods, services or works are no longer required by the procuring entity; or
- (d) it has been established that there has been collusion among the tenderers.

(2) The relevant authority shall give to every tenderer participating in the procurement proceedings written notice of the rejection of the tenders or, as the case may be, the cancellation of the procurement proceedings.

(3) Save and except where the rejection of all tenders or cancellation of procurement proceeding is made on the ground specified in subsection (1)(a) or (b), there shall be no invitation to re-tender for the procurement of the goods, services or works on the same specifications and contract conditions.

(4) Where the procuring entity intends to publish anew the invitation to tender for the procurement of goods, services or works—

- (a) the Procurement Officer shall examine the reason for the rejection of the tenders or the cancellation of the procurement proceedings; and
- (b) the procuring entity shall modify the technical specifications or contract conditions as required.

- (5) Where a procuring entity—
- (a) rejects all tenders at any time before the acceptance of a tender; or
 - (b) cancel the procurement proceedings in the public interest, the procuring entity shall not incur any liability to the tenderers.
- (6) Notwithstanding subsection (5), where the procuring entity—
- (a) cancels any procurement proceedings, the Board may order a refund of the cost incurred by any tenderer respecting the preparation and submission of the tender or offer; or
 - (b) by reason of a cancellation of any procurement proceedings, publishes anew an invitation for tenders or request for proposals, the Board may direct that a tenderer affected by the cancellation is furnished with the new tendering documents or request for proposals without charge, if the Board is of the opinion that the refund or, as the case may be, the receipt of such documents or request without charge is in the public interest.
- (7) Where a procuring entity determines not to proceed with any procurement of goods, services or works, the procuring entity shall—
- (a) without delay, notify in writing each pre-qualified applicant of its determination and the reason for its determination; and
 - (b) ensure that the procurement officer of the procuring entity places a copy of the record in the procurement document file.
- (8) The decision of the Board under subsection (6) and the reason for the decision shall be published in the *Gazette*.

89. Record of procurement proceedings.

- (1) Every procuring entity shall—
- (a) keep and maintain a record of the comprehensive procurement proceedings, that is to say, adequate contract documentation for all phases of the procurement process including planning, tendering, award, contract management, modifications, schedules of payment, progress reports and contract evaluations;
 - (b) upon request, make available for inspection by the Board, the Review Commission or the Director of Audit the records and documents respecting procurements maintained by the procuring entity; and
 - (c) retain the record of the comprehensive procurement proceedings and the related documents for a period of not less than six year.
- (2) Where donor funds have been used for the procurement of goods, services or works, the officials of the donor shall, upon request, have access to the procurement files for the purpose of audit and review.
- (3) A procuring entity shall not be liable to suppliers, contractors or service providers for damages by reason only of the failure of the procuring entity to maintain and retain a record of the procurement proceedings in accordance with this regulation.

90. Contents, etc. of procurement records

- (1) Every procuring entity shall keep appropriate information in respect of each procurement contract which shall be sufficient to permit the procuring entity, at a later date, to justify decisions taken in connection with—
- (a) the qualification and selection of contractors, suppliers or service providers;
 - (b) the award of contracts; or
 - (c) the use of any restricted tendering procedure, without competition.
- (2) Subject to sub-regulation (3), a procuring entity shall keep records of every procurement for a period not less than six years—
- (a) subject to paragraph (b), from the date of the execution of the resulting procurement contract; or
 - (b) if no contract resulted and the procurement proceedings were terminated, from the date of termination of the procurement proceedings, for the purpose of providing, during that period, information as the Minister, Board or Director may require.
- (3) The records of every procurement must include—
- (a) a brief description of the goods, works or services being procured;
 - (b) where a restricted procurement procedure was used, the reasons for selecting the procedure;

- (c) if, as part of the procurement process anything was advertised in a newspaper or publication, a copy of that advertisement as it appeared in the newspaper or publication;
 - (d) for each tender, proposal or quotation submitted—
 - (i) the name and address of the person making the submission,
 - (ii) the price or the basis for determining the price, and
 - (iii) a summary of the principal terms and conditions of the tender, proposal or quotation;
 - (e) a summary of the evaluation criteria used and the result of the evaluation and comparison of the tenders, proposals or quotations;
 - (f) where the procurement proceedings were terminated without resulting in a contract, an explanation respecting the termination;
 - (g) a copy of every document required to be prepared and supplied by the procuring entity under the Act and these Regulations; and
 - (h) such other information or documents as may be prescribed.
- (4) Subject to sub-regulation (6), the procuring entity shall, on request, make the records for the procurement available—
- (a) after a contract has been awarded or the procurement proceedings have been terminated, to any person who submitted a tender, proposal or quotation; or
 - (b) if direct procurement was used, to any person with whom the procuring entity negotiated in respect of the direct procurement.
- (5) The procuring entity may charge a fee for reproducing and supplying the records to any person, but the fee shall not exceed the costs of reproducing and supplying the records.
- (6) A person shall not disclose any information under sub-regulation (4), if the disclosure of the information is contrary to section 90(1)(h) of the Act, but a disclosure of any information referred to in sub-regulation (3) shall be deemed not to be contrary to that section.
- (7) A procuring entity shall maintain a proper filing system with clear links between the procurement and expenditure files.

91. Failed Public Procurement Procedure -

- (1) Pursuant to section 83 of the Act, tender documents shall provide that the procuring entity may reject all tenders when there is:
- i. lack of effective competition,
 - ii. tenders are not substantially responsive,
 - iii. no tender meets the specified qualification criteria,
 - iv. the price of the lowest evaluated tender is substantially higher than the updated estimated cost or available budget for the procurement.
- (2) Lack of competition shall not be determined solely on the basis of the number of Tenders. Even when only one tender is submitted, the process may be considered valid, if advertising was satisfactory, the qualification criteria were not unduly restrictive, and prices are reasonable in comparison to market values. If all tenders are rejected, the procuring entity shall review the causes justifying the rejection and make appropriate the revision of qualification criteria may be justified only when they were set too stringently.
- (3) If for justified reasons, re-advertisement is not practical or the rejection is due to all of the tenders being nonresponsive, new tenders may be invited, from the initially prequalified firms, or, in the absence of prequalification, from all firms that purchased the initial tender documents. Exceptionally, when justified, the procuring entity may decide to re-invite only those firms that submitted tenders in the first instance.
- (4) Tenders shall not be rejected and new ones invited on the same bidding and contract documents solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds the Borrower's updated cost estimates by a substantial margin, the Borrower shall investigate causes for the excessive cost and consider requesting new bids as described in the previous paragraphs. Alternatively, the Borrower may negotiate with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price. However, substantial reduction in the scope or modification to the contract documents may require rebidding.

92. Procurements to be numbered in annual series.

The procurement officer of each procuring entity shall—

- (a) number each procurement in one series for each financial year—
 - (i) in the chronological order of the procurement, and
 - (ii) in ascending number commencing with the number “1”; and
- (b) organise each annual series in such a manner so as to distinguish between—
 - (i) procurements commenced by invitations for tenders,
 - (ii) procurements commenced by requests for proposals,
 - (iii) procurements commenced by invitations to pre-qualify,
 - (iv) framework agreements;
 - (v) exempt procurements
 - (vi) emergency procurements,
 - (vii) sole source procurements, and
 - (viii) direct procurements.

93. Procurement document files to be maintained.

- (1) Pursuant to section 81 of the Act and subject to sub-regulation (2), the procurement officer of the procuring entity—
 - (a) shall maintain a separate procurement document file for each procurement contract having an estimated value of [\$2,500] or more;
 - (b) may maintain a separate procurement document file for each procurement contract having an estimated value of less than [\$2,500]; and
 - (c) shall maintain an annual procurement document file for all procurements made by oral request for quotations, other than procurement resulting from contracts referred to in paragraph (b).
- (2) The accounting officer of each department shall ensure that an annual procurement document file is maintained for all procurements referred to in Part 6 of these Regulations.
- (3) Each procurement document file shall be—
 - (a) labelled with the description of the procurement and its number; and
 - (b) filed by financial year.
- (4) The procuring entity shall maintain an individual file, in paper or electronic form, for each procurement proceeding, which shall be marked with the relevant procurement reference number. The file shall contain all information, documents, records and communications related to that procurement proceeding, including, but not limited to—
 - (a) the authorised procurement requisition, including the description of goods, works or services required;
 - (b) the approved procurement plan, including the justification for the use of any public procurement procedure other than open tendering or request for proposals;
 - (c) a copy of any invitation to pre-qualify or call for expressions of interest notice and any pre-qualification invitation documents;
 - (d) all applications to pre-qualify or expressions of interest submitted by tenderers and the report on the evaluation of qualifications or of expressions of interest;
 - (e) the invitation to bid notice or any shortlist or list of pre-qualified bidders;
 - (f) the tender documents, request for proposals or other solicitation documents issued, including any clarifications or amendments issued and minutes of any pre-bid meetings;
 - (g) the record of solicitation documents issued, tenders submitted and the record of all bid or proposal openings;
 - (h) all bids, proposals or quotations submitted, other than tenders or proposals returned unopened to tenders;

Commented [C30]: Should we prescribe a reference number format?

- (i) copies of all clarifications requested and received and the procuring entity's response to all such requests;
 - (j) the evaluation report, including signed individual score sheets or other documentation;
 - (k) records of any negotiations;
 - (l) any notice of proposed award;
 - (m) any notice of bid acceptance;
 - (n) a copy of the contract or purchase order document;
 - (o) copies of letters rejecting and debriefing unsuccessful bidders;
 - (p) a copy of any published notice of contract award;
 - (q) copies of all contract variations and modifications;
 - (r) all documentation and correspondence relating to contract administration;
 - (s) copies of all documentation demonstrating performance of the contract, such as inspection reports, supervision reports, delivery documentation and interim certificates;
 - (t) any documentation relating to cancellation of a procurement process or termination of a contract;
 - (u) information relating to any applications for review; and
 - (v) all approvals from XX and any other award authority.
 - (w) all suppliers' invoices, records of payments made, including authorization of payments.
- (5) Procurement records shall be kept for a minimum period of five years following completion or termination of the contract or cancellation of the procurement proceedings.

94. Reporting requirements.

- (1) Subject to sub-regulations (2) and (3), every procuring entity shall, for each calendar month of every financial year, report contracts awarded by it which are in excess of [five hundred thousand dollars].
- (2) Reports under this regulation shall be made using the standard prescribed form.
- (3) The procurement officer of the procuring entity shall, not later than seven days after the end of the reference period, submit—
 - (a) the completed form to the Director of Procurement; and
 - (b) a copy of the completed form to the accounting officer and Permanent Secretary, as the case may require, in the Ministry responsible for the proposed contract.
 - (c) the director of Audit
- (4) The Director shall promptly, but not later than three days after the receipt of the report submit a copy of the report of all contracts awarded having a value in excess of one million dollars, to the Board, Director of Audit and the Cabinet.

REVIEWS IN RESPECT OF CONTRACT AWARDS

95. REVIEW

- 1. In conducting the review under section 84 of the Act, the Director shall act on the basis of a recommendation from an independent expert in accordance with the procedure established in Schedule 1.
- 2. Under section 84(2), no application for review may be lodged before the tenderer has exhausted its right to complain to the procuring entity under section 83A of the Act. In particular,
 - (a) the tenderer shall make a complaint regarding an alleged breach of the Act or these Regulations as soon as the grounds for the complaint arose and in any event within 7 days of the date of the notice of intention to award a contract under section 76(3) of the Act;
 - (b) the procuring entity shall, within 7 days of the receipt of the complaint, provide a reasoned opinion in writing either dismissing or accepting the complaint in accordance with section 83 B (3) of the Act;
 - (c) in the absence of a decision under sub-paragraph (b) or where the tenderer disagrees with the decision, the tenderer may apply for review in accordance with section 84 of the Act;

- (d) once a complaint has been lodged, the time period set out in section 76(4) of the Act shall be suspended until such time as the complaint has been resolved, including any time required to conduct a review pursuant to section 84 of the Act.
3. The fee referred to in section 84(5) of the Act shall be ECD 300.

Part 3 Procurement Contracts

100. General conditions of contracts.

- (1) A procuring entity shall use the standard general conditions of contracts in the tendering documents.
- (2) A procuring entity shall not change a general condition of contracts if such general condition contains—
- (a) operational clauses which establish the relationship between the procuring entity and the suppliers or contractors including information respecting—
- (i) definitions,
 - (ii) rights and obligations of the parties to the contract,
 - (iii) procedures for shipment and documentation,
 - (iv) delivery and transfer of risks,
 - (v) terms and currencies of payment,
 - (vi) mode and form of disputes settlement,
 - (vii) the language governing the contract, or
 - (viii) the applicable law;
- (b) protective clauses which establish protection against various risks and allocate such risks between the parties, including information respecting—
- (i) tender or performance security,
 - (ii) retention of payments,
 - (iii) insurance,
 - (iv) inspections and tests,
 - (v) warranty,
 - (vi) protection against third party infringement suits,
 - (vii) *force majeure*, or
 - (viii) valid, and current tax and National Insurance compliance certificates;
- (c) variations, including information respecting—
- (i) quantity changes,
 - (ii) adverse physical conditions,
 - (iii) price adjustments, or
 - (iv) changes in delivery requirements; or
- (d) remedial clauses which deal with breach of contract by any party to the contract including information respecting—
- (i) forfeiture of the performance security,
 - (ii) procedures for obtaining damages or paying penalties for delay,
 - (iii) procedure for suspension or termination of contract, and
 - (iv) procedures respecting non-payment or failure to provide required approvals and information.

- (3) For the purposes of this regulation, “variations” means any unforeseen or planned change during the life of the contract which is identified and provided for under the general conditions of contract,

101. Renewal and extension of contract.

A Relevant Authority may renew or extend a contract if—

- (a) the conditions of renewal or extension are specified in the tendering documents; and
- (b) funds are available—
 - (i) subject to sub-paragraph (ii), for the renewal or extension, or
 - (ii) if the contract is for more than one year, for the first year of the renewal or extension.

102. Contracts for legal services.

A procuring entity shall not award any contract for legal services unless the procuring entity first obtains the approval, in writing, of the Attorney General.

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103. Evaluation of contractor.

Pursuant to section 93 of the Act, the procuring entity shall, without delay after the completion of every procurement contract having a value in excess of [\$500,000], evaluate the performance of the contractor or cause the performance of the contractor to be evaluated.

PART 4

TRANSPARENCY AND ACCOUNTABILITY

104. Duty to declare interest.

- (1) Where a procurement official has knowledge or has reason to believe that he is exposed to or has been exposed to a conflict-of-interest situation respecting a procurement contract, the procurement official shall—
 - (a) immediately declare such exposure to the head of the procuring entity, the chairperson of the public procurement committee or the chairman of the Board; and
 - (b) refrain from taking part in the decision-making process or the implementation of any prospective procurement contract including sitting in any meeting or participating in deliberations in respect of the procurement.
- (2) A prospective contractor, tenderer, supplier or service provider with potential or actual conflict of interest in relation to any proposed procurement contract is ineligible to tender or to submit any proposal in respect of the proposed procurement contract.

105. Conflicts of interest.

- (1) Subject to Part 8, where a member of the permanent staff, or an associate, of a consulting firm is available as an individual consultant, the conflict of interest provisions in the Act, these Regulations and other relevant enactments shall not apply to the individual consultant.
- (2) A prospective consultant is ineligible to participate in procurement opportunities under the Act and these Regulations if there have been—
 - (a) downstream procurement of goods and works, related to the work of the consultant, such as the consultant attempting or being perceived to influence the decisions of the procuring entity for his own benefit or that of his affiliates by specifying, designing, or suggesting that works or equipment be obtained from such affiliates;
 - (b) downstream provision of consultancy services related to—
 - (i) the procurement of works by an affiliate of the consultant;
 - (ii) the supply of equipment by an affiliate of the consultant; and
 - (iii) the installation of equipment referred to in sub-paragraph (ii) by an affiliate of the consultant;
 - (c) downstream conflicting activities closely related to the consultant’s work while in a consulting capacity on the same transaction such as an investment bank, in a consulting capacity, supplying funds to a procuring entity in a sale transaction after advising a seller;
 - (d) conflicting downstream assignments where the incumbent consultant deprives his client of the full benefits of competition by creating conditions under which the consultant attains or, is perceived to attain, an undue advantage over other consultants who may apply for consideration in such downstream assignments; or
 - (e) conflicting assignments which by their nature cause, or are likely to cause, the consultant to bias his advice to be consistent with findings of the assignments or that of his affiliates.

106. Limitation on contracts with employees, etc.

Except as expressly provided under the Act and these Regulations, a procuring entity shall not award a procurement contract to—

- (a) a member of the Cabinet;
- (b) a person appointed to any position by the Governor-General or a Minister;
- (c) a member of a board or committee of the Government or any department of the Government; or
- (d) an employee of the procuring entity or a member of a board or committee of the procuring entity.

107. Tendering by statutory bodies prohibited

A statutory body is ineligible to respond to an invitation for tenders or request for proposals under the Act or these Regulations.

108. Public access and transparency.

- (1) Where a relevant authority awards a procurement contract, the procuring entity shall, as soon as practicable after the award of the procurement contract, make available to members of the public the documents related to the evaluation of the tender and the award of procurement contract.
- (2) Where—
 - (a) the disclosure of any information related to the award of procurement contract is of a propriety nature; or
 - (b) the procuring entity has reasons to believe that the disclosure of such information—
 - (i) is not in the public interest,
 - (ii) is contrary to law,
 - (iii) is likely to impede law enforcement, or
 - (iv) is likely to prejudice the legitimate commercial interests of the parties to the contract, the procuring entity shall, subject to the approval of the Director, withhold only such information from public disclosure.
- (3) Where—
 - (a) a tender, a proposal, an offer or a quotation is accepted; or
 - (b) procurement proceedings are terminated without resulting in the award of procurement contract, the procuring entity shall, on request, make available to any authorised tenderer such portion of the record referred to in this section which may not be withheld from public disclosure.
- (4) Notwithstanding sub-regulations (2) and (3), a procuring entity shall disclose records of the procurement proceedings, whether before or after the award of procurement contract, if a court of competent jurisdiction makes an order directing the disclosure.
- (5) For the purposes of sub-regulation (3), the reference to “authorised tenderer” shall be construed to include a reference to any supplier, contractor or service provider who submitted a tender, a proposal, an offer or a quotation or application for pre-qualification.

109. Publication of awards.

For purposes of this Part, the Director shall publish monthly notice of an award of contracts on—

- (a) in the *Gazette*;
- (b) where applicable, the Government electronic procurement system or the website of the Ministry of Finance; or
- (c) by such other means as considered appropriate including the posting of the notice in a conspicuous location at the Ministry of Finance or office of government.

PART 5**MISCELLANEOUS****110. Availability of financial resources.**

Every procurement contract providing for the payment of money by the Government or any other procuring entity shall state that payment under the contract is subject to there being an appropriation for the particular service for the financial year in which any commitment under that contract would become due for payment.

111. Compliance certificate.

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Unless otherwise directed in writing by the Board, every tender, proposal or quotation submitted to a procuring entity in respect of any procurement opportunity under the Act or these Regulations shall be accompanied by a certificate of compliance issued by—

- (a) the Comptroller of Inland Revenue, stating to the effect that the tenderer, contractor or supplier has to the satisfaction of the Comptroller complied with and discharged his or its obligations under the Income Tax Act, Cap. 15:02 and other relevant tax enactment; and
- (b) the Director of the National Insurance Corporation, stating to the effect that the tenderer, contractor or supplier has to the satisfaction of the Director complied with and discharged his or its obligations under in accordance with the National Insurance Corporation Act, Cap 16:01.

112. Procurements respecting national defence and security.

- (1) For the purposes of section 23 of the Act, the Procuring entity shall, not less than twenty-one days before the deadline for the submission of tenders, proposals or invitations to pre-qualify, give notice of—
 - (a) an invitation for tenders,
 - (b) a request for proposals; or
 - (c) an invitation to prequalify, to as many potential tenderers, offerors or applicants as practicable, which shall not be less than three, if possible.
- (2) The tenderers, offerors or applicants to whom the notice is given shall satisfy the requirements as the Procurement Officer may specify under sub-regulation (3)(a).
- (3) The Procurement Officer—
 - (a) may require potential tenderers, offerors or applicants to comply with such requirements in relation to confidentiality to the extent of the nature of the procurement as is considered appropriate;
 - (b) shall make or cause to be made a record of—
 - (i) the manner in which notice was given of each invitation for tenders, request for proposals or invitation to prequalify, and
 - (ii) day on which and the person to whom such notice was given; and
 - (c) shall give a copy of the record to the accounting officer of the procuring entity, who shall place the copy of the record in the procurement document file.

113. Design contest and concessions.

- (1) A procuring entity may award a design contract by means of—
 - (a) an open design contest; or
 - (b) a limited design contests.
- (2) When—
 - (a) an open design contest takes place, the application sent by a tenderer shall consist of a first envelope containing the information pertaining to the application, a second envelope containing the work requested and a third envelope containing the price proposal for carrying out the contract; or
 - (b) a limited design contest takes place, the tenderers authorized to compete are invited to submit their application in two envelopes, that is to say, one envelope containing their work and a second envelope containing their price proposal for carrying out the contract.
- (3) Where a procuring entity intends to award a design contract, the procuring entity shall establish a committee comprising persons specifically competent with regards to the work to be designed and the nature of the provisions to be obtained for its design.
- (4) The committee established under sub-regulation (3) shall—
 - (a) carry out the functions of a technical committee and those of a tender evaluation committee;
 - (b) define the design tender rules including at least one brief preliminary design with a definition of the work's technical performances for the design to be performed; and
 - (c) make recommendations respecting the value of the prizes for the three best evaluated tenders.
- (5) For the purpose of pre-qualifying tenderers, the committee shall—

- (a) draw up an evaluation report on the applications, together with a reasoned opinion regarding the list of the candidates, who should be selected; and
 - (b) finalize the list of candidates chosen to deliver the design.
- (6) The committee—
- (a) shall furnish every prequalified tenderer with the tender documents required for the tendering process; and
 - (b) upon receipt of the tenders, may request clarifications or further details concerning the tenders submitted by the candidates; but such clarifications or further details shall not have the effect of altering the fundamental elements of the tender or the essential characteristics of the contract.
- (7) For the avoidance of doubt, regulations 16, 17, 23, 24 and 47 apply with necessary modification to the applications and tenders in respect of design contests.
- (8) The committee shall—
- (a) evaluate the tenderers' works;
 - (b) verify their compliance with the design contest rules;
 - (c) on the basis of the criteria indicated in the public tender notice, propose a ranking in respect of such works; and
 - (d) board draws up a report on the evaluation of the works and formulate a grounded opinion.
- (9) For the purposes of sub-regulation (7), the committee—
- (a) may invite the tenderers to answer questions in its report in order to clarify any aspect of the project;
 - (b) shall make and keep a record of minutes of the dialogue between the committee and the tenderers;
 - (c) shall not indicate, in the report, the position adopted by any individual member or the voting pattern of any such member; and
 - (d) promptly, submit the report to the procuring entity.
- (10) The procuring entity shall, on the basis of the report and after examining the envelope containing the price, award the design contest to the tenderer whose work represents the best result as evaluated and proposed by the committee.
- (11) Nothing in this regulation shall be construed to restrict the authority of procuring entity to negotiate with the winner.
- (12) The provisions of this regulation apply, with the necessary modifications, to public concessions granted for works, supplies or services.

114 Participation of affected communities, etc.

- (1) For the purposes of enabling any community, registered non-government organization or such other organization to keep an interactive dialogue with a procuring entity and donors so as to enhance the implications of the procurement of goods or works, the procuring entity may permit the community, registered non-government organization or such other organization to participate on any public procurement proceedings, so far as such proceedings are actually in any way related to the community or organization.
- (2) The participation may start in the planning phase of any public procurement project and continue until the end of the implementation phase and operation management, if any.
- (3) For the purposes of this regulation, a procuring entity shall expressly specify in any announcement of a public procurement of goods or works that communities, registered non-government organizations or such other organizations may participate in the procurement proceedings.

115. Purchases of computer equipment.

- (1) Notwithstanding anything in these Regulations but subject to sub-regulation (2), a procuring entity shall not procure any main frame, major network or work station for any computer system without first obtaining the written approval of the Board.
- (2) The Board shall not issue any written approval under sub-regulation (1) unless it consults the Minister and the Minister with responsibility for information, communications and technology.

116. Domestic preferences.

- (1) A procuring entity shall, when processing procurement, comply with the provisions of the Act and these Regulations in respect of prices preferences.
- (2) For greater certainty, the preferences referred to in the Act and this regulation shall apply to—
 - (a) works, services, goods or any combination of works, services and goods; and
 - (b) any contractor, supplier and service provider satisfying the requirements of—
 - (i) a disadvantaged group,
 - (ii) a micro, small or medium enterprise or
 - (iii) such other categories as the Board may specify in accordance with the procurement policy objectives of the Government.
- (3) For the purpose of qualifying for a specific preference, a person referred to in sub-regulation (2)(b) shall provide evidence of eligibility.
- (4) In applying the preferences under this regulation—
 - (a) exclusive preference shall be given to nationals of Saint Lucia or any other Member State of the OECS where—
 - (i) the funding is not out of donor funds, and
 - (ii) the value of the procurement is below the prescribed threshold; and
 - (b) a prescribed margin of preference may be given—
 - (i) in the evaluation of tenders, to tenderers offering goods manufactured, minerals extracted and grown in Saint Lucia or any other Member State of the OECS, or
 - (ii) in respect of works, goods and services where preference may be applied depending on the percentage of shareholding of residents and citizens on a graduating scale as the Cabinet may direct.
- (5) For the purpose of being cognizant of the workload, availability and performance record of any contractor to which this regulation applies, the Board shall maintain an up-to-date register of such contractors in respect of works, goods and services and any combination of works, goods and services.

117. Forfeiture of tender security.

The tender security which is accepted by the procuring entity is liable to be forfeited if the tenderer—

- (a) modifies or withdraws the tender after the deadline for submission of tenders during the period of validity of the tender;
- (b) refuses to accept a correction of an error in the tender; or
- (c) being the successful tenderer, fails—
 - (i) to sign a procurement contract in accordance with the terms and conditions specified in the tendering documents, or
 - (ii) to provide the required security for the performance of the procurement contract in accordance with the tendering documents.

118. Availability of Public Procurement Manual and procurement policy.

- (1) The Board shall make the Public Procurement Manual and the procurement policy of the Government available on the electronic procurement system of the Government or on the website of the Central Procurement Unit when such system or website is operational.
- (2) Until the electronic procurement system of the Government or the website of the Central Procurement Unit is operational, the Director shall, subject to sub-regulation (3), make up-to-date copies of the Public Procurement Manual available to procuring entities and to members of the public.

Made this day of , 2021.

Minister for Finance

Schedule 1 Review Procedure

1 Procedure for Review

- (1) An application for review shall be made in writing and addressed to the Director and in the manner prescribed in section 5, setting out—
 - (a) the grounds of the challenge; and
 - (b) whether the procuring entity has notified the bidder of any steps it has or proposes to take to rectify the breach alleged in the complaint, and if it has done so, the reasons why the bidder is dissatisfied with them.
- (2) Within 5 days after receiving an application under Article 84(1) of the Act, the Director shall register the review procedure in accordance with section 7.
- (3) The making of an application to the Director in terms of subsection (1), within the five-day period specified in that subsection, shall suspend the challenged procurement proceedings until the Independent Expert—
 - (a) makes its final recommendation to the Director; or
 - (b) upon hearing the parties, decides to recommend to the Director the cancellation of the suspension on the grounds that it is satisfied that urgent public interest considerations require the procurement to proceed.
- (4) The decision of the Director following the recommendation of the Independent Expert shall be binding on the bidder that lodged the application and the procuring entity whose tender procedure is the subject of the review.
- (5) The Director shall dismiss the application where—
 - (a) the grounds for review do not constitute a valid basis for the review; or
 - (b) the bidder that lodged the application has failed to establish the grounds for review.
- (6) Where the Independent Expert finds that a bidder that lodged an application for review has established valid grounds for the review, it may, as appropriate, recommend to the Director the application of the remedies of Article 84(9) of the Act.
- (7) The decision of the Independent Expert is subject to judicial review only on a question of law.

2 Duties of the Independent Expert

- (1) Once appointed, the Independent Expert shall conduct the review independently and impartially in accordance with the Procedure and shall, in all respects relating to his or her status and ethical standards, be bound by the rules applicable to public servants.
- (2) An Independent Expert who has a direct or indirect personal interest in a matter being considered or to be considered shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his or her knowledge, disclose the nature of his or her interest to the Director which shall appoint an alternative independent expert.
- (3) The obligation of sub-section (2) is a continuing obligation on the Independent Expert appointed. He or she is required to disclose immediately to the Director their interest as soon as such interest arises.

3 Secretariat

- (1) The Director shall provide the Secretariat of the Independent Expert and shall be responsible for the organisation and management of review procedures.

- (2) The business of the Independent Expert and all clerical matters arising out of the conduct of a review under this procedure shall be carried out by the Secretariat. In particular, all applications, replies and subsequent communications shall be addressed to the Independent Expert at the Secretariat unless otherwise specified.
- (3) Copies of all relevant forms to be used for the review procedure shall be available for collection at the office of the Secretariat and a copy of such forms shall be sent to all interested parties upon request.
- (4) Following the receipt of an application for review, the Secretariat shall prepare and provide to the Independent Expert the case file and the terms of reference in the form provided for in the Secretariat's Manual of Procedures.

4 Representation

A party may appear in person or may be represented by a lawyer or such other person as shall be recognised by the Independent Expert as suitable for the purposes of such representation.

5 Submission of Application for Review

- (1) Any bidder wishing to submit an Application for Review shall submit the following documents to the Secretariat at the office of the Director:
 - (a) a completed Review Application in the Form provided for by the Secretariat;
 - (b) copies of any documentary evidence relied upon in support of the claim set out in the Review Application Form;
 - (c) where the request is made by an agent of the Applicant, an appropriate power of attorney.
- (2) The Secretariat shall record receipt of the Application in the Review Register and assign it a Case Reference Number.
- (3) The Secretariat shall immediately verify that the Application for Review is in conformity with the provisions of sections 1(1) and 5(1).
- (4) Any Application for Review found not to be in conformity with the above shall be rejected and returned to the Applicant together with a statement of the reasons for rejection. The Applicant may then re-submit its corrected Application for Review.
- (5) Upon recording receipt, the Secretariat shall immediately notify the procuring entity against whom the Application has been made (the Respondent) of the Application for Review and include with the notice a complete copy of the Application. Such notification shall ordinarily take place at the latest the day following the submission of the Application.

6 Submission of Reply

- (1) Within 3 days of the receipt of the notification from the Secretariat, the Respondent shall submit to the Secretariat a Reply containing the following documents:
 - (a) a written Reply to the Application for Review in the Form provided by the Secretariat;
 - (b) copies of any documentary evidence relied upon in support of the Reply;
 - (c) where the Reply is made by an agent of the Respondent, an appropriate power of attorney.
- (2) The failure to submit a Reply within the specified period will not prevent the conduct of the review procedure and the Respondent will remain bound by any decision of the Director.
- (3) Where the Respondent fails to submit a Reply within the specified time limit, the Director may proceed with the formal assignment of the case to the Independent Expert.
- (4) The Independent Expert shall, if he or she is satisfied that the Application for Review was duly served on the Respondent and the party has failed to serve a Reply without good cause, have power to proceed with its deliberations on the basis of the evidence before it as if such proceedings had been conducted in the presence of all parties.

7 Registration

- (1) Following receipt of the Reply, the Secretariat shall collate all the relevant documents into a single case file, including the Application for Review, the Reply, the documentary evidence provided by the parties and the powers of attorney, if any.
- (2) The Director shall formally assign the case to the Independent Expert and the secretariat will provide the Independent with a copy of the case file.
- (3) Following confirmation of assignment of the case to the Independent Expert and receipt by the Director of the procedural instruction for the review from the Independent Expert, the Secretariat shall register the commencement of the review procedure in the Review Register as the 'date of commencement'.
- (4) The Secretariat shall immediately notify the parties of the date of commencement and provide them with a copy of the case file and the procedural instructions for the review.
- (5) The Secretariat shall simultaneously notify the suppliers, contractors, service providers and any governmental authority whose interests are affected or are likely to be affected by the review in accordance with Article 82(3) of the Law.

8 Opening of Review Procedure

- (1) The Independent Expert shall, taking into account the nature of the case defined in the terms of reference, determine the order, time and place of any Hearing he or she intends to hold.
- (2) At the request of the parties, the Independent Expert may proceed to make a recommendation in the absence of a Hearing. In such a case, the Independent Expert, if satisfied that it can reach a definitive opinion on the basis of the terms of reference and without hearing the parties, may proceed to reach a recommendation without a Hearing.
- (3) In determining the order and time of the Hearing, the Independent Expert shall give sufficient consideration to preventing the delay of the proceedings.
- (4) The Secretariat shall communicate this decision to the parties in the form provided for in the Manual of Procedures.

9 Hearing

- (1) The Hearing shall take place in the manner provided for by the Independent Expert.
- (2) If one of the parties, despite having received notice of the Hearing, fails to appear, the Independent Expert, if satisfied that the notification was received and the party is absent without good cause, shall have power to proceed with the proceedings which shall be deemed to have been conducted in the presence of all parties.
- (3) The Hearing shall be closed to the public save that, with the consent of the Independent Expert, persons having a justifiable interest in the proceedings may be admitted.
- (4) The Secretariat shall, for each Hearing, take and keep minutes or ensure that such are taken and kept stating the time, place and the names of those attending together with a summary record of the meeting or Hearing.

10 Evidence

- (1) All relevant documentary evidence relied upon by the parties in support of their claims and replies shall be put before the Independent Expert in the form of copies of the Application for Review and Reply Forms provided for in the Manual of Procedures.
- (2) Subsequent documentary evidence shall be admitted only where, in the opinion of the Independent Expert, it is relevant and only with the Independent Expert's consent.
- (3) During the hearing, any party may submit oral evidence in support of its own contentions by way of the voluntary appearance of witnesses.
- (4) The Independent Expert may, at its discretion, request the submission of further documentary evidence from the parties or request the presence of other witnesses or expert witnesses.

11 Conclusion of the Proceedings

- (1) The Independent Expert shall, when satisfied that all contentions and evidence of the parties have been submitted, conclude the proceedings.
- (2) The Independent Expert shall deliver his or her recommendation to the Director within 10 days of the date of commencement, subject to any adjournment that proves necessary in the opinion of the Independent Expert which may not exceed a further 10 days.
- (3) The recommendation of the Independent Expert shall be confined to the issues raised by the Application for Review and Reply.

- (4) The recommendation shall be formulated in accordance with the Form provided for in the Manual of Procedures.
- (5) The Director shall immediately notify the all parties of his or her decision based on the recommendation.
- (6) The decision of the Director shall be final and binding, subject only to judicial review on a point of law.

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Schedule 2

List of Standard Tender Documents

1. Request for Quotations for Goods
2. Request for Quotations for Works
3. Open competitive tendering for Goods
4. Open competitive Tendering for small and large works
5. Open competitive Tendering (Request for Proposals) for Consulting Services
6. Conditions of contract for Small works
7. Conditions of Contract FIDIC and other large works

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Schedule 3

List of Standard Notification Templates

Procurement Planning Template
Tender Opening Report template
Evaluating Template
Evaluation Report Template
Declaration of Impartiality and Confidentiality
Notification to successful Offeror
Notification to unsuccessful Offeror
Performance Security Form
Contract Assessment Form
Monthly Procurement Report

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