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Author: Kahaki Jere

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PUBLIC PROCUREMENT REGULATIONS, 2020



GOVERNMENT NOTICE NO. ...

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT
(No. 27 OF 2017)

PUBLIC PROCUREMENT REGULATIONS, 2020

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GOVERNMENT NOTICE NO. ...

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT, 2017
(No. 27 OF 2017)

PUBLIC PROCUREMENT REGULATIONS, 2019

IN EXERCISE of the powers conferred by section 64(1) of the Public Procurement and Disposal of Public Assets Act, 2017, I, JOSEPH MWANAMVEKHA, Minister of Finance Economic Planning and Development, make the following Regulations—

PART 1– PRELIMINARY

Citation **1.** These Regulations may be cited as the Public Procurement Regulations, 2020.

Interpretation **2.** In these Regulations, unless the context otherwise requires, the several terms defined in the Act shall have the meanings set out in the-

“alternative bid” is a bid submitted by a bidder who has submitted another bid in the same procurement;

“accountability” means

“stand still period” is the period between the date of publication of an intention to award notice and the date of actual award of a contract;

“requisitioning unit” means a unit by whom the goods, works or services being procured are intended to be utilized;

“set-aside” means the reserving of a procurement exclusively for participation by micro, small and medium size enterprises;

“targeted procurement” means the process used to create a demand for services or goods of, or to secure the participation of, targeted enterprises in contracts in response to the objectives of a secondary procurement policy (procurement policy that promotes objectives additional to those associated with the immediate objective of the procurement itself).

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Scope of procurement regulations **3.** These Regulations apply to all procurement covered by section 3 of the Act except where it is mandatory to follow the guidelines of a financing agency.

Accessibility of legal texts governing public procurement **4.**—(1) The Director General shall, pursuant to section 5 (2) (b) of the Act, periodically issue an updated compilation of the main legal texts governing public procurement.

(2) All pre-qualification documents, bidding documents, and all contract agreements and contract conditions shall be in English;

Provided that where necessary for purposes of promoting targeted procurement, the Director General may authorize the use of other local languages.

PART II — INSTITUTIONAL AND ORGANIZATIONAL ARRANGEMENTS FOR PROCUREMENT

Division I—Public Procurement and Disposal of Assets Authority

Functions of the Authority **5.**—(1) In addition to the functions provided in the Act, the Authority shall approve strategic plans, annual budgets and work plans of the secretariat.

(2) Any decision of the Authority shall be evidenced by signatures of the Chairperson and the Director General under the Authority's seal:

Provided that in the absence of the Chairperson, the member that chaired the particular meeting that made the decision shall sign as the chairperson.

Membership of the Authority **6.**—(1) Pursuant to section 7 of the Act, each professional body shall submit from its membership two names to the secretariat for onward submission to the Minister who shall within thirty days, appoint one member out of the two for further submission to the National Assembly for confirmation:

Provided that only those individuals nominated by their respective professional bodies shall be eligible for appointment to the Authority.

(2) In the event that an individual duly nominated by his professional body has not been successful during the parliamentary vetting process, the Minister shall request the relevant professional body to nominate replacement individuals within three (3) months.

Funds of the Authority **7.**—(1) Pursuant to section 16 (b) of the Act, the Authority shall, from time to time, collect levies on public procurement or disposal proceedings which shall only be used for the general operations of the Authority:

Provided that the Authority may not charge any levy on the procurement of utilities and consumables.

(2) The levy referred to in sub regulation (1) shall be equal to one per cent (1%) of the procurement or disposal contract emanating from such proceedings.

(3) All the levies shall be collected at the source and the procuring and disposing entity shall be under legal obligation to remit such levies to the Authority within fourteen days from the date of effecting the payment.

(4) In the event that the procuring and disposing entity has failed to fulfill its obligation under sub regulation (3), the Controlling Officer and the Head of Finance shall be liable to a fine prescribed in the First Schedule hereto.

(5) In addition to the penalty provided in sub regulation (4), the Authority shall report the PDE to the Secretary to the Treasury who may withhold from the following month's funding, the amount that is due to be submitted to the Authority plus ten percent, the amount of which shall then be paid from Treasury to the Authority.

(6) The Authority shall charge fees to cover the costs of performing some of its functions including the following—

- (a) registration of suppliers and other service providers;
- (b) training or capacity development;
- (c) publications and use of the website for commercial purposes;
- (d) processing applications for review of procurement decisions; and
- (e) any other consultancy services offered by the Authority.

(7) All applicable fees shall be paid to the Authority in a prescribed manner before performance of the service.

(8) Any levies, fees and other monies payable to the Authority shall be published as a notice in the Gazette.

Quorum requirements

8.— Pursuant to section 8 (4) of the Act, a quorum at any meeting shall constitute at least three appointed members including the Chairperson.

Functions of the Director General

9. In addition to the functions provided in sections 5 and 10 (3) of the Act, the Director General shall—

- (a) ensure the availability and accessibility of the Act and any subsidiary legal instruments to the general public and all other stakeholders;

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- (b) collect information and require reports from procuring and disposing entities concerning the conduct of procurement, supply management and disposal activities in prescribed format and advise procuring and disposing entities on any improvements required;
- (c) establish procedures and mechanisms to ensure the effective and timely solicitation of views of interested parties in the development of procurement policies, regulations, procedures and forms;
- (d) devise policies and measures to enhance the use of Information and Communication Technology in procurement, supply management and disposal activities;
- (e) publish periodic bulletins containing information about the procurement systems and proceedings including supply management and asset disposal procedures;
- (f) conduct civic education on the legal, procedural and organizational framework for procurement and disposal of public assets;
- (g) appoint and maintain members of the standing review committee established under section 60 (3) of the Act as well as providing secretarial services to the ad hoc review committees;
- (h) in consultation with relevant stakeholders, devise and facilitate the implementation of strategies and programmes for the promotion of professional standards and development in public procurement; and
- (i) promote the development of a professional procurement workforce including by organizing and conducting training programmes relating to public procurement and disposal of public assets.

Division II—Internal Procurement and Disposal Committees

Composition of
internal
procurement
and disposal
committee

10.—(1) Pursuant to section 26 (2) (h) of the Act, additional functions of the Internal Procurement and Disposal Committees shall have the following additional functions in addition to the functions under section 26(2) of the Act—

- (a) approving draft adverts and bidding documents before their issuance to prospective bidders;
- (b) approving or rejecting contract award recommendations from the ad hoc evaluation committee including terms and conditions of contract where appropriate;

- (c) assessing performance of suppliers in relation to terms and conditions of contracts;
- (d) approving recommendations for contract termination; and
- (e) constituting negotiating teams.

(2) The Controlling officer shall ensure that persons appointed to the Internal Procurement and Disposal Committee undergo basic training in public procurement and disposal of public assets offered by the Authority.

(3) Pursuant to section 27 (3) of the Act, a Controlling Officer shall provide justification, in writing, including the proposed number of members.

(4) Membership in an Internal Procurement and Disposal Committee is an additional responsibility, requiring occasional meetings, and shall not be a full time assignment.

(5) The Controlling Officer shall rotate membership of the Internal Procurement and Disposal Committee as he determines appropriate in accordance with section 27 of the Act.

(6) Members of Internal Procurement and Disposal Committees may be removed by the Controlling Officer for the following reasons—

- (a) incapacity or other inability to perform functions of the Committee;
- (b) abuse of office;
- (c) corrupt or fraudulent practices;
- (d) failure to attend three consecutive scheduled meetings without justifiable reasons; and
- (e) incompetence

Division III— Ad hoc Evaluation Team

Adhoc
evaluation team

11.—(1) The Internal Procurement and Disposal Committee shall appoint an ad hoc team of experts including a chairperson, for purposes of assessment, analysis and comparison of bids.

(2) All evaluation team members shall be required to undertake an oath of secrecy and sign a declaration of interest form before commencement of evaluations.

(3) A member who has declared any conflict of interest in the subject of a procurement, and is absent or envisages to be absent at the evaluation exercise shall be replaced by the Internal Procurement and Disposal Committee.

(4) Evaluation proceedings shall proceed only when all appointed members or their replacements are present.

(5) Procuring and Disposing Entity's shall ensure that bids are evaluated promptly after opening so that all necessary approvals are obtained within the bid validity period.

Division IV – Procurement and Disposal Units

Procurement and disposal units

12. The positions in Procurement and Disposal Units shall be filled by officers who meet the qualification requirements prescribed by relevant statutes.

Functions of the procurement disposal unit

13—(1) A Procurement and Disposal Unit shall perform the following additional functions to those in section 29(2) Act—

- (a) receive duly authorized procurement requisitions and analyze them in relation to the annual procurement plan;
- (b) publication of invitation to bid notices and distribution of bidding documents;
- (c) receive and safeguard bids; and
- (d) provide technical guidance on procurement and disposal matters to the Procuring and Disposing Entity.

PART III—PRINCIPLES OF PUBLIC PROCUREMENT

DIVISION I – Transparency

Record keeping

14. A Procuring and Disposing Entities shall maintain among others the following documentation in relation to procurement proceedings—

- (a) a brief description of goods, works or services to be procured, or of the procurement need for which the Procuring and Disposing Entity requested bids, quotations or proposals;
- (b) in procurement proceedings which limit participation on the basis of nationality or size of the enterprise, a statement of the grounds relied on by the Procuring and Disposing Entity;

- (c) in procurement proceedings involving the use of a procurement method other than open tendering or request for proposals in case of consultancy services, the statement of the grounds and circumstances on which the Procuring and Disposing Entity relied to justify the selection method used;
- (d) copy of the advertisement and/or any other solicitation document;
- (e) a summary of any request for clarifications of the pre-qualification or bidding documents, the responses as well as any modification of those documents;
- (f) record of bid opening which at a minimum shall include the names and addresses of bidders that submitted bids, late bidders and the date and time of submission of their bids and minutes of bid opening proceedings;
- (g) a summary of the evaluation and comparison of bids, including the name of the successful bidder and the proposed contract amount;
- (h) minutes of the Internal Procurement and Disposal Committee approving or rejecting the recommendations of the ad hoc evaluation team;
- (i) in case all bids were rejected or the procurement proceedings were cancelled pursuant to section 46 of the Act, a statement to that effect and the grounds thereof;
- (j) if a bid is rejected under any circumstances including improper conduct on the part of the bidder, all relevant information pertaining to the rejection shall be properly documented; and
- (k) if a successful bidder in tendering proceedings fails to enter into a procurement contract, a statement of the grounds thereof.

Disclosure

15. In disclosure of the record of the procurement proceedings, and in debriefing of bidders, and in other contexts, except when ordered to do so by a competent court and subject to the conditions of such an order, the Procuring and Disposing Entity shall not disclose information—

- (a) if its disclosure would—
 - (i) be contrary to the law;
 - (ii) impede law enforcement;

(iii) not be in the public interest;

(iv) prejudice legitimate commercial interest of the parties; or

(v) inhibit fair competition; and

(b) relating to the examination, evaluation and comparison of bids other than the summary referred to in regulation 14 (g).

Availability of record for oversight

16. A Procurement and Disposal Entity shall make available for inspection, records of procurement proceedings as well as all documents generated in planning and conducting procurement proceedings, and implementing procurement contracts, upon request by the Director General, the Auditor General, and other oversight organs authorized pursuant to any written law.

Annual register

17.—(1) Each Procuring and Disposing Entity shall prepare an annual register of the procurement proceedings that have been undertaken for every year in serial numbers.

(2) Each Procurement and Disposal Unit shall open and maintain a separate file for every procurement proceeding and all the information and documentation relating to the proceeding such as the invitation to tender, a decision of award, work take-over certificate and any other information on the method of the supplier's completion of his commitment shall be kept in the file.

Contents of a procurement file

18.—(1) A contract file kept by a Procuring and Disposal Entity shall include, at a minimum, the following documentation—

(a) contract file index;

(b) invitation to bid;

(c) invitation to apply for pre-requisition, if applicable;

(d) bidding documents;

(e) requests for clarification and responses thereto, and record of circulation of responses to all participating bidders;

(f) qualification assessment courts for each bidder whose qualification were assessed in courts of the procurement proceedings;

(g) list of pre-qualified bidders;

(h) minutes of pre-bid meeting with bidders, if applicable;

- (i) minutes of bid opening;
- (j) originals of bids;
- (k) documentation of requests for and responses to clarifications of bids;
- (l) minutes of any negotiation;
- (m) copies of notice of acceptance sent winning bidder;
- (n) copy of notices sent to unsuccessful bidders;
- (o) copy of published notice of contract award;
- (p) procurement contract;
- (q) documentation related to contract implementation, including progress reports, invoices and other documents such as inspection reports and any supporting documentation;
- (r) documentation related to change orders and contract modification;
- (s) documentation related to inspections, acceptance and receiving, including any exercise of the procuring and disposing entity's right to reject defective performance;
- (t) copies of corresponding with the supplier; and
- (u) requests to subcontract and responses thereto; evaluation reports; and the record of the procurement proceedings, as well as the documentation referred to therein.

Notice of
procurement
contract

19.—(1) In the case of procurement contracts of goods, works and services whose threshold values has been set and issued by the Director General, a Procuring and Disposing Entity shall cause a notice of the procurement contract to be published in the newspapers of national wide circulation within seven days of signing the contract.

(2) The notice referred to in paragraph (1) shall refer to—

- (a) the announcement of the procurement published in the newspapers of national wide circulation at the commencement of the procurement proceedings pursuant to section 31 (1) of the Act;
- (b) the subject matter of the procurement;

(c) the name and address of the successful bidder; and

(d) the contract price.

Publication of
award notice

20.—(1) Pursuant to section 48 of the Act, a Procuring and Disposing Entity shall publish a notice of intention to award a contract including a brief description of the goods, works or services to be procured; the name and address of the successful bidder and the amount of contract in the Gazette and at least two newspapers of wide circulation and the Authority’s website.

(2) The notice referred to in (1) shall be valid for at least fourteen days before a Procuring and Disposing Entity can finalize a contract with the successful bidder.

(3) Any aggrieved bidder may challenge the outcome of the proceedings during the period in sub-regulation (2) in accordance with sections 59 and 60 of the Act.

Publication of
contract award

21.—(1) In the case of procurement contract requiring publication of intention to award, a Procuring and Disposing Entity shall publish information pertaining to the award within seven days of contract signing in at least two newspapers of wide circulation, the Gazette and the Authority’s website.

(2) Information referred to in sub regulation (1) shall include the procurement reference number, the subject of the procurement, the name and address of the successful bidder and the contract price.

(3) Notwithstanding sub regulation (1), a Procuring and Disposing Entity shall notify, in writing, all unsuccessful bidders within seven days of entry into force of the procurement contract the name and address of the bidder that has entered into the contract and the contract price.

Information
disclosure

22.—(1) Pursuant to section 57 (2) and (3) of the Act and upon a written request from Non- Governmental Organizations, Civil Society Organizations, development partners, private individuals and other interested parties, a procuring and disposing entity shall disclose all the information relating to the construction projects.

(2) Such a non-governmental organization, civil society organization, development partner, private individuals and other interested party shall be granted access to the procurement records held by the Procuring and Disposing entity.

(3) In addition to information requested in (1) above, the Authority and any interested party shall be allowed to inspect the goods or works so delivered or performed.

(4) Notwithstanding (1) above, interested parties shall not be allowed access to proprietary and confidential information of a bidder.

Project
identification

23. A Procuring and Disposing entity shall disclose the following information to the public and interested stakeholders during project identification—

- (a) the name of the project;
- (b) the scope of the project;
- (c) location of the project;
- (d) name and address including postal and electronic addresses of a client;
- (e) sources of funds;
- (f) Sector and sub-sector in which contract is;
- (g) Socio-economic purposes of the project; and
- (h) any other relevant details of the project

Project
preparation

24. A procuring and disposing entity shall disclose the following information to the public and interested stakeholders during project preparation—

- (a) feasibility study reports;
- (b) environmental impact including the mitigation measures upon the flora, fauna, woodlands and areas of natural beauty;
- (c) related impacts on the indigenous/local settlements within the land the project is being undertaken;
- (d) the amount of budget allocated for the project and date of approval; and
- (e) Alternative implementation approaches considered.

Project
procurement

25. A procuring and disposing entity shall disclose the following information to the public and interested stakeholders during project procurement—

- (a) procuring and disposing entity;

- (b) scope of project;
- (c) procurement method used;
- (d) number of firms tendering.
- (e) bid validity and actual date of award; and
- (f) contract price;

Project
implementation

26. Subject to the standard forms which a procuring and disposing entity may be required to utilize under the Act, the following items shall be disclosed to the public—

- (a) complete name and postal and electronic addresses of the parties to the contract;
- (b) name of any party supervising the project on behalf of the procuring and disposing entity;
- (c) the status or stage of the contract whether it is at pre-commencement, active or closed;
- (d) the date of commencement and expected completion date;
- (e) the contract price;
- (f) any changes in the duration of the contract and reasons for such changes;
- (g) any changes to the price of the contract and reasons for such changes;
- (h) any unforeseen circumstances which may have delayed or prevented the parties to fulfill their obligations;
- (i) the rate at which the price of materials, labour, equipment escalated; and
- (j) Incidences and status of disputes between the parties

Project
completion

27. A procuring and disposing entity shall disclose the following information to the public and interested stakeholders during project completion—

- (a) actual completion date and cost;
- (b) cost and time overruns including possible reasons;

- (c) actual changes in scope including reasons thereof;
- (d) status of claims; and
- (e) technical and financial audit or evaluation reports.

DIVISION II – Accountability

Declaration and disclosure requirements

28.—(1) All members of the ad hoc review committee shall, prior to commencing evaluation and comparison of bids have to make a declaration to the effect that they have no relationship with bidders of the following—

- (a) a marital or direct birth relationship or any close association with a bidder participating in the procurement proceedings, including its legal practitioners or its officers;
- (b) during the last two years has been an employee or officer of a bidder participating in the procurement proceedings, or has held a financial interest in a bidder; and
- (c) is negotiating or has an arrangement concerning prospective employment in a bidder involved in the procurement proceedings.

(2) A member of the Internal Procurement and Disposal Committee, or any employee or consultant of the Procuring and Disposing Entity who in course of any procurement proceedings becomes aware that it has a relationship with a bidder a relationship which is likely to influence the outcome of the procurement proceedings, shall immediately report that fact to the head of the procuring and disposing entity.

(3) The head of the procuring and disposing entity shall upon giving the member, employee or consultant opportunity to be heard and assessing all circumstances of the relationship shall make a decision—

- (a) to remove the member, employee or consultant from procurement proceedings; and
- (b) to retain the member, employee or consultant in the procurement proceedings.

(4) Public officials and their close associates are forbidden to bid, or to participate in bids for procurement contracts with respect to procurement proceedings of the entities by which they are employed.

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Conflict of interest

29. Procurement-related activities on behalf of a procuring and disposing entity that are subject to the conflict of interest restrictions referred to in section 57 (1) (c) of the Act include the following—

- (a) procurement planning, including preparation, review or approval of specifications or a statement of work for particular procurement proceedings;
- (b) assessment of requirements to be fulfilled by a procurement action;
- (c) preparation of procurement documents for solicitation of participation in procurement proceedings;
- (d) opening, evaluation and comparison of bids, proposals, offers or quotations;
- (e) conduct of technical discussions of negotiations;
- (f) selection or approval of selection of bidder; and
- (g) administration of the procurement contract.

Post-employment restrictions on procurement professionals

30.—(1) Individuals who served as procurement professionals or who exercised some other authority referred to in regulation 21 with respect to a procurement shall not—

- (a) participate in any manner, as officer, employee, agent or representative of a supplier, in any negotiations or technical discussions leading to the award, modification, or extension of a contract for such procurement; or
- (b) participate personally on behalf of a supplier in the performance of such contract.

(2) The restriction referred to in paragraph (1) shall remain in force for the duration for delivery of goods and services under the procurement proceedings.

Contingent fee arrangements

31.—(1) In addition to activities prohibited under section 57 of the Act, a person, including former public employees, shall not be retained on a contingent fee basis for the purpose of influencing the selection process in procurement proceedings, except when that person is acting as a *bona fide* commercial selling agent for purpose of securing a business.

(2) Bidding documents shall require bidders to disclose any contingent fee arrangements entered into for the purposes of securing a procurement contract,

and such information shall be made a part of the record of the procurement proceedings.

Conspicuous notice of prohibitions

32. A procuring and disposal entity shall put a notice conspicuously in the bidding and contract documents that bidders are not permitted to—

(a) enter into contingent fee arrangements; and

(b) directly or indirectly offer, give or agree to give inducement of the type referred to in section 55 (1) (a) of the Act,

and that rejection of the bid, offer or quotation results from a violation of the rule.

Prohibition of solicitation of improper inducement

33.—(1) A public official shall not engage in corrupt or fraudulent practices including soliciting or receiving any improper inducement in the procurement process.

(2) A public official who is offered an inducement in contravention of section 55 (1) (a) of the Act shall report such an offer to the head of the Procuring and Disposing Entity, to the Director General and to relevant law enforcement authorities.

Prohibition of contract award to a bidder affiliated with a consultant

34.—(1) A procuring and disposing entity shall not accept a bid or sign a procurement contract—

(a) with a bidder associated as a parent or subsidiary company or branch; or

(b) a consultant who is responsible for preparing the specifications or bidding documents for the procurement contract or supervising the execution of the procurement contract.

(2) This section shall not apply to the various firms including consultants, contractors or suppliers, which together are performing the supplier's obligation under a turnkey or a design and build contract.

Confidentiality of procurement information

35.—(1) Subject to applicable oversight, auditing or other laws, or to the order of a competent court, a public official shall not disclose to any third party, whether for personal gain or for any other motive, confidential or proprietary commercial information obtained by virtue of their involvement in, or contact with officials involved in, procurement proceedings or the planning of a procurement.

(2) All information relating to the examination, clarification, evaluation, comparison of bids, and recommendations and approvals made thereof shall not be disclosed to bidders or to any other person not involved officially in the

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examination, evaluation or comparison of the bids, except as provided for under regulation 13.

(3) The requirement of confidentiality, imposed on procuring and disposing entities by section 34 (1) of the Act also extends to agents of these entities.

Dissemination of applicable conflict of interest and conduct rules to public employees

36. The controlling officer or head of procuring and disposing Entity shall ensure that every employee is provided with a copy of the Act and these Regulations specifically the provisions dealing with conflicts of interest, including specific notice of the prohibitions and requirements set forth in section 57 (1) of the Act and in Part III, Division II of these Regulations.

Remedies against breach of conduct standards by public officials

37.—(1) In addition to any other applicable civil and administrative remedies, and sanctions under the penal law, the Director General may recommend to the relevant authorities the imposition of one or more of the following sanctions for breach of ethical standards for public officials involved in procurement—

- (a) written warnings or reprimands;
- (b) suspension or interdiction with or without pay for specified periods of time;
- (c) withdrawal of procurement professional membership; and
- (d) termination of employment.

(2) All procedures under this regulation shall be in accordance with due process requirements and existing law including notice and opportunity for a hearing prior to imposition of any suspension or interdiction or other sanction.

Reporting of violations by procuring and disposing entities
Cap. 37:02

38.—(1) The Director General shall report violations of these Regulations which have financial implications to the Secretary to Treasury who may, in accordance with his powers as provided by the Public Finance Management Act, take appropriate action on the procuring and disposing entity that does not comply with applicable procedures.

(2) Where any misconduct involving an officer in a procuring and disposing entity is criminal in nature, the Director General shall, in liaison with the controlling officer, report the matter to the Secretary to the Treasury, the Auditor General and the relevant law enforcement agencies.

(3) In the event of official misconduct, or breach of official duties, the Director General shall recommend possible disciplinary or other administrative action, civil or criminal action to the relevant authorities.

DIVISION III — Fairness, Economy and Efficiency

Principles of non-discrimination

39.—(1) Pursuant to section 30 of the Act, a bidder shall not be excluded from participating in public procurement on the basis of nationality, race, religion, gender or any other criteria related to qualification, except under guidelines made under these regulations or by any other competent authority.

(2) Notwithstanding sub regulation (1), a Procuring and Disposing Entity may limit participation in a procurement proceeding by providing justification and obtaining prior written approval of the Authority before publishing an invitation for bids.

Uniformity of bidding documents

40.—(1) Bidding documents shall contain the same information and be made available to all prospective bidders who fulfill participation requirements.

(2) A procuring and disposing entity shall communicate all clarifications or amendments on bidding documents to all the participating bidders.

(3) Criteria to be used in evaluating the bids shall be pre-disclosed in the bidding documents, and a Procuring and Disposing Entity shall use these criteria consistently during the actual evaluation of submitted the bids.

Economy and efficiency

41. Pursuant to section 30 of the Act, Procuring and Disposing Entities shall observe the principles of economy and efficiency through—

- (a) strict adherence to procurement plans;
- (b) use of modern information and communications technology in public procurement;
- (c) use of non-monetary securities, promoting community participation in public procurement proceedings; and
- (d) at all times awarding the contract to the lowest evaluated bidder.

PART IV – PROCUREMENT METHODS

Division I - General Provisions

Notice of procurement method to be used

42. A Procuring and Disposing Entity shall include in the invitation to tender or application for pre-qualification, or in any other document used to solicit an offer, proposal or quotation, an indication of the procurement method being used in the procurement proceedings.

Clarification and notice of procurement method

43.—A bidder may request a clarification of the bidding documents from the Procuring and Disposing Entity, pursuant to section 41(4) of the Act and the Procuring and Disposing Entity shall respond to such a request at least fourteen days prior to the deadline for submission of bids.

(2) The Procuring and Disposing Entity shall respond to a request under sub regulation (1) so as to enable the bidder to make a timely submission of its bid and shall, without identifying the source of the request, communicate the clarification to all bidders to which the Procuring and Disposing Entity has provided the bidding documents.

(3) At any time prior to the deadline for submission of bids, the Procuring and Disposing Entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a bidder, modify the bidding documents by issuing an addendum, and the addendum shall be communicated promptly to all bidders to which the Procuring and Disposing Entity has provided the bidding documents and shall be binding on those bidders.

Bid security

44. A bidder shall furnish a Procuring and Disposing Entity with a bid security in the amount and currency specified in the invitation to bid:

Provided that for national competitive bidding, procuring and disposing entity shall ensure that the bidder submits a bid securing declaration in lieu of the bid security.

45.—(1) Notwithstanding section 42 (5) of the Act, a Procuring and Disposing Entity may extend the deadline for submission of bids through a written notice which shall be issued promptly to all those that have obtained a bidding document.

(2) The extension of the deadline for submission of bids mentioned in sub regulation (1), may be allowed on the following grounds—

- (a) clarification or modification of the bidding documents;
- (b) late issuance of minutes of a pre-bid conference or a site visit; or
- (c) *force majeure*.

Receipt and security of bids

46.—(1) A Procuring and Disposing Entity shall ensure that all bids it receives are kept in a secure manner that does not permit the bids to be opened or viewed.

(2) For the purpose of sub-regulation (1), the Procuring and Disposing Entity shall maintain a secure tender box into which bidders may deposit their bids:

Provided that where size of the offer envelopes make it impossible to place them in the box, they shall be handed over to the Internal Procurement and

Disposal Committee's secretary, who shall ensure that the bids are kept in a safe, in a secure area and manner, and handed over to the Internal Procurement and Disposal Committee at the time of bid opening.

(3) In addition to direct deposit in the tender box, bids may be submitted by registered mail, courier or any other means that may be specified in the bidding documents and bids received in such a manner shall be promptly placed in the tender box.

(4) Any sample bids that are submitted shall be handled in a confidential and secure manner that does not lead to the disclosure of their contents and characteristics prior to the opening of bids.

Rejection of late bids

47.—(1) A bid received by a Procuring and Disposing Entity after the deadline for the submission of bids shall not be opened and shall be returned to the bidder that submitted it.

(2) The date and time of arrival of a late bid shall be noted in the record of the procurement proceedings.

Bid validity period

48.—(1) A Procuring and Disposing Entity shall set a validity period for Bidding documents that is of a sufficient length to enable the Procuring and Disposing Entity to complete the evaluation and comparison of bids and to obtain all the necessary approvals so that the procurement contract can be awarded within that period.

(2) If, prior to the expiry of the validity period of bids, the Procuring and Disposing Entity requests bidders to extend the validity period of their bids, it shall address such a request to all the bidders.

(3) A refusal to extend the bid-validity period shall not result in forfeiture of the bid security.

(4) Extension of the bid-validity period shall, however, be subject to extension of the bid security if security was required in the first place and without such an extension of the bid security, a bid security shall be deemed not extended.

Evaluation of bids in different currency

49. When bid prices are expressed in more than one currency, the bid prices of all bids shall be converted to the same currency, and according to the rate specified in the bidding documents, for the purpose of evaluating and comparing those bids.

Prompt payment discount units

50. A prompt payment discount included in a bid shall become a term of the procurement contract if that bid is accepted, and shall be utilized by the Procuring

and Disposing Entity if payment is made in accordance with the terms of the discount:

Provided that the prompt payment discount shall not be considered in the evaluation and comparison of bids.

Unrealistically
low bids

51.—(1) If, for a given contract, bids appear to be unrealistically low in relation to the goods, works or services, a Procuring and Disposing Entity shall, before it rejects those bids, request in writing, details of the constituent elements of the bid which it considers relevant and shall verify, after due hearing of the parties, those constituent elements taking account of the explanations received.

(2) The Procuring and Disposing Entity shall take into consideration explanations relating to—

- (a) the economics of the manufacturing process, of the services provided or of the construction methods;
- (b) the technical solutions chosen and the exceptionally favorable conditions available to the bidder for the supply of the goods or services, or the execution of the work; and
- (c) the originality of the goods, services or works proposed by the bidder.

Rejection of
bids

52. A Procuring and Disposing Entity shall not accept a bid—

- (a) if the bidder that submitted the bid is not qualified, including bidders that are debarred or suspended;
- (b) if the bidder submits an alternative bid contrary to the provisions of the bidding document;
- (c) if the bidder that submitted the bid does not accept a correction of an arithmetical error made pursuant to Regulation 134;
- (d) if the bid is not substantially responsive to the requirements of the bidding documents;
- (e) for which a bid security or bid securing declaration was not provided, if such form of security was required by the bidding documents; or
- (f) in the circumstances referred to in section 55 (1) (a) of the Act.

Notice required
for rejection of
all bids

53. A Procuring and Disposing Entity shall give notice of the rejection of all bids, or of cancellation of the procurement proceedings, no later than five working days of making such a decision to all bidders that submitted bids, and the notice

shall state the grounds for the rejection of the bids, or for the cancellation of the procurement proceedings.

Return of samples

54.—(1) Any required samples that have not been destroyed in testing shall be returned to the respective bidders at their written request and expense, and in all cases, the bidder loses the right of claim for the return of samples sixty days following the date of notification of contract award.

(2) The samples approved in relation to the successful bid shall, after being signed by the Internal Procurement and Disposal Committee, be kept by the Procuring and Disposing Entity for the purpose of comparison with the delivered goods.

Division II – Procedures for Procurement of Consultants’ Services

Preparation of shortlist

55.—(1) A Procuring and Disposing Entity shall publish a notice seeking expressions of interest to provide consultancy services, for purposes of creating a shortlist in the following cases—

- (a) when the procuring and disposing entity does not have information in its possession concerning a sufficient number of consultants in order to provide effective competition for the procurement contract; and
- (b) when the assignment for which the consultant is sought is complex or its estimated value exceeds the threshold set by the Authority.

(2) The information requested pursuant to sub-regulation (1) shall be the minimum required to make a judgement on the consultant’s suitability, and not be so complex as to discourage consultants from expressing interest.

(3) The notice in sub-regulation (1) shall include the following information—

- (a) related to the project—
 - (i) identification and general description of the assignment or project in question, including any project identification codes;
 - (ii) date of issuance of the notice, and closing date for submission of expressions of interest;
 - (iii) the funding source;
 - (iv) location where the services are to be performed;
 - (v) the projected time period for implementation and completion of the assignment;

- (vi) the qualification criteria to be met by shortlisted consultants;
 - (vii) an invitation to interested consultants to submit expressions of interest;
- (b) relating to capability and experience of consulting firms—
- (i) a profile of the company, its organization and staffing; and in the case of associations between two or more firms, for the name, address and profile of the participating firm(s), and the lead firm must be clearly identified;
 - (ii) details of experience or similar assignments undertaken in the previous five years, including their locations; focus on the firm's role in similar assignments in the region or elsewhere;
 - (iii) curriculum vitae of staff who could be available to work on the assignment;
- (c) relating to individual consultants, the information referred to in subparagraph (b) (ii) and curriculum vitae;
- (d) a statement that shortlisted consultants, in the case of firms, will be invited to submit proposals; and
- (e) the number of copies of the requested information to be submitted, and the address to which submission is to be made and from which additional information may be obtained.

(4) The Procuring and Disposing Entity shall allow at least fourteen days from the date of first publication of the notice, to the closing date for receipt of expressions of interest;

Provided that complex projects the period may be longer but not more than thirty days.

(5) Bidders that expressed interest, as well as any member of the general public that specifically so requests, shall be provided with information on the final shortlist of firms.

56. A Procuring and Disposing Entity shall provide a request for proposals document to a shortlist of consultants containing at least three, but not more than six consultants.

Issuance of
request for
proposals

57.—(1) The request for proposals for consultancy services in regulation 56 shall set the minimum quality rating that proposals must attain in order to be considered for award for consultancy services and shall include—

- (a) the terms of reference, including the following information—
 - (i) the objectives, goals, and scope of the assignment and providing background information (including a list of existing relevant studies and basic data) to facilitate the consultant’s preparation of their proposals;
 - (ii) outline of any transfer of knowledge or training that is required, including details of number of staff to be trained;
 - (iii) the services and surveys necessary to carry out the assignment and the expected outputs such as reports, data, maps, surveys;
 - (iv) the location where the services are to be provided and the desired or required time, if any, when the services are to be provided, and the anticipated date on which a selected bidder shall be expected to commence the assignment; and
 - (v) details of the services, facilities, equipment, and staff to be provided by the procuring and disposing entity;
- (b) an indication that bidders may propose their own methodology and staffing and may comment on the terms of reference in their proposals;
- (c) details of the selection procedure to be followed, including—
 - (i) in the case of a quality and cost-based selection procedure, a description of the two-stage process;
 - (ii) where applicable, the details of the financial evaluation, including the relative weights for quality and cost; the weight for cost shall normally be in the range of ten per cent to twenty per cent, but in no case shall exceed 30 per cent out of a total score of 100;
 - (iii) the minimum pass score for quality; and
 - (iv) where applicable, the details on the public opening of financial proposals.
- (d) an estimate of the level of key staff inputs (in staff-months) required for the consultants;

- (e) requirements that bidders identify the proposed key personnel that will carry out the assignment and that bidders provide the curriculum vitae of each proposed key person, which must be accurate, complete, and signed by an authorized official of the bidder and the individual proposed;
- (f) an indication of minimum experience, academic achievement, expected of key staff;
- (g) standard formats for the technical and, if applicable, financial proposals;
- (h) the manner in which the proposal shall be submitted, including, in the case of quality and cost-based selection, the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;
- (i) a request that the invited firm—
 - (i) acknowledges receipt of the request for proposals; and
 - (ii) informs the procuring and disposing entity whether or not it will be submitting a proposal;
- (j) the short list of bidders being invited to submit proposals, and whether or not associations between short-listed consultants are acceptable;
- (k) the period for which bidders' proposals shall be valid (normally 60-90 days) and during which no changes shall be made to—
 - (i) the proposed key staff and rates and, in the case of quality and cost-based selection, the total price proposed; and
 - (ii) in case of extension of the proposal validity period, the right of the consultants to maintain their proposal;
- (l) a statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, or services under the project, if in the procuring and disposing entity's judgment, such activities constitute a conflict of interest with the services provided under the assignment;
- (m) a statement indicating whether or not the consultant's contract and personnel shall be tax-free or not; and if not, what the likely tax burden will be or where this information can be obtained; and a statement

requiring that the consultant should include in its financial proposal a separate amount clearly identified to cover taxes;

(n) phasing of assignment if appropriate, and the likelihood of follow-up assignments; and

(o) any conditions for subcontracting part of the assignment.

Avoidance of conflict of interest

58.—(1) Consultants shall provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests.

(2) Consultants shall not be hired for any assignment that would, by its nature, be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the procuring and disposing entity; for example, consultants hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental impact assessment for the same project.

(3) Without limitation on the generality of the provisions of paragraphs (2) and (3), consultants shall not be hired where—

(a) a firm which has been engaged by the procuring and disposing entity to provide goods or works for a project, and any of its affiliates, shall be disqualified from providing consulting services for the same project;

(b) a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates shall be disqualified from subsequently providing goods or works or services related to the initial assignments, other than in the case when, subject to satisfactory performance of the initial assignment, it is essential for continuity that there be a continuation of the firm's earlier consulting services for the same project.

(4) This Regulation shall not apply to various firms which include consultants, contractors, or suppliers, that together are performing the supplier's obligations under a turnkey or design-and-building contract.

Choice of selection procedures

59.—(1) A procuring and disposing entity shall use one of the following procedures for selection of the winning proposal for consultancy services, in accordance with the notice provided to bidders in the request for proposals—

(a) quality and Cost-Based Selection, which takes into account both the quality and the cost aspects in selectin the winning proposal;

(b) quality-Based Selection, which focuses primarily on quality in selecting the winning proposal; and

(c) least Cost Selection, in which the contract is awarded to the lowest priced proposal among those that have attained the minimum technical score.

(2) Use of the Quality and Cost-Based Selection method shall be appropriate for the following types of assignments—

(a) complex or highly specialized assignments for which it is difficult to define precise terms of reference and the required input from that consultants, and for which the client expects the consultants to demonstrate innovation in their proposals such as country economic or sector studies, multi-sectoral feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms;

(b) assignments that have a high downstream impact and in which the objective is to have the best experts such as feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies; and

(c) assignments that can be carried out in substantially different ways, such that proposals not will be compared such as management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis.

(4) Use of the Least Cost Selection method shall be more appropriate for selection of consultants for assignments of a standard or routine nature including audits, engineering design of noncomplex works, where well-established practices and standards exist and in which contract amount is small,

(5) The procuring and disposing entity shall include in the record required under section 32 of the Act a statement of the grounds and circumstances on which it relied to justify the use of a selection procedure pursuant to this regulation.

Submission of proposals

60.—(1) In the case of Quality and Cost-Based selection—

(a) the technical and financial proposals shall be submitted at the same time, in separate sealed envelopes; and

- (b) the technical envelopes shall be opened in the first stage and the financial proposals shall remain sealed until the first stage is completed.

(2) In the case of Quality-Based Selection, bidders may be required to submit technical and financial proposals at the same time, in separate sealed envelopes or, at the option of the procuring and disposing entity, bidders may be requested to submit at the outset of the proceedings, only technical proposals.

(3) In the case of Least Cost Selection, the procuring and disposing entity shall set the deadline for submission of proposals not less than twenty one days from the date of the issuance of the request for proposals.

Evaluation and selection

61.—(1) Any award for consultancy services by a procuring and disposing entity shall be made to the bidder whose proposal best meets the needs of the procuring and disposing entity as determined in accordance with the criteria for evaluating the proposals and final selection procedures set forth in the request for proposal.

(2) A record of the evaluation of each proposal and the comparison between them shall be maintained by the procuring and disposing entity.

Evaluation of proposals in quality and cost based selection procedure

62.—The evaluation of the proposals under Quality and Cost-Based Selection shall be carried out in two stage –

- (a) the first stage of the evaluation shall concern only the quality and technical aspects of proposals; and evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded; and
- (b) financial proposals shall be opened after the evaluation of technical proposals and the evaluation shall be carried out in full conformity with the provisions of the request for proposals.

Criteria for evaluation of quality of a proposal

63.—(1) Each technical proposal shall be evaluated using the following criteria—

- (a) the bidder’s relevant experience for the assignment;
- (b) the quality of the methodology proposed;
- (c) the qualifications of the key staff proposed;
- (d) transfer of knowledge; and
- (e) the extent of participation by nationals among key staff in the performance of the assignment.

(2) Each of the criteria shall be assigned a weight, and the following weights shall be formulated taking into account the following general guidelines—

Consultant's specific experience	0 to 10 per cent of score
Methodology	20 to 50 per cent of score
Key personnel	30 to 60 per cent of score
Transfer of knowledge ..	0 to 10 per cent of score
Participation by nationals: ..	0 to 10 per cent of score
TOTAL	100 per cent of score

Commented [K7]: To be in schedule – Weighting criteria

(3) The criteria and sub-criteria referred to in this regulation are indicative only and shall be formulated taking into account the specific circumstances of each particular procurement of consultants' services.

(4) The criteria may be adjusted and shall be disclosed in the request for proposals.

(5) Use of sub-criteria of the general criteria in this regulation should be limited to what is essential to conduct the evaluation.

Relative weighting of criteria

64.—(1) The weight given to experience can be relatively modest in relation to other requirement, since this criterion is already been taken into account when shortlisting the bidder.

(2) More weight shall be given to the methodology in the case of more complex assignments such as multidisciplinary feasibility or management studies.

(3) More weight shall be assigned to the qualifications and experience of key personnel if the proposed assignment is complex.

(4) When the assignment depends critically on the performance of key staff such as a project manager in a large team of specified individuals, it may be desirable to conduct interviews.

Sub-criteria for evaluation of key personnel

65. The key personnel of bidders shall be rated according to the following sub-criteria, as relevant to the task—

- (a) general qualifications, including general education and training, length of experience, positions held, time with the consulting firm as staff, and experience in developing countries;

- (b) adequacy for the assignment, including education, training, and experience in the specific sector, field, subject, relevant to the particular assignment; and
- (c) experience in the region, knowledge of the local language, culture, administrative system, government organization.

Quality rating of proposals

66. After conducting the technical and quality evaluation of the proposals in accordance with criteria other than price, and their relative weight as set out in the request for proposals, a procuring and disposing entity shall rate each proposal and identify those proposals that meet or surpass the minimum quality and technical threshold set forth in the request for proposals.

Rejection of unresponsive proposals

67. Following evaluation and rating of proposals, a procuring and disposing entity shall reject proposals that are unresponsive to important aspects of the terms of reference or that fail to achieve the minimum threshold score as specified in the request for proposals.

Notification of results of technical evaluation

68.—(1) After the evaluation of quality is completed, a procuring and disposing entity shall notify those bidders whose proposals did not attain the minimum qualifying score or were considered non-responsive, indicating that their financial proposals will be returned unopened after completion of the selection process.

(2) The procuring and disposing entity shall notify the bidders that have secured the minimum qualifying mark and indicate the date and time set for opening financial proposals and the opening date shall in any case not less than fourteen days after the notification date.

Technical evaluation report

69.—(1) A procuring and disposing entity shall prepare an evaluation report on the quality of the proposals, and the report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposal.

(2) All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit, subject to the requirement of regulation 15.

Opening on financial proposals

70.—(1) Financial proposals shall be opened publicly in the presence of representatives of the bidders who opt to attend.

(2) The name of the bidder, the quality scores, and proposed prices shall be read aloud and recorded when the financial proposals are opened.

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(3) The procuring and disposing entity shall prepare the minutes of the public opening, which shall form part of the record of the procurement proceedings.

Evaluation of financial proposal **71.**—(1) The proposal with the lowest cost may be given a financial score of one hundred and other proposals given financial scores that are inversely proportional to their prices; alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost; and the methodology to be used shall be described in the request for proposals.

(2) For the purpose of this regulation, “cost” shall include Malawian taxes, unless otherwise specified, and shall also include other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses.

Selection of successful proposal **72.** Following the evaluation of quality and the financial proposals, the successful proposal shall be determined on the basis of the selection procedure indicated in the request for proposals.

Combined technical and financial evaluation **73.**—(1) Where the successful proposal is selected on the basis of a combined evaluation of quality and price aspects, the total score shall be obtained by weighting the quality and financial scores and adding them.

(3) The weight for the cost shall be chosen taking into account the complexity of the assignment and the relative importance of quality, and level at which the minimum quality threshold is set in accordance with regulation 55(2).

(4) The weight for the cost shall normally be in the range of ten to twenty per cent, but in no case shall exceed thirty per cent out of a total score of one hundred.

(5) Only the weighting disclosed to bidders in the request for proposals shall be used.

Negotiations and award of contract **74.**—(1) A procuring and disposing entity shall invite a bidder whose proposal is determined to be successful for technical discussions aimed at finalization of a contract.

(2) The negotiations may include discussions of the terms of reference, the methodology, staffing, the procuring and disposing entity’s inputs, and special conditions of the contract:

Provided that there shall not be made any substantially alterations the original terms of reference or the terms of the contract.

(3) Financial negotiations may include clarification of the consultants' tax liability, if any, and how this tax liability has been or would be reflected in the contract.

(4) Proposed unit rates for staff-months and reimbursable shall not be negotiated, so as not to alter the cost structure that resulted in the ranking of the proposals which were already taken into account as a factor of selection in the cost of the proposal unless there are exceptional reasons including the fact that staff rates offered are much higher than rates typically charged by consultants for similar contracts.

(5) Major reductions in work inputs shall not be made solely to meet the budget.

(6) The final terms of reference and the agreed methodology shall form part of the contract.

(7) The selected bidder shall not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objective of the assignment and where this is not the case, and if it is established that key staff were offered in the proposal without confirming their availability, the bidder may be disqualified and the process continued with the next ranked bidder.

(8) The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

Failure to reach agreement with successful bidder

75.—(1) If discussions with the selected bidder fail to result in an acceptable contract, the procuring and disposing entity shall, by letter addressed to that bidder, terminate the discussions and invite the next ranked bidder for discussions.

(2) The bidder with whom discussions are being terminated shall be informed of the reasons for the termination and once discussions are commenced with the next ranked bidder, the procuring and disposing entity shall not reopen the earlier discussions.

(3) After discussions are successfully completed, the procuring and disposing entity shall promptly issue an intention to award notice, where applicable, otherwise it shall promptly notify other bidders on the short list that they were unsuccessful.

Rejections of all proposals

76. Without prejudice to the right of the procuring and disposing entity to cancel the procurement proceedings in accordance with section 46 of the Act, the

procuring and disposing entity may reject all proposals only if all proposals are non-responsive and unsuitable either—

- (a) because they present major deficiencies in complying with the terms of reference; or
- (b) because they involve costs substantially higher than the original estimate.

Selection based on quality

77.—(1) Where a procuring and disposing entity uses quality based selection (QBS), it shall engage in negotiations with bidders in accordance with the following procedures—

- (a) establish a minimum quality score in;
- (b) invite for negotiations on the price of its proposal the bidder that has attained the highest rating;
- (c) inform the bidders that attained ratings above the threshold that they may be considered for negotiation if the negotiations with the bidders with better ratings do not result in a procurement contract;
- (d) inform the other bidders that they did not attain the required threshold; and
- (e) where it becomes apparent to the procuring and disposing entity that the negotiations with the bidder invited pursuant to paragraph (b) will not result in a procurement contract, inform that bidder that it is terminating the negotiations,
- (f) the procuring and disposing entity shall then invite for negotiations the bidder that attained the next best rating; if the negotiations with that bidder do not result in a procurement contract; and
- (g) the procuring and disposing entity shall invite the other bidders for negotiations on the basis of their ranking until it arrives at a procurement contract or rejects all remaining proposals.

(2) The selection process under paragraph (1) shall be identified to that applied in the quality and cost-based selection procedure, except as otherwise specified in this regulation:

Provided that where consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in accordance with regulation 96, to ensure that the price envelope of only the selected proposals is opened and the rest returned unopened, after the negotiations are successfully concluded.

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Selection based on least cost

78. Where, in accordance with the request for proposals, the Least-Cost Selection method is to be used for determining the successful proposals—

- (a) the envelopes containing the technical proposals shall be opened and evaluated;
- (b) the proposals meeting the minimum technical score identified;
- (c) the envelopes containing the financial proposals of the bidders that have attained the minimum technical score shall be opened;
- (d) and the bidder whose financial proposal is the lowest shall be invited for technical and cost clarifications and negotiations with a view to conclusion of a procurement contract.

Design contents

79.—(1) In appropriate cases, such as the procurement of architectural designs or urban planning designs, the procuring and disposing entity may conduct a design contest for the purposes of selecting a design.

(2) The procedures to be followed in conducting a design contest are set forth in Third Schedule hereto.

Division IV – Request for Quotations Procedures

Conditions for use of request for quotations procedure

80.—(1) In procurement of goods, works, and routine services, whose estimated threshold is set and issued by the Authority, from time to time, the request for quotations procedure referred to in section 37 (8) of the Act may be applied.

- (2) The request for quotation shall indicate—
 - (a) specific aspects of any special requirements, such as installation;
 - (b) all the required components of the price, including the required shipping terms;
 - (c) that the quoted rates are to remain applicable for the duration of the contract;
 - (d) the required validity period of the quotation;
 - (e) where more than one type of item is being procured, whether a quotation referring to more than one item is to be evaluated for all the items together, or separately for each item;

(f) that, if applicable, the estimated cost of inland transportation and insurance, if any, will be added to the bid price;

(g) that for the purposes of price comparison, prices will be converted to local currency at the exchange rate prevailing on the date of opening of quotations;

(h) the deadline for submission of quotations;

(i) the requirement that the quotations should be properly signed.

Quotations
acceptance
procedure

81.—(1) A procuring and disposing entity's purchase order constitutes an acceptance of the winning bidder's quotation and forms a legally binding contract.

(2) The successful bidder shall confirm the purchase order within seven days of receipt of the order.

(3) Any terms or conditions in the bidder's confirmation of a purchase order which change or alter the terms of the order shall be valid only if approved in writing by the procuring and disposing entity.

Division V – Single-source Procurement

Requirements
for due
diligence

82.—(1) Prior to awarding the procurement contract on single-source procurement basis, the procuring and disposing entity shall ascertain that—

(a) the supplier possesses the qualifications required to perform the procurement contract;

(b) that the quality and technical aspects of the supplier's offer meet the procuring and disposing entity's requirements;

(c) the price to be paid by the procuring and disposing entity is reasonable.

(2) When single-source procurement is used, the procuring and disposing entity shall conduct price analysis so as to ensure that the price to be paid is fair and reasonable, and the analysis shall—

(a) to the extent practicable, be based on market price supported by market research, including a comparison of the proposed price with satisfactory prices paid in previous procurement, prices for similar items, and independent cost estimates;

(b) be performed with respect to prices appearing in catalogues, advertisements and price lists.

Monetary threshold for low value single source

83.—(1) The monetary limit on the use of single source procurement on the grounds of very low value, referred to in section 37 (9) (a) of the Act shall be per transaction, and shall be set and issued by the Authority from time to time.

(2) The Authority may establish a threshold on single source procurement pursuant to section 37 (9) (a) of the Act.

(3) Low-value items procured on a recurrent basis, or items that are likely to be required on short notice shall, to the extent feasible, be procured through framework agreements awarded on a competitive basis in accordance with the Act, these Regulations and Guidelines of Framework Agreements issued by the Authority.

Procurement of functionally equivalent goods

84. Single-source procurement may not be justified on the grounds that only one bidder has the capacity or the exclusive right to manufacture or deliver goods, works or services if functionally equivalent goods, works or services from other bidders would meet the needs of the procuring and disposing entity.

Single source procurement on the grounds of emergency

85.—(1) Emergency procurement shall be conducted by the Procuring and Disposing Entity in accordance with procedures set forth in the Act and these Regulations.

(2) In the case of Single-source Procurement on the grounds of emergency referred to in section 37 (9) (c) of the Act, the procuring and disposing entity shall limit the procurement to the quantity and duration needed to deal with the emergency circumstances.

(3) Procurement on the grounds of emergency does not relieve the procuring and disposing entity from seeking competition to the extent practicable, negotiating a fair and reasonable price and documenting the procurement in accordance with section 32 of the Act.

Documentation of single source procurement

86.—(1) Where a procuring entity engages in single-source procurement on the grounds referred to in section 37 (9) of the Act, it shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery, and may negotiate with the sole supplier.

(2) Procurement carried out on a single source basis shall be embodied in a written contract or purchase order.

(3) Notwithstanding sub regulation (1), in case of single-source procurement on the grounds of emergency, an initial oral solicitation may be utilized when the processing and use of a written solicitation would cause an unacceptable delay in the procurement process to the detriment of the public interest, but the oral solicitation shall be followed by a written confirmation in accordance with paragraph (1) within forty-eight hours.

(4) In case of single-source procurement on grounds of emergency, in accordance with section 37 (9)(c) of the Act, the procuring and disposing entity may enter into a “letter” contract, namely, a written preliminary contractual instrument, when the public interest demands that the fulfillment of a procurement requirement starts immediately and negotiating a definitive contract is not possible in sufficient time to meet this demand.

(5) A Procuring and Disposing Entity shall comply with section 32 of the Act and these Regulations with respect to the preparation of a record of the procurement proceedings, to the extent applicable.

(6) The procuring and disposing entity shall, within seventy two hours, place in the contract file a written justification for conducting single-source procurement on grounds of emergency including the following information—

- (a) the specific threat to the public health, safety or welfare;
- (b) the unforeseen nature of the threat;
- (c) the basis for the need for immediate action, as opposed to fulfilling the requirement through normal procedures; and
- (d) the steps taken to obtain competition on the procurement even with the emergency situation in existence.

Publication of
prior notice

87.—(1) A procuring and disposing entity shall publish in the Gazette and on the Authority’s website when the procuring and disposing entity intends to carry out a single-source procurement proceedings pursuant to section 37 (9) (b) of the Act, and the notice shall describe the nature of the procurement and identify the supplier to whom it proposes to award the procurement contract and shall state the grounds for the proposed single-source procurement.

(2) The requirement in paragraph (1) shall not apply to single-source procurement conducted on the grounds of emergency, in accordance with section 37 (9) (c) of the Act.

Division VI - Procedure for Community Participation Method

Procurement by
means of
community
participation

88.— Pursuant to section 61(3) of the Act, where, in the interest of project sustainability or to achieve economy, quality or certain specific social objectives, it is desirable in selected project components to call for participation of local communities in the delivery of goods, including non-consulting services, and simple infrastructure projects, subject to the guidelines to be issued by the Authority, procuring and disposing entity shall request the Authority for an approval to use community participation method .

Division VII - Procedure for Restricted tendering
A – Restricted tendering

Procedures for
restricting
tendering

89.—(1) Where the restricted form of tendering is to be utilized on the grounds referred to in section 37 (3) (a) of the Act, a procuring and disposing entity may publish in the Gazette, local press and the Authority’s website, and at the discretion of the procuring and disposing entity, in internationally recognized papers in the English language and in other media of wide international circulation, including the internet, a notice on the upcoming restricted tendering proceeding.

(2) The notice referred to paragraph (1) shall indicate the ground for the limited solicitation, identify the suppliers intended to be invited, and invite any interested suppliers to their interest in participating, and if all suppliers that respond to the notice will not necessarily be permitted to submit bids, the notice shall state the criteria to be utilized for establishing the short list, and the information to be provided by bidders to demonstrate that they meet those criteria.

(3) Restricted tendering shall not be utilized on the grounds referred to in section 37 (3) (b) of the Act, when the estimated value of the procurement exceeds the threshold set and issued by the Authority.

(4) When the limited form of tendering is utilized on the grounds referred to in section 37 (3) (b) of the Act, the procuring and disposing entity shall invite a sufficient number of suppliers, at least three, to ensure effective competition.

(5) Regulations 94 to 118 shall apply the limited tendering proceedings, except to the extent derogated from this Regulation.

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Two stage
tendering

90.—(1) Where a procuring and disposing entity uses two-stage tendering pursuant to section 37 (4) of the Act, it shall first publish a notice of invitation to bid in the Gazette, the local press and the Authority’s website.

(2) The notice referred to in paragraph (1) shall instruct the prospective bidders to submit technical offers only, including proposed improvements to the

initial technical specifications or design provided by the procuring and disposing entity.

(3) During any negotiation, which may take place in the first stage in accordance with section 37 (4)(b) of the Act, the procuring and disposing entity shall ensure equality of treatment among all suppliers; and in particular, the procuring and disposing entity shall not provide information in a discriminatory manner which may give some suppliers an advantage over others.

(4) The procuring and disposing entity may not reveal to the other participants solutions proposed or other confidential information communicated by a bidder participating in the confidential dialogue without agreement of that bidder.

(5) The procuring and disposing entity shall complete the first stage by coming up with a final solution or design after comparing the different solutions which are considered capable of meeting its needs.

(6) In the second stage, the bidding document containing the final solution shall be issued to all the bidders who participated in the first stage to guide them in the preparation of their bids, including the price.

(7) Regulations 94 to 118 shall apply to two-stage tendering proceedings, except to the extent derogated from in this regulation.

(8) Notwithstanding paragraph (7), where the procuring and disposing entity has selected a solution proposed by a particular bidder in whole, it may enter into negotiations with that bidder regarding the terms and conditions of adopting that solution without necessarily re-opening competition to all the participating bidders.

B. Open Tendering

Open tendering
for defence
related
materials

91.—(1) Open tendering shall be the default method of procurement of goods, works and non-consultancy services pursuant to section 37 (1) of the Act.

(2) The list of security and defence materials exempted from open tender proceedings are as prescribed in the Fourth Schedule hereto and shall be eligible for special treatment.

Publication of
invitation notice

92.—(1) A Procuring and Disposing Entity shall publish an invitation to tender or to apply for pre-qualification in at least two newspapers of nation-wide circulation, the authority's website and the Gazette.

(2) In the case of international competitive bidding pursuant to section 37 (5) and (6) of the Act, the publication referred to in subregulation (1) shall, in addition, be made in publications of wide international circulation, specialized trade journals, international newspapers or magazines and other appropriate media such as the internet.

(3) Every chairperson of an Internal Procurement and Disposal Committee shall, prior to the issuance of an invitation to tender of any tender, ascertain the following—

- (a) compliance with the requirements in the Act and these Regulations;
- (b) the rectification of any errors or omissions where necessary and the concerned Procurement and Disposal Unit shall do so; and
- (c) availability of a sufficient number of copies of the bidding documents.

Contents of an invitation notice

93. An invitation to tender or to pre-qualify shall contain, at a minimum, the following information—

- (a) the address of the Procuring and Disposing Entity;
- (b) the nature and quantity, and place of delivery of the goods to be supplied, the nature and location of the works to be performed, or the nature of the services to be provided and the location where the services are to be provided;
- (c) the required time for the supply of the goods or for the completion of the works or services.
- (d) the criteria and procedures to be used for evaluating the qualifications and eligibility of bidders in conformity with sections 52 and 53 of the Act;
- (e) the means of obtaining the bidding or pre-qualification documents and the place from which they may be obtained;
- (f) the price, if any, charged by the Procuring and Disposing Entity for the bidding or pre-qualification documents.
- (g) the currency and means of payment for the bidding or pre-qualification documents;
- (h) the language or languages in which the bidding or pre-qualification documents are available;

- (i) the place and deadline for the submission of bids or applications to pre-qualify; and
- (j) in the case of works contracts under ICB, the requirement that foreign bidders must comply with the NCI Joint venture/sub-contracting and consultancy requirements for contractors and consultants.

Preparation of bidding documents/contents of bidding documents

94.—(1) A Procurement and Disposal Unit shall, in consultation with the requisitioning unit, prepare bidding documents using standard bidding documents issued by the Authority.

(2) The bidding documents shall include, at a minimum, the following information—

- (a) instructions for preparing bids, including—
 - (i) any descriptive literature bidders are required to submit with their bids;
 - (ii) any requirement that bidders provide samples, and the number and type of such samples;
 - (iii) any requirement that bidders view samples to which goods must conform, and the circumstances under which such requirements would be waived;
 - (iv) any requirement that bidders submit a table of spare parts recommended by the manufacturer along with the manufacturer's stock number for each item, the quantity, unit price, and an indication of any escalation of prices for spare parts after the contractually guaranteed period for spare parts prices; and
 - (v) any requirement that the bidder should state in the bid the country of origin of the goods, the name of the manufacturer, the brand name, model and catalogue number;
- (b) the criteria and procedures for qualifying the bidders in conformity with section 54 (2) of the Act and Part VI of these Regulations;
- (c) the requirements as to documentary evidence or other information that must be submitted by bidders to demonstrate their qualifications;
- (d) the nature and required technical and quality characteristics of the goods, works or services to be procured, including—

- (i) technical specifications, plans, drawings and designs as appropriate; and the quantity of the goods;
 - (ii) any incidental services to be performed;
 - (iii) the location where the works are to be executed or the services are to be provided, the required time the goods are to be delivered, the works are to be executed or the services are to be performed;
 - (iv) any warranty and maintenance requirements;
 - (v) the tests, standards and methods to be employed to judge the conformity of the goods or works with technical specifications provided in the solicitation documents; and
 - (vi) any requirement that goods, materials, spare parts should be brand new and original;
- (e) the criteria to be used by the Procuring and Disposing Entity in determining the successful bidder, including any margin of preference and any criteria other than price;
- (f) the terms and conditions of the procurement contract and the contract forms to be signed by the parties;
- (g) if alternatives to the characteristics of the goods, works, services, contractual terms and conditions or other requirements set forth in the bidding documents are permitted, a statement to that effect, and a description of the manner in which alternative bids are to be evaluated and compared;
- (h) if bidders are permitted to submit bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which bids may be submitted;
- (i) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, works or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes; and whether the prices are fixed or adjustable and, if so, the formula thereof;

- (j) the currency or currencies in which the bid price is to be formulated and expressed; in respect of local bids, the price shall be expressed in Malawi Kwacha and any convertible currency for international bids;
- (k) the language or languages in which bids are to be prepared;
- (l) any requirements of the procuring and disposal entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of any bid security to be provided by bidders submitting bids; and any such requirements for any security for the performance of the procurement contract to be provided by the bidder that enters into the procurement contract, including securities such as labour and materials bonds;
- (m) when a bid security is required, an indication that withdrawal or modification of the bid following the deadline for submission of bids will result in forfeiture of the bid security amount; and that a bidder may withdraw its bid prior to the deadline for the submission of bids without forfeiting its bid security;
- (n) A bid security issued by a bank which does not have an office in Malawi will be considered valid if it acceptable to the Reserve Bank of Malawi;
- (o) in case a bid securing declaration (non-monetary bid security) is required, an undertaking that the bidder may be debarred for up to sixty months if the bidder withdraws from the process any time after opening of bids or fails to sign a contract if awarded;
- (p) the manner, place and deadline for the submission of bids, in conformity with section 42(5) of the Act;
- (q) the means by which, pursuant to section 41 (4) of the Act , bidders may seek clarifications of the bidding documents, and a statement as to whether the procuring and disposing entity intends, at this stage, to convene a meeting of bidders;
- (r) the period of time during which bids shall be valid;
- (s) the place, date and time for the opening of bids, in conformity with section 43 of the Act;
- (t) the procedures to be followed for opening and examining bids;

- (u) the currency that will be used for the purpose of evaluating and comparing bids and either the exchange rate that will be used for the conversion of bids into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (v) the name, functional title and address of one or more officers or employees of the procuring and disposing entity who are authorized to communicate directly with and to receive communications directly from bidders in connection with the procurement proceedings, without the intervention of an intermediary;
- (w) any commitments such as the transfer of technology to be made by the bidder under the procurement contract;
- (x) notice of the right provided under section 59 and 60 of the Act to seek review of an unlawful act or decision of, or procedure followed by the procuring and disposing entity in relation to the procurement proceedings;
- (y) a statement to the effect that the procuring and disposing entity reserves the right to reject all bids pursuant to section 46 of the Act;
- (z) any formalities that will be required once a bid has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract; and
- (aa) any other requirements established by the procuring and disposing entity in conformity with the Act and these Regulations relating to the preparation and submission of bids and to other aspects of the procurement proceedings.

PART V – PROCUREMENT PLANNING

Division I – Prerequisite Steps for Initiating Procurement Proceedings

Annual planning for budget preparation purposes

95. Prior to the determination of annual budgetary allocations, a Procuring and Disposing Entity shall provide to the Ministry of Finance, or in the case of local authorities, to the National Local Government Finance Committee, a general plan describing the extent, timing and purposes of projected procurement requirements for the budgetary period.

Apportioning of procurement

96.—(1) Without prejudice to section 39 (2) of the Act, when apportioning of a procurement would be technically or financially feasible, the procurement may be divided into lots, which may be awarded through separate contracts.

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(2) If one or more lots are not awarded, the procuring and disposing entity may initiate a new proceeding, modifying the content of the lots.

Planning for individual procurement proceedings

97. Procuring and Disposing Entities shall devise procurement plans, taking into account the following factors and steps as appropriate under the circumstances—

- (a) constitution of a procurement planning team;
- (b) estimation of the cost of a proposed procurement;
- (c) conducting market research in order to identify various technical solutions, the range of available suppliers, and to determine the most favourable contractual and guarantee terms available in the commercial market that would be suitable for the procurement;
- (d) studying procurement history for similar goods, works or services;
- (e) consolidation and assessment of the procurement requirements;
- (f) conducting feasibility and other pre-contract studies; and
- (g) identification of the sources and amount of financing.

Initiation of procurement proceedings

98. A procuring and disposing entity may initiate actual procurement proceedings only after the determination and approval of budgetary allocations, and only after obtaining a certification from the Ministry responsible for Finance that budgetary allocations sufficient to fund the procurement are available for that purpose, and a specific reference to that certification shall be included in the bidding documents.

Valuation of procurement

99. For the purposes of complying with monetary thresholds referred to in the Act and these Regulations to select the appropriate procurement method, the procuring and disposing entity shall assess the expected value of a procurement contract or package of contracts taking into account—

- (a) the total cost of the goods or equipment including freight charges and applicable duties and charges;
- (b) all forms of remuneration, including any premiums, fees, commissions and interest receivable;
- (c) the likelihood and expected value of recurring orders; and
- (d) the estimated value of additional purchases to be permitted under the contract.

Requisitioning for procurement

100.—(1) In all cases, the request to initiate procurement shall be addressed to the head of a Procurement and Disposal Unit, and the requisitioning unit shall seek approval from relevant budget authorities and Controlling Officer to ascertain availability of funds.

(2) The Procurement and Disposal Unit shall examine the procurement request for compliance with the Act and these Regulations, and in the event of non-compliance, the procurement request shall be sent back promptly and directly to the requisitioning unit for the appropriate modifications.

(3) The Procurement and Disposal Unit shall further ascertain that the procurement request is contained in the procurement plan and in the event that the item was not planned for, the Procurement and Disposal Unit shall refer back the request for proper justification.

General principles of describing requirements

101.—(1) No requirement or reference shall be made in the technical specifications to a particular trademark or name, patent, design or type, principles of specific original, producer or service provider, unless there is no sufficiently precise or intelligible way of describing the procurement requirements, in which case words such as "or equivalent" shall be included in the specifications.

(2) Standardized features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, works or services to be procured shall be used, where available, in formulating any specifications, plans, drawings and designs to be included in the pre-qualification documents or bidding documents.

(3) Due regard shall be given to the use of standardized trade terms such as the current version of International Commercial Terms (INCOTERMS), where available, in formulating the terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings and in formulating other relevant aspects of the pre-qualification or bidding documents.

Division II-Selection of Appropriate Contract Form

Determination of appropriate form

102. In the planning and preparation of procurement, a procuring and disposing entity shall determine the appropriate contracting approach and structure to be utilized for any given procurement taking into account standard contract forms prescribed by the Authority and the conditions for their use.

Framework agreements

103. Pursuant to section 61 (1) of the Act, framework agreements shall be governed by detailed rules contained in Public Procurement Guidelines for Framework Agreements issued by the Authority.

Indefinite quantity contracts

104.—(1) A Procuring and Disposing Entity may enter into the following types of works contracts—

- (a) unit price works (admeasurement) contracts;
- (b) lump sum works contracts;
- (c) turnkey works contracts; and
- (d) time-and-material rate contracts.

(2) A contract based on unit price is awarded based on unit prices in the successful bid for estimated quantities of defined items of work that are required in order to carry out the works, and total payment is based on the units of work actually done and measured in the field.

(3) Bidders shall consider the following points for contracts based on unit price—

- (a) list of quantities of labour and other inputs listed in bill of quantities in bidding documents, for which bidders give their unit prices in their bids; and
- (b) list of quantities of work with total prices.

(4) In lump-sum contracts, the supplier shall perform the specified work for a fixed sum of money and it is the suppliers' responsibility and risk to remain on budget, since the procuring and disposing entity is liable only for the lump-sum price of the contract, subject to changes ordered by the procuring and disposing entity.

(5) In turnkey contracts the supplier shall be responsible for design, consultancy, building and implementation of the project, and in such contracts, the supplier shall ensure that the standard criteria for designing, implementation and technical specifications are in accordance with the procurement contract.

(6) In the case of construction and maintenance services or other contracting situations in which the amount and combinations of various types of labor and materials cannot be predicted with certainty at the time of entry into the procurement contract, the procuring and disposing entity may enter into a time-and-materials-rate contract

(7) A time-and-materials-rate contract shall stipulate hourly labour rates, including overhead and profits; reimbursement of material; and ceiling price within which the contractor shall make a good faith effort to remain.

PART VI – BIDDER QUALIFICATIONS
Division I – Qualification Data and Assessment

Qualification
assessment
criteria

105.—(1) In addition to the eligibility criteria contained in section (52) of the Act, a procuring and disposing entity shall not enter into contract with a supplier—

(a) who is insolvent, in receivership, bankrupt or being wound up, its affairs are being administered by a court or a judicial officer, its business activities have been suspended, and it is the subject of legal proceedings for any of the foregoing; and

(2) Subject to the right of bidders to protect their intellectual property or trade secrets, the procuring and disposing entity may require bidders participating in procurement proceedings to provide such appropriate documentary evidence or other information as it may consider necessary to satisfy itself that bidders are qualified in accordance with the criteria referred to in the paragraphs (1)

(3) In handling the information provided under sub regulation (1), the procuring and disposing entity shall take into consideration the legitimate interests of bidders as regards the protection of their technical or trade secrets.

(2) The bidding documents shall indicate the types of documentation, if any, to be provided by bidders to attest to their conformity with the qualification requirements set forth in the bidding documents.

Suitability to
pursue
professional
activities

106.—(1) Any bidder, whether local or foreign, wishing to take part in a procurement contract may be requested to prove his enrolment, as prescribed in his country of establishment, in one of the professional or trade registers or to provide a certificate in a prescribed format.

(2) In procedures for the award of service contracts where the service providers have to possess a particular authorization or to be members of a particular organization in their home country in order to be able to perform the service concerned, the procuring and disposing entity may require them to prove that they hold such authorization or membership.

Information as
to economic and
financial
standing

107. Supporting documents to prove economic and financial standing under this part may include—

(a) evidence of availability or access to capital or lines of credit;

(b) statements of liabilities and assets, and of profit and loss;

(c) average annual turnover from related business over a period of time stated in the bidding document; and

- (d) any other information as the procuring and disposing entity may require.

Information as
to technical
capacity

108.—(1) In the procedures for awarding goods contracts, evidence of a bidder's technical capability shall take into account the nature, quantity and purpose of the products to be supplied including—

- (a) a list of the principal deliveries effected in the past three years, with the sums, dates and recipients, public or private, involved;
- (b) a description of the bidder's technical facilities, its measures for ensuring quality and its study and research facilities;
- (c) an indication of the technicians or technical bodies involved whether or not belonging directly to the supplier, especially those responsible for quality control;
- (d) samples, descriptions, and photographs of the products supplied whose authenticity must be provided if the procuring and disposing entity so requests;
- (e) certificates issued by official quality control institutes or agencies of recognized competence attesting to the conformity of products clearly identified by references to specifications or standards; and
- (f) a bidder who is not a manufacturer shall be required to produce evidence of a manufacturer's authorization.

(2) In the procedures for awarding consultancy service contracts, ability of bidders to perform services may be evaluated in particular with regard to their skills, efficiency, experience and reliability, and evidence of the service provider's technical capability may be furnished through the following means—

- (a) the bidder's educational and professional qualifications and those of the firm's managerial staff and in particular, those of the person or persons responsible for providing the services;
- (b) a list of the principal services provided over a period of time stated in the bidding document, with the sums, dates and recipients, public or private, of the services provided;
- (c) a description of the bidder's measures for ensuring quality and his study and research facilities; or

(d) an indication of the proportion of the contract which the bidder may intend to sub-contract.

(3) In the procedures for awarding non-consultancy service contracts, the ability of bidders to perform services shall be evaluated in particular, with regard to their skill and efficiency.

Selection followed by post qualification procedures

109. In procurement proceedings that are not initiated by pre-qualification proceedings, following the evaluation of bids and the determination of the lowest evaluated bid, a procuring and disposing entity shall conduct a detailed examination of the qualification data submitted by the bidder that submitted that bid, prior to issuance of the notice of acceptance of the bid.

Sub-contractor qualification

110.—(1) A procuring and disposing entity may require bidders to provide qualification information and documentation in accordance with the Act and these Regulations for any subcontractor to be involved in the performance of the procurement contract.

(2) Where the procuring and disposing entity, in view of the circumstances of the case and because of the particularly critical nature of a subcontractor's role in the implementation of the procurement contract, decides that it is in the public interest to do so, the procuring and disposing entity may directly determine the suitability of the qualifications of a subcontractor, in accordance with the qualification criteria set forth in the Act.

False and deficient qualification

111.—(1) A procuring and disposing entity shall disqualify a bidder if it finds at any time, that the information submitted concerning the qualifications of the bidder was false materially inaccurate or materially incomplete.

(2) Other than in a case to which paragraph (1) applies, the procuring and disposing entity may not disqualify a bidder on the ground that information submitted concerning the qualifications of the bidder was inaccurate or incomplete in a non-material respect, but the bidder may be disqualified if it fails to remedy such deficiencies promptly upon request by the procuring and disposing entity.

Division II-Pre-Qualification Proceedings

Purpose of prequalification proceedings

112.—(1) Pre-qualification shall be based entirely on the capacity and resources of potential bidders to successfully perform a contract and all pre-qualified bidders shall be invited to bid.

(2) A minimum of fourteen days shall be given for applicants to obtain the pre-qualification documents and prepare and submit their applications.

(3) Pre-qualification proceedings shall be utilized in particular in the case of open invitations to participate in proceedings for the procurement of complex or high-value goods or works, or in any other circumstances in which the high costs of preparing detailed bids, proposals or offers could discourage competition, including custom-designed equipment, industrial plant, specialized services, and contracts to be let under turnkey, design and build or management contracting, or for the purpose of establishing short lists for two-stage tendering.

(4) For pre-qualification for groups of contracts to be awarded over a period of time, a limit on the number or total value of awards to any single supplier may be made on the basis of the supplier's resources, and the conditions to be satisfied by a supplier, the methods according to which satisfaction of each of those conditions is to be verified and the period of validity of a pre-qualification for a group of contracts shall be determined by the procuring and disposing entity.

(5) Every pre-qualification shall be for a duration of twenty four months subject to annual renewal in which case, prequalified suppliers or contractors shall be required to submit updated qualification information and shall be informed of their removal from pre-qualified status if they are judged to no longer have the required resources or capability.

Contents of pre-qualification documents

113.—(1) A Procuring and disposing entity shall develop pre-qualification documents which shall at a minimum, include the following information—

- (a) instructions for preparing and submitting pre-qualification applications;
- (b) a summary of the principal required terms and conditions of the procurement contract to be entered into as a result of the subsequent procurement proceedings;
- (c) documentary evidence or other information that must be submitted by suppliers to demonstrate their qualifications;
- (d) the manner and place for the submission of applications to pre-qualify and the deadline for the submission expressed as a specific date and time and allowing sufficient time for suppliers to prepare and submit their applications, taking into account the reasonable needs of the procuring and disposing entity; and
- (e) any other requirements that may be established by the procuring and disposing entity in conformity with the Act and these Regulations.

(2) The procuring and disposing entity shall respond to any request by a prospective applicant for clarification of the pre-qualification documents that is received by the procuring and disposing entity within a reasonable time prior to the deadline for the submission of applications to pre-qualify.

(3) The response by the procuring and disposing entity under paragraph (2) shall be given within a reasonable time so as to enable the prospective applicants to make a timely submission of its application to pre-qualify and a response to any request shall, without identifying the source of the request, be communicated to all prospective applicants which the procuring and disposing entity provided the pre-qualification documents.

Confirmation of qualification information

114.—(1) Prior to the award of the procurement contract, the procuring and disposing entity may require the bidder submitting the bid that has been found to be successful to demonstrate again its qualifications and the criteria and procedures to be used for such further demonstration shall be the same as those set forth in the pre-qualification documents.

(2) If the bidder submitting the successful bid is requested to demonstrate again its qualifications in accordance with paragraph (1) but fails to do so, the procuring and disposing entity shall reject that bid and shall select a successful bidder, in accordance with the criteria set forth in the bidding documents from among the remaining bids subject to the right of the procuring and disposing entity in accordance with section 46 of the Act to reject all remaining bids.

Division III – Database and Classification of Suppliers

Supplier database

115.—(1) The Authority shall require suppliers seeking inclusion on databases to provide at a minimum the following information—

- (a) completed registration application form prescribed from time to time by the Authority and which shall also be available on the Authority’s website;
- (b) copy of a valid licence and commercial registration for the business carried out;
- (c) copy of a valid registration certificate from the bidder’s sector regulator or equivalent body; and
- (d) copy of valid tax registration or tax clearance certificate where applicable.

(2) The Authority shall receive applications for entry into the database at any time from any interested supplier and shall be acted upon within fourteen days.

(3) The Authority shall periodically publish and update the database or list on its website for general information.

Division II – Procedures for Tendering Proceedings

Contents of invitation to tender and invitation to pre-qualification

116.—(1) An invitation to tender shall contain, at a minimum, the following information—

- (a) the name and address of the procuring and disposing entity;
- (b) the nature and quantity, and place of delivery of the goods to be supplied, the nature and location of the works to be performed, or the nature of the services and the location where the services are to be provided;
- (c) the desired or required time for the supply of the goods or for the completion of the works.
- (d) the criteria and procedures to be used for evaluating the qualifications and eligibility of bidders in conformity with sections 52 and 53 of the Act;
- (e) the means of obtaining the bidding documents and the place from which they may be obtained;
- (f) the price, if any, charged by the procuring and disposing entity for the bidding documents;
- (g) the currency and means of payment for the bidding documents;
- (h) the language or languages in which the bidding documents are available; and
- (i) the place and deadline for the submission of bids.

(2) An invitation to pre-qualify shall contain, at a minimum, the information referred to in paragraph (1) as well as the following—

- (a) the means of obtaining the pre-qualification documents and the place from which they may be obtained;

- (b) the price, if any, charged by the procuring and disposing entity for the pre-qualification documents;
- (c) the currency and terms of payment for the pre-qualification documents;
- (d) the language or languages in which the pre-qualification documents are available; and
- (e) the place and deadline for the submission of applications to pre-qualify.

Publication of invitation to tender

117.—(1) An invitation to tender or to apply for pre-qualification shall be published at a minimum, in at least two newspapers of nationwide circulation and on the Authority’s website.

(2) In the case of solicitation of international participation, publication shall, in addition to publication in newspapers and the Authority’s website, be made in publications of wide international circulation, specialized trade journals, or international newspapers, and using other appropriate media such as the internet.

(3) An Internal Procurement and Disposal Committee shall, prior to the issuance of an invitation to tender of any tender, ascertain the following—

- (a) compliance with the requirements in the Act and these Regulations and direct the procurement and disposal unit to rectify any errors and omissions; and
- (b) the readiness of the bidding documents.

Preview of bidding documents

118. Bidders interested in the tendering proceedings may preview the bidding documents.

Technical evaluation of bids

119.—(1) The criteria used to assess the technical responsiveness of bids shall be formulated in as clear, precise, and objective a manner as possible.

(2) Technical evaluation criteria shall be expressed—

- (a) in the form of pass or fail requirements; or
- (b) in monetary values attached to non-material deviations and such monetary values shall be added to the price of the bid for comparison purposes only.

(3) Bid evaluation criteria may identify an acceptable range of performance and an acceptable range of delivery and payment terms.

(4) Bid evaluation criteria shall be formulated in such a manner that does not permit the procuring and disposing entity to award the procurement contracts to a bidder whose bid exceeds the requirements referred to in paragraph (2), unless that bidder also has the bid price evaluated lowest in accordance with the evaluation criteria set forth in the bidding documents.

Technical
specification for
goods

120. Technical specifications for procurement of goods may, among others, contain the following elements and descriptions of requirements—

- (a) list of the goods to be procured, including the required performance characteristics, quantity, delivery times and incidental services such as installation, training of procuring and disposing entity's personnel, and after sales service;
- (b) requirement for availability of spare parts and service;
- (c) descriptive literature such as operating or descriptive manuals or samples to be provided with the bid;
- (d) description of any required performance or quality guarantee;
- (e) technical configurations;
- (f) inspection and quality testing to be conducted, including pre-shipment testing and pre-shipment inspection where necessary;
- (g) environmental impact and safety standards to be met by the goods; and
- (h) criteria and performance tests or inspections for final acceptance.

Technical
specification for
works

121. Technical specifications for procurement of works shall include at a minimum, the following—

- (a) general description of the scope and purpose of the works;

precise description of scope of work to be carried out, including, elements such as design, construction, erection, any manufacturing, installation of equipment;
- (b) physical nature and conditions of construction site.
- (c) detailed list of any equipment and components required for performance of works;

- (d) detailed design and drawings of works to be performed;
- (e) description of the works in terms of design details or performance characteristics, including specific technical descriptions and standards as to items such as plumbing, and electrical installations;
- (f) environmental impact and safety standards to be met;
- (g) description of performance and quality guarantees required;
- (h) inspection and testing to be conducted at various stages of construction;
- (i) completion tests;
- (j) technical documentation, drawings, operating manuals to be provided by suppliers;
- (k) type, quality and quantity of training and supervision to be provided by suppliers to the extent applicable;
- (l) inspection and performance tests to be passed for acceptance; and
- (m) a schedule for starting and completion of construction time.

Bills of quantities

122.—(1) Bidding documents for unit-price works contract shall require bidders to quote their prices for the items listed in the bill of quantities included in the bidding documents.

(2) The bills of quantities shall set forth the procuring and disposing entity's estimate of the quantities of materials, labour and the other inputs required to be provided by the contractor in order to carry out the works.

Technical specifications for procurement of services

123. Technical specifications for procurement of services, other than consultants' services, shall contain the following elements and description of requirements—

- (a) general description of the scope and purpose of the service;
- (b) description of the service to be supplied and the tasks to be performed by the supplier including performance requirements;
- (c) conditions under which the service is to be performed;
- (d) descriptive literature or samples to be provided with a bid;

- (e) inspection and quality testing to be conducted;
- (f) criteria and methods by which the procuring and disposing entity intends to judge the performed services;
- (g) description of performance and quality guarantees required; and
- (h) type, quality and quantity of training and supervision to be provided by supplier.

Pre-bid
conference

124.—(1) A procuring and disposing entity may organize a conference for the purpose of briefing bidders on bidding documents, including the technical specifications and other requirements.

(2) The conference in sub regulation (1) shall take place at an early point following the distribution of the bidding documents, so as to allow bidders to take the information they obtain at the conference into account in preparing their bids:

Provided that clarifications at the conference of defects or ambiguities in the bidding documents shall not relieve the procuring and disposing entity in such cases of the obligation to amend the bidding document.

(3) If the procuring and disposing entity convenes a meeting of bidders, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the bidding documents, and its responses to those requests, without identifying the sources of the requests; and the minutes shall be provided promptly to all bidders to which the procuring and disposing entity provided the bidding documents, so as to enable those bidders to take the minutes into account in preparing their bids.

Site visits

125. A procuring and disposing entity shall arrange for site visits during or after the pre-bid conference, where such site visits would facilitate the submission of bids that are responsive to the needs of the procuring and disposing entity.

Submission of
bids

126.—(1) A bidder shall submit a signed bid, in the required number of copies in a tightly closed and sealed envelope, and a copy marked as the “original” shall be amongst the submitted copies.

(2) The procuring and disposing entity shall, on request, provide to the bidder a receipt showing the date and time when its bid was received.

(3) A bidder shall be required to submit its bid in a single sealed envelope.

Bid security

127.—(1) A procuring and disposing entity shall set the amount of bid security in the bidding documents, at between 1 per cent and 3 per cent of the estimated value

of the procurement, and the required amount of the security shall be stated as an amount rather than as a percentage of the bid price of each bidder.

(2) Where the procuring and disposing entity requires bidders to provide a bid security, the requirement shall apply to all such bidders.

(3) Prior to submitting a bid, a bidder may request the procuring and disposing entity to confirm the acceptability of a proposed issuer of a bid security, or of a proposed confirmer, if required; and the procuring and disposing entity shall respond promptly to such a request.

(4) Confirmation of the acceptability of a proposed issuer or of any proposed confirmer pursuant to paragraph (3) does not preclude the procuring and disposing entity from rejecting the bid security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or otherwise lacks creditworthiness;

(5) A bid security shall be forfeited subject to a demand for payment in the following cases—

- (a) withdrawal of the bid after the deadline for submission of bids;
- (b) failure by the successful bidder to sign a duly awarded procurement contract; or
- (c) failure to provide a performance security after the bid has been accepted or failure to comply with any other condition precedent to signing the procurement contract specified in the bidding document.

(6) A procuring and disposing entity shall make no claim to the amount of the bid security and shall promptly return or procure the return of, the bid security document in the event of any of the following—

- (a) the expiry of validity period of the bid security;
- (b) the entry into force of a procurement contract and the provision of a performance security of the contract by the successful bidder;
- (c) termination of the tendering proceedings without the entry into force of a procurement contract; or
- (d) the withdrawal of the bid prior to the deadline for the submission of bids, unless the bidding documents stipulate that no such withdrawal is permitted.

Validity of bid security

128.—(1) A bidding document shall require that a bid security provided by bidder should have a validity period extending for a period of twenty eight days

beyond the expiry of the validity period of bids, in order to allow the procuring and disposing entity sufficient time to make a demand for payment under the bid security in accordance with regulation 127 (5).

(2) Bid securities shall be returned to unsuccessful bidders once a contract has been signed with the successful bidder.

Modification or withdrawal of a bid

129. A modification or notice of withdrawal of a bid shall be effective and not subject the bid security to forfeiture only if it is received by the procuring and disposing entity prior to the deadline for the submission of bids.

Opening of bids

130.—(1) A procuring and disposing entity shall open bids in a session open to the public, including bidders or their representatives, at the time and place indicated in the bidding documents; and the time of bid opening shall coincide with the deadline for submission of bids.

(2) The name, address and bid price of each bidder whose bid is opened, and the price of any alternative bids if they have been solicited or permitted, shall be—

- (a) announced to those persons present at the opening of bids;
- (b) communicated on request to bidders that have submitted bids but that are not present or represented at the opening of bids, and
- (c) recorded immediately in the record of the tendering proceedings required by section 32 of the Act.

Evaluation of bids

131. The process of evaluation of bids shall be carried out in an efficient manner, taking particular account of the validity period of the bids, and the actual period of time required may vary depending on the nature or urgency of the tendering proceeding.

Preliminary screening of bids

132.—(1) After the initial opening of bids is done in accordance with section 43 (1) of the Act, a preliminary screening of bids shall be carried out to determine whether bids comply with the procuring and disposing entity's requirements as to the bids themselves and the accompanying documents by examining whether—

- (a) all the required documents, including any standard forms supplied with the bidding documents, have been submitted fully completed;
- (b) the bidder has met the eligibility requirements;
- (c) the bid complies with bid validity period requirements set forth in the bidding documents;

- (d) the bid substantially conforms with the contractual terms and technical requirements set out in the invitation to tender and instructions to bidders such as with respect to scope of works, delivery schedule, price schedule for a substantial portion of the works, or compliance with key technical requirements;
- (e) the bid is conditional, thus compromising the bidder's ability to accept an award;
- (f) the bid has been signed by an authorized representative of the bidder; and
- (g) a bid security, if required, has been provided. A bid security shall be in monetary form or in the form of a declaration.

Evaluation of
bids for works

133.—(1) Following the preliminary screening of bids, a Procuring and Disposing Entity shall proceed with the detailed evaluation and comparison of bids that have not been rejected in the preliminary screening.

(2) In the detailed evaluation of bids, the procuring and disposing entity shall examine and compare bids in detail with respect to the following—

- (a) commercial terms, including aspects such as—
 - (i) delivery period;
 - (ii) payment terms;
 - (iii) duration of warranty period;

and any minor deviations with respect to commercial terms shall be identified and listed and any financial adjustments to bids that necessitated as a result of minor deviations shall be identified;

- (b) technical requirements, including the following aspects—
 - (i) scope of supply of goods or of works;
 - (ii) major technical specifications for all key items being procured (e.g. technical capacity of plant) and operating and performance characteristics such as fuel utilization;

and any minor deviations with respect to technical requirements shall be identified and listed and any financial adjustments to bids that are necessitated as a result of minor deviations shall be identified;

- (c) financial evaluation of bids which involves—
 - (i) adjustment of bid prices to reflect permissible deviations from commercial terms of bids which affect the prices of bids, including payment terms, delivery or completion schedules;
 - (ii) adjustment of bid prices with respect to minor deviations from technical requirements which affect the prices of bids, including the completeness of the scope of the goods, works or services and compliance with technical requirements;
 - (iii) adjustment of bid prices with respect to technical evaluation criteria identified in the bidding documents as relevant to the evaluation and comparison of bids, such as life-cycle operating costs, performance factors; and
 - (iv) adjustment of bid prices with respect to cost of inland transportation to project site or delivery point, and cost of local handling if required, but omitted from bid prices.

(3) The detailed evaluation of bids for civil works shall be conducted in general in accordance with sub regulation (2) with particular attention being paid to the aspects specific to the civil works context, including—

- (a) consistency of work plans and schedules with the requirements in the bidding documents, including with respect to aspects such as timing of mobilization and construction methodology;
- (b) examination and analysis of reasonableness and reliability of unit rates quoted for items listed in the bill of quantities; and
- (c) identification of unbalanced bids, in which unusually high prices are quoted for items of works to be performed at an early stage in the implementation of the contract (“frontloading”) or for items that the contractor believes were underestimated in the bill of quantities.

Correction of arithmetic errors

134.—(1) An *ad hoc* evaluation team shall correct any arithmetical errors appearing on the face of a bid and inform the bidder in question of the correction.

(2) A bid shall be rejected if the bidder does not accept the correction, and the bid security shall be subject to forfeiture.

(3) If there is a discrepancy between the unit price and the total price, or the line item total, that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the procuring and disposing entity there is an obvious gross misplacement of the

decimal point in the unit rate or a similar obvious gross mathematical error, in which case the line item total, or total price, as the case may be, as quoted will govern and the unit rate will be corrected.

(4) Where there is a discrepancy between the amounts in figures and in words, the amount in words will prevail.

(5) Where there is a discrepancy in the information contained in the submitted copies of the bid, the copy marked as the “original” shall prevail.

Application of
evaluation
criteria

135.—(1) A Procuring and Disposing Entity shall evaluate and compare bids that have been received in order to identify a successful bid, in accordance with paragraph (3) and the procedures and criteria set forth in the bidding document.

(2) The successful bid shall be the lowest evaluated bid responsive to the requirements set forth in the bidding documents.

(3) In determining the lowest evaluated bid in accordance with paragraph (2), the procuring and disposing entity may consider the following—

(a) the bid price, subject to any margin of preference applied pursuant to paragraph (4);

(b) any other criteria stated in the bidding documents shall, to the extent practicable, be objective and quantified in monetary terms, so as to enable the application of adjustments to bid prices for the purposes of detailed evaluation and comparison of bids and the criteria may include the following—

(i) the cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services; or

(ii) the effect that acceptance of a bid would have on the environment, the extent of local content, including local manufacture, labour and materials, in goods, works or services being offered by suppliers, the transfer of technology and the development of managerial, scientific and operational skills.

(4) In evaluating and comparing bids, the procuring and disposing entity may grant a margin of preference for the benefit of bids for works by domestic contractors or for the benefit of bids for domestically produced goods.

(5) The margin of preference may be applied in cases under sub regulation (4) and in accordance with procedures described in regulations 137 to and this shall be reflected in the record of the procurement proceedings.

Assessing
responsiveness
of bids

- 136.** A Procuring and Disposing Entity may determine a bid to be responsive—
- (a) even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bidding documents, or
 - (b) if it contains errors or oversights that are capable of being corrected without affecting the substance of the bid,

and any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation and comparison of bids by way of adjustments to bid prices that are for purposes of only comparing bids and that are not to be reflected in the price of the procurement contract.

Domestic price
preference

- 137.—(1)** A domestic price preference may be accorded in the following cases—
- (a) if the bidder establishes to the satisfaction of the procuring and disposing entity that—
 - (i) labour, raw materials and components from within Malawi, will account for more than thirty per cent of the ex-works price offered; and
 - (ii) the production facility in which those goods will be manufactured and assembled has been engaged in manufacturing or assembling such goods at least since the time of bid submission;
 - (b) in the case of construction by local contractors, if they provide as part of data for qualification, such information, including details of ownership, as shall be required to determine whether a particular contractor or group of contractors qualifies for domestic preference, and the bidding documents shall clearly indicate the preference and the method that will be followed in the evaluation and comparison of bids to give effect to such preference;

(2) A construction company can only qualify for the margin of preference if it is determined by the procuring and disposing entity that at least fifty one percent is owned by Malawian nationals.

(3) For purposes of evaluation and comparison of bids, a domestic price preference as prescribed by the Authority shall apply to prices of bids received from qualifying domestic bidders, provided that the required level of quality is assured.

Margin of preference for domestically manufactured goods

138.—(1) If the procuring and disposing entity intends to grant a margin of preference in the evaluation of bids in tendering proceedings to bids offering certain goods manufactured in Malawi, the bidding documents shall clearly indicate any preference to be granted to domestically manufactured goods and the information required to establish the eligibility of a bid for such preference and the methods and stages set forth in the bidding documents shall be followed in the evaluation and comparison of bids.

(2) For the purposes of comparison, responsive bids received pursuant to paragraph (1) shall be classified in one of the following three groups—

- (a) Group A for bids offering goods manufactured in Malawi if the bidder establishes to the satisfaction of the procuring and disposing entity that it qualifies for domestic preference;
- (b) Group B for other bids offering goods from within Malawi; and
- (c) Group C for bids offering the goods from abroad and to be directly imported.

(3) The ex-works price quoted by a Group A bidder shall include all duties and taxes paid or payable on the basic material components purchased in the domestic market or imported.

(4) Prices quoted by Group B bidders shall include all duties and taxes on components and raw materials.

(5) The price quoted by a Group A and B bidder shall exclude the sales and similar taxes in the finished product.

(6) The price quoted by a Group C bidder shall be on Cost Freight and Insurance (CIF) or Carriage and Insurance Paid (CIP) to border point or other destination, exclusive of customs duties and other imports taxes.

(7) In the first step, all evaluated bids in each group shall be compared to determine the lowest evaluated in each, and such lowest evaluated bids shall then be compared with each other and if, as a result of this comparison, a bid from Group A or Group B is the lowest, it shall be selected for the award.

(8) If, as a result of the comparison under sub regulation (7), the lowest evaluated bid is a bid from Group C, that bid shall be further compared with the lowest evaluated bid from Group A after adding the margin of preference indicated in the bidding document on the price of the imported goods.

(9) If the Group A bid in such further comparison mentioned in sub regulation (8) is the lowest, it shall be selected for the award and if not, the lowest evaluated bid from Group C, as determined from the comparison under paragraph (7), shall be selected.

(10) In the case of single responsibility supply and installation or turnkey contracts in which a number of discrete items of equipment is grouped into one contract package where custom duties are excluded from the bid prices, and the price of imported goods quoted is on a CIF or CIP basis, the preference margin shall not be applied to the whole package, but only to the locally-manufactured equipment within the package; and equipment offered from abroad shall be quoted CIF or CIP and equipment offered locally ex-works free of sales and similar taxes; all other components, such as design, works, installation, and supervision, shall be quoted separately.

(11) Where the provisions of paragraph (1) apply, bids shall not be classified into groups A, B, or C and in the comparisons of bids, only the CIF or CIP price in each bid of the equipment offered from outside of Malawi shall be increased by the applicable duty and other taxes payable by non-exempt importer:

Provided that if duties vary from item to item within a package, the appropriate tariff for each piece of equipment shall apply and no preference shall be applied for any associated services or works included in the package.

Margin of preference for contract of works

139.—(1) For contracts for works to be awarded on the basis of tendering, a Procuring and Disposal Entity may grant a margin of preference of up to ten per cent to local contractors provided the local contractor is partnered with a small and medium contracts, based on the following—

- (a) contractors applying for such preference shall be required to provide, as part of the data for qualification at the pre-qualification stage or at the bidding stage, such information, including details of ownership, as shall be required to determine whether a particular contractor or group of contractors qualifies for a domestic preference, and the bidding documents shall clearly indicate the preference and the methodology that will be followed in the evaluation and comparison of bids to give effect to such preference;
- (b) for avoidance of doubt, where the contract for procurement of works provides for retention, the provisions of Retention Fund Regulations shall apply.
- (c) The Authority shall in conjunction with NCIC determine the threshold for minor works to be carried out by registered local firms in accordance with section (6)(h) of the Act.
- (d) For avoidance of doubt, the contract for works in International Competitive Bidding should comply with the Malawi Joint Venture/sub-contracting requirements.

(e) after bids have been received and reviewed by the procuring and disposing entity, responsive bids shall be classified into the following groups—

(i) Group A, namely, bids offered by domestic contractors eligible for the preference; and

(ii) Group B, namely, bids offered by other contractors.

(2) For the purpose of evaluation and comparison of bids received pursuant to paragraph (1), the margin of preference indicated in the bidding document shall be added to the bids received from contractors in Group B.

Tender for raw materials

140. Where tendering is used for procurement of raw materials and other commodities whose prices are quoted in established commodity market, the following conditions shall apply if set in the bidding documents—

(a) bidders shall be invited to quote prices linked to market price at the time of, or prior to, the shipment;

(b) bid validity period shall be kept as short as possible; and

(c) the bidding documents may permit faxed or electronic bids, if there is no requirement for a bid security or if standing bid securities valid over a specified period of time have been provided by pre-qualified bidders.

PART VIII CONTRACT FORMATION

No objection validity period

141.—(1) A procuring and disposing entity shall enter into a contract with a successful bidder after a No objection is granted by the Authority under section 6 of the Act:

Provided that the contract shall be entered into within three months of the grant of the “No Objection”.

(2) Where three months lapse after the grant of “No Objection” and the Procuring and Disposing Entity does not conclude a contract, the PDE shall reopen the tender process and inform the Authority accordingly.

(3) Notwithstanding paragraph (2), where the Procuring and Disposing Entity determines with justifiable reasons, that it is not possible to conclude a contract

within three months, the procuring and disposing entity shall before the expiry of the period, apply for an extension of the validity of the No Objection:

Provided that the extension shall not be longer than one month.

(4) The Authority shall make its own rules regarding the review of requests grant of no objection.

Notice of acceptance of bid

142 — (1) Notice of acceptance of a bid shall be given promptly and within the bid validity period to the bidder who was determined to have submitted the successful bid.

(2) The notice of acceptance shall not be sent until all the necessary approvals have been obtained or the fourteen days' standstill period pursuant to section 48 of the Act has expired, wherever necessary.

(3) A procurement contract in accordance with the terms and conditions of the accepted bid shall enter into force when that notice is dispatched to the bidder that submitted the winning bid:

Provided that the notice is dispatched while the bid is still valid, and for purpose of this paragraph the notice is dispatched when it is properly addressed or otherwise directed and transmitted to the bidder.

(4) Neither the Procuring and Disposing Entity nor the bidder shall take any action that interferes with the entry into force of the procurement contract or with its performance between the time when the notice referred to in the paragraph (1) is dispatched to the bidder and the entry into force of the procurement contract.

(5) In the event of failure of the bidder whose bid has been accepted to sign a written procurement contract in accordance with the bidding documents, or if required to do so, to provide any required security for the performance of the contract, the procuring and disposing entity shall select the next ranked bidder.

(6) A procuring and disposing entity shall not request or require the successful bidder to sign a contract at variance with the terms and conditions set forth in the bidding documents.

Performance security

143. If required to do so by the bidding documents, a successful bidder shall submit the performance security within twenty-eight days from the date of the notification of acceptance of the bid.

Form of performance security

144.—(1) A Procuring and Disposing Entity may solicit and accept as security for the performance of a procurement contract, such arrangements as guarantees, stand-by letters of credit or cheques for which a bank shall be primarily liable.

(2) The amount of performance security shall be set at a minimum of ten per cent of the value of the procurement contract, or, in the case of an indefinite quantity contract, ten per cent of the value estimated by the procuring and disposing entity.

Validity period of performance security

145. Unless otherwise stipulated in the procurement contract, the validity period of the performance security shall extend at least one month beyond the latest of the time of delivery, or handing over, or beyond the warranty or defects liability period, as the case may be, under the procurement.

PART IX CONTRACT ADMINISTRATION

Support operating for contract administration

146.—(1) All Procuring and Disposing Entities shall ensure the availability of contract administration support operations and staffing necessary for effective contract administration which shall include the following—

- (a) engineering and design services, providing design and monitoring functions for preparation and implementation of procurement contracts;
- (b) financial control and payment services;
- (c) management information systems for coordinated processing and communication of and access to relevant information by all parties involved in contract administration, including document control services, for establishment and maintaining filing systems for correspondence and other paperwork and records relating to procurement contracts; and
- (d) legal services:

Provided that where the Procuring and Disposing Unit does not have the capacity to provide such services, an agent may provide such services on behalf of the Procuring and Disposing Entity.

(2) The main elements of contract administration include—

- (a) holding post-award meetings with the successful bidder, and devising a specific contract administration plan;
- (b) where appropriate, constituting a contract administration team;
- (c) development of contract implementation work plan and schedule;
- (d) monitoring progress in implementation of the procurement contract, including determination of extent of performance accomplished

periodically according to the work plan, and inspection and testing of quality aspects;

- (e) management of variation orders, contract suspension and termination, price revision, application of contract remedies and dispute settlement procedures;
- (f) management of financial aspects of contract implementation, including payment to suppliers, and budgetary and cost accounting aspects; and
- (g) organization and management of documentation related to contract implementation, and preparing periodic reports on the implementation of contracts.

(3) Procuring and disposing entities shall make available to the Authority, the Auditor- General and other authorized organs documentation, reports and other information required by those bodies for the purpose of monitoring contract administration.

(4) Without prejudice to the rights of the parties under the procurement contract, the procuring and disposing entity, and any supervising party that it involves in the implementation of the procurement contract, shall comply with the execution of the contract according to the layouts, specifications and conditions set forth in the bidding documents.

Contents of a
procurement
contract

147. A procurement contract shall, subject to the standard forms of contract that procuring and disposing entities may be required to utilize pursuant to section 5 (2) (b) of the Act and to the circumstances of the particular procurement proceedings, at a minimum, provide for the following—

- (a) complete name and address of the parties to the contract;
- (b) the listing by order of priority of contract documents;
- (c) specifications of the goods, works or services;
- (d) quantity or number of the goods or amount of the works or services;
- (e) the price of the goods, works or services, or how the price will be determined, and the payment method;
- (f) the procuring and disposing entity's right of inspection;
- (g) the location, conditions of delivery, delivery schedule and acceptance procedures;

- (h) required securities or bank guarantees, if applicable;
- (i) methods for termination of the contract;
- (j) other issues describing the obligations of the parties and clarifying the transaction, including price revision, if applicable, warranties, contract modification, subcontracting, insurance obligations, remedies for delay and non-performance, and acceptance;
- (k) the unforeseen events (force majeure) with respect to responsibilities for delay in fulfilling the obligations or termination of the contract; and
- (l) dispute settlement clause.

(2) For purposes of this regulation, “force majeure” means an event beyond the control of the parties to the contract which frustrates contract performance and is unforeseeable.

Basic pricing approaches

- 148.**—(1) The price of a procurement contract shall be set either, on—
- (a) the basis of a unit price applied to the quantities actually delivered, or services or works actually performed; or
 - (b) on lump-sum basis, applied to the entire contract or part thereof, irrespective of the actual quantity delivered.

(2) Use of a unit-price contract is appropriate when there is uncertainty at the time of conclusion of the contract as to the extent of the deliveries required or work or services to be performed.

(3) Use of a lump-sum contract is appropriate when it is feasible to make accurate estimates of costs and time of performance, and the supplier or contractor is willing to assume the risk that the price quoted in the bid may turn out to have underestimated the bidder’s actual cost in fulfilling the contract.

(4) Procurement contracts shall be concluded on the basis of an initial definite price, but in exceptional circumstances, to be noted in the record of the procurement proceedings, a procurement contract may be concluded on the basis of a provisional price.

(5) Procurement contracts may include incentive clauses linked to delivery periods, improved quality, and production-cost reduction.

Unit price works contracts **149.**—(1) A works contract based on unit price shall be awarded based on priced bills of quantities in the successful bid where total payment is based on the units of works actually performed and measured in the field.

(2) Bidders shall consider the following points for the type of contract mentioned in the paragraph (1)—

(a) list of the quantities of labour, materials and other inputs listed in the bill of quantities in the bidding documents, for which bidders give their unit prices in their bids; and

(b) list of quantities of work with total prices.

Lump-sum works contracts **150.**—(1) In lump-sum contracts, a contractor agrees to perform the specified works for a fixed sum of money and it is the contractor's responsibility and risk to remain on budget, since the procuring and disposing entity is liable only for the lump-sum price of the contract, subject to changes ordered by the procuring and disposing entity.

(2) Lump-sum pricing shall be used in preference to unit pricing except when—

(a) large quantities of works such as grading, paving, building outside utilities, or site preparation are involved;

(b) quantities of works, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;

(c) estimated quantities of works required may change significantly during construction; or

(d) bidders would have to expend unusual effort to develop adequate estimates.

Price adjustments **151.**—(1) Unless otherwise provided in a procurement contract, the price of a procurement contract is considered to be fixed and shall generally, not be modified in response to changes in economic or commercial conditions.

(2) If the procurement contract provides for the possibility of price adjustment, it shall provide for—

(a) the conditions, such as increases in the cost of materials, labour, energy, in which price adjustments would be permitted;

(b) the formulas and indices to be referred to in order to determine whether economic conditions have altered to a significant enough

degree to justify a price adjustment and to identify the amount of increase; and

- (c) the frequency with which price adjustments may be implemented, and the procedures to be followed.

(3) Procuring and disposing entities shall not adjust contract prices based on unit rates in a manner that results in movement beyond fifteen percent of the initial contract price without the prior approval of the Authority.

(4) Notwithstanding sub regulation (3), any price adjustment beyond the procuring and disposing entity's threshold shall require the prior approval of the Authority.

Shipment terms **152.** In the import of goods, transfer of title, and allocation of responsibility with regard to risk of loss, delivery, transport-related insurance, and export and import formalities shall be addressed in the procurement contract, making appropriate reference to internationally recognized trade terms.

After sales service **153.** Unless technical or commercial factors dictate otherwise, the bidding documents should require a supplier to provide workshops and spare parts for supplies that require such after-sale services and the period of the supplier's commitment in this regard should correspond to the average operating life of the supplies in question.

Insurance requirement **154.**—(1) The bidding documents to be used to solicit bids, proposals, offers or quotations and the procurement contract shall indicate the amount and essential terms of the insurance that the successful bidder may be required to obtain, depending upon the nature of the contract, including insurance of goods in transit, professional liability insurance of consultants, accident insurance for construction sites, vehicles insurance for supplier's or consultant's vehicles used for implementation of the contract.

(2) The procurement contract may require the bidder to cause any of its subcontractors to take out and maintain insurance in accordance with the requirement of the contract.

(3) The procuring and disposing entity reserves the right to reject insurance coverage that is not in the public interest.

Return of performance security **155.** Where a procurement contract in respect of which a performance security was given has been satisfactorily performed, or terminated for a reason that is not attributable to any fault of the bidder, and the procuring and disposing entity has no claim against the supplier arising out of the contract or relating in any manner

whatsoever to the contract, the performance security shall be returned to the bidder within thirty days from the date of completion or termination.

Maintenance
guarantee

156.—(1) A procurement contract may require a supplier to provide a maintenance guarantee in the form of a bank guarantee, or other form provided in the contract, and the value of the guarantee shall be not less than ten per cent of the value of the guaranteed performance.

(2) Where the supplier fails to provide the required maintenance, the supplier shall forfeit the maintenance guarantee.

(3) In supply and installation contracts, unless otherwise provided by the contract, the maintenance period shall, in the event that the procuring and disposing entity has not requested installation to be started at an earlier time, be deemed to begin one hundred and twenty days after the receipt of the equipment or machinery

Manufacturer's
warranty

157. A procurement contract shall set forth the supplier's warranty obligation, and normally the supplier shall be obligated, during warranty period of at least one year, to replace, as its own expense, defective goods within a specified period of time; and in the event of a breach of warranty, the procuring and disposing entity shall be entitled to claim the entire value of the warranted goods and additional charge of fifteen per cent of the value of the defective goods.

Subcontracting

158. Where a bidder indicates sub-contracting in a bid, the acceptance of each subcontractor and the agreement of the procuring and disposing entity to the conditions of payment should be requested in the following manner—

- (a) when the request for subcontracting arises at the time of the bid submission, the bidder should state in the bid—
 - (i) the nature of the goods, works or services for which subcontracting is envisaged;
 - (ii) the name and address of the proposed subcontractor;
 - (iii) the amounts expected to be paid directly to the subcontractor;
 - (iv) the manner of payment;
 - (v) the conditions of payment foreseen in the draft subcontract and, if applicable, price revision;
 - (vi) A declaration to the effect that the proposed subcontractor is not barred from participating in procurement proceedings pursuant to sections 52 and 53 of the Act.

- (b) When the request for subcontracting is submitted after the conclusion of the procurement contract, the supplier shall submit the request, containing the information mentioned in paragraph (a), to the procuring and disposing entity in a manner that provides a record of the submission and receipt of the request.
- (c) When the request for subcontracting is presented in the bid, the notice of acceptance of the bid shall include the acceptance of the subcontractor and of the conditions of payment.

Management of sub contracts **159.** The prime supplier shall be responsible for administering its subcontractors, and the procuring and disposing entity's review of subcontractors shall be limited to evaluating the prime supplier's management of the subcontractors, unless—

- (a) the procuring and disposing entity would otherwise incur undue cost;
- (b) the successful completion of the prime contract is threatened; or
- (c) certain high risk or critical subsystems in major systems acquisition require special surveillance.

Quality assurance inspection and testing **160.**—(1) A procuring and disposing entity shall take such steps as are determined necessary to ascertain or verify that goods, services or works items procured conform to the technical requirements provided in the procurement contracts, and in performing that duty, the procuring and disposing entity may—

- (a) establish inspection and testing facilities;
- (b) employ inspection personnel;
- (c) enter into arrangements for the joint or co-operative use of laboratories; and
- (d) inspection and testing facilities, and contract with others for inspection or testing work as needed.

(2) The Director General may give authority for inspection and testing to officers as may be determined appropriate.

Stipulation of inspection **161.** The inspection requirements and procedures to be applied in the implementation of the procurement contract shall be provided in the bidding documents and in the procurement contract.

Inspection of goods **162.**—(1) A procuring and disposing entity may carry out acceptance inspection to observe and inspect the manufacture of the goods, and observe the supplier's

own quality assurance procedures, at a supplier's premises during regular working hours.

(2) The supplier shall, at his own expense, place at the procuring and disposing entity's disposal, any premises, facilities and personnel needed for normal inspections, and the supplier and the procuring and disposing entity shall each bear the expenses for the attendance of their representatives at the inspection.

(3) Any deficiencies and omissions detected during inspection of goods shall be remedied by, and at the expense of the supplier.

(4) The procuring and disposing entity shall not pay for any goods or accessories that have become unserviceable or lost value in the course of a normal inspection.

(5) If an item or consignment of goods inspected does not meet the requirement set for it, the supplier shall bear all the expenses that renewed inspection, handling or transport may involve.

(6) The observation and inspection of the manufacture of the goods affected by the procuring and disposing entity shall not in any way limit the supplier's responsibilities and liabilities.

(7) If the supplier has been permitted to employ the services of a subcontractor, he shall, in his contract with the subcontractor, reserve to the procuring and disposing entity the rights referred to in this regulation.

Pre-shipment inspection services

163.—(1) The Authority may authorize a procuring and disposing entity to engage an external agent for the purposes of conducting pre-shipment inspection of goods being purchased by procuring and disposal entities

(2) Contracts with firms to conduct pre-shipment inspection of goods shall be awarded by way of competitive procedures pursuant to the Act and these Regulations.

Examination and receipt of goods

164.—(1) A procuring and disposing entity shall establish appropriate procedures and mechanism for inspecting and examining supplied goods and shall determine the precise form and designate the officials or bodies to be involved.

(2) The inspecting official or organ shall inspect and examine the supplied items to compare them with the stamped and approved samples and other specialties, putting aside the rejected goods to be returned to the supplier and shall

examine varying percentages to be determined depending on the importance of the item.

(3) The inspecting official or organ shall prepare an examination report indicating acceptance or rejection of goods, and the examination report shall indicate the percentage which the official or organ has examined, the names, specifications, results of testing which shall be included in the record of the procurement proceeding.

(4) In the event of a dispute between the supplier and the inspecting official or organ, the matter shall be submitted to dispute settlement procedures under the procurement contract.

Receiving
report

165.—(1) Acceptance by the procuring and disposing entity of the performance of a procurement contract shall be properly documented, and a receiving report shall be prepared containing the following information—

- (a) contract reference numbers;
- (b) description of the item or service received;
- (c) date(s) of delivery and acceptance; and
- (d) signature in written form, or in electronic form, when that form is acceptable to the procuring and disposing entity and provide the requisite security, subject to compliance with guidelines that may be issued by the Authority.

(2) With a view to preventing delays in payment, the receiving report shall be transmitted promptly to the appropriate disbursement authorities, in accordance with applicable procedures.

Remedies for
breach of contract

166. A procurement contract shall specify remedies available to a procuring and disposing entity in the event of breach of the procurement contract by the supplier, and such remedies include—

- (a) rejection of defective performance;
- (b) prompt removal and replacement of defective goods;
- (c) liquidated damages for delay, in accordance with a rate set for each week or other unit time, or part thereof, of delay;
- (d) termination of the contract and purchase of replacement performance, at the expense of the defaulting party; and

- (e) such other remedies as may available pursuant to the contract or to applicable law.

Rejection of goods

167.—(1) In the event that a procuring and disposing entity rejects goods provided under a procurement contract, the procuring and disposing entity shall notify the supplier, by registered mail or courier with a return receipt of the rejection and its reasons in order to cause the supplier to withdraw those materials from the stores and supply replacements of the rejected goods within the specified duration.

(2) In case the supplier refuses to take delivery of the rejected goods, he shall be liable for storage and other related expenses at the rate to be specified in the procurement contract, beyond that the procuring and disposing entity is entitled to sell the goods by public auction and recover all expenses and fines from the sale value, and the balance remaining shall be returned to the supplier.

Payment on submission of invoice

168.—(1) Subject to the terms of the procurement contract, payment to the supplier shall be made on the basis of the submission of a proper invoice, and to be considered proper, and invoice shall set forth the following information—

- (a) date of Invoice;
- (b) identification of the supplier;
- (c) reference to the underlying contract;
- (d) description of the goods, work or services provided, and its quantity and price;
- (e) shipment and payment terms;
- (f) supporting documentation required by the procurement contract to be submitted with the invoice; and
- (g) payment instructions, including contact information for the payee.

(2) Upon receipt of an invoice, the procuring and disposing entity shall notify the supplier within seven days in the event that the invoice is not deemed proper, stating the ground for that documentation.

(3) The procurement contract shall define the manner and timing of payment.

(4) In the case of procurement of goods, the invoice shall be accompanied by any shipping or other documents, in the prescribed form which may be obtained from the procuring and disposing entity, in accordance with the

instructions given in the purchase order, letter of acceptance of tender or procurement contract, as the case may be; and in the procurement of goods, payment shall normally not be effected before receipt of the goods.

(5) Prior to effecting payment, the officer responsible for payment shall establish the availability of the appropriate supporting documents, including payments vouchers attached to relevant invoices, purchase orders, and cross-references to purchase orders or tender documents.

Prompt
payment

169. Payments that become due to the supplier shall be made in accordance with the deadlines set forth in the procurement contract, failing which, the supplier shall be compensated by payment of interest in accordance with the provisions of the procurement contract.

Retention

170.—(1). Notwithstanding regulations 171, where progress payments are made, the procurement contract may provide that a percentage of amounts due to the bidder may be withheld until performance of the procurement contract is completed.

(2) Subject to sub regulation (1), the percentage of retention shall not exceed 5% of the contract amount.

(3) A procuring and disposing entity shall remit any retention sums so deducted from the contractor's dues to the National Construction Industry Council Retention Fund within seven (7) days from the day of payment.

(4) A procuring and disposing entity shall order the release of 50% of the retention sums within thirty (30) days from the date of project hand-over

(5) The retention sums shall be released to the contractor upon expiry of the defect liability period but within forty-five (45) days from the date of the claim by the contractor.

(6) In the event that the contractor fails to rectify defects within the defects liability period, a procuring and disposing entity shall have unlimited access to the unreleased retention sums on the project.

Advance
payment

171.—(1) A procurement contract may provide for advance payments to the bidder.

(2) The total amount of advance payment made under the procurement contract shall not exceed the percentage of the initial contract price as indicated in the applicable bidding documents, and any advance payment in excess of fifty

per cent of the value of goods, work or service to be supplied shall be approved by the Authority.

(3) Unless otherwise provided in the procurement contract, an advance payment shall not be made unless and until the bidder furnishes an advance payment guarantee covering the amount of the advance payment.

(4) Unless otherwise authorized by the procuring and disposing entity or its representative, the supplier, and any of its subcontractors, shall utilize materials, equipment and personnel that are the subject of advance payment only for supply of goods, completion of works, or provision of services related to the procurement contract and where a works contract is involved the supplier shall commit such materials, equipment and personnel exclusively to sites related to the works covered by the procurement contract.

(5) Advance payments shall not be final payments, but shall be subject to final accounting and deduction from progress or other payments that may become due to the supplier.

Progress payment

172.—(1) A procurement contract may provide for the making of progress payment based on progress in the fulfillment of the procurement contract, measured as a percentage of the performance due under the contract that has been completed or in accordance with performance milestones identified in the contract and having been achieved.

(2) Progress payments may be issued to a supplier in accordance with the progress of performance of the procurement contract, upon presentation and acceptance of such documentation as required by the procurement contract to evidence the progress performance.

Final payment

173.—(1) Final payments shall be implemented once of performance of a procurement contract has been completed and accepted by a procuring and disposing entity.

(2) The procurement, contract may mandate that the supplier provide to the procuring and disposing entity a release from claims related to the contract as a condition for final payment, subject to exceptions including—

- (a) specified claims;
- (b) supplier's liability to third parties stemming from performance of the procurement;
- (c) claims for reimbursement of costs based on liability incurred to third parties in performance of the procurement contract, provided the

claims are not known the supplier as at the date of signature of the release;

- (d) costs related to identification of the procuring and disposing entity against patent liability.

Increase in quantities requiring contract modification

174.—(1) An increase in quantities which exceeds the maximum variations allowed in the procurement contract requires formal modification of the contract.

(2) Contract modifications shall not result in an alteration of the basic Nature or scope of the contract.

(3) An increase in quantities which exceeds fifteen per cent of the contact sum requires either a new procurement proceeding or justification, if appropriate as single-source procurement in accordance with section 37(11) of the Act and Regulation 154.

Dispute resolution

175. The parties to a procurement contract may agree in the procurement contract, or by a separate agreement, to submit disputes arising under the procurement contract to settlement by arbitration, where necessary.

Liquidated damages

176.—(1) A procurement contract may provide that the supplier is liable for payment of an agreed sum for delay in the performance due under the contract.

(2) If a clause of the type referred to in paragraph (1) is included in the procurement contract, it shall specify—

- (a) the agreed sum to be paid per time-unit of delay (day, week or month);
- (b) the maximum amount due under the liquidated damages clause;
- (c) that this supplier is not relieved of its liability for performance of the procurement contract by virtue of payment under the liquidated damages clause;
- (d) that if the procuring and disposing entity terminates the contract for default, the supplier will be liable for liquidated damages accruing until the procuring and disposing entity reasonably obtains delivery or performance of similar services, and that those liquidated damages are in addition to liability for the excess costs of re-procurement; and
- (e) that the supplier will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the contractor.

Contract termination **177.** Notwithstanding the provisions of section 46 (c) of the Act, a procuring and disposing entity may terminate a contract for the following reasons—

- (a) default of supplier to perform the contract;
- (b) force majeure;
- (c) bankruptcy on the part of the supplier;
- (d) conviction a criminal offence relating to obtaining or attempting to obtain a contract or subcontract; or
- (e) conviction of an offence under the Corrupt Practices Act or the Financial Crimes Act.

Termination of convenience **178.**—(1) If the contract is terminated for convenience, the procuring and disposing entity shall authorize payment for the value of the work done, materials ordered, or goods or services supplied, the reasonable cost of removal of equipment, repatriation of the supplier's personnel employed solely on the works, and the supplier's costs of protecting and securing the works, if applicable, and less advance payments received up to the date of the certificate; and no payment shall be made of unearned profit.

(2) Notwithstanding paragraph (1), goods that are complete and ready for shipment within forty days after the supplier's receipt of notice of termination shall be accepted by the procuring and disposing entity at the contract terms and prices, and for the remaining goods, the procuring and disposing entity may elect—

- (a) to have any portion completed and delivered at the contract terms and prices; or
- (b) to cancel the remainder and pay to the supplier an agreed amount for partially completed goods and services and for materials and parts previously procured by the supplier.

PART X—INFORMATION AND COMMUNICATION TECHNOLOGY FOR PUBLIC PROCUREMENT

Use of electronic media **179.** The use of electronic media including acceptance of electronic signatures, may be authorized consistent with the applicable statutory regulatory or other rules for use of such media, so long as such rules provide for—

- (a) appropriate security to prevent unauthorized access to the bidding, approval and award processes; and

Gradual
introduction of
the use of
information and
communication
technology

- (b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

180.—(1) The use of information and communication technology including electronic procurement system shall be introduced in a gradual but steady manner ensuring that procuring and disposing have capacity to apply such measures.

(2) Pursuant to section 42 of the Act, the Authority shall examine and recommend ways of introducing in public procurement, at appropriate stages, the use of information and Communication technology and other technical innovations including electronic procurement system.

(3) The guiding principles for identifying and developing applications of information and communications technology to procurement shall include—

- (a) communication and information exchanges being carried out in such a way as to ensure that the integrity of data and the confidentiality of bids and of all information supplied by economic operators are preserved, and that the Procuring and Disposing Entities only access the content of bids after bid submission deadline; and

- (b) standardization and inter-operability of key aspects of information and communications system for procurement throughout public administration, to facilitate internal sharing of information, and participation by bidders throughout the procurement market.

(4) At a minimum, elements to be explored for a procurement systems utilizing information and communications technology in the procurement process include—

- (a) easy access to standard bidding documents and use of standard formats;
- (b) establishment of a website dedicated to procurement activities and systems in Malawi, containing the following information—
 - (i) standard procurement specifications for goods and services;
 - (ii) procurement opportunities;
 - (iii) direct access to bidding documents;
 - (iv) list of vendors, including information from the centralized master bidders list and vendor performance information;
 - (v) types of about products, including product testing results;

- (vi) historical purchasing information, qualified purchase lists, and trends; and
- (vii) information about the availability of surplus property;
- (c) automated linkages between procurement systems and other relevant systems, in particular supply and materials management systems and payment systems;
- (d) bidder registration systems for the purposes of electronic procurement procedures;
- (e) where appropriate, the development of special electronic procurement methods for conducting purchasing activity electronically such as use of purchase cards for small purchases, catalogue shopping for standard goods;
- (f) electronic payment involving, for example, electronic issuance of invoices, if invoices are necessary the automatic generation of payment on report of the receipt of the procured object;

(4) The Authority shall issue detailed guidelines for the implementation of electronic Government procurement system and other information and communication technology related innovations.

PART XI – CANCELLATION OF PROCUREMENT PROCEEDINGS

Cancellation of procurement proceedings before opening of bids

181.—(1) Pursuant to section 46(b) of the Act, a Procuring and Disposing entity may cancel procurement proceedings if—

- (a) the procurement need in question has ceased to exist;
- (b) the bidding documents require substantial modification.

(2) Where the procurement proceedings have been cancelled subject to sub-regulation (1), the procuring and disposing entity shall return all the bids received to the bidders unopened.

(3) Notwithstanding regulation 1 and 2 , the Authority shall order cancellation of procurement proceedings in case of gross irregularity in the procurement process.

Commented [WU12]: Defin. Anomalies in a procurement process that would have an impact on the outcome.

Cancellation of procurement proceedings after opening of bids

182.—(1) In order to protect the integrity of the public procurement process, a procurement and disposal entity shall to the greatest extent possible, avoid cancellation of procurement proceedings after opening of bids:

Provided that this may be done and limited strictly to exceptional cases.

(2) Cancellation of procurement proceedings after opening of bids shall be subject to approval by the Internal Procurement and Disposal Committee, and may be authorized only in the following cases—

- (a) the object of the procurement is no longer required;
- (b) there is need to substantially modify the bidding document;
- (c) there is evidence of collusion among bidders in setting bid prices;
- (d) there is no substantially responsive bid; and
- (e) all the bids exceed the budget.

Publication of notice of cancellation of procurement proceedings

183.—(1) In an open tender process, a procuring and disposing entity shall publish Notice of Cancellation of procurement proceedings or rejection of all bids, including the grounds for such decision in at least two newspapers of nationwide circulations and Authority’s website within five working days from the date of such decision.

(2) In the case of a method other than open tendering, a procuring and disposing entity shall notify all the bidders invited to participate by issuance of letters of such notice and publication of the notice on the Authority’s website within five days.

(3) In case a No Objection was already obtained from the Authority, the procuring and disposing entity shall inform the Authority in writing of such cancellation and the grounds thereof.

(4) A procuring and disposing entity reserves the right to recommence the procurement process should the need still exists.

PART XII—PARTICIPATION BY MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES

Guidelines for targeted procurement

184. Pursuant to section 6 (1)(k) and 36 (2) of the Act, the Authority shall issue guidelines for targeted procurement aimed at the promotion and facilitation of participation by micro-, small- and medium-sized enterprises in public procurement.

Promotion of the use of Micro, Small and Medium Enterprises

185. The Authority, in consultation and co-operation with relevant Ministries, other Organs of Government and representative bodies of micro, small and medium-sized, may devise programs and measures to promote and to facilitate

the participation of micro, small- and medium-sized enterprises in public procurement,

Eligibility of enterprises **186.** Eligibility of enterprises for designation as micro, small and medium-sized -enterprises eligible for set-asides, shall be determined in accordance with rules issued by the concerned organs of government, and referred to in an instruction from the Authority.

Required information **187.**—(1) To be eligible for award as a micro, small- and medium-sized enterprise, a bidder must represent by way of information that is in line with the applicable eligibility requirements that it is a micro, small- and medium-sized -enterprise at the time of its written representation.

(2) A bidder may represent that it is a micro, small- and medium-sized l-enterprise in connection with a specific solicitation if it meets the definition of a micro, small- and medium-sized -enterprise applicable to the solicitation and has not been determined by the relevant authority designated by Government, to be other than a micro, small- and medium-sized enterprise.

Margin of preference **188.** A procuring and disposing entity may in the evaluation of bids apply a margin of preference in the evaluation of bids in favour of one or more of the following entities—
(a) a bidder who is—
(i) a micro enterprise; or
(ii) a small enterprise; or
(iii) a medium enterprise; or
(b) a bidder who undertakes to achieve a contract participation goal in accordance with the provisions of a specification issued by the Authority for inclusion in standard bid documents.

Set asides **189.** A procuring and disposing entity may in its annual procurement plan set aside a portion of the proposed procurements for the exclusive award to micro, small or medium enterprises, or any combination thereof, in which case only bidders who are micro, small or medium enterprises, as applicable, may have their bids evaluated.

Reservations **190.** A procuring and disposing entity may reserve a portion of a contract for micro, small or medium enterprises, or any combination thereof, by requiring a supplier, contractor, consultant or other service provider that is awarded contract to achieve a minimum contract participation goal specified in the contract that is

entered into in accordance with the provisions of a specification issued by the Authority for inclusion in standard bid documents.

PART XIII—ADMINISTRATIVE REVIEW AND DEBARMENT PROCEDURES

Division I--Debarment of Suppliers and Bidders

Procedure for exclusion from participation in procurement

191.—(1) Pursuant to section 56 of the Act, the Director General may, after reasonable notice to the supplier or bidder involved, and upon granting reasonable opportunity for that supplier or bidder to be heard, exclude a supplier or bidder from participating in public procurement.

(2) Depending upon the gravity of misconduct cited in section 56 the Director General may suspend supplier or bidder from participating in public procurement proceedings for a reasonable period not exceeding 90 days to facilitate investigations prior commencement of debarment procedures.

Period of debarment

192.—(1) The maximum period of debarment for a supplier or bidder may be in accordance with the Act shall be as follows—

- (a) refusal by a successful bidder to sign a procurement contract duly offered in accordance with the terms of the bidding documents if required to do so; or to furnish a performance security in accordance with the terms of the bidding documents, for maximum period of five years;
- (b) false information supplied in the process of submitting a bid, for a maximum period of five years;
- (c) collusion between the bidder and a public official pertaining to the bidding process for maximum period of ten years;
- (d) collusion amongst bidders aimed at fixing prices at artificial and non-competitive levels, for maximum period of ten years;
- (e) conviction of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract or permanent debarment;
- (f) conviction of criminal offence under the Corrupt Practices Act or Financial Crimes Acts ; for a maximum of five years; and
- (g) breach of contractual obligations; for a maximum period of a maximum of five years.

(2) Notwithstanding the maximum debarment period for each form of misconduct, the Director General may permanently debar the supplier or bidder if it is determined that they are habitual offenders.

(3) The bidder or supplier shall be declared ineligible for award of contract if it comes to the knowledge of the Director General that the bidder or supplier in question is debarred by cooperating development partner subject to agreement entered into between then Authority and such partners.

(4) A Supplier or Bidder under sanction by relevant regulatory body shall, be ineligible for award of contract if such sanctions come to the knowledge of the Director General.

Grounds for debarment

193.—(1) A decision by the Director General to commence debarment proceedings against a supplier may originate from a petition by the public procuring and disposing entity or a determination of possible misconduct by the Authority emanating from its monitoring and oversight activities

(2) A supplier or bidder shall be given notice, in writing, show cause within fourteen days as to why they should not be debarred for the alleged misconduct

(3) Failure to show cause in writing within the period in subsection 2 shall result in debarment decision being made on the basis of the available information.

(4) All debarment decisions shall be made by the adhoc Review Committee constituted by the Director General pursuant to section 60 (3) of the Act.

(5) Upon the supplier or bidder show cause the Director General shall constitute an a three member adhoc review committee stated in 4 above shall hear and make a determination of the matter

(6) The Director General shall communicate the determination by the adhoc Review Committee to both parties in writing.

(7) The exclusion hearing shall be placed before a three-member ad hoc Review Committee whose members shall be appointed by the Authority, drawing from the standing Review Committee established pursuant to section 60 (3) of the Act, which shall reach a decision on the matter .

Conduct of debarment hearing

194. The following shall apply during debarment hearings—

(a) the supplier or bidder has the right to be represented by a legal practitioner;

(b) the hearing shall be recorded and all evidence presented shall be preserved; and

(c) witnesses must testify under oath and may be cross-examined.

(2) A debarment decision takes effect upon issuance of the written decision, and stays in effect until overturned on appeal to the High Court, or until the expiry date of the debarment period.

(3) A supplier or bidder that has been debarred from public procurement may appeal to the High Court.

(4) The Director General shall maintain and circulate to all stakeholders a list of debarred suppliers and bidders which shall also be published on Authority website.

Division II— Administrative Review Procedures

Administrative review procedures relating to award of procurement contract

195.—(1) A person may submit a written complaint which may be delivered by hand, mail, courier or other electronic means to the Director General.

(2) A complaint shall be considered filed on a particular day when it is received by the procuring and disposing entity or by the Authority, as the case may be by close of business on that day and the time lines referred to in section 60 (9) shall commence that day.

(3) The Director General shall render secretarial and advisory services to the Review Committee.

(4) In addition to the member and employees of the Authority, all members of the Internal Procurement and Disposal Committees and the members of the standing Review Committee shall be required to take an oath of secrecy on assumption of their duties to ensure the integrity of the public procurement da system.

Declaration of interest

196. Members of any adhoc review committee shall be required to declare interest in any matter that they are required to hear.

Application process

197. Applications to the Director General in the first instance shall only be made under very special circumstances which shall be justified by the applicant as to why the complaint cannot be first filed with the Controlling Officer or head the procuring and disposing entity

Review prior to award of contract

198. An application for review prior to award of contract may only be made during the stand still period unless such application is against the procurement process.

Remedies available at review

199. Any remedies payable pursuant to the right of review under these regulations after a contract has been awarded shall be limited to the cost of preparing and submitting a tender, and fee for application for the review and shall not include loss of profit, and may only be awarded to a bidder that would have been awarded the contract but for the complained action or omission.

Review and court proceeding to be part of procurement records

200. Any decision by the entity, the Review Committee or by the Court pursuant to section 60 of the Act and the ground and circumstances thereof shall be made part of the record of the procurement proceedings.

Review Procedure

201. The review procedure shall be as provided in the fifth Schedule hereto.

PART XIV – PENALTIES FOR BREACH

Offences and penalties

202.—(1) In the event of any breach of the Act and these Regulations, the Authority shall charge appropriate fines as prescribed in the First Schedule hereto of these Regulations.

(2) Any applicable fine shall be payable to the Authority within thirty (30) days from the date of communication of the said breach, failing which the Authority shall report the issue to relevant law enforcement authorities.

Commented [K13]: Schedule on penalties

FIRST SCHEDULE
MISCONDUCTS PUNISHABLE WITH FINES

NO.	NATURE OF MISCONDUCT	K t
1	Procuring from unregistered supplier	500,000. 00
2	Failure to publish Intention of award in accordance with section 48 of the PPD Act	500,000. 00
3	Evaluation conducted by the Internal Procurement Committee	500,000. 00
4	IPDC deliberations conducted by more than seven members (except Local Councils)	500,000. 00
5	Conducting evaluation processes by more than five members	500,000. 00
6	More than half of IPDC also conducted evaluation	500,000. 00
7	Bid opening ceremony chaired by a non member of IPDC	500,000. 00
8	Accepting of late bids	500,000. 00
9	Failure to seek prior approval from Authority to use a method other than open tendering in procurement	500,000. 00

10	Failure to debrief an unsuccessful bidder who has requested for the same	500,000. 00
11	Failure to comply with the Thresholds	500,000. 00
12	Failure to seek prior approval from Authority to use a method other than tendering with sealed bids and auction in disposal of assets	500,000. 00
13	Failure to comply with the bidding periods prescribed in section 42(5) of PPD Act	500,000. 00
14	Failure to respond to any request by a bidder for clarification of the bidding documents as provided under section 41(4) and bidding documents.	500,000. 00
15	Failure to allow bidders use Bid Securing Declaration in National Competitive Bidding	500,000. 00
16	Failure to announce bid prices during bid opening or announcing for the whole package instead of lots	500,000. 00
17	Evaluation of bids for goods/works using merit point system	500,000. 00
18	Failure to issue a bidder a receipt or any document to demonstrate that the supplier's tender was received at such time and date.	500,000. 00
19	Entering into a contract with a supplier based on an expired No Objection.	500,000. 00
20	Slicing or splitting procurement requirements to avoid thresholds	500,000. 00
21	Failure to keep information relating to procurement or disposal confidential	500,000. 00
22	Failure to produce record/documentation of procurement or disposal proceedings when required to do so by the Authority or oversight bodies	500,000. 00
23	Being involved in any act/conduct that brings procurement profession in disrepute	500,000. 00
24	Entering a contract with a debarred bidder	500,000. 00
25	Failure to publish a notice of cancellation of procurement proceedings	500,000. 00
26	Cancelling procurement proceedings on grounds that do not constitute public interest	500,000. 00
27	Being engaged in misprocurement	500,000. 00
28	Terminating a procurement contract for a reason other than those contained in the contract	500,000. 00

29	Variation of a contract without any written documentation	500,000. 00
30	Failure to return bid securities of unsuccessful bidders within seven days from the date of signing of the contract	500,000. 00
31	Failure to return performance security within 30 days from completion of performance of contract	500,000. 00
32	Failure by the Controlling Officer to respond to a complaint lodged by a bidder within 14 days from date of lodging	500,000. 00
33	Failure by a member of IPDC or PDU to take and Oath of Secrecy within 14 days from the date of appointment	500,000. 00
34	Failure by Evaluation team members to declare interest before commencing evaluation of bids	500,000. 00
35	Failure to comply with any measure regulated by the Authority through a circular issued to the procuring and disposing entity	500,000. 00

SECOND SCHEDULE :
WEIGHTING OF EVALUATION CRITERIA OF CONSULTANCY SERVICES

Consultant's specific experience	0 to 10 per cent of score
Methodology	20 to 50 per cent of score
Key personnel	30 to 60 per cent of score
Transfer of knowledge ..	0 to 10 per cent of score
Participation by nationals: ..	0 to 10 per cent of score
TOTAL	100 per cent of score

THIRD SCHEDULE

(reg. 113)

PROCEDURES FOR DESIGN CONTESTS

PART I

GENERAL PROVISION

Scope and
purpose

1.—(1) This Annex provides detailed rules and procedures related to the conduct of design contests, with a view of fulfilling the objectives and implementing the provisions of the Act.

(2) For the purposes of this Annex “design contests” means those procedures that enable the procuring and disposing entity to acquire, mainly in the fields of area planning, town planning, architecture and engineering or data processing, a plan or design selected by jury after being put out to competition with or without the award of prizes.

(3) In accordance with regulations, Procuring and Disposing Entities may conduct design contests, with or without prizes, to acquire the required plans and

projects relating to architecture, landscaping, engineering, urban projects, urban and regional planning, and fine arts.

(4) The rules and procedures for the organization of a design contest shall be in conformity with the requirements of this Annex and shall be consistent with the Act.

Valuation of design contest

2. For the purposes for the organization of a design contest and the application to design contest of monetary thresholds referred to in the Act and regulations—

(a) in the case of design contests organized as part of a procedure leading to the award of a contract for consultants' services, the estimated value net of surtax of the services shall be used; and

(b) in the case of design contests with prizes, all contests awards and other amounts payable to the participants in the design contest shall be used.

PART II DESIGN CONTEST JURY

Establishment of jury

3.—(1) The designs submitted by contestants shall be evaluated by a jury composed exclusively of members who are natural persons and are independent from the participants in the contest.

(2) The jury shall be established prior to the opening of the contest.

(3) The members of the jury shall be appointed and dismissed by the procuring and disposing entity.

Composition of jury

4. If certain professional qualifications are required from participants in a design contest, at least one-third of the members of the jury of the contest must have the same or similar qualifications.

Jury procedures

5.—(1) At its first meeting, the jury shall elect a chairperson and a rapporteur.

(2) The decision of the jury shall be taken by a majority vote, with a separate vote on each design, and if the vote is equally divided, the chairperson shall have the decisive vote, and all decisions of the jury shall be final.

(3) A report of the meetings, including explanations of the decision of the jury with respect to each plan or design submitted, shall be drawn up by the rapporteur and signed by the chairperson and all members of the jury.

(4) The report of the jury shall be made public.

PART III PARTICIPATION IN DESIGN CONTESTS

Contest Notice

6.—(1) Procuring and Disposing Entities who wish to carry out a design contest shall make known their intention by means of a contest notion.

(2) In addition to publication in the Gazette and local press, the notion shall be published in technical journals and reviews relevant to the subject matter of the design contest.

(3) Notices of design contests shall be published not less than thirty days prior to the date for the receipt of designs.

Content of
contest notice

7. The design contest notice shall contain at least the following information—

- (a) the name and address, fax number and electronic address of the procuring and disposing entity and, if different, of the service from which additional information may be obtained;
- (b) project description, including the subject and characteristics of the design contest;
- (c) the requirement for participation in the design contest, including any qualification criteria and proof of compliance therewith to be submitted by participants;
- (d) nature of the contest, namely open or registered;
- (e) in the case of open contests, the final date for receipt of plans or designs;
- (f) in the case of restricted contests—
 - (i) the number of participants envisaged;
 - (ii) where applicable, names of participants already selected;
 - (iii) criteria for the selection of participants; and
 - (iv) final date for receipt of request to participate.
- (g) where applicable, indication of whether participation is reserved to a particular profession;
- (h) criteria to be applied in the evaluation of plans and designs;
- (i) the place from which and the manner in which candidates may obtain the contest documents, including the deposit, if any, to be paid for the documents;

- (j) the names of the members of the jury;
- (k) indication of whether the prize winners are permitted any follow-up contracts;
- (l) where applicable, the number and value of prizes;
- (m) where applicable, details of payment to all participants; and
- (n) date of publication of the notion.

Extent of participation

8.—(1) Where design contests are restricted to a limited number of participants, the procuring and disposing entity shall state in the notion clear and non-discriminatory selection criteria, and the procuring and disposing entity may restrict participation only on the basis of those criteria.

(2) In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

Subvention of participation

9.—(1) In restricted competitions, provision may be made for payment of a certain sum to each of the participants invited to take part, without prejudice to the regular award of prizes.

(2) In contests consisting of two stages, a reasonable sum may be paid to all participants admitted to the final contest, and such sum is distinct from the prizes awarded upon the conclusion of the final contest.

Non-discrimination

10. The conditions and contest documents of a contest shall be identical for all participants.

PART IV CONTEST DOCUMENTS

Provision of contest documents

12. The procuring and disposing entity shall supply participants with all the documentation necessary for drawing up their designs, and if there is a deposit to be paid for the documentation, the deposit shall be refunded to the candidate that in fact participate in the contest.

Contents of contest documents

13.—(1) In addition to restating the information contained in the design contest notion referred in paragraph 7 of this Schedule, the contest documents shall contain the following—

- (a) The detailed nature of the problem;

- (b) The actual conditions to be fulfilled in the preparation of the design;
- (c) The number, nature, scale and dimensions of the documents or models required in two or three dimensions;
- (d) The conditions of receipt, acceptance and return of such documents or models;
- (e) The requirements as to data to be supplied by participants so as to enable the costs of execution of design to be estimated in accordance with uniform standards;
- (f) The method of allocation of prizes;
- (g) Whether the prize is to be the sole remuneration received by the prize-winner; and
- (h) The name, functional title, address of one or more officers or employees of the procuring and disposing entity who are authorized to communicate directly with and to receive communications directly from participants in connection with the procurement proceedings, without the intervention of an intermediary.

(2) A clear distinction shall be made in the contest documents, between conditions that are compulsory and those that leave participants freedom in interpretation, which should be as wide as possible.

(3) The contest documents shall indicate that, in principle, the procuring and disposing entity shall use meter as the scale for designs and plans; in cases where this is not done, a metric equivalent shall be given in the contest documents.

(4) The procuring and disposing entity shall endeavor to reduce to a minimum, in all cases, the number and size of the documents and drawings required to be submitted.

(5) The procuring and disposing entity shall give, on an equal basis, to all participants in the second stage of a two-stage contest all of the supplementary information necessary for drawing up designs and plans to be submitted in the second stage.

14. Upon obtaining the contest documents, candidates intending to participate in the contest shall register that intent with the procuring and disposing entity, and registration implies acceptance of the conditions of the competition.

PART V

SUBMISSION AND EVALUATION OF DESIGNS AND PLANS

15. The designs and plans submitted by participants for consideration by the jury shall be presented to the procuring and disposing entity for transmission to the jury in such a manner as to ensure their anonymity before and during the evaluative, comparison and award stages.

One or two
stage contests

16.—(1) Contests may be held in one or two stages.

(2) In contests that consist of two stages, only those competitors who are successful in the first part shall be admitted to the final contest.

(3) Designs and plans submitted in the first stage shall be kept confidential until the results of the second stage have been announced.

(4) The list of participants admitted to the final contest shall be drawn up and published in alphabetical order.

(5) Participants admitted to the second stage of contests shall receive from the procuring and disposing entity all the supplementary information necessary for drawing up designs and plans to be entered in the final contest.

Evaluation and
comparison of
designs

17.—(1) Decision and opinion concerning the designs and plans shall be made only on the basis of the criteria and conditions set forth in the notice announcing the design contest and in the documents.

(2) All drawings, photographs, models or documents, other than those specified in the program, shall be excluded from consideration, and shall be eliminated before examination of the plan.

(3) The jury shall disqualify any plan not in conformity with the conditions set forth in the contest documents.

Selection of the
winning design

18. The winning design or plan shall be selected exclusively on the basis of criteria and conditions set forth in the contest notice and documents.

Notice of results

19.—(1) Procuring and Disposal Entities who have held a design contest shall send a notice of the results of award procedure and must be able to prove the date of dispatch.

(2) The notice referred to in paragraph (1) shall contain the following information—

- (a) name, address, fax number and electronic address of the procuring and disposing entity;
- (b) project description;
- (c) number of participants, including the number of foreign participants;
- (d) winner(s) of the contest;
- (e) where applicable, the prizes;
- (f) reference number of the design contest notice; and
- (g) date of dispatch of the notice.

(3) The notice shall be published in the same publications utilized for publication of the design contest notice.

**PART VI
ALLOCATION OF PRIZES, AWARDS AND COMPENSATION**

Amount of prizes **20.** The amount of the prizes shall be proportional to the size of the project, the work involved and the expenses incurred by participants.
21. Prizes shall be distributed within ten days of the announcement of the results of the contest.

Use of designs **22.—**(1) The winning design may not be put to any use other than that expressly stated in the contest documents.

(2) No other design, whether or not it is awarded a prize, may be used in whole or in part by the procuring and disposing entity except by special agreement with the respective participant.

(3) In cases where the procuring and disposing entity wishes to use a prize-winning design for other purposes, or to modify it, a fresh agreement to that effect shall be concluded between the procuring and disposing entity and the author of the design or plans.

Copyright and ownership issues **23.—**(1) The author of any design shall retain the artistic copyright in his work, and no alterations may be made without his formal consent.

(2) The design winning the first prize shall become the property of the procuring and disposing entity.

(3) Unless otherwise specified in the contest documents, the procuring and disposing entity's ownership in the winning design shall cover only one execution thereof.

(4) Unless otherwise specified in the contest documents, the author of any design shall retain the right of reproduction.

PART VII
MISCELLANEOUS PROVISIONS

Exhibition of designs

24.—(1) Following the conclusion of the deliberations of the jury, the designs submitted in the contest shall be publicly exhibited, and in addition to the designs themselves, all documents and drawings, as well as the report and decisions of the jury bearing the signatures of the chairman and of all members shall be exhibited.

(2) The procuring and disposing entity shall notify the participants at least seven days prior to the date of the exhibit of the date and place of the exhibition, and the procuring and disposing entity shall also arrange for the publication of the date and place of the exhibition in the Gazette and local press and in the technical journals and reviews in which the design contest notice was published.

Standards of conduct

25.—(1) The members of the jury shall undertake not to be guided in their work by any consideration other than their own conscience, the interests of the contest and the public interest.

(2) No member of the jury shall take part, either directly or indirectly, in the contest, nor be entrusted, either directly or indirectly, with work connected with the execution of the winning design.

(3) The communication and information exchange involved in design contests shall be carried out in such a way as to ensure that the integrity and confidentiality of all information supplied by participants are preserved, and that the content of plans and design may only be examined by the jury, after the time-limit set for submitting those has expired.

(4) In their conduct, the members of the jury and participants in the contest are subject to the conduct and ethics principles set forth in the Act and in these Regulations.

Cancellation of contest

26.—(1) The procuring and disposing entity retains the right to cancel the contest at any stage prior to the announcement of a winning design, and in the event of a cancellation, the procuring and disposing entity shall refrain from the utilization of any design that may have been submitted.

(2) In the event of the cancellation of a contest for which participants have been officially registered, the procuring and disposing entity shall compensate the participants for work actually carried out in connection therewith, in accordance with conditions set forth in the contest documents.

Record of the
contest

27. The Procuring and disposing entity shall prepare a record of the design contest containing at least the following information—

- (a) the name, address and other details of the procuring and disposing entity;
- (b) the subject and characteristics of the design contest;
- (c) the names and addresses of the participants in the design contest;
- (d) the name and address of the person who submitted the award-winning project;
- (e) information concerning the qualifications required of the participants in the design contest or confirming the lack thereof;
- (f) the total value of the design contest awards and other amounts payable to the participants in the contest;
- (g) a summary of the evaluation and comparison of the designs or plans; and
- (h) the report of the jury, signed by the chairperson and the members, summarizing and explaining the deliberations and decisions of the jury with respect to the evaluation and comparison of the designs submitted in the contest, and stating the grounds for the selection of the winning design.

28. Part V of the Act and Division II of Part X of these Regulations shall apply to the resolution of the complaints from participants concerning the conduct of design contests.

FOURTH SCHEDULE

LIST OF NATIONAL SECURITY OR DEFENCE RELATED ITEMS ELIGIBLE FOR SPECIAL TREATMENT UNDER S.37(2) OF THE PPD ACT, 2017.

1. Ammunition and pyrotechnics
2. Lethal security weapons (guns, rifles and artillery pieces)
3. Non-lethal security weapons
4. Original Equipment Manufacturer (OEM) spare parts for security platforms i.e. air craft, ground crafts and water crafts
5. Riot Management Equipment
6. Communications Equipment
7. Security and Defence Hardware and Equipment
8. Security uniforms and accessories
9. Meals Ready to Eat (MRE) e.g. 1 Man x 24 hour combo or 1 Man x 48 hour combo
10. Bomb x-ray machines
11. Security version vehicles and motor cycles
12. Forensic science equipment
13. Construction of explosive storage houses and armouries
14. Dual purpose engineering plant and equipment
15. Special security and defence equipment and consumables
16. Weapon ecosystems
17. Construction of aircraft shelters

18. Tinned Equivalent Food
19. Security and Defence medals and ribbons
20. Target papers (all sizes)
21. Security and Defence Band Equipment
22. Security Medical Equipment
23. Unmanned Aerial Systems (UAS)
24. Security systems (e.g. passport issuance, border control, visa and permit systems)
25. ID making machines
26. Finger print identification equipment

A. BANK ACCOUNT DETAILS FOR THE PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS AUTHORITY

Registration Fees should be deposited into the following Bank Account and a copy of the Bank Deposit Slip must be attached and submitted together with completed Application Forms as indicated in section H. A receipt will be issued together with the Certificate.

Name of Bank: National Bank of Malawi
Name of Branch: Capital City
Account Name: Public Procurement and Disposal of Assets Authority
Account Number: 000 100 562 4416
Account Type: Current Account

B. DOCUMENTS TO BE ATTACHED:-

- a) Copy of Business Registration Certificate or Certificate of Incorporation
- b) Copy of MRA TPIN Certificate
- c) An original copy of the General Receipt or original copy of Bank Deposit Slip
- d) Copy of MRA Tax Clearance Certificate
- e) Copy of the previous PPDA Registration Certificate (for suppliers renewing their PPDA registration)

C. SUBMISSION OF APPLICATIONS

Completed Application Forms in sealed envelopes duly indicated in bold on top
“REGISTRATION OF SUPPLIERS” shall be submitted to the address below:-

The Director General,
Public Procurement and Disposal of Assets Authority,
Area 14, Petroda House, Second and Third Floor,
Private Bag 383,
Capital City,
Lilongwe 3.

D. VALIDITY

The certificate to be issued by the PPDA shall be valid for one (1) year and shall expire exactly twelve (12) months from the date of registration.

E. NOTE

All applications that do not contain the required information will not be processed. PPDA reserves the right to check and verify information applicants have provided from any source in order to make an informed decision on the a applications.

SIXTH SCHEDULE
ADMINISTRATIVE PROCEDURES

Contents of
application for
review

1.—(1) An application for review under Part IX of the Act shall be in writing and signed by the applicant or its representative and shall—

- (a) include the name, postal and physical address, and telephone number and email address of the applicant;
- (b) identify the procuring and disposing entity and the procurement or contract number;
- (c) set forth a detailed statement of the legal and factual grounds of the application for review including copies of relevant documents;
- (d) set forth all information established that the applicant is, for the purpose of filing an application for review, a bidder whose direct economic interest would be affected by the award of a contract or by the failure to award a contract;
- (e) set forth all information establishing the timeliness of the application for review; and
- (f) specifically request a ruling and state the form of relief requested;

(2) An application for review under Part IX of the Act may, in addition—

- (a) request special measures for handling proprietary commercial or other confidential information;
- (b) request specific documents, explaining the relevance of the documents to the grounds underlying the application for review; and
- (c) request a hearing, explaining the reasons that a hearing is needed to resolve the application for review.

(3) In the event that the application for review is filed in the first instance with the Authority, the applicant shall furnish a complete copy of the application for review, including all attachments, to the procuring and disposing entity not later than one day after the application for review is filed.

(4) If the applicant believes that the application for review contains information which should be withheld from the public, a statement advising of this fact must be on the front page of the submission, and wherever the information appears, and the applicant shall file a redacted copy of the application for review which omits the information with the procuring and disposing entity within one day after the filing of its application for review.

Time periods
and deciding
applications for
review

2.—(1) An application for review based upon alleged improprieties in a procurement which are apparent prior to bid opening shall be filed prior to bid opening.

(2) Applications for review other than those covered by paragraph (1) shall be filed during the stand still period or within fourteen days after the basis of applications for review is known or should have been known, whichever is earlier.

(3) Review by the Authority

(4) An application for review may be submitted to the Authority, for disposition by an ad hoc Review Committee constituted from among the members of the Standing Review Committee in accordance with section 63 of the Act.

Notice of
application for
review

3. In the event of the filing with the Authority of an application for review by an ad hoc Review Committee, that office shall notify the procuring and disposing entity by electronic mail promptly after the filing of an application and, unless the application for review is dismissed, shall send a formal letter to the procuring and disposing entity and an acknowledgement to the applicant.

Dismissal of
application for
review

4. An application for review may be dismissed for—

- (a) failure to comply with any of the requirements set out in this Schedule, except for the provisions of paragraph 1 (2) and (3), and paragraph 2 where the procuring and disposing entity has actual knowledge of the basis of the application for review, or the procuring and disposing entity is not prejudiced by the protester's non-compliance;
- (b) Setting forth only allegations that do not state a valid basis for an application for review, or that do not set forth a detailed legal and factual statement;
- (c) having been filed in an untimely manner;
- (d) not being properly submitted before the procuring and disposing entity or the Authority;
- (e) concerning contract administration rather than contract award; and

- (f) challenging an affirmative determination of qualifications.

Comments by
procuring and
disposing entity
on application
for review by
the Authority

5.—(1) When an application is filed with the Authority for review, the procuring and disposing entity, shall provide comments on the application within seven days after the notice. The comments of the procuring and disposal entity shall include relevant facts and all documents relevant to the procurement proceedings.

(2) The procuring and disposing entity, if it feels that there are grounds thereof, may file a request for dismissal before filing a report required under paragraph (1) 3 days from the day of the notice.

Disclosure by
procuring and
disposing entity

6.—(1) The procuring and disposing entity shall promptly make available to the ad hoc Review Committee any information and documentation that the ad hoc Review Committee may request, including—

- (a) the bid submitted by the applicant;
- (b) the bid of the bidder that is being considered for award, or whose bid or proposal is being reviewed;
- (c) all qualification assessment and bid evaluation documents;
- (d) the solicitation, including the specifications;
- (e) the abstract of bids or offers;
- (f) requests for clarification of the bidding documents and responses thereto; and
- (g) any other relevant documents.

(2) The procuring and disposing entity may make an application to the Authority, request the applicant to produce relevant documents, or portions of documents, that are not in the review committee's possession. The applicant shall promptly respond

(3) Where, under a special measure to protect confidential information pursuant to paragraph 1 (2) (a), or pursuant to the obligation of the procuring and disposing entity to protect the confidential information of the competing bidders, the procurement and disposal entity shall make an application to the authority so that some document are withheld from the applicant in accordance with these regulations in which case the authority shall inform the applicant the basis of that position..

(4) Upon the request of the applicant, the ad hoc Review Committee shall decide whether the procuring and disposing entity must provide any withheld documents, or portions of documents, and whether this should be done under a special measure to protect confidentiality.

(5) The ad hoc Review Committee may request or permit the submission of additional statements by the parties and by other parties not participating in the application for review as may be necessary for the fair resolution of the application for review.

Hearings **7.**—(1) At the request of a party or on its own initiative, the ad hoc Review Committee may conduct a hearing in connection with an application for review.

(2) Hearings generally will be conducted as soon as practicable after receipt by the parties of the procuring and disposing entity comments and relevant documents.

(3) All parties participating in the application for review shall be invited to attend the hearing.

(4) Hearings shall normally be recorded or transcribed. If a recording or transcript is made, any party may obtain copies at its own expenses.

Remedies **8.** In determining the appropriate remedies pursuant to section 60(12) of the Act, the ad hoc Review Committee shall consider all circumstances surrounding the procurement or disposal or proposed procurement, including the seriousness of the procurement deficiency, the degree of prejudice to other parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the government, the urgency of the procurement or disposal, and the impact of the remedies on the procuring and disposing entity's mission.

Distribution of decisions **9.**—(1) Unless it contains information subject to special measures, a copy of a decision by the ad hoc Review Committee shall be provided to the applicant, any intervenors, and the head and to the senior procurement officer of the procuring and disposing entity.

(2) A copy of a decision containing information subject to special measures shall be provided only to the procuring and disposing entity and to individuals granted access to the information pursuant to the special measures.

(3) A summarized version of the decision omitting the information subject to special measures shall be made public.



Notice to the
Authority of
Action taken

10. The Procuring and disposing entity shall promptly notify the Authority of the any action taken by the procuring and disposing entity in response to the decision of the ad hoc Review Committee.

Made this..... day of, 2020

JOSEPH MWANAMVEKHA
Minister of Finance, Economic Planning and Development

(FILE NO:)