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GOVERNMENT NOTICE NO. 78

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT, 2024 (NO. 7 OF 2025)

PUBLIC PROCUREMENT REGULATIONS, 2026

ARRANGEMENT OF REGULATIONS

REGULATION

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IN EXERCISE of the powers conferred by section 97 of the Public Procurement and Disposal of Public Assets Act, 2024, I, JOSEPH MATHYOLA MWANAMVEKHA, Minister of Finance, Economic Planning and Decentralization, on the recommendation of the Authority, make the following Regulations—

Part I—Preliminary

Citation

1. These Regulations may be cited as the Public Procurement Regulations, 2026.

Scope

2. These Regulations shall apply to all procurements covered under section 3 of the Act.

Accessibility of legal texts governing public procurement

3.—(1) The Authority shall, in accordance with 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 the English language.

(3) Notwithstanding subregulation (2), where necessary for purposes of promoting targeted procurement, the Authority may authorize the use of local languages.

(4) For purposes of subregulation (3), "targeted procurement" means the process used to create a demand for goods, works or services of, or to secure the participation of, targeted enterprises in contracts in response to the objectives of a secondary procurement policy or a procurement policy that promotes objectives additional to those associated with the immediate objective of the procurement itself.

Part II—Principles of Public Procurement

Division 1—Transparency

Record keeping

4. A procuring and disposing entity shall maintain 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, a 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 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 66 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, a statement pertaining to the rejection and the grounds thereof; and

(*k*) if a successful bidder in tendering proceedings fails to enter into a procurement contract, a statement of the grounds thereof.

Availability of records for oversight

5. A procuring and disposing 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 to do so pursuant to any written law.

Annual register and procurement file

6.—(1) A procuring and disposing entity shall prepare an annual register of the procurement proceedings that have been undertaken for every year in serial numbers.

(2) A 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, including 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 procurement file

7. A procurement file kept by a procuring and disposing entity shall include the following documentation, arranged in a sequential order—

(*a*) contract file index;

(*b*) requisition of 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 counts for each bidder whose qualification were assessed in the course 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*) minutes of negotiations, if any;

(*l*) copies of notice of acceptance sent by winning bidder;

(*m*) copy of notices sent to unsuccessful bidders;

(*n*) where applicable, a copy of "No Objection" from the Authority or clearance from the Anti-Corruption Bureau, as the case may be;

(*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 correspondence with the supplier;

(*u*) requests to subcontract and responses thereto;

(*v*) evaluation reports; and

(*w*) the record of the procurement proceedings, as well as the documentation referred to therein.

Notice of procurement contract

8.—(1) In the case of procurement of a contract of goods, works or services whose threshold values have been set and issued by the Authority, a procuring and disposing entity shall, in accordance with section 56 (2) of the Act, within seven days of signing the contract, cause a notice of the procurement contract to be published in the *Gazette*, in at least one newspaper of national wide circulation, in the electronic media, on the websites of the procuring and disposing entity and the Authority, and in the case of international tendering, in international recognized business portals and other media of wide international circulation.

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

(*a*) the announcement of the procurement at the commencement of the procurement proceedings;

(*b*) the subject matter of the procurement;

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

(*d*) the contract price.

Publication of notice of intention to award contract

9.—(1) A procuring and disposing entity shall, in accordance with section 70 of the Act, 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*, in at least one newspaper of wide circulation, in the electronic media, on the websites of the procuring and disposing entity and the Authority, and in the case of international tendering, in international recognized business portals and other media of wide international circulation.

(2) The notice referred to in subregulation (1) shall be a period of fourteen days, and a procuring and disposing entity shall not finalize a contract with the successful bidder before the expiry of that period.

(3) Any aggrieved bidder may, in accordance with sections 82 and 83 of the Act, challenge the outcome of the procurement proceedings during the notice period prescribed in subregulation (2).

Publication of contract award

10.—(1) In the case of procurement contract requiring publication of intention to award, a procuring and disposing entity shall, within seven days of the signing of the contract, publish information pertaining to the contract award, in the *Gazette*, in at least one newspaper of wide circulation, in the electronic media, on the websites of the procuring and disposing entity and the Authority, and in the case of international tendering, in international recognized business portals and other media of wide international circulation.

(2) The information referred to in subregulation (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 subregulation (1), a procuring and disposing entity shall, within seven days of entry into force of the procurement contract, in writing, notify all unsuccessful bidders the name and address of the bidder that has entered into the contract and the contract price.

Publication of contract awards based on requests for quotations

11.—(1) In the case of procurement based on requests for quotations, a procuring and disposing entity shall, within seven days of the signing of the contract, publish information pertaining to the procurement, in the *Gazette*, in at least one newspaper of wide circulation, in the electronic media, on the websites of the procuring and disposing entity and the Authority.

(2) The information referred to in subregulation (1) shall include the procurement reference number and the subject of the procurement.

(3) Notwithstanding subregulation (1), a procuring and disposing entity shall, within seven days of entry into force of the procurement contract, in writing, notify all unsuccessful bidders the name and address of the bidder that has entered into the contract and the contract price.

Disclosure of information

12.—(1) A procuring and disposing entity shall, in accordance with section 80 (2) and (3) of the Act, upon a written request from a non-governmental organization, civil society organization, donor or financing agency, private individual and other interested party, disclose all the information relating to the procurement contracts, including construction projects.

(2) A non-governmental organization, civil society organization, donor or financing agency, private individual and other interested party which makes a request under subregulation (1) shall be granted access to the procurement records held by the procuring and disposing entity.

(3) Notwithstanding subregulation (1), a non-governmental organization, civil society organization, donor or financing agency, private individual, or other interested party shall not be allowed access to proprietary and confidential information of a bidder.

Information on project identification

13. 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 of the client, including postal and electronic addresses of the client;

(*e*) sources of funds;

(*f*) sector and sub-sector of the project;

(*g*) socio-economic purposes of the project; and

(*h*) any other relevant details of the project.

Information on project preparation

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

(*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 or 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.

Information on project procurement

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

(*a*) the name of the procuring and disposing entity;

(*b*) scope of project;

(*c*) procurement method used;

(*d*) number of firms tendering;

(*e*) bid validity period and the actual date of award; and

(*f*) contract price.

Information on project implementation

16. 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 and interested stakeholders during project implementation—

(*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 from fulfilling their obligations;

(*i*) the rate at which the price of materials, labour, and equipment escalated; and

(*j*) incidences and status of disputes between the parties.

Information on project completion

17. A procuring and disposing entity shall disclose the following information to the public and interested stakeholders at 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 2—Accountability

Declaration and disclosure requirements

18.—(1) All members of the *ad hoc* evaluation team shall, before commencing evaluation and comparison of bids have to make a declaration to the effect that they have no relationship with bidders in relation to 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 an *ad hoc* evaluation team, or any employee or consultant of a procuring and disposing entity who in course of any procurement proceedings becomes aware that he or she has a relationship with a bidder, which is likely to

influence the outcome of the procurement proceedings, shall immediately report that fact to the Controlling Officer or head of the procuring and disposing entity, or the Internal Procurement and Disposal Committee, as the case may be.

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

(*a*) to remove the member, employee or consultant from procurement proceedings; or

(*b*) to retain the member, employee or consultant in the procurement proceedings.

(4) The Internal Procurement and Disposal Committee of the procuring and disposing entity shall, upon giving a member of an *ad hoc* evaluation team, employee or consultant an opportunity to be heard and assessing all circumstances of the relationship, make a decision—

(*a*) to remove a member of an ad hoc evaluation team, employee or consultant from procurement proceedings; or

(*b*) to retain the member, employee or consultant in the procurement proceedings.

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

Conflict of interest with respect to procurement-related activities

19. Procurement-related activities, on behalf of a procuring and disposing entity, that are subject to conflict of interest restrictions of public officials referred to in section 80 (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-procurement restrictions on procurement professionals

20.—(1) Any person who served in a procuring and disposing entity as a procurement professional or who exercised some other authority 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, on behalf of a supplier, in the performance of such contract.

(2) The restriction referred to in subregulation (1) shall remain in force for the duration for delivery of goods, works or services under the procurement proceedings.

Contingent fee arrangements

21.—(1) In addition to the activities prohibited under section 80 of the Act, a person, including former public officials, 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 *bonafide* commercial selling agent for the 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

22. A procuring and disposing 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 78 (1) (*a*) of the Act,

and that a violation of the prohibition shall result in the rejection of the bid, offer or quotation, as the case may be.

Prohibition of solicitation of improper inducement

23.—(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 78 (1) (*a*) of the Act shall report such an offer to the Controlling Officer or head of the procuring and disposing entity, to the Authority and to relevant law enforcement authorities.

Prohibition of contract award to a bidder affiliated with a subsidiary company, consultant, etc

24.—(1) Subject to subregulation (2), 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 for bidding documents for the procurement contract or supervising the execution of the procurement contract.

(2) Subregulation (1) shall not apply to the firms, consultants, contractors or suppliers, which together are performing the supplier's obligation under a turnkey or a design and build contract.

Disclosure of records of procurement proceedings

25. 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, a procuring and disposing entity shall not disclose information—

(*a*) if the 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 4 (*g*).

Confidentiality of procurement information

26.—(1) Subject to applicable oversight, auditing or other written law, or an 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 the involvement of the public official in, or contact with officials involved in, procurement proceedings or the planning of a procurement.

(2) Except as provided for under regulation 5, 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 examination, evaluation or comparison of the bids.

(3) The requirement of confidentiality, imposed on procuring and disposing entities under section 34 (1) of the Act, shall also extend to agents of procuring and disposing entities.

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

27. The Controlling Officer or head of a 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 80 (1) of the Act.

Remedies against breach of conduct standards by public officials

28.—(1) In addition to any other applicable civil and administrative remedies, and sanctions under any written law, the Authority 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; or

(*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 No. 4 of 2022

29.—(1) The Director General shall report to the Secretary to the Treasury any violation of these Regulations which have financial implications, and the Secretary to the Treasury may, in accordance with powers conferred on him under the Public Finance Management Act, 2022 take appropriate action on the procuring and disposing entity that does not comply with these Regulations.

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

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

Division 3—Fairness, Economy and Efficiency

Principles of non-discrimination

30.—(1) In accordance with section 29 (2) 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.

(2) Notwithstanding subregulation (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

31.—(1) All bidding documents shall contain the same information, and shall be made available to all prospective bidders who fulfil participation requirements.

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

(3) The 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 bids.

Economy and efficiency

32. A procuring and disposing entity shall, in accordance with section 29 of the Act, among other things, 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 III—PROCUREMENT PLANNING

Division 1—Prerequisite Steps for Initiating Procurement Proceedings

Annual planning for budget preparation purposes

33. Prior to the determination of annual budgetary allocations, a procuring and disposing entity shall provide to the Ministry responsible for finance, or in the case of local authorities, to the National Local Government Finance Committee, a procurement plan describing the extent, timing and purposes of projected procurement requirements for the budgetary period.

Apportioning of procurement

34.—(1) Without prejudice to section 55 (2) of the Act, when the apportioning of a procurement would be technically or financially feasible, the procurement may be divided into lots, which may be awarded through separate contracts.

(2) Where 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

35. A procuring and disposing entity shall devise procurement plans, and shall take 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 procurement;

(*d*) 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

36. A procuring and disposing entity shall initiate actual procurement proceedings only after—

(*a*) the determination and approval of budgetary allocations; and

(*b*) 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 be included in the bidding documents.

Estimation of the value of procurement

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

(*d*) the estimated value of additional purchases to be permitted under the contract; and

(*e*) a total cost of works, goods or services to be procured and any incidental cost.

Requisition for procurement

38.—(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 the Controlling Officer to ascertain availability of funds.

(2) A 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) A 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

39.—(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) The 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 prequalification 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 2—Selection of Appropriate Contract Form

Determination of appropriate form

40. 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, pursuant to section 65 (2) of the Act, the standard contract forms prescribed by the Authority and the conditions for their use.

Framework agreements

41. Pursuant to section 54 of the Act, framework agreements shall be governed by detailed rules contained in Public Procurement Guidelines for Framework Agreements issued by the Authority.

Types of works contracts

42.—(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-materials rate contracts.

(2) A contract based on unit price shall be awarded based on unit prices in the winning 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) The 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 a lump-sum contract, the supplier shall perform the specified work for a fixed sum of money and it shall be the suppliers' responsibility and risk to remain on budget, since the procuring and disposing entity shall be liable only for the lump-sum price of the contract, subject to changes ordered by the procuring and disposing entity.

(5) In a turnkey contract, 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 labour and materials cannot be predicted with certainty at the time of entry into 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 IV—Procurement Methods

Division 1—General Provisions

Notice of procurement method to be used

43. A procuring and disposing entity shall include in the invitation to bid, or to apply 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.

Bid security

44.—(1) A bidder shall furnish a procuring and disposing entity with a bid security in the amount and currency specified in the invitation to bid.

(2) In case of a national competitive bidding, a procuring and disposing entity shall ensure that a bidder submits a bid securing declaration, *in lieu of* a bid security.

Receipt and security of bids

45.—(1) A procuring and disposing entity shall ensure that all bids it has received are kept in a secure manner that does not permit the bids to be opened or viewed.

(2) For the purpose of subregulation (1), the procuring and disposing entity shall maintain a secure tender box into which bidders may deposit their bids, however—

(*a*) where the size of the offer envelopes makes it impossible to place the bids in the box, the bids shall be handed over to the secretary of the Internal Procurement and Disposal Committee, who shall ensure that the bids are safely kept in a secure area and manner, and are handed over to the Internal Procurement and Disposal Committee at the time of the opening of bids; and

(*b*) where the bid is transmitted electronically, it shall be transmitted to a designated secure portal.

(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 samples 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 time of opening of bids.

Evaluation of bids in different currency

46. 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

47.—(1) 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.

(2) The prompt payment discount referred to under subregulation (1) shall not be considered in the evaluation and comparison of bids.

Notice required for rejection of all bids

48. A procuring and disposing entity shall give notice of the rejection of all bids, or of cancellation of the procurement proceedings, no later than seven 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, as the case may be.

Return of samples

49.—(1) Any required samples that have not been destroyed in testing shall be returned to the respective bidders on 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 a procuring and disposing entity for the purpose of comparison with the delivered goods.

Division 2—Open Tender

Open tendering

50. The open tender shall be the default method of procurement of goods, works or non-consultancy services by procuring and disposing entities, as provided under section 38 (1) of the Act.

Publication of invitation notice

51.—(1) A procuring and disposing entity shall publish an invitation to bid or to apply for pre-qualification in the *Gazette,* in at least one newspaper of wide circulation, in the electronic media, on the websites of the procuring and disposing entity and the Authority.

(2) In the case of international competitive bidding pursuant to section 42 of the Act, the publication referred to in subregulation (1) shall be made in publications of wide international circulation, specialized trade journals, international newspapers or magazines and other appropriate media such as the internet.

(3) The Internal Procurement and Disposal Committee shall, prior to the issuance of an invitation to bid 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*) the availability of a sufficient number of copies of the bidding documents.

Contents of an invitation notice

52. An invitation to bid or to pre-qualify under regulation 51 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 75 and 76 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 prequalification 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 International Competitive Bidding, the requirement that foreign bidders shall comply with the joint-venture and subcontracting and consultancy requirements for contractors and consultants, made under the Construction Industry Act, 2025. No. 28 of 2025

Preparation of bidding documents and contents of bidding documents

53.—(1) A procurement and disposal unit shall, in consultation with the requisitioning unit, prepare bidding documents using the 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 any—

(i) descriptive literature required to be submitted with their bids;

(ii) requirement that bidders provide samples, and the number and type of such samples;

(iii) requirement that bidders view samples to which goods must conform, and the circumstances under which such requirements would be waived;

(iv) 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) 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 76 (2) of the Act and Part V 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—

(i) in respect of local bids, the price shall be expressed in Malawi Kwacha; and

(ii) in respect of international bids, the price shall be expressed in any other convertible currency;

(*k*) the language or languages in which bids are to be prepared;

(*l*) any requirement of the procuring and disposing 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 may be in the form of a bank guarantee directly issued by a financial institution in Malawi;

(*o*) where a bid security is issued by a non-bank financial institution located outside Malawi and is not enforceable in Malawi, the financial institution shall have a correspondent financial institution in Malawi to make the security enforceable;

(*p*) in case a bid securing declaration or 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;

(*q*) the manner, place and deadline for the submission of bids, in conformity with section 58 (5) of the Act;

(*r*) the means by which, pursuant to section 57 (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;

(*s*) the period of time during which bids shall be valid;

(*t*) the place, date and time for the opening of bids, in conformity with section 61 of the Act;

(*u*) the procedures to be followed for opening and examining bids;

(*v*) 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;

(*w*) 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;

(*x*) any commitments such as the transfer of technology to be made by the bidder under the procurement contract;

(*y*) notice of the right provided under sections 82 and 83 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;

(*z*) a statement to the effect that the procuring and disposing entity reserves the right to reject all bids pursuant to section 66 of the Act;

(*aa*) 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 (*bb*) 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.

Division 3—Request for Quotations Procedures

Conditions for use of request for quotations procedure

54. In procurement of goods, works, or routine services, whose estimated threshold is set and issued, from time to time, by the Authority, the request for quotations procedure referred to in section 44 of the Act may be applied.

Quotations acceptance procedure

55.—(1) A purchase order of the procuring and disposing entity 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 term or condition in the bidder's confirmation of a purchase order which changes or alters the terms of the purchase order shall be valid only if approved, in writing, by the procuring and disposing entity.

Division 4—Single-Source Procurement

Requirements for due diligence

56.—(1) Prior to awarding a procurement contract on single-source procurement basis, in accordance with section 45 of the Act, a procuring and disposing entity shall ascertain that—

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

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

(*c*) the price to be paid by the procuring and disposing entity is reasonable in pursuant to section 64 (1) of the Act.

(2) Where single-source procurement is used, a 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; and

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

Monetary threshold for low value single source

57.—(1) The monetary limit on the use of single source procurement on the grounds referred to in section 45 (1) (*a*) of the Act shall be per transaction, and shall be set and issued by the Authority.

(2) The Authority may establish a threshold on single source procurement pursuant to section 45 (1) (*a*) of the Act.

(3) Any goods or items procured on a recurrent basis, or goods 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 for Framework Agreements set and issued by the Authority.

Procurement of functionally equivalent goods

58. The single-source procurement may not be justified on the ground 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

59.—(1) An emergency procurement shall be conducted by a 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 45 (1) (*c*) of the Act, a procuring and disposing entity shall limit the procurement to the quantity and duration needed to deal with the emergency circumstances.

(3) A procurement on the grounds of emergency shall not relieve a procuring and disposing entity from—

(*a*) seeking competition, to the extent practicable;

(*b*) negotiating a fair and reasonable price; and

(*c*) documenting the procurement in accordance with section 32 of the Act.

Documentation of single source procurement

60.—(1) Where a procuring and disposing entity engages in single source procurement on the grounds referred to in section 45 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) A procurement carried out on a single source basis shall be embodied in a written contract or purchase order.

(3) Notwithstanding subregulation (1), in case of single source procurement on the grounds of emergency, with section 45 (1) (*c*) of the Act, 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 subregulation (1), within forty-eight hours.

(4) In case of single source procurement on grounds of emergency, in accordance with section 45 (1) (*c*) of the Act, a procuring and disposing entity may enter into a "letter" contract, namely, a written preliminary contractual instrument, where the public interest demands that the fulfilment 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, to the extent applicable, comply with section 32 of the Act, and these Regulations with respect to the preparation of a record of the procurement proceeding.

(6) A 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

61.—(1) Where a procuring and disposing entity intends to carry out a single source procurement proceeding pursuant to section 45 (1) (*b*) of the Act, the procuring and disposing entity shall publish in the *Gazette*, in at least one newspaper of wide circulation, in the electronic media, on the websites of the procuring and disposing entity and the Authority, a notice, which shall—

(*a*) describe the nature of the procurement;

(*b*) identify the supplier to whom it proposes to award the procurement contract; and

(*c*) state the grounds for the proposed single source procurement.

(2) Where, in response the publication of a notice referred to in subregulation (1), a procuring and disposing entity receives an expression of interest from another supplier, the procuring and disposing entity shall consider whether another method of procurement should be used, and if the procurement and disposing entity decides to proceed with the single source method of procurement, it shall record the reasons for the decision.

Division 5—Procedure for Restricted Tendering

Procedures for restricted tendering

62.—(1) Where a restricted form of tendering is to be utilized, in accordance with section 41 (*a*) of the Act, a procuring and disposing entity shall publish in the *Gazette*, in at least one newspaper of wide circulation, in the electronic media, on the websites of the procuring and disposing entity and the Authority, and at the discretion of the procuring and disposing entity, in internationally recognized business portals 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 in subregulation (1) shall—

(*a*) indicate the grounds for the limited solicitation;

(*b*) identify the suppliers intended to be invited;

(*c*) invite any interested suppliers to express their interest in participating;

(*d*) if all suppliers that respond to the notice will not necessarily be permitted to submit bids, the criteria to be utilized for establishing the short list; and (*e*) indicate the information to be provided by bidders to demonstrate that bidders meet those criteria.

(3) A restricted tendering shall not be utilized on the grounds referred to in section 41 (*b*) of the Act, when the estimated value of the procurement exceeds the threshold set and issued by the Authority.

(4) Where the limited form of tendering is utilized on the grounds referred to in section 41 (b) of the Act, a procuring and disposing entity shall invite a sufficient number of suppliers, at least three, to ensure effective competition.

(5) Except to the extent derogated from in this regulation, the provisions of regulations 34 to 53 shall apply, with necessary modifications, to the restricted tendering proceedings.

Division 6—Procedures for Two-Stage Tendering

Two stage tendering

63.—(1) Where a procuring and disposing entity uses two-stage tendering in accordance with section 39 of the Act, it shall first publish a notice of invitation to bid in the *Gazette*, in at least one newspaper of wide circulation, in the electronic media, on the websites of the procuring and disposing entity and the Authority, and at the discretion of the procuring and disposing entity, in internationally recognized business portals in the English language and in other media of wide international circulation, including the internet.

(2) The notice referred to in subregulation (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 39 (*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) A 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 authorization of that bidder.

(5) A procuring and disposing entity shall complete the first stage by coming up with final technical specifications 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 technical specifications or design 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) Except to the extent derogated from in this regulation, the provisions of regulations 54 to 125 shall apply, with necessary modifications, to two-stage tendering proceedings.

(8) Notwithstanding subregulation (7), where a 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 reopening competition to all the participating bidders.

Division 7—Procedure for Community Participation Method

Procurement by means of community participation

64.—(1) In accordance with section 47 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, a procuring and disposing entity shall use community participation method, subject to the guidelines to be issued by the Authority.

(2) Where a procuring and disposing entity intends to use the community participation procurement method, it shall seek an approval from the Authority, in writing.

(3) The Authority shall, in writing, grant or deny an approval sought in accordance with subregulation (2), and in the event where the approval has denied, the Authority shall, accordingly, provide the reasons for the denial.

Division 8—Procedures for Procurement of Consultancy Services

Preparation of shortlist

65.—(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 subregulation (1) shall be required to assist the procuring and disposing entity to make a judgment on the suitability of the consultant, and shall not be so complex as to discourage consultants from expressing interest.

(3) The notice referred to in subregulation (1) shall include the following information—

(*a*) if relating to a project—

(i) identification and general description of the assignment or project in question, including any project identification code;

(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; and

(vii) an invitation to interested consultants to submit expressions of interest;

(*b*) if 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 shall be clearly identified;

(ii) details of relevant experience, including a specified number of similar assignments undertaken within a specified timeframe, along with where the assignments were performed; focus on the firm's role in similar assignments in the region or elsewhere;

(iii) *curriculum vitae* of staff who are available to work on the assignment;

(*c*) if 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) A procuring and disposing entity shall allow at least seven days from the date of first publication of the notice referred to in subregulation (1), to the closing date for receipt of expressions of interest, however, for complex projects the period may be longer but not more than fifteen days.

(5) Bidders that expressed interest, who specifically so requests, shall be provided with information on the final shortlist of bidders.

Issuance of request for proposals

66. A procuring and disposing entity shall provide a request for proposals for consultancy services to a shortlist of consultants containing at least three, but not more than six consultants.

Contents of request for proposals for services

67.—(1) The request for proposals for consultancy services in regulation 67 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 members 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 percent, but in no case shall it exceed thirty per cent;

(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 shall 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 shortlist 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, 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 judgment of the procuring and disposing entity, 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*) if appropriate, phasing of assignment, and the likelihood of follow-up assignments; and

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

Avoidance of conflict of interest by consultants

68.—(1) A consultant shall provide professional, objective, and impartial advice and at all times, hold paramount the interests of the client, without any consideration for future work, and strictly avoid conflicts with other assignments or the corporate interests of the consultant.

(2) A consultant 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 the consultant in a position of not being able to carry out the assignment in the best interest of the procuring and disposing entity.

(3) Without limitation on the generality of subregulations (1) and (2), a consultant or a firm which has been engaged by the procuring and disposing entity to provide—

(*a*) goods or works for a project, and any of its affiliates, shall be disqualified from providing consulting services for the same project; and

(*b*) 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 firms which include consultants, contractors, or suppliers, that together are performing the supplier's obligations under a turnkey or design-and-build contract.

Choice of selection procedures

69.—(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 selecting 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) The 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 the consultants, and for which the procuring and disposing entity expects the consultants to demonstrate innovation in their proposals including 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 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.

(3) The 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 non-complex works, where well established practices and standards exist, and in which contract amount is small.

(4) A 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

70.—(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—

(*a*) the bidders may be required to submit technical and financial proposals at the same time, in separate sealed envelopes; or (*b*) at the option of the procuring and disposing entity, the bidders may be requested to submit at the outset of the proceedings, technical proposals only.

(3) The proposals under this regulation shall be opened publicly in the presence of representatives of the bidders who may opt to be in attendance.

(4) A procuring and disposing entity shall prepare the minutes of the public opening of the proposals under this regulation, which shall form part of the record of the procurement proceedings.

Evaluation and selection

71.—(1) An 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

72.—(1) The evaluation of the proposals under quality and cost-based selection shall be carried out in the following two stages—

(*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 the technical evaluation report is approved by the Internal Procurement and Disposal Committee; and

(*b*) the second stage of the evaluation shall concern financial proposals which 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.

(2) The evaluation reports for the technical and financial proposals for quality and cost-based selection under subregulation (1) shall be submitted to the Internal Procurement and Disposal Committee, for approval.

(3) All records relating to the evaluation, including individual mark sheets, shall, in accordance with regulation 4, be maintained and retained until completion of the project and its audit.

Criteria for evaluation of quality of a proposal

73.—(1) The evaluation criteria for each technical proposal shall include 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

(3) The evaluation criteria referred to in this regulation—

(*a*) are indicative only and shall be formulated taking into account the specific circumstances of each particular procurement of consultants' services;

(*b*) may be adjusted, accordingly; and

(*c*) shall be disclosed in the request for proposals.

(4) The use of the weights under subregulation (2) shall be limited to what is essential to conduct the evaluation.

Relative weighting of criteria

74.—(1) The weight given to experience may be relatively modest in relation to other requirements, since this criterion may have already been taken into account when shortlisting the bidder.

(2) In the case of more complex assignments, other than multi-disciplinary feasibility or management studies, more weight shall be given to the methodology to be used.

(3) In proposed complex assignments, more weight shall be assigned to the qualifications and experience of key personnel.

(4) Where the assignment depends critically on the performance of key staff such as a project manager in a large team of specified individuals, procuring and disposing entities shall be advised to conduct interviews.

Sub-criteria for evaluation of key personnel

75. 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 and subject, relevant to the particular assignment; and

(*c*) experience in the region, knowledge of the local language, culture, administrative system, and government organization.

Quality rating of proposals

76. After conducting the technical and quality evaluation of a proposal 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.

77. After the evaluation and rating of the 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. Rejection of unresponsive proposals

78.—(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 nonresponsive, indicating that their financial proposals will be returned unopened after completion of the selection process. Notification of results of technical evaluation

(2) A procuring and disposing entity shall notify the bidders that have secured the minimum qualifying mark, and indicate the date and time set for opening of financial proposals.

(3) The date for the opening of financial proposals referred to in subregulation (2) shall not be less than seven days after the notification date.

79.—(1) The proposals for quality-based selection shall be opened publicly in the presence of representatives of the bidders who opt to attend. Technical evaluation report for quality-based selection

(2) In the case of submission of an electronic proposal, an online bid opening access shall be granted to the representatives of the bidders who had submitted technically responsive bids.

(3) A procuring and disposing entity shall prepare a technical evaluation report on the quality of a proposal, and the report shall—

(*a*) substantiate the results of the evaluation; and

(*b*) describe the relative strengths and weaknesses of the proposal.

(4) The technical evaluation report referred to in subregulation (3) shall be submitted to the Internal Procurement and Disposal Committee, for approval, before the opening of the financial proposals of bidders whose technical proposals have passed the threshold mark or score.

(5) All records relating to the evaluation, including individual mark sheets shall, in accordance with regulation 4, be maintained and retained until completion of the project and its audit.

80.—(1) The financial proposals for quality-based selection shall be opened publicly in the presence of representatives of the bidders who opt to attend. Opening of financial proposals for quality-based selection

(2) In the case of submission of an electronic proposal, an online bid opening access shall be granted to the representatives of the bidders who submitted technically responsive bids.

(3) When the financial proposal is opened, proposed prices shall be read aloud and recorded.

(4) A 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 proposals for quality-based selection

81.—(1) A procuring and disposing entity may give the financial proposal with the lowest cost a financial score of one hundred, and other financial proposals may be given financial scores that are inversely proportional to their prices.

(2) Notwithstanding subregulation (1), a directly proportional or other methodology described in the request for proposals may be used in allocating the marks for the cost.

(3) For the purpose of this regulation, unless otherwise specified in the request for proposals, "cost" includes Malawian taxes, and other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses.

Selection of successful proposal

82. After the evaluation of quality and the financial proposals, a procuring and disposing entity shall determine the successful proposal on the basis of the selection procedure indicated in the request for proposals.

Combined technical and financial evaluation

83.—(1) Where a procuring and disposing entity selects a successful proposal 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.

(2) 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 88 (2).

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

(4) The procuring and disposing entity shall only use the weighting disclosed to bidders in the request for proposals.

Negotiations and award of contract

84.—(1) A procuring and disposing entity shall invite a bidder whose proposal is determined to be successful for a negotiation, aimed at finalization of a contract.

(2) The negotiations on the technical proposals may include discussions of the terms of reference, the methodology, staffing, the inputs of the procuring and disposing entity, and special conditions of the contract, however, no substantial alterations shall be made to any of the original terms of reference or the terms of the contract.

(3) The negotiations on the financial proposals may include clarification of the tax liability of the consultant, if any, and how the tax liability has been or would be reflected in the contract.

(4) The 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) A major reduction 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 may make such substitution unavoidable, or that such changes are critical to meet the objective of the assignment.

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

(9) A selected bidder shall not be allowed to substitute key staff, unless both parties agree that—

(*a*) an undue delay in the selection process makes such substitution unavoidable; or

(*b*) such changes are critical to meet the objective of the assignment.

(10) Notwithstanding subregulation (9), a selected bidder may still be disqualified and the process continued with the next ranked bidder, if it is established that key staff were offered in the proposal but their availability was not confirmed.

Failure to reach agreement with successful bidder

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

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

(3) After negotiations 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 shortlist that they were unsuccessful.

Rejection of all proposals

86. Without prejudice to the right of a procuring and disposing entity to cancel the procurement proceedings in accordance with section 66 of the Act, the procuring and disposing entity may reject all proposals only if all proposals are non-responsive and unsuitable either because—

(*a*) they present major deficiencies in complying with the terms of reference; or

(*b*) they involve costs substantially higher than the original estimate.

Selection based on quality

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

(*a*) establish a minimum quality score;

(*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 other bidders that they did not attain the required threshold;

(*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*) if the negotiations with the bidder invited pursuant to paragraph (*b*) do not result in a procurement contract, invite for negotiations the bidder that attained the next best rating; and

(*g*) 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 referred to in subregulation (1) shall be similar to that applied in the quality and-cost-based selection procedure, except as otherwise specified in this regulation.

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

Selection based on least-cost

88.—(1) 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 publicly in the presence of representatives of the bidders who opt to attend, however, in the case of submission of an electronic proposal, an online bid opening access shall be granted to the bidders' representatives who submitted bids;

(*b*) the name of the bidder shall be read aloud and recorded;

(*c*) the proposals meeting the minimum technical score identified;

(*d*) the envelopes containing the financial proposals of the bidders that have attained the minimum technical score shall be opened publicly in the presence of representatives of the bidders who opt to attend; and

(*e*) the bidder whose financial proposal is the lowest shall be invited for technical and cost clarifications, and negotiations with a view to the conclusion of a procurement contract.

(2) The *ad hoc* evaluation team appointed by the Internal Procurement and Disposal Committee in accordance with section 25 (2) (*e*) of the Act shall—

(*a*) proceed to evaluate the technical proposals; and (*b*) prepare a technical proposal evaluation report and submit to the Internal Procurement and Disposal Committee, for approval.

(3) The procuring and disposing entity shall—

(*a*) invite all bidders whose technical proposals attained the minimum technical score to financial proposal opening;

(*b*) the envelopes containing the financial proposals of the bidders that had attained the minimum technical score shall be opened publicly in the presence of representatives of the bidders who opt to attend; and

(*c*) 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.

(4) All records relating to the evaluation, including individual mark sheets, shall, in accordance with regulation 4, be maintained and retained until completion of the contract and its audit.

Design contests

89.—(1) In appropriate cases, such as the procurement of architectural designs or urban planning designs, a 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 shall be as set forth in *First Schedule*.

Part V—Bidder Qualifications

Division 1—Qualification Data and Assessment

Bidder qualification assessment criteria

90.—(1) In addition to the eligibility criteria contained in section 75 of the Act, a procuring and disposing entity shall not enter into contract with a supplier 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.

(2) Subject to the right of bidders to protect their intellectual property or trade secrets, a 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 subregulation (1).

(3) In handling the information provided under subregulation (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.

(4) 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

91.—(1) Any bidder, whether local or foreign, who intends to take part in a procurement contract may be requested to prove the enrolment of the bidder, 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, a procuring and disposing entity may require them to prove that they hold such authorization or membership.

Information as to economic and financial standing

92. The supporting documents to prove economic and financial standing of a bidder 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

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

(*a*) a list of the principal deliveries effected over a period of time stated in the bidding document, 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*) if the procuring and disposing entity so requests, samples, descriptions, and photographs of the products supplied, and evidence of authenticity thereof;

(*e*) certificates issued by official quality control authorities or agencies of recognized competence attesting to the conformity of products clearly identified by references to specifications or standards; and

(*f*) in the case of a bidder who is not a manufacturer, evidence of a manufacturer's authorization.

(2) In the process for awarding consultancy service contracts, the ability of a bidder 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 education 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; and

(*d*) an indication of the proportion of the contract which the bidder may intend to subcontract.

(3) In the process 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, and evidence of the service provider's technical capability may be furnished through the following means—

(*a*) the bidder's professional certification where applicable, and those of the firm's managerial or supervisory 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 list of tools and equipment for the performance of the services;

(*d*) evidence of compliance with relevant laws for the welfare of the employees of the bidder; and

(*e*) a description of the bidder's measures for ensuring quality of the services to be performed.

(4) In the procedures for awarding works contracts, evidence of a bidder's technical capability and financial capacity shall take into account the nature, complexity, and scope of the works to be executed, and may include the following—

(*a*) a list of major construction works carried out over a specified period indicated in the bidding document, indicating contract values, locations, completion dates, and the names and contact details of clients;

(*b*) information on the bidder's construction equipment, tools, and other physical facilities relevant to the performance of the contract;

(*c*) details of the technical personnel or engineering staff available to the bidder for execution and supervision of the works;

(*d*) documentation of the bidder's quality control practices, safety policies, and environmental management measures;

(*e*) a statement indicating the portions of the works, if any, the bidder proposes to subcontract, including details of proposed subcontractors;

(*f*) evidence of financial capacity, including audited financial statements or other acceptable proof of solvency, covering the period specified in the bidding document;

(*g*) evidence of access to, or availability of, financial resources such as lines of credit or other liquid assets sufficient to meet the cash flow requirements on the contract;

(*h*) information on the bidder's current financial commitments and liabilities to assess overall solvency and capacity to perform additional contracts;

(*i*) proof of the bidder's ability to furnish performance security or other contract-related financial guarantees as required by the procuring and disposing entity; and

(*j*) any other relevant documentation that demonstrates the bidder's financial soundness and ability to sustain contract performance throughout the project duration.

Selection followed by post qualification procedures

94. In procurement proceedings that are not initiated by prequalification 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.

Subcontractor qualification

95.—(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 a 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

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

(2) Except in cases where the circumstances to which subregulation (1) applies, a 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 2—Pre-Qualification Proceedings

Purpose of prequalification proceedings

97.—(1) A 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 seven days shall be given for applicants to obtain the pre-qualification documents and prepare and submit their applications.

(3) A pre-qualification shall be utilized in particular in the case of open invitations to participate in the 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 shortlists 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, pre-qualified 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 prequalification documents

98.—(1) A procuring and disposing entity shall develop prequalification 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) A 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 a procuring and disposing entity under subregulation (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

99.—(1) Prior to the award of a procurement contract, a procuring and disposing entity may require a bidder submitting a 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) Where the bidder submitting the successful bid is requested to demonstrate again its qualifications in accordance with subregulation (1) but fails to do so, a 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 66 of the Act to reject all remaining bids.

Division 3—Database and Classification of Suppliers

Supplier database

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

(*a*) completed registration application form prescribed in the *Second Schedule* which shall also be available on online platforms of the Authority;

(*b*) copy of the relevant licence, permit or authorization and commercial registration for the activity practiced;

(*c*) copy of a registration certificate from the bidder's sector regulator or equivalent body; and

(*d*) copy of a tax registration or tax clearance certificate, where applicable.

(2) The Authority may receive applications for entry into the database, at any time, from any interested supplier and shall be processed within thirty days.

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

Division 4—Procedures for Tendering Proceedings

Contents of invitation to tender and invitation to prequalification

101.—(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 75 and 76 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 for payment, and the 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 subregulation (1), including the place and deadline for submission of applications to pre-quality.

Publication of invitation to tender

102.—(1) An invitation to tender or to apply for pre-qualification shall be published in the *Gazette*, in at least one newspaper of wide circulation, in the electronic media, on the websites of the procuring and disposing entity and the Authority, and in the case of international tendering, in international recognized business portals and other media of wide international circulation.

(2) In the case of solicitation of international participation, publication shall, in addition to publication in newspapers and the website of the Authority, 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 under subregulation (1), ascertain the following—

(*a*) compliance with the requirements in the Act and these Regulations and direct the procurement and disposing unit to rectify any errors and omission; and

(*b*) the readiness of the bidding documents.

Preview of bidding documents

103. A bidder interested in the tendering proceedings may preview the bidding documents.

Technical evaluation of bids

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

(2) The technical evaluation criteria of bids 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) A bid evaluation criteria may identify an acceptable range of performance and an acceptable range of delivery and payment terms.

(4) A bid evaluation criteria shall be formulated in such a manner that it does not permit the procuring and disposing entity to award the procurement contracts to a bidder whose bid exceeds the requirements referred to in subregulation (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

105. The 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 the personnel of the procuring and disposing entity, and after sales services;

(*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

106. The technical specifications for procurement of works shall include, at a minimum, the following—

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

(*b*) precise description of scope of work to be carried out, including, elements such as design, construction, erection, any manufacturing, installation of equipment;

(*c*) physical nature and conditions of construction site;

(*d*) detailed list of any equipment and components required for performance of works;

(*e*) detailed design and drawings of works to be performed;

(*f*) 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;

(*g*) environmental impact and safety standards to be met;

(*h*) description of performance and quality guarantees required;

(*i*) inspection and testing to be conducted at various stages of construction;

(*j*) completion tests;

(*k*) technical documentation, drawings, operating manuals to be provided by suppliers;

(*l*) type, quality and quantity of training and supervision to be provided by suppliers to the extent applicable;

(*m*) inspection and performance tests to be passed for acceptance;

and

(*n*) a schedule for starting and completion of construction time.

107.—(1) A bidding document 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. Bills of quantities

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

108. The technical specifications for procurement of services, other than consultancy services, shall contain the following elements and description of requirements— Technical specifications for procurement of services

(*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*) the type, quality and quantity of training and supervision to be provided by supplier.

109.—(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. Pre-bid conference

(2) The conference in subregulation (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.

(3) The 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.

(4) Where the procuring and disposing entity convenes a conference of bidders, it shall prepare minutes of the conference containing the requests submitted at the conference 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.

110. 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. Site visits

Submission of bids

111.—(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) A bid submitted electronically shall be signed and sent to a secure designated portal with a password which shall only be issued for the opening of the bid.

(3) A bidder shall be required to submit its bid in a single sealed envelope, and where the bid is submitted electronically, the bid shall be sent to a secure designated portal.

(4) A procuring and disposing entity shall, on request, provide to the bidder a receipt showing the date and time when its bid was received, however, a bid submitted electronically may be acknowledged by e-mail.

Bid security

112.—(1) A procuring and disposing entity shall set the amount of bid security in the bidding documents, at between one per cent and three 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) A bid security shall be in monetary form or in form of a declaration.

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

(4) Prior to submitting a bid, a bidder may request a 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.

(5) A confirmation of the acceptability of a proposed issuer or of any proposed confirmer pursuant to subregulation (3) shall not preclude a 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.

(6) A bid security shall be 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;

(*c*) failure to provide a performance security after the bid has been accepted; or

(*d*) failure to comply with any other condition precedent to signing the procurement contract specified in the bidding document.

(7) A procuring and disposing entity shall make no claim on 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

113.—(1) A bidding document shall require that a bid security provided by a 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 a procuring and disposing entity sufficient time to make a demand for payment under the bid security in accordance with regulation 112 (6).

(2) A bid security shall be returned to unsuccessful bidder within fourteen days after a contract has been signed with the successful bidder.

Modification or withdrawal of a bid

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

Opening of bids

115.—(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 bids submitted electronically shall be open to the public through an online facility on the designated portal, including bidders or their representatives, at the time and on the portal indicated in the bidding documents, and the time of the bid opening shall coincide with the deadline for electronic submission of bids.

(3) 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

116. Subject to section 62 (2) of the Act, the process of the 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

117. After the initial opening of bids is done in accordance with section 61 (1) of the Act, a preliminary screening of bids shall be carried out to determine whether bids comply with the requirements of the procuring and disposing entity as to the bids themselves and the accompanying documents by examining whether—

(*a*) all the required documents have been submitted, including any standard forms supplied with the bidding documents, have been 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.

Evaluation of bids

118.—(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

(iv) 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 works;

(ii) major technical specifications for all key items being procured, such as technical capacity of plant, and operating and performance characteristics such as fuel utilization; and

(iii) 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; and

(*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 subregulation (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, based on the prevailing market rates, historical trends, and standard construction cost indices published by recognized authorities; 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 (“front-loading”) or for items that the contractor believes were under-estimated in the bill of quantities.

Correction of arithmetic errors

119.—(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) Where 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 shall govern and the unit rate shall be corrected.

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

(5) Subject to the threshold prescribed in accordance with section 6 (1) (*p*) of the Act, 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

120.—(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 subregulation (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 subregulation (2), the procuring and disposing entity may consider the following—

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

(ii) the time for delivery of the goods;

(iii) completion of works or provision of the services;

(iv) the functional characteristics of the goods or works;

(v) the terms of payment and of guarantees in respect of the goods, works or services;

(vii) 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; and

(viii) the transfer of technology and the development of managerial, scientific and operational skills.

(4) In evaluating and comparing bids, a 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 subregulation (4) and in accordance with procedures described in regulation 123, and this shall be reflected in the record of the procurement proceedings.

Assessing responsiveness of bids

121. 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

122.—(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; and

(*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 or firm shall only qualify for the margin of preference if it is determined by the procuring and disposing entity that at least fifty one percent of its shares or ownership is owned by Malawian citizens.

(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

123.—(1) Where a 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 subregulation (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) The price 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 or Carriage and Insurance Paid 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) Where, as a result of the comparison under subregulation (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) Where the group A bid in such further comparison mentioned in subregulation (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 Cost Freight and Insurance or Carriage and Insurance Paid basis, the preference margin shall not be applied to the whole package, but only to the locally manufactured equipment within the package—

(*a*) equipment offered from abroad shall be quoted Cost Freight and Insurance or Carriage and Insurance Paid ;

(*b*) equipment offered locally ex-works free of sales and similar taxes; and

(*c*) all other components, such as design, works, installation, and supervision, shall be quoted separately.

(11) Where the provisions of subregulation (1) apply, bids shall not be classified into groups A, B, or C and in the comparisons of bids, only the Cost Freight and Insurance or Carriage and Insurance Paid 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.

(12) Where 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

124.—(1) For contracts for works to be awarded on the basis of tendering, a procuring and disposing entity may grant a margin of preference of up to ten per cent to local contractors, 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*) the Authority shall, in consultation with the Construction Industry Regulatory Authority, determine the threshold for minor works to be carried out by registered local firms in accordance with section (6) (1)(*n*) of the Act;

(*c*) the contract for works in International Competitive Bidding should comply with the joint venture and subcontractor requirements prescribed under the Construction Industry Act, 2025; and No.28 of 2025

(*d*) 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 subregulation (1), the margin of preference indicated in the bidding document shall be added to the bids received from contractors in group B.

Part VI—Contract Formation

No objection validity period

125.—(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 (1) (*b*) of the Act.

(2) The contract referred to under subregulation (1) shall be entered into within forty-five days of the grant of the "No Objection".

(3) Where forty-five days lapse after the grant of "No Objection", and the procuring and disposing entity does not conclude the contract, the procuring and disposing entity shall re-open the tender process and inform the Authority accordingly.

(4) Notwithstanding paragraph (3), where a procuring and disposing entity determines with justifiable reasons, that it is not possible to conclude a contract within forty-five days, the procuring and disposing entity shall, before the expiry of the period, apply to the Authority, for an extension of the validity of the "No Objection".

(5) The Authority may grant or deny the application made under subregulation (4) and where the application is granted, that extension shall not be for a period longer than fifteen days.

(6) The Authority shall make its own rules regarding the review of requests for granting of "No Objection".

Notice of acceptance of bid

126.—(1) A 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 70 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.

(4) The notice is dispatched while the bid is still valid, and for purpose of this subregulation the notice is dispatched when it is properly addressed or otherwise directed and transmitted to the bidder.

(5) Neither a 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 subregulation (1) is dispatched to the bidder and the entry into force of the procurement contract.

(6) 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.

(7) A procuring and disposing entity shall not request or require the successful bidder to sign a contract which is different from the terms and conditions set forth in the bidding documents.

Performance security

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

Form of performance security

128.—(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

129. 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 VII—Contract Administration

Support operations for contract administration

130.—(1) Every procuring and disposing entity 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, however, where the procurement and disposal 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 shall include—

(*a*) holding post-award meetings with the successful bidder, 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 payments 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) A procuring and disposing entity 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, a procuring and disposing entity, and any supervising party that is involved 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

131.—(1) A procurement contract shall, subject to the standard forms of contract that a procuring and disposing entity 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 or *force majeure* events 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* event" means an event beyond the control of the parties to the contract which frustrates contract performance and is unforeseeable.

Basic pricing approaches

132.—(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) The use of a unit-price contract shall be 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) The use of a lump-sum contract shall be 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) A procurement contract 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 provision.

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

133.—(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. Unit price works contracts

(2) A bidder shall consider the following points for the type of contract mentioned in subregulation (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 shall give their unit prices in their bids; and

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

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

(2) A 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.

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

(2) Where 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) A procuring and disposing entity 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 subregulation (3), any price adjustment beyond the threshold of the procuring and disposing entity shall require the prior approval of the Authority.

Shipment terms

136. 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 by reference to appropriate reference International Commercial Terms (INCOTERMS).

After contract services

137.—(1) Unless technical or commercial factors dictate otherwise, the bidding document shall 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.

(2) Unless technical or contractual considerations dictate otherwise, the bidding document shall require the contractor to provide post-construction support services such as maintenance, rectification of latent defects, and technical assistance during the defects liability period, which shall correspond to the nature and expected durability of the constructed works.

(3) Unless assignment-specific factors dictate otherwise, the bidding document shall require the consultant to provide continued advisory or support services for a defined period after contract completion, to ensure knowledge transfer and implementation oversight, with the duration reflecting the complexity and sustainability needs of the consultancy assignment.

(4) Unless operational or commercial factors dictate otherwise, the bidding document shall require the service provider to offer post-service support such as troubleshooting, refresher training, or updates, for a period aligned with the operational lifecycle or user requirements of the delivered services.

Insurance requirement

138.—(1) A bidding document used to solicit bids, proposals, offers or quotations and a procurement contract shall indicate the amount and essential terms of the insurance that the successful bidder may be required to obtain, depending on 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) A 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) A procuring and disposing entity shall reserve the right to reject insurance coverage that is not in the public interest.

Return of performance security

139. Where—

(*a*) a procurement contract in respect of which a performance security was given has been satisfactorily performed, or has been terminated for a reason that is not attributable to any fault of the bidder; and

(*b*) a 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.

140.—(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. Maintenance guarantee

(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 a 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.

141. 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, at its own expense, defective goods within a specified period of time, and in the event of a breach of warranty, a 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. Manufacturer's warranty

142. Where a bidder indicates subcontracting in a bid, the acceptance of each subcontractor and the agreement of the procuring and disposing entity to the conditions of payment shall be requested in the following manner— Subcontracting

(*a*) when the request for subcontracting arises at the time of the bid submission, the bidder shall 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 or payment;

(v) the conditions of payment foreseen in the draft subcontract and, if applicable, price revision; and

(vi) a declaration to the effect that the proposed subcontractor is not barred from participating in procurement proceedings in accordance with sections 78 and 79 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; and

(*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 subcontracts

143. A prime supplier shall be responsible for administering its subcontractors, and a 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 sub-systems in major systems acquisition require special surveillance.

Quality assurance inspection and testing

144. 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, a procuring and disposing entity may—

(*a*) establish inspection and testing facilities;

(*b*) employ inspection personnel;

(*c*) enter into arrangements for joint or co-operative use of laboratories; and

(*d*) inspection and testing facilities, and contract with others for inspection or testing work as needed.

Stipulation of inspection

145. A procuring and disposing entity shall ensure that inspection requirements and procedures to be applied in the implementation of the procurement contract have been provided in the bidding documents and in the procurement contract.

Inspection of goods

146.—(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) A supplier shall, at its own expense, place at the disposal of the procuring and disposing entity, 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) A 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) Where 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 a procuring and disposing entity shall not in any way limit the supplier's responsibilities and liabilities.

(7) Where 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

147.—(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 procured by procuring and disposing entity.

(2) A contract 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

148.—(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 officials or bodies to be involved.

(2) An 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

149.—(1) An acceptance by a 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 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) The receiving report shall be transmitted promptly to the appropriate disbursement authorities, in accordance with applicable procedures in order to prevent delays in payment.

Remedies for breach of contract

150. 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 shall 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 be available pursuant to the contract or to applicable law.

Rejection of goods

151.—(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, or where applicable electronically, of the rejection and reasons therefor, 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, the supplier shall be liable for storage and other related expenses at the rate to be specified in the procurement contract, and 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.

(3) Where a procuring and disposing entity rejects any completed or ongoing works for failing to meet specifications or contract requirements, it shall formally notify the contractor in writing, by registered mail or courier with a return receipt, or where applicable electronically, stating the reasons and requiring rectification or replacement within the specified period.

(4) Where the contractor fails or refuses to rectify or remove the rejected works or materials within the specified time—

(*a*) the contractor shall bear all related costs, including storage and demolition;

(*b*) the procuring and disposing entity may engage others to remedy the defects and recover expenses and penalties from the contractor, including by deducting payments; and

(*c*) the unremoved materials may be sold by public auction or disposed of, with any remaining proceeds returned to the contractor.

(5) Where a procuring and disposing entity rejects any deliverables under a consultancy contract for failing to meet terms, standards, or deadlines, it shall formally notify the consultant in writing, by registered mail or courier with a return receipt, or where applicable electronically, stating reasons and requiring correction or replacement within the specified period.

(6) Where the consultant fails or refuses to revise or resubmit rejected deliverables within the specified time—

(*a*) the consultant shall be liable for additional costs incurred by the procuring and disposing entity in obtaining alternative services;

(*b*) the procuring and disposing entity may recover these costs and penalties by deducting payments or other lawful means; and (*c*) in the case of tangible deliverables left uncollected, the procuring and disposing entity may dispose of the tangible deliverables, including by public auction, and return any remaining proceeds to the consultant after deducting expenses.

(7) Where a procuring and disposing entity rejects any service output for failing to meet required standards, it shall notify the service provider in writing, by registered mail or courier with a return receipt, or where applicable electronically, stating reasons and requiring correction or re-performance within the specified period.

(8) Where the service provider fails or refuses to correct rejected services within the specified time—

(*a*) the service provider shall be liable for additional costs incurred by the procuring and disposing entity in securing alternative services;

(*b*) the procuring and disposing entity may recover these costs and penalties by deducting payments or other lawful means; and

(*c*) in the case of physical items left uncollected, the procuring and disposing entity may dispose of the items by public auction or other means, returning any remaining balance to the service provider after expenses.

Payment on submission of invoice

152.—(1) Subject to the terms of a procurement contract, a payment to the supplier shall be made on the basis of the submission of a proper invoice, and to be considered proper, an 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, a 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 determination.

(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, and payment shall not be effected before receipt of the goods.

(5) In the case of procurement of works, the contractor's payment certificate or invoice shall be accompanied by required supporting documents in the prescribed form, as specified by the procuring and disposing entity, in accordance with the instructions in the letter of acceptance, contract agreement, or works order, and payment shall not be effected before verification of the completed works or certified milestones, as applicable.

(6) In the case of procurement of consultancy services, the consultant's invoice shall be accompanied by required deliverables and any supporting documentation, in the prescribed form as specified by the procuring and disposing entity, in accordance with the instructions in the contract or letter of engagement, and payment shall not be effected before acceptance of the deliverables or achievement of agreed milestones.

(7) In the case of procurement of non-consultancy services, the service provider's invoice shall be submitted with service completion records or other prescribed documents, as required by the procuring and disposing entity and stated in the service contract or order, and payment shall not be effected before verification of satisfactory service delivery.

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

Prompt payment

153. A payment that becomes due to a 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 money

154.—(1) Notwithstanding regulation 156, where progress payments are made, the procurement contract may provide that a percentage of amounts due to a contractor may be withheld until performance of the procurement contract is completed.

(2) Subject to subregulation (1), the percentage of retention shall not exceed five per cent of the contract amount.

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(3) A procuring and disposing entity on a construction project shall remit to the retention fund established under the Construction Industry Act, 2025, the retention money due to a contractor, on every payment certificate issued in accordance with the terms of the contract.

(4) A procuring and disposing entity shall order the release of fifty per cent of the retention sums within thirty 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 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.

155.—(1) A procurement contract may provide for advance payments to a supplier. Advance payments

(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.

(3) 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.

(4) Unless otherwise provided in the procurement contract, an advance payment shall not be made, unless the bidder furnishes an advance payment guarantee from an acceptable financial institution covering the amount of the advance payment.

(5) 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.

(6) An advance payment shall not be a final payment but shall be subject to final accounting and deduction from progress or other payments that may become due to the supplier.

156.—(l) A procurement contract may provide for the making of progress payment based on progress in the fulfilment 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. Progress payment

(2) A progress payment may be made 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.

157.—(1) A final payment shall be made only after performance of a procurement contract has been completed and accepted by a procuring and disposing entity. Final payment

(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 to the supplier as at the date of signature of the release; and

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

Increase in quantities requiring contract modification

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

(2) A modification of a contract shall not result in an alteration of the basic nature or scope of that contract.

(3) An increase in quantities under a contract which results in more than 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 45 of the Act and regulation 56.

Dispute resolution

159. 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

160.—(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) Where a clause of the type referred to in subregulation (1) is included in the procurement contract, it shall specify—

(*a*) the agreed sum to be paid per time-unit of delay, such as the day, week or month;

(*b*) the maximum amount due under the liquidated damages clause;

(*c*) that the 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 shall 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 shall 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 supplier.

Contract termination

161. Notwithstanding the provisions of section 66 (2) (*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 of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract; or

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(*e*) conviction of an offence under this Act, the Corrupt Practices Act or the Financial Crimes Act.

Termination for convenience

162.—(1) Where a procurement 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 payments received up to the date of the certificate, and no payment shall be made of unearned profit.

(2) Notwithstanding subregulation (1), the 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 VIII—Information and Communication Technology for Public Procurement

Use of information and communication technology

163.—(1) The use of information and communication technology, including electronic government procurement system as the Authority may prescribe, shall be introduced in a gradual but steady manner, ensuring that a procuring and disposing entity has the capacity to apply such measures.

(2) The Authority shall, in accordance with section 58 of the Act, 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 government procurement systems.

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

(*a*) communication and information exchanges which shall be 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 system utilizing information and communications technology in the procurement process may include—

(*a*) easy access to standard bidding documents and the use of standard formats;

(*b*) establishment of a portal 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 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 acquisition 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; and

(*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.

(5) A procuring and disposing entity shall, in relation to the implementation of electronic Government procurement system, use the Malawi National Electronic Procurement System Guidelines and other detailed guidelines and other information and communication technology related innovations as the Authority may issue, from time to time.

Part Ix—Cancellation of Procurement Proceedings

Publication of notice of cancellation of procurement proceedings

164.—(1) A procuring and disposing entity shall, in an open tender process, publish notice of cancellation of procurement proceedings or rejection of all bids, including the grounds for such decision, in at least one newspaper of nationwide circulation and the websites of the procuring and disposing entity and the Authority within five days from the date of such decision.

(2) In the case of a method of procurement, other than open tendering, a procuring and disposing entity shall notify all the bidders invited to participate by issuance of letters of the notice of cancellation of procurement proceedings or rejection of all bids, including the grounds of the decision, and publication of the notice on the websites of the procuring and disposing entity and the Authority, within five days from the date of such decision.

(3) In case a “No Objection” was already obtained from the Authority, a procuring and disposing entity shall inform the Authority, in writing, of such cancellation of procurement proceedings or rejection of all bids and the grounds thereof.

(4) Where a procuring and disposing entity has cancelled a procurement proceeding in accordance with this regulation but the need to procure still exist, the entity shall still have the right to recommence the procurement process.

Part X—Promotion and Facilitation of Micro, Small and Medium-Sized Enterprises

165. Pursuant to sections 6 (1) (*k*) and 37 (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. Guidelines for targeted procurement

166. 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. Promotion of the use of micro, small and medium-sized enterprises

167. The eligibility of enterprises for designation as micro, small and medium-sized enterprises eligible for set-asides referred to under regulation 171, which shall be determined in accordance with the relevant written laws, as well as any rules issued by the concerned organs of Government, and referred to in an instruction from the Authority. Eligibility of enterprises

168.—(1) In order to be eligible for an award as a micro, small and medium-sized enterprise, a bidder shall 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. Required information

(2) For purposes of this regulation, a bidder is a micro, small or medium-sized 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 been so determined by the relevant authority designated by Government, to be a micro, small and medium-sized enterprise.

169. In the evaluation of bids, a procuring and disposing entity may apply a margin of preference in favour of one or more of the following entities— Margin of preference

(*a*) a bidder who is—

(i) a micro enterprise;

(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 bidding document.

170.—(1) A procuring and disposing entity may, in accordance with section 37 (2) of the Act, reserve a portion of procurement for micro, small or medium enterprises, or any combination thereof. Reservations

(2) A supplier, contractor, consultant or other service provider that is awarded contract reserve under subregulation (1) shall be required 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 bidding documents.

Set asides

171. A procuring and disposing entity shall, in accordance with section 62 (11) of the Act, in its annual procurement plan, set aside a portion of procurement 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.

Part XI—Administrative Review and Debarment Procedures

Division 1—Debarment of Suppliers and Bidders

Procedure for exclusion from participation in procurement

172.—(1) The Authority may, in accordance with section 79 of the Act, 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, including the directors and beneficial owners of a supplier or bidder, as the case may be, from participating in any public procurement.

(2) The Authority may, depending on the gravity of misconduct referred to in section 78 of the Act, suspend supplier or bidder from participating in a public procurement proceeding for a reasonable period not exceeding ninety days to facilitate investigations, prior commencement of debarment procedures.

Period of debarment

173.—(1) The maximum period of debarment for a supplier or bidder 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, for a permanent debarment;

(*f*) conviction of any other criminal offence under the Act, the Corrupt Practices Act or any other financial crime, for a maximum of five years; and

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(*g*) breach of contractual obligations, for a maximum of five years.

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

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

(4) A supplier or bidder under sanction by any relevant regulatory body shall be ineligible for award of contract if such sanctions come to the knowledge of the Authority.

(5) For purposes of subregulation (1)(*f*), "financial crime" shall have the definition as ascribed to that term under the Financial Crimes Act. Cap. 7:07

Initiation of debarment proceedings

174.—(1) A decision by the Authority to commence debarment proceedings against a supplier may originate from a petition by a 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, with a request to show cause, within a period of fourteen days, as to why the supplier or bidder, as the case may be, should not, for the alleged misconduct, be debarred.

(3) Where a supplier or bidder fails to show cause in accordance with subregulation (2), the Authority shall make its decision on the basis of the available information.

Conduct of debarment hearing

175.—(1) The following shall apply during debarment proceedings—

(*a*) the supplier or bidder shall have 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 shall give their evidence under oath and may be cross-examined.

(2) A debarment decision takes effect upon issuance of the written decision by the Authority to the supplier or bidder, and shall stay in effect until overturned on review by the High Court, or until the expiry date of the debarment period, as the case may be.

(3) A supplier or bidder that has been debarred from public procurement may apply to the High Court, for a review of the debarment decision.

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

Division 2—Administrative Review Procedures

Administrative review procedures relating to award of a procurement contract

176.—(1) A bidder may submit an application for review of procurement proceedings in accordance with section 82 of the Act which may be delivered by hand, mail, courier or other electronic means to the procuring and disposing entity or Authority, as the case may be.

(2) An application for review 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 timelines referred to in section 83 of the Act shall commence that day.

(3) An application for review of procurement proceedings under subregulation (1) shall be accompanied by prescribed fees as prescribed in the *Third Schedule*.

(4) The review procedure in respect of procurement proceedings pursuant to section 82 of the Act shall be as provided in the *Fourth Schedule*.

Declaration of interest

177. A member of technical committee of the Authority established in accordance with section 83 (6) of the Act shall be required to declare interest in any matter that the member is required to consider.

Review prior to award of contract

178. An application for review of procurement proceedings 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

179. Any monies payable pursuant to the right of administrative review 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.

Decisions on administrative review and judicial review to form part of procurement records

180. Any decision by a procuring and disposing entity, the Authority or by the High Court in respect of procurement proceedings pursuant to section 82 of the Act, and the grounds and circumstances therefor shall be made part of the record of the procurement proceedings.

Part XII—Penalties

Penalties

181.—(1) In the event of any breach of these Regulations, the Authority may charge appropriate penalties as prescribed in the *Fifth Schedule*.

(2) Any applicable fine or penalty under subregulation (1) shall be payable to the Authority within thirty days from the date of communication of the said breach, failing which, the Authority shall report the issue to relevant law enforcement authorities for enforcement of payment of the fine or penalty.

FIRST SCHEDULE (reg. 89)

PROCEDURES FOR DESIGN CONTESTS

Part I—General Provisions

Scope and purpose

1.—(1) This Schedule 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 Schedule, "design contests" means those procedures that enable a procuring and disposing entity to acquire, mainly in the fields of area planning, town planning, architecture and engineering, data processing, or graphic design, a plan or design selected by jury after being put out to competition with or without the award of prizes.

(3) In accordance with these Regulations, a procuring and disposing entity 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 Schedule, and shall be consistent with the Act.

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

(*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

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. Establishment of jury

(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 Internal Procurement and Disposal Committee.

4.—(1) Where certain professional qualifications are required from participants in a design contest, at least one-third of the members of the jury of the contest shall have the same or similar qualifications. Composition of jury

(2) The jury shall be composed of a minimum of three and a maximum of seven members.

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

(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 in respect of a design contest shall be submitted to the Internal Procurement and Disposal Committee, for approval, and shall thereafter be made public.

PART III—PARTICIPATION IN DESIGN CONTESTS

Design contest notice

6.—(1) A procuring and disposing entity that wishes to carry out a design contest shall make known their intention by means of a contest notice.

(2) A procuring and disposing entity shall publish, the notice referred to in subparagraph (1), in the *Gazette*, in at least one newspaper of wide circulation, in the electronic media, on the websites of the procuring and disposing entity and the Authority, and at the discretion of the procuring and disposing entity, in internationally recognized business portals in the English language and in other media of wide international circulation.

(3) The design contest notice may also be published in technical journals and reviews relevant to the subject matter of the design contest.

(4) A design contest notice shall be published not less than twenty-one days prior to the date for the receipt of designs.

Content of design contest notice

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

(*a*) the name and address, 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 payments 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, a 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 document

11. A 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 design contest documents

12.—(1) In addition to restarting the information contained in the design contest notice 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 connexion 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 with freedom in interpretation, which shall 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, and in cases where this is not done, a metric equivalent shall be given in the contest documents.

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

(5) A 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.

Regulation of intent to participate in content

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

Part V—Submission and Evaluation of Designs and Plans

Submission of designs and plans

14. 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 evaluation, comparison and award stages.

One or two stage contest

15.—(1) A design contest 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) The 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 an alphabetical order.

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

16.—(1) Any 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.

Evaluation and comparison of designs or plans

(2) A drawing, photograph, models or document, 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 design or plan that is not in conformity with the conditions set forth in the design contest documents.

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

Selection of the winning design or plan

18.—(1) A procuring and disposing entity that has held a design contest shall send a notice of the results of award procedure and shall be able to prove the date of dispatch.

Notice of results

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

(*a*) name, address, telephone 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

19. The amount of the prizes shall be proportional to the size of the project, the work involved and the expenses incurred by participants.

Amount of prizes

20. The prizes shall be distributed within ten days of the announcement of the results of the design contest.

Distribution of prizes

21.—(1) The winning design or plan may not be put to any use other than that expressly stated in the contest documents.

Copyright and ownership issues

(2) No other design or plan, 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) Where a procuring and disposing entity wishes to use a prize-winning design or plan 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 plan.

Artistic copyright

22.—(1) The author of any design or plan shall retain the artistic copyright in his work, and no alterations may be made without his formal consent.

(2) The design or plan 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 or plan shall cover only one execution thereof.

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

Part VII—Miscellaneous

Exhibition of designs or plans

23.—(1) Following the conclusion of the deliberations of the jury, the designs or plans submitted in the contest shall be publicly exhibited, and in addition to the designs and plans 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) A procuring and disposing entity shall notify the participants at least seven days prior to the date of the exhibit of the dated 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*, in at least one newspaper of wide circulation, in the electronic media, on the websites of the procuring and disposing entity and the Authority, and at the discretion of the procuring and disposing entity, in internationally recognized business portals in the English language and in other media of wide international circulation.

(3) The notice shall also be published in technical journals and reviews relevant to the subject matter of the design contest and in the technical journals and reviews in which the design contest notice was published.

Standards of conduct

24.—(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 design 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 or plan.

(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 design or plan 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.

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

(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.

26. A procuring and disposing entity shall prepare a record of the design contest containing at least the following information— Record of the contest

(*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 or plans submitted in the contest, and stating the grounds for the selection of the winning design or plan.

27. Part XI of the Act and Division 2 of Part XI of these Regulations shall apply, with necessary modifications, to the resolution of the complaints from participants concerning the conduct of design contests. Resolutions of complaints

SECOND SCHEDULE (reg. 100)

SECTION 77 OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT, 2024

SUPPLIER REGISTRATION FORM

A. BANK ACCOUNT DETAILS FOR THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC 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 Public 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; and

(*e*) Copy of the previous PPDPAA 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 Public Assets Authority

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 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 applications.

F. BUSINESS DETAILS

1. Name of business/company: ....
2. Postal address: ....
   ....
3. Physical address: ....
   ....

4. Contact persons (maximum of 3) ....
5. Tel/Cell phone numbers: ....
6. E-mail Address: ....
7. Names of shareholders: ....
8. Names of beneficial owners: ....
9. Registrar General's Certificate number ....
10. MRA TPIN: ....
11. Number of employees: ....
12. Bank account details for the business (provide details for the bank account through which your business gets payment from Government)

    (*a*) Name of Bank: ....

    (*b*) Name of Branch: ....

    (*c*) Account Name: ....

    (*d*) Account Number: ....

    (*e*) Account Type: ....

GENERAL INSTRUCTION

Each supplier is free to apply for any category and a supplier registered in one category cannot bid for procurement contract in a higher category, unless an application for category upgrade has been made for the new category.

A supplier can be registered as a supplier of goods or services separately. A supplier who wants to apply for both goods and services will pay for both according to the category chosen.

REGISTRATION FEES FOR SUPPLIERS

Part I—Local Suppliers

SUPPLIER CATEGORY	*GOODS, WORKS OR SERVICES PROCUREMENT CONTRACT*	*FEES*
1.	Up to K10 million	K12,000.00
2.	Above K10 million–K30 million	K25,000.00
3.	Above K30 million–K80 million	K40,000.00
4.	Above K80 million–K100 million	K75,000.00
5.	Above K100 million–K500 million	K250,000.00
6.	Above K500 million–K1 billion	K500,000.00
7.	Above K1 billion	K1,000,000.00

Part II—Foreign Suppliers

	CATEGORY	*FEES*
1.	Goods	US$ 2,000
2.	Services	US$ 1,500
3.	Works	US$ 2,500

LIST OF GOODS

A supplier is free to tick unlimited goods—

1. Office equipment
2. Farm implements
3. Plant and motor vehicle spares
4. Laboratory and hospital equipment
5. Tools and hardware
6. Office consumables
7. Plumbing materials
8. Telecommunications equipment
9. Textile products

If the category of your goods is not listed above, please indicate your preference below (*not more than 4*)

10 ....

11 ....

LIST OF SERVICES

A supplier is free to tick unlimited services—

1. Maintenance of motor vehicles
2. Maintenance of office equipment, refrigeration and air-conditioning
3. Cleaning services
4. Plumbing services
5. Transport
6. Travel agency
7. Consultancy
8. Provision of security services
9. Servicing of firefighting equipment

If the category of your service is not listed above, please indicate your preference below (not more than 4)

10 ....

11 ....

BANK ACCOUNT DETAILS FOR THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC 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 Public Assets Authority
Account Number:	000 100 562 4416
Account Type:	Current Account

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; and

(*e*) Copy of the previous PPDA Registration Certificate (for suppliers renewing their PPDA registration).

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 Public Assets Authority

Private Bag 383,

Capital City

Lilongwe 3.

VALIDITY

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

NOTE:

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

THIRD SCHEDULE (reg. 176 (3))

APPLICABLE ADMINISTRATIVE REVIEW APPLICATION

Estimated Procurement Contract Value	*Administrative Review Application Fee*
Less than K250 million	K350,000.00
Up K250 million	K500,000.00
Above K250 million–K5 billion	K1,000,000.00
Above K5 billion–K10 billion	K1,500,000.00
Above K10 billion	K2,000,000.00

FOURTH SCHEDULE (reg. 176 (4))

REVIEW PROCEDURES

Contents of application for review

1.—(1) An application for review under Part XI of the Act—

(*a*) shall be in writing and signed by the applicant or its representative, and shall—

(i) include the name, postal and physical address, and telephone number and email address of the applicant;

(ii) identify the procuring and disposing entity and the procurement or contract number;

(iii) set forth a detailed statement of the legal and factual grounds of the application for review, including copies of relevant documents;

(iv) 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;

(v) set forth all information establishing the timeliness of the application for review; and

(vi) specifically request a ruling and state the form of relief requested; and

(*b*) may, in addition—

(i) request special measures for handling proprietary commercial or other confidential information;

(ii) request specific documents, explaining the relevance of the documents to the grounds underlying the application for review; and

(iii) request a hearing, explaining the reasons that a hearing is needed to resolve the application for review.

(2) 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.

(3) Where 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 subparagraph (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) An application for review may be submitted to the Authority, for disposition by the technical committee constituted in accordance with section 83 (6) of the Act.

Notice of application for review

3. In the event of the filing with the Authority of an application for review, the technical committee shall promptly notify the procuring and disposing entity by electronic mail 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) Where an application is filed with the Authority for review, a procuring and disposing entity shall provide comments on the application within seven days after the notice.

(2) The comments of the procuring and disposing entity pursuant to subparagraph (1) shall include relevant facts and all documents relevant to the procurement proceedings.

(3) A procuring and disposing entity may, within three days from the day of the notice, if it feels that there are grounds thereof, file a request for dismissal before filing comments required under subparagraph (1).

Disclosure by procuring and disposing entity

6.—(1) A procuring and disposing entity shall promptly make available to Authority, for the consideration of the technical committee, any information and documentation that the technical 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) A 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 possession of the technical committee, and the applicant shall, promptly, respond.

(3) Where, under a special measure to protect confidential information pursuant to subparagraph (1) (*a*), or pursuant to the obligation of the procuring and disposing entity to protect the confidential information of the competing bidders, the procurement and disposing 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 Authority 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 Authority 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) The Authority may, at the request of a party or on its own initiative, conduct a hearing in connection with an application for review.

(2) The hearings for review shall be conducted as soon as practicable after the receipt by the parties of the comments and relevant documents of the procuring and disposing entity.

(3) All parties participating in the application for review shall be invited to attend the hearing.

(4) The hearings of an application for review shall be recorded or transcribed, and where a recording or transcript is made, any party may obtain copies at its own expenses.

Hearings

8. In determining the appropriate remedies pursuant to section 83 (10) of the Act, the Authority shall consider all circumstances surrounding the procurement or proposed procurement, including the—

(*a*) seriousness of the procurement deficiency;

(*b*) degree of prejudice to other parties or to the integrity of the competitive procurement system;

(*c*) good faith of the parties,

(*d*) extent of performance;

(*e*) cost on the Government;

(*f*) urgency of the procurement or proposed procurement; and

(*g*) 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 Authority, on the recommendation of the technical committee, shall be provided to the applicant, any intervenors, and the Controlling Officer or head 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 made public.

Notice to the Authority of action taken

10. A 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 Authority.

FIFTH SCHEDULE

(reg. 181)

MISCONDUCTS PUNISHABLE WITH PENALTIES

NO.	*NATURE OF MISCONDUCT*	*K t*
1.	Procuring from unregistered supplier	1,000,000.00
2.	Failure to publish intention of award in accordance with section 70 of the Act	1,000,000.00
3.	Evaluation conducted by the Internal Procurement and Disposal Committee	1,000,000.00

NO.	NATURE OF MISCONDUCT	K t
4.	Internal Procurement and Disposal Committee deliberations conducted by more than seven members (except for local councils)	1,000,000.00
5.	Conducting evaluation processes by more than five members	1,000,000.00
6.	More than half of the Internal Procurement and Disposal	
7.	Committee also conducted an evaluation	1,000,000.00
8.	Bid opening ceremony chaired by a non-member of the Internal Procurement and Disposal Committee	1,000,000.00
9.	Acceptance of late bids	1,000,000.00
10.	Failure to seek prior approval from Authority to use a method other than open tendering in procurement	1,000,000.00
11.	Failure to debrief an unsuccessful bidder who has requested for the same	1,000,000.00
12.	Failure to comply with thresholds	1, 000,000.00
13.	Failure to seek prior approval from Authority to use a method other than tendering with sealed bids and auction in disposal of assets.	1,000,000.00
14.	Failure to comply with the bidding periods prescribed in section 42 (5) of the Act	1,000,000.00
15.	Failure to respond to any request by a bidder for clarification of the bidding documents as provided under section 41(4) and bidding documents	1,000,000.00
16.	Failure to allow bidders use bid securing declaration in National Competitive Bidding	1,000,000.00
17.	Failure to announce bid prices during bid opening or announcing for the whole package instead of lots	1,000,000.00
18.	Evaluation of bids for goods or works not using merit point system	1,000,000.00
19.	Failure to issue a bidder a receipt or any document to demonstrate that the supplier’s tender was received at such time and date	1,000,000.00
20.	Entering into a contract with a supplier based on an expired “No Objection”	1,000,000.00
21.	Slicing or splitting procurement requirements to avoid thresholds	1,000,000. 00
22.	Failure to keep information relating to procurement or disposal confidential	1,000,000.00
23.	Failure to produce record or documentation of procurement or disposal proceedings when required to do so by the Authority or oversight bodies	1,000,000.00
24.	Being involved in any act or conduct that brings procurement profession into disrepute	1,000,000.00

NO.	*NATURE OF MISCONDUCT*	*K t*
25.	Entering a contract with a debarred bidder	1,000,000.00
26.	Failure to publish a notice of cancellation of procurement proceedings	1,000,000.00
27.	Cancelling procurement proceedings on grounds that do not constitute public interest	1,000,000.00
28.	Being engaged in mis-procurement	1,000,000.00
29.	Terminating a procurement contract for a reason other than those contained in the contract	1,000,000.00
30.	Variation of a contract without any written documentation	1,000,000. 00
31.	Failure to return bid securities of unsuccessful bidders within seven days from the date of signing of the contract	1,000,000.00
32.	Failure to return performance security within thirty days from completion of performance of contract	1,000,000.00
33.	Failure by the Controlling Officer to respond to a complaint lodged by a bidder within fourteen days from date of lodging	1,000,000.00
34.	Failure by a member of an Internal Procurement and Disposal Committee or procurement and disposal unit to take an oath of secrecy within fourteen days from the date of appointment	1,000,000.00
35.	Failure by an evaluation team members to declare interest before commencing evaluation of bids	1,000,000.00
36.	Failure to comply with any measure regulated by the Authority through a circular issued to the procuring and disposing entity	1,000,000.00
37.	Failure to remit levies in accordance with section 21(5) of the Act	1,000,000.00
38.	Failure to submit quarterly procurement reports in accordance with section 24(2)(*b*) of the Act	1,000,000.00

Made this 3rd day of August, 2026.

J. M. Mwanamvekha
Minister of Finance,
Economic Planning and Decentralization

(FILE NO: MOF/PFMS/PPDA/3/1)

GOVERNMENT NOTICE NO. 79

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT, 2024 (No. 7 of 2025)

DISPOSAL OF PUBLIC ASSETS REGULATIONS, 2026

ARRANGEMENT OF REGULATIONS

REGULATION

IN EXERCISE of the powers conferred by section 97 (2) (*g*) of the Public Procurement and Disposal of Public Assets Act, 2024, I, JOSEPH MATHYOLA MWANAMVEKHA, Minister of Finance, Economic Planning and Decentralization, on the recommendation of the Authority, make the following Regulations—

Part I—Preliminary

Citation

1. These Regulations may be cited as the Disposal of Public Assets Regulations, 2026.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Board of Survey" means an *ad hoc* team appointed to assess assets earmarked for disposal and evaluate submitted bids for the assets being disposed of pursuant to section 27 of the Act;

"capital asset" means tangible, long term equipment or property that a procuring and disposing entity acquires for use in its operations, other than for resale;

"reserve price" means the minimum price below which an asset shall not be disposed of; and

"trade-in" means a method of disposal in which an asset is exchanged as part payment consideration for a new asset.

Application

3. In addition to asset disposal contracts exempted from application of the Act under section 3 (2) of the Act, these Regulations shall not apply to disposal of—

(*a*) an asset of a procuring and disposing entity—

(i) in liquidation or receivership; and

(ii) in the normal course of trade where the disposal is the core business of the procuring and disposing entity; and

(*b*) an asset in the control, or on the register, of a donor or financing agency, unless the asset is transferred to the procuring and disposing entity.

Part II—General Provisions on Disposal of Public Assets

Review and identification of assets for disposal

4.—(1) A Controlling Officer or head of a procuring and disposing entity shall cause each asset of the procuring and disposing entity to be reviewed annually to determine if the asset is past its useful economic life.

(2) The review under subregulation (1) shall be carried out by the Internal Procurement and Disposal Committee of the procuring and disposing entity.

(3) The Internal Procurement and Disposal Committee shall submit a report to the Controlling Officer to authorize the disposal of the identified assets.

Planning for disposal of assets

5.—(1) A procuring and disposing entity shall, in accordance with section 55 of the Act, plan for the disposal of its assets.

(2) A procuring and disposing entity shall—

(*a*) not carry out any unplanned disposal of a public asset, except—

(i) with the prior written approval of the Authority; or

(ii) in cases of emergency, where an asset poses an immediate risk to public health, safety or security in which case the procuring and disposing entity shall notify the Authority within seven days of the date of disposal of the asset;

(*b*) aggregate disposal requirements within the entity;

(*c*) incorporate the disposal of the asset in its asset inventory and its income and expenditure statement;

(*d*) use the method of disposal that promotes competition and guarantees the highest return from the disposal; and

(*e*) package items earmarked for disposal in such a manner as to ensure use of the appropriate disposal method.

(3) A procuring and disposing entity may aggregate assets intended for disposal and conduct a joint disposal process, to reduce administration and transaction costs.

Assessment of assets pending disposal

6.—(1) Where an Internal Procurement and Disposal Committee identifies an asset that is past its useful economic life, the committee shall appoint a Board of Survey to assess the asset, and make a recommendation for disposal of the asset.

(2) The Board of Survey shall assess the asset and submit a report on the assessment to the Internal Procurement and Disposal Committee.

(3) A report submitted under subregulation (2) shall contain—

(*a*) particulars of the asset;

(*b*) the condition of the asset;

(*c*) the identification or code number of the asset;

(*d*) the recommended reserve price of the asset; and

(*e*) the proposed method for disposal of the asset.

Valuation of assets pending disposal

7.—(1) A procuring and disposing entity shall, prior to the commencement of disposal proceedings for any asset, cause the asset to be valued in accordance with regulation 8.

(2) The valuation of an asset shall be carried out by—

(*a*) a Board of Survey;

(*b*) an independent provider of asset valuation services; or

(*c*) where the requirement for valuation of the asset is prescribed by any other written law, a competent authority prescribed under that law.

(3) A procuring and disposing entity shall not use a Board of Survey to value a capital asset which shall be disposed of in a prescribed manner as provided in subregulation 2 (*c*).

(4) Where an asset requires valuation by an independent provider of asset valuation services, the requirement may be dispensed with where the cost of the valuation is likely to be the same as, more than, or slightly less than, the proceeds expected to be realized from the disposal of the asset.

(5) Where subregulation (4) applies, the valuation shall be carried out by a Board of Survey in accordance with subregulation 2 (*a*), or a competent authority, in accordance with subregulation 2 (*c*), as the case may be.

(6) The value of the asset determined by the valuer shall be the reserve price of the asset.

Asset valuation criteria

8. A valuer shall, in determining the value of an asset, consider—

(*a*) the age of the asset;

(*b*) the condition of the asset;

(*c*) reusability of the asset; and

(*d*) the prevailing market price of the asset.

Publication of disposal notice

9.—(1) A procuring and disposing entity shall publicize an intended disposal of an asset as prescribed in these Regulations, in order to increase competition and maximize proceeds to be realized from disposal of the asset.

(2) A notice under subregulation (1) shall be—

(*a*) displayed at a conspicuous place at the premises of the procuring and disposing entity; and

(*b*) published in the *Gazette*, in at least one newspaper with wide circulation in Malawi, and on the website of the procuring and disposing entity and the Authority, and other electronic and print media as prescribed under these Regulations, and in any other manner determined appropriate by the procuring and disposing entity.

(3) A procuring and disposing entity shall publish the disposal notice in compliance with the thresholds issued by the Authority pursuant to section 6 (1) of the Act.

Inspection of asset by potential bidder

10.—(1) Where a procuring and disposing entity intends to dispose of an asset through public auction, forward auction or tendering with sealed bids, the entity shall provide an opportunity to every potential bidder to inspect the asset, at the bidder's own cost, before the date of the public auction, forward auction, or closure of the bidding period, as the case may be.

(2) A procuring and disposing entity shall provide information on arrangements for inspection of the asset—

(*a*) in the notice of invitation for bids; or

(*b*) notice of the public auction or forward auction.

Description and condition of assets to be sold

11.—(1) A procuring and disposing entity shall give a brief and accurate description of an asset earmarked for disposal.

(2) A procuring and disposing entity shall dispose of the asset on an "*as is, where is*" basis with no liability attaching to the entity after disposal.

(3) A procuring and disposing entity shall specify in the notice of disposal, and any additional information provided to a prospective bidder, that the disposal is on an "*as is, where is*" basis.

(4) A procuring and disposing entity shall not give a warranty on the asset.

(5) Where the procuring and disposing entity provides additional information to a prospective bidder, including a catalogue of an auctioneer, the additional information shall not be part of the disposal contract.

12. An Internal Procurement and Disposal Committee shall, where it is satisfied with the report of a Board of Survey, received under regulation 6 (2), recommending disposal of an asset, instruct its procurement and disposal unit, to commence the disposal process of the asset. Commencement of disposal proceedings

13.—(1) A custodian of an asset earmarked for disposal shall initiate the disposal process by submitting a request for disposal of the asset to the Controlling Officer or head of the procuring and disposing entity using the Requisition Form in *First Schedule*. Initiation of disposal of assets

(2) A request under subregulation (1) shall be accompanied by a report issued under regulation 6 (2).

(3) A Controlling Officer or head of a procuring and disposing entity may, upon receipt of a request under subregulation (1), approve the initiation of the process of asset disposal as recommended in the report issued under regulation 6 (2).

14.—(1) Where the Internal Procurement and Disposal Committee approves the disposal of assets through sale by public auction, forward auction or tendering with sealed bids, the procuring and disposing entity may package the disposal of assets into lots. Packaging of assets for disposal

(2) A procuring and disposing entity shall dispose of assets packaged into lots on item-by-item basis, in order to promote competition and maximize proceeds from the disposal.

15. Where a procuring and disposing entity aggregates assets intended for disposal as prescribed under regulation 4 (3)— Packaging and disposal of aggregated assets

(*a*) regulation 14 shall apply to the packaging and disposal of the assets; and

(*b*) each procuring and disposing entity shall enter into and manage contracts with respect to assets belonging to that entity.

16.—(1) A procuring and disposing entity intending to dispose of an asset through public auction, forward auction or tendering with sealed bids may appoint a contract manager to manage the disposal contract. Management of disposal contract

(2) The contract manager shall—

(*a*) cross check all relevant documents forming part of the disposal contract and resolve any discrepancy in the documents;

(*b*) collect the contract price from the successful bidder within the payment period stipulated in the contract;

(*c*) hand over the asset and all the appropriate accessories and documents to the successful bidder;

(*d*) where so authorized, sign the disposal contract and any other document required to be signed by the procuring and disposing entity;

(*e*) manage any outstanding legal obligation of the procuring and disposing entity under the contract;

(*f*) ensure that the Act, the Public Finance Management Act, 2022 and guidelines issued by the Authority are complied with; and No. 4 of 2022 (*g*) submit a report on the disposal contract to the procuring and disposing entity.

(3) Where a procuring and disposing entity uses a registered auctioneer to dispose of an asset, the entity may appoint the auctioneer as contract manager of the disposal.

Mode of payment

17. A successful bidder shall pay the purchase price of an asset to the procuring and disposing entity through a cash payment or an electronic money transfer.

Management of proceeds of asset disposal No. 4 of 2022

18. The Controlling Officer or head of procuring and disposing entity shall ensure the proper management of proceeds of asset disposal in accordance with the Public Finance Management Act, 2022.

Non-disclosure of information on asset disposal processes

19. Subject to the Act, a procuring and disposing entity shall not disclose information on the asset disposal process to any other person before the successful bidder is notified of the award of contract where the disclosure would—

(*a*) amount to a breach of the Act;

(*b*) interfere with law enforcement;

(*c*) prejudice legitimate commercial interests of the bidder or a third party; or

(*d*) not be in the public interest.

Publication of certain disposal proceedings

20. The Authority may, by notice published in the *Gazette* and on the website of the Authority, prescribe disposal proceedings whose results shall be published in the manner prescribed in the notice.

Part III—Procedure For Disposal of Public Assets

Division 1– Public Auction or Forward Auction

Disposal by public auction or forward auction

21.—(1) Where a procuring and disposing entity intends to dispose of an asset through public auction or forward auction, the procurement and disposal unit shall complete Form 1 set out in the *Second Schedule*, and submit the Form to the Internal Procurement and Disposal Committee.

(2) The procuring and disposing entity may—

(*a*) engage a registered auctioneer, through a competitive procurement process, to conduct the public auction or forward auction on behalf of the entity; or

(*b*) appoint a member of staff of the entity to conduct the public auction or forward auction.

(3) Where a procuring and disposing entity engages a registered auctioneer under subregulation (2) (*a*)—

(*a*) the auctioneer shall transfer the proceeds of the disposal to the procuring and disposing entity within five days from the date of receipt of the proceeds from the successful bidder; and

(*b*) the entity shall pay to the auctioneer the consideration prescribed in the engagement contract in accordance with the contract.

(4) An engagement contract signed between a procuring and disposing entity and an auctioneer may authorize the auctioneer to deduct the fees of the auctioneer from proceeds of sale received from the successful bidder.

22.—(1) A procuring and disposing entity shall, at least ten days before the date of a public auction or forward auction, publish a notice of the public auction or forward auction— Notification of public auction and pre-inspection of asset

(*a*) on a notice board at the premises of the entity and any other public place as the entity may determine appropriate;

(*b*) on the website of the procuring and disposing entity and the Authority;

(*c*) in any other electronic media as the entity may determine appropriate; and

(*d*) in at least one newspaper of wide circulation in Malawi.

(2) The publication of a notice under subregulation (1) (*d*) shall be dispensed with where the total estimated revenue to be realized from the disposal proceedings is not more than three times the cost of the publication.

(3) The notification published under subregulation (1) shall contain inspection arrangements of the asset by potential bidders, and the date, time and venue of the public auction or forward auction.

(4) A procuring and disposing entity shall schedule inspection of the asset to take place not less than three days before the date of the public auction or forward auction.

23.—(1) An auditor from the office of the Auditor General or from the office of the Comptroller of Internal Audit Services may attend a public auction or follow proceedings of forward auction to observe the proceedings. Independent observation of public auction or forward auction

(2) An auditor who attends a public auction or follows proceedings of forward auction shall, within three working days of completion of the auction, submit a report on the auction to the Controlling Officer or head of the procuring and disposing entity, and to the Authority.

(3) A procuring and disposing entity may invite the Anti-Corruption Bureau, any civil society organization, and any other relevant institution to attend the public auction or forward auction as an observer.

(4) A procuring and disposing entity shall file the report received under subregulation (2) on the disposal file.

24.—(1) A procuring and disposing entity shall not issue a formal bidding document for an asset intended for disposal by public auction. Conduct of public auction

(2) An auctioneer shall, during a public auction, announce the reserve price, and bidders shall thereupon make competing offers orally.

(3) Upon the fall of the auctioneers’ hammer, the auctioneer shall declare the bidder who offers the highest price as the successful bidder.

(4) The procuring and disposing entity shall award a disposal contract, in writing, to the successful bidder.

(5) The procuring and disposing entity shall not enter into negotiation with the successful bidder on the purchase price or any other term of the contract awarded under subregulation (4).

(6) The successful bidder shall pay at least fifty per-cent of the contract price immediately after award of the contract, and shall pay the balance within five working days from the date of the auction.

(7) Where the successful bidder fails to pay the contract price or part thereof as provided under subregulation (6)—

(*a*) the procuring and disposing entity shall terminate the contract, and offer the contract to the second successful bidder who offered competitive price above the reserve price;

(*b*) the disposal proceedings shall be restarted only after all the successful bidders who offered competitive price above reserve price have not accepted the contract; and

(*c*) the bidder who fails to pay the contract price shall forfeit to the procuring and disposing entity twenty-five per-cent of the contract price.

(8) The successful bidder shall not collect the asset, unless the bidder pays the balance of the contract price.

(9) The procuring and disposing entity shall keep a record of the public auction in Form 2 set out in the *Second Schedule*.

Conduct of forward auction

25.—(1) A procuring and disposing entity shall not issue a formal bidding document for an asset intended for disposal by forward auction.

(2) A procuring and disposing entity shall, during a forward auction, post the reserve price online, and bidders shall thereupon make competitive offers electronically.

(4) At the closing time of the forward auction, a procuring and disposing entity shall declare the bidder who offers the highest price as the successful bidder.

(5) The procuring and disposing entity shall award a disposal contract, in writing, to the successful bidder.

(6) The procuring and disposing entity shall not enter into negotiation with the successful bidder on the purchase price or any other term of the contract awarded under subregulation (5).

(7) The successful bidder shall pay at least fifty per-cent of the contract price immediately after award of the contract, and shall pay the balance within five working days from the date of the forward auction.

(8) Where the successful bidder fails to pay the contract price or part thereof as provided under subregulation (6)—

(*a*) the procuring and disposing entity shall terminate the contract and offer the contract to the second successful bidder who offered competitive price above the reserve price.

(*b*) The disposal proceedings shall be restarted only after all the successful bidders who offered competitive price above reserve price have not accepted the contract; and

(*c*) the bidder who fails to pay the contract price shall forfeit to the procuring and disposing entity twenty-five per-cent of the contract price.

(9) The successful bidder shall not collect the asset, unless the bidder pays the balance of the contract price.

(10) The procuring and disposing entity shall keep a record of the forward auction in Form 2 set out in the *Second Schedule*.

Division 2—Tendering With Sealed Bids

Disposal by tendering with sealed bids

26.—(1) Where a procuring and disposing entity intends to dispose of an asset through tendering with sealed bids, the procurement and disposal unit shall complete Form 3 set out in the *Second Schedule*, and submit the Form to the Internal Procurement and Disposal Committee.

(2) The procuring and disposing entity shall dispose public assets of high value as prescribed in *Third Schedule* through disposal by tendering with sealed bids.

(3) A procuring and disposing entity shall invite sealed bids through publication of the invitation—

(*a*) on a notice board at the premises of the entity, and any other public place, as the entity may determine appropriate;

(*b*) on the website of the Authority;

(*c*) in any other electronic media, as the entity may determine appropriate; and

(*d*) in at least one newspaper of wide circulation in Malawi.

(4) The publication of a notice under subregulation (3) (*d*) shall be dispensed with where the total estimated revenue to be realized from the disposal proceedings is not more than three times the cost of the publication.

(5) An invitation for sealed bids shall—

(*a*) provide a description of the asset to be disposed of;

(*b*) specify that the asset is being disposed of on an "*as is, where is*" basis;

(*c*) specify location of the asset;

(*d*) provide information on arrangements for inspection of the asset;

(*e*) specify deadline, location and method for submission of bids;

(*f*) provide information on arrangements for a public tender opening;

(*g*) specify qualification requirements to be met by a bidder;

(*h*) specify the method for bid valuation and award of contract;

(*i*) specify terms and conditions of sale;

(*j*) specify the reserve price of the asset;

(*k*) specify the contract price payment procedure;

(*l*) specify the asset hand-over arrangements;

(*m*) contain a statement indicating that the risk and cost of dismantling and removing the asset shall be on the successful bidder; and

(*n*) provide details of any reservations scheme in operation.

(6) A procuring and disposing entity may require a bidder to pay a non-refundable fee, determined by the entity, on or before submission of a sealed bid.

(7) A bidder shall submit his bid to the procuring and disposing entity in a sealed envelope, or electronically to a designated secured portal.

Bidding period

27.—(1) A procuring and disposing entity shall set a closing date for submission of bids which shall be at least ten days from the date of publication of the invitation to tender.

(2) A procuring and disposing entity shall determine the bidding period based on the—

(*a*) need to allow sufficient time for a potential bidder to inspect the asset prior to bidding; and

(*b*) time required for preparation and submission of the bid.

(3) A procuring and disposing entity shall reject a bid submitted after the deadline for submission of bids.

Opening of bids

28.—(1) A procuring and disposing entity shall keep a record of bids received in Form 4 set out in the *Second Schedule*.

(2) A procuring and disposing entity shall, upon closure of the bidding period, open the bids in public, and read out loudly the price for each bid.

(3) A procuring and disposing entity shall maintain a record of the bid opening in Form 5 set out in the *Second Schedule*.

Evaluation of bids

29.—(1) A Board of Survey shall evaluate bids received in response to the invitation for bids.

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

(3) A Board of Survey may, in the evaluation of bids, consider other factors in addition to the bid price, where there is—

(*a*) an end-user restriction on the asset;

(*b*) an export restriction on the asset; or

(*c*) a need to attach a condition to the sale of the asset.

(4) The other factors referred to in subregulation (3) include—

(*a*) nationality of the bidder, under a reservation scheme;

(*b*) environmental impact of the disposal of the asset;

(*c*) risk or condition associated with health and safety, legal or human rights, national security or public interest;

(*d*) the need to maintain the asset within Malawi or within a specified area in Malawi;

(*e*) the need to maintain the asset in working order or to maintain accessibility to the asset by the public; or

(*f*) any other performance condition, including means of monitoring compliance with any condition attached to the disposal.

(5) A Board of Survey may, during evaluation—

(*a*) correct arithmetical errors;

(*b*) convert bid prices to a common currency, where applicable; and

(*c*) compare bid prices with the reserve price.

(6) A Board of Survey shall, upon completion of bid evaluation, submit a report of the evaluation to the Internal Procurement and Disposal Committee.

(7) A procuring and disposing entity shall maintain a record of the bid evaluation in Form 6 set out in the *Second Schedule*.

Breaking a tie in bids

30.—(1) Where there is a tie in the highest-bid price submitted by two or more bidders, a procuring and disposing entity shall invite the bidders who submitted the identical bid price to submit revised bids within the period specified in the invitation for the revised bids.

(2) The bid closing date specified in the invitation for revised bids under subregulation (1) shall be at least two days from the date of delivery of the invitation.

(3) A revised bid shall—

(*a*) be in writing, sealed and submitted in the same manner as the initial bid;

(*b*) be submitted within the period specified in the invitation for submission of revised bids; and

(*c*) contain the revised bid price only.

(4) The procedure for receipt and opening the revised bids shall be the same as the procedure for receipt and opening the initial bids.

(5) A procuring and disposing entity shall evaluate the revised bids based on bid price only.

(6) Where there is a tie in the highest revised bid prices submitted by two or more bidders, the procuring and disposing entity shall invite the bidders who submitted the revised identical bid price to submit second revised bids within the period specified in the invitation for the second revised bids, and subregulations (2), (3), (4) and (5) shall apply.

(7) Where the second revised bidding process fails to identify a successful bidder, the procuring and disposing entity may—

(*a*) repeat the procedure prescribed under subregulation (6) until a successful bidder is identified; or

(*b*) change the disposal method to a public auction or forward auction, where only the bidders who submitted the second identical bid prices shall participate.

(8) Where the disposal method is changed to public auction or forward auction as provided under subregulation (7) (*b*), the identical second revised bid price offered by the bidders shall be the reserve price.

Declaration of successful bidder and award of contract

31.—(1) A procuring and disposing entity shall, upon the Internal Procurement and Disposal Committee approving a recommendation submitted by the Board of Survey under regulation 29 (6), declare the successful bidder.

(2) Where bid evaluation is based on—

(*a*) bid price only, the procuring and disposing entity shall declare the bidder offering the highest price as the successful bidder; or

(*b*) bid price and other factors as prescribed under regulation 29 (3), the procuring and disposing entity shall declare the highest evaluated bidder as the successful bidder.

(3) A procuring and disposing entity shall not declare the successful bidder at bid opening.

(4) A procuring and disposing entity shall, within three days of the declaration of the successful bidder, display a notice of award of the disposal contract to the successful bidder on the notice board of the procuring and disposing entity and the website of the procuring and disposing entity and that of the Authority.

(5) Where an electronic bidding process is used, the declaration of the successful bidder shall be done electronically, and the information shall be available on-line.

(6) A procuring and disposing entity shall award a disposal contract to the successful bidder, in writing.

(7) The contract awarded under subregulation (6) shall contain the terms and conditions of the disposal contract and shall, at a minimum, include—

(*a*) the price to be paid by the successful bidder;

(*b*) the mechanism and date for payment of the contract price;

(*c*) any accessories or linked assets to be included in or excluded from the disposal contract;

(*d*) the date of collection of the asset;

(*e*) the hand-over procedure and any documentation to be transferred together with the asset; and

(*f*) the person responsible for any legal obligation linked to the asset upon transfer of the asset.

Contract negotiations

32.—(1) Where bid evaluation is based on bid price and other factors as prescribed under regulation 29 (3), a procuring and disposing entity may enter into contract negotiations on conditions of sale of the asset with a successful bidder.

(2) The contract negotiations under subregulation (1) shall not affect the evaluated bid price.

(3) A procuring and disposing entity shall enter into the contract negotiation—

(*a*) upon written approval, by the Internal Procurement and Disposal Committee, of a recommendation of the Board of Survey to enter into the negotiation; and

(*b)* with the successful bidder only.

(4) The Internal Procurement and Disposal Committee shall—

(*a*) appoint a contract negotiation team; and

(*b*) specify the issue to be negotiated and the objective to be achieved.

(5) The negotiation team shall produce minutes of the negotiation meeting and the bidder shall indicate, in writing, that the minutes are a true and accurate record of the negotiations.

(6) The negotiation team shall submit a negotiation report to the Internal Procurement and Disposal Committee, and the report shall state whether the objective of the negotiations has been achieved.

(7) The report submitted under subregulation (7) may recommend—

(*a*) award of the disposal contract to the bidder;

(*b*) further negotiations, after revision of the negotiation objective; or

(*c*) termination of the negotiations, and rejection of the bid submitted by the bidder.

(8) The Internal Procurement and Disposal Committee may, upon receipt of the report submitted under subregulation (7)—

(*a*) approve the report for implementation;

(*b*) order further negotiations on a specific point;

(*c*) reject any recommendation, and give reasons for the rejection; or

(*d*) cancel the negotiations.

(9) Where a negotiation team recommends rejection of the bid, the team may recommend that the procuring and disposing entity should enter into contract negotiations with the bidder ranked second best.

(10) A procuring and disposing entity shall incorporate into the disposal contract all contract terms and conditions agreed to during the negotiations.

(11) Where negotiations with the successful bidder are terminated, a procuring and disposing entity shall notify the termination to the bidder, and give reasons for the termination.

(12) Where negotiations have been terminated with the successful bidder, the procuring and disposing entity may proceed to enter into negotiations with successful bidders whose bid process are above the reserve price.

Division 3—Trade-in, Transfer and Destruction

Disposal through trade-in

33.—(1) Where a procuring and disposing entity intends to dispose of an asset using the trade-in method, the procurement and disposal unit, shall complete Form 7 set out in the *Second Schedule* and submit the Form to the Internal Procurement and Disposal Committee.

(2) The Internal Procurement and Disposal Committee shall, upon receipt of Form 7—

(*a*) approve terms and conditions of the trade-in arrangement; and

(*b*) appoint a disposal contract negotiation team.

(3) The negotiation team shall negotiate the trade-in terms and conditions, including the trade-in value of the assets, with the supplier approved by the Internal Procurement and Disposal Committee.

(4) Where the negotiations for a trade-in are successful, the procuring and disposing entity shall dispose of the asset though trade-in on such terms and condition as agreed with the supplier.

(5) Where there is a stalemate in the negotiations for a trade-in, the negotiation team may terminate the negotiations and recommend to the Internal Procurement and Disposal Committee that the asset be disposed of using another disposal method.

Disposal through transfer to another procuring and disposing entity

34.—(1) Where a procuring and disposing entity intends to dispose of an asset by transferring the asset to another procuring and disposing entity, the procurement and disposal unit, shall complete Form 8 set out in the *Second Schedule* and submit the form to the Internal Procurement and Disposal Committee.

(2) The Controlling Officer or head of the procuring and disposing entity transferring the asset and the Controlling Officer or head of the procuring and disposing entity receiving the asset shall agree, in writing, the terms and conditions of the transfer.

(3) The agreement under subregulation (2) shall be in Form 9 set out in the *Second Schedule*.

(4) The receiving procuring and disposing entity shall, upon signing Form 9, collect the asset.

Disposal by destruction

35.—(1) A procuring and disposing entity shall dispose of an asset through destruction of an asset where—

(*a*) destruction is the appropriate method for disposal of the asset; or (*b*) other factors, including national security, public interest, public health and safety, human rights or environmental considerations make it appropriate that the asset be disposed of through destruction.

(2) Where a procuring and disposing entity intends to dispose of an asset through destruction of the asset, the procurement and disposal unit, shall complete Form 10 set out in the *Second Schedule* and submit the Form to the Internal Procurement and Disposal Committee for approval.

(3) A procuring and disposing entity may destroy the asset or commission a competent authority or service provider to destroy the asset.

(4) The destruction of the asset shall be witnessed by—

(*a*) an internal auditor;

(*b*) an auditor from the office of the Auditor General or the office of Comptroller of Internal Auditing Services; and

(*c*) any other relevant authority.

(5) A person who is tasked to destroy the asset shall, upon destroying the asset, issue a certificate of destruction in Form 11 set out in the *Second Schedule*.

(6) A procuring and disposing entity shall keep the certificate issued under subregulation (5) on the asset disposal file.

(7) Where a procuring and disposing entity disposes a perishable asset through destruction on a regular basis, the Internal Procurement and Disposal Committee may give a standing approval under subregulation (2) and the approval shall be valid for the period specified in the approval.

(8) The approval under subregulation (7) shall not be granted, unless a suitably qualified medical or environmental officer certifies the need for expeditious destruction of such asset.

(9) The procuring and disposing entity shall seek approval of the Authority pursuant to section 51 (2) of the Act, and also in compliance with the Public Finance Management Act, 2022. No 4 of 2022

Disposal through conversion or classification

36.—(1) Where a procuring and disposing entity intends to dispose of an asset through conversion or classification of the asset, the procurement and disposal unit shall complete Form 12 set out in the *Second Schedule* and submit the Form for approval to the Internal Procurement and Disposal Committee.

(2) A procuring and disposing entity may undertake the conversion or classification of the asset or commission a competent authority or service provider to undertake the conversion or classification.

(3) Where the procuring and disposing entity commissions a service provider to undertake the conversion or classification of the asset, the procuring and disposing entity shall procure the service provider in accordance with the Act.

(4) The competent authority or service provider which undertakes the conversion or classification of the asset shall, upon completion of the conversion or classification, issue a certificate of conversion or classification in Form 13 set out in the *Second Schedule*.

(5) A procuring and disposing entity shall keep the certificate issued under subregulation (4) on the asset disposal file.

Disposal of assets to employees of a procuring and disposal entity of a public conversion

37.—(1) Where a procuring and disposing entity intends to dispose of an asset to a specified employee, the department responsible for human resource management shall complete Form 14 set out in the *Second Schedule* and submit the Form to the Procurement and Disposing Unit, which shall later submit to the Internal Procurement and Disposal Committee.

(2) The Internal Procurement and Disposal Committee shall—

(*a*) review Form 14 to verify if the asset to be disposed were being used by the specified employee;

(*b*) review the supporting evidence that the employee has been the one using that asset in performing the duties of the employee;

(*c*) upon being satisfied with the completeness of Form 14 and evidence that the asset was being used by the specified employee, appoint a Board of Survey;

(*d*) review the report from the Board of Survey on the assessment of the asset and its residue value; and

(*e*) approve the Board of Survey asset valuation report, and proceed to submit a recommendation to the Controlling Officer or head of the procuring and disposing entity for the disposal of the asset.

(3) Upon approval of the Internal Procurement and Disposal Committee, the Controlling Officer or head of the procuring and disposing entity shall submit a request for approval to the Authority as provided under section 36 of the Act.

(4) Upon receipt of the approval from the Authority, the Controlling Officer or head of the procuring and disposing entity shall issue an offer letter to the employee to whom the asset is to be disposed.

(5) The employee shall proceed to make payment for the asset and submit payment evidence to finance which shall issue a receipt.

(6) The employee shall proceed to submit the receipt to the officer responsible for management of the asset register to record that the asset is being taken out of the register, and issue an asset deregistration certificate to the employee with a copy sent to the finance department for updating the financial records.

Part IV—Administrative Review and Debarment of Bidders

Division 1—Administrative Review of Disposal Proceedings

Administrative review

38.—(1) A bidder who is dissatisfied with the conduct of a disposal proceeding under these Regulations may, within fourteen days of becoming aware of the act or decision giving rise to the dissatisfaction, submit an application, in writing, to the Controlling Officer or head of the procuring and disposing entity for administrative review of the proceeding.

(2) An application for administrative review under subregulation (1) shall—

(*a*) contain—

(i) details of the disposal to which the complaint relates;

(ii) the provision of the Act or these Regulations which has been contravened;

(iii) an explanation of how the provision cited under paragraph (ii) has been contravened;

(iv) the date on which the contravention occurred;

(v) where the bidder knows the officer responsible for the contravention, particulars of the officer;

(vi) a copy of documentary or other form of evidence supporting the complaint; and

(vii) any other information relevant to the complaint; and

(*b*) be accompanied by a fee as prescribed in the *Fourth Schedule*.

(3) The bidder shall submit a copy of the application for administrative review to the Authority.

Determination of application for administrative review by Controlling Officer

39.—(1) In the event that the continuation of the process will adversely affect the asset disposal process or occasion injustice to any bidder, the Controlling Officer or head of procuring and disposing entity shall, upon receipt of an application for administrative review under regulation 38, suspend the asset disposal process for fourteen days.

(2) Where the Controlling Officer or head of procuring and disposing entity fails to determine the application within the suspension period prescribed under subregulation (1), the Controlling Officer or head of procuring and disposing entity may extend the suspension by fourteen days.

(3) A Controlling Officer or head of procuring and disposing entity shall inquire into the application and communicate a decision to the bidder within fourteen days of receipt of the application, or where subregulation (2) applies, within twenty-eight days of receipt of the application.

(4) The Controlling Officer or head of procuring and disposing entity shall, in considering the application—

(*a*) review information and evidence contained in the application;

(*b*) review records contained in the disposal file of the procuring and disposing entity;

(*c*) solicit information from any member of staff of the procuring and disposing entity;

(*d*) review information provided by other bidders participating in the disposal; and (*e*) review any other relevant information.

(5) A decision of the Controlling Officer or head of procuring and disposing entity shall be in writing and shall—

(*a*) where the contravention is proven, uphold the application and outline corrective measures to be implemented to rectify the contravention; or

(*b*) where the contravention is not proven, dismiss the application.

(6) The decision of the Controlling Officer or head of the procuring and disposing entity shall contain reasons for the decision.

(7) The Controlling Officer or head of the procuring and disposing entity shall submit a copy of the decision to the Authority.

Appeal against decision of Controlling Officer

40.—(1) The bidder may lodge an application for appeal with the Authority, in writing, where—

(*a*) a bidder is dissatisfied with the decision of the Controlling Officer or head of the procuring and disposing entity; or

(*b*) the Controlling Officer or head of the procuring and disposing entity fails to communicate his decision to the bidder within the period prescribed under regulation 39 (3).

(2) An application for appeal under subregulation (1) shall be lodged with the Authority within—

(*a*) fourteen days of the date of the decision of the Controlling Officer or head of the procuring and disposing entity; or

(*b*) where the Controlling Officer or head of the procuring and disposing entity has failed to communicate a decision, fourteen days of the expiry of the period within which the decision should have been delivered.

(3) An application for appeal shall—

(*a*) contain—

(i) a copy of the application for administrative review submitted to the Controlling Officer or head of the procuring and disposing entity;

(ii) a copy of any correspondence on the matter between the bidder and the Controlling Officer or head of the procuring and disposing entity;

(iii) a copy of the decision of the Controlling Officer or head of the procuring and disposing entity;

(iv) in the case of dissatisfaction with a decision of a Controlling Officer or head of procuring and disposing entity, an explanation of why the bidder is dissatisfied with the decision; and

(v) in the case of a Controlling Officer or head of procuring and disposing entity failing to deliver a decision, a statement that the Controlling Officer has failed to deliver a decision within the prescribed period; and

(*b*) be accompanied by a fee as prescribed in the *Fourth Schedule*.

(4) The Authority shall, upon receipt of an application for appeal under subregulation (3)—

(*a*) give notice of an application for appeal to the Controlling Officer or head of the procuring and disposing entity and invite the Controlling Officer or head of the procuring and disposing entity to submit a response to the application for appeal in writing within five days of receipt of the notice;

(*b*) order the Controlling Officer or head of the procuring and disposing entity to suspend the disposal process to which the appeal relates; and

(*c*) notify the appeal to all bidders involved in the disposal process and invite those wishing to be heard on the matter to make written submissions within the period specified in the notice.

(5) The Authority shall inquire into an application for appeal and communicate its decision to the bidder, the Controlling Officer or head of procuring and disposing entity and the other bidders within fourteen days of receipt of the appeal.

(6) The Authority shall, in considering the appeal—

(*a*) review information and evidence contained in the appeal;

(*b*) review records contained in the disposal file of the procuring and disposing entity;

(*c*) solicit information from any member of staff of the procuring and disposing entity;

(*d*) review information provided by other bidders participating in the disposal; and

(*e*) review any other relevant information.

(7) A decision of the Authority shall be in writing and may—

(*a*) confirm the decision of the Controlling Officer or head of the procuring and disposing entity;

(*b*) dismiss the application for appeal; or

(*c*) modify or reverse the decision of the Controlling Officer or head of the procuring and disposing entity, and provide guidelines on how to proceed with the disposal.

(8) The Authority shall give reasons for its decision.

(9) A bidder who is dissatisfied with a decision of the Authority may apply to the High Court for review of the decision of the Authority within thirty days of the decision of the Authority.

Division 2—Suspension and Debarment

Suspension of a bidder

41.—(1) The Authority may suspend any bidder from participating in asset disposal proceedings in accordance with section 79 of the Act, to facilitate investigations, where the bidder—

(*a*) is suspended or debarred from participating in procurement and disposal proceedings;

(*b*) is suspected of having knowingly supplied false information in an asset disposal bid;

(*c*) is suspected to have colluded with an officer from a procuring and disposing entity to—

(i) fix an asset disposal price at a non-competitive level;

(ii) prescribe unfair asset disposal terms and conditions; or

(iii) influence award of an asset disposal contract to the person or another person;

(*d*) is suspected to have colluded with another bidder to submit bid prices that are artificial and non-competitive with a view to fixing the asset disposal price at a low level;

(*e*) has breached a contractual obligation in an asset disposal contract;

(*f*) is convicted of an offence relating to obtaining or attempting to obtain a procurement or asset disposal contract; or

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(*g*) is convicted of an offence under this Act, the Corrupt Practices Act or of any financial crime as defined under the Financial Crimes Act.

(2) A suspension under subregulation (1) shall be for a period of ninety days.

Debarment from participating in asset disposal proceedings

42.—(1) Where the Authority, after due inquiry, is satisfied that a bidder suspended under regulation 41 committed the alleged misconduct, the Authority shall commence debarment proceedings against the bidder.

(2) The Authority shall give notice of the intended debarment, in writing, to the bidder.

(3) The notice under subregulation (2) shall provide particulars of the alleged misconduct and require the bidder to show cause why it should not be debarred from participating in disposal proceedings.

(4) The bidder shall, within fourteen days of receipt of the debarment notice, submit its response to the allegations contained in the notice.

(5) Where the bidder—

(*a*) fails to provide the response as required under subregulation (4), the Authority shall make a decision on the matter based on the available information; or

(*b*) provides a response as required under subregulation (4), the Authority shall take the response into consideration in making a decision on the matter.

(6) The Authority shall communicate its decision to the bidder, in writing.

(7) Where the Authority has determined to hear the side of the bidder, it shall proceed to commence hearing proceeding to be conducted by the Technical Committee as provided in section 83 (6) of the Act, and the

Authority shall ensure that the bidder has a right to legal representative of his or her choice, bring witnesses, be given an opportunity to cross examine the other witnesses, and be informed its right to appeal.

(8) Where the Authority decides to debar the bidder from participating in asset disposal proceedings, the debarment shall be for a period not exceeding five years.

Part V—Disposal Records and Reports

43. A procuring and disposing entity shall, in accordance with section 32 of the Act, maintain a record of disposal proceedings which, among other documents, shall contain— Assets disposal records

(*a*) disposal plan;

(*b*) approval of the Controlling Officer to proceed with disposal of the asset;

(*c*) a copy of all submissions to, and all decisions of the Internal Procurement and Disposal Committee, related to the disposal including—

(i) the choice of disposal method;

(ii) approval of evaluation reports;

(iii) contract award;

(iv) approval of contract documents;

(v) proof of payment;

(vi) proof of asset handover; and

(vii) any decision to suspend or cancel the disposal proceedings;

(*d*) prior approval of the Authority to use the disposal method, where applicable;

(*e*) a request to initiate disposal proceedings;

(*f*) a Board of Survey report;

(*g*) a copy of the published advertisement of the disposal;

(*h*) a copy of the invitation for sealed bids and any amendment, clarification and response provided;

(*i*) a record of bid opening;

(*j*) copies of all evaluated bids;

(*k*) bid evaluation report;

(*l*) minutes of all meetings on the disposal, including pre-bid and negotiation meetings;

(*m*) a notice of the successful bidder;

(*n*) asset disposal contract and amendments to the contract;

(*o*) disposal contract acceptance letter;

(*p*) disposal certificate, where applicable; and (*q*) all correspondence between the procuring and disposing entity and a bidder or potential bidder;

Disposal reports

44. A periodic disposal report submitted to the Authority by a Controlling Officer or head of a procuring and disposing entity under section 24 (2) (*b*) of the Act shall be in Form 15 set out in the *Second Schedule*.

FIRST SCHEDULE (reg. 13 (1))

REQUISITION FOR DISPOSAL BY USER DEPARTMENT

User Department Name	
Description of Asset being disposed	
Asset Reference No.	
Location/site of asset	
Year the asset was procured [*If applicable*]	
The planned disposal time as per the Asset Disposal Policy [*if applicable*]	
Asset User	Name: .... Signature: .... Date: ....
Head of User Department	Name: .... Signature: .... Date: ....
Asset Manager/Management Officer Confirmation that asset is due for disposal	Name: .... Signature: .... Date: ....
Controlling Officer approval for inclusion of asset in the list of assets to be disposed	Name: .... Signature: .... Date: ....

SECOND SCHEDULE (reg. 21 (1))

FORM 1

REQUEST BY PROCUREMENT AND DISPOSAL UNIT TO INTERNAL PROCUREMENT AND DISPOSAL COMMITTEE FOR DISPOSAL BY PUBLIC AUCTION

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL

Subject of disposal

Disposal plan reference

Location/site of asset

DETAILS RELATING TO SUBMISSION AND DECISION BY THE INTERNAL PROCUREMENT AND DISPOSAL COMMITTEE

No.	Submission by the Procurement and Disposal Unit	Decision by the IPDC	Conditions/ justification for decision
	Date of submission to the IPDC	Date/ reference of IPDC meeting	
1.	Assets to be disposed of, proposed reserve price and justification for using public auction		
2.	Arrangements for inspection of assets by bidders (v*enue, date and time*)		
3.	Individual/company who/which valued the asset.		
4.	Proposed auctioneer, contract arrangement and costs to be incurred, where applicable		
5.	Any other information		

Documents attached:

REQUISITION FOR DISPOSAL FORM

Declaration by the Procurement and Disposal Unit	*Declaration by the IPDC*
The information contained in this Form and the attached documents are complete, true and accurate and are in accordance with the Public Procurement and Disposal of Public Assets Act, 2024.	The information contained in this Form is a true and accurate record of the decision of the Internal Procurement and Disposal Committee meeting held on the above-mentioned date.
	Name: ....
Name:	Position: *Chairperson, IPDC*
Position:	Signature: ....
Signature:	Date: ....
Date:	Name: ....
	Position: *Secretary, IPDC*
	Signature: ....
	Date: ....

FORM 2 (regs. 24 (9) and 25 (10))

RECORD OF PUBLIC AUCTION

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL	
Subject of disposal	
Date and time of public auction	
Venue of public auction	
Estimated No. of bidders	

No	Asset Description	Asset Reserve Price	Bid Price of Successful Bidder	Names and addresses of bidders	Name and address of successful bidder	Signature of auctioneer

Witnesses

Name: .... Position: ....

Signature: .... Date: ....

Name: .... Position: ....

Signature: .... Date: ....

FORM 3 (reg. 26 (1))

REQUEST BY THE PROCUREMENT AND DISPOSAL UNIT TO INTERNAL PROCUREMENT AND DISPOSAL COMMITTEE FOR APPROVAL OF DISPOSAL BY TENDERING WITH SEALED BIDS

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL

Subject of disposal

Disposal plan reference

Location/site of asset

No.	SUBMISSION BY THE PROCUREMENT AND DISPOSAL UNIT	DECISION BY THE IPDC	
	Date of submission to the IPDC	Date/ reference of IPDC meeting	
1.	Assets to be disposed of, proposed reserve price and justification for using tendering with sealed bids	Justification/reasons/ conditions of the decision	

No.	SUBMISSION BY THE PROCUREMENT AND DISPOSAL UNIT	DECISION BY THE IPDC	
2.	Arrangements for inspection of assets by bidders (*venue, date and time*)		
3.	Individual/company who/which valued the asset.		
4.	Names and positions of officers recommended to constitute the Board of Survey and justification		
5.	Any other information		

Documents attached:

REQUISITION FOR DISPOSAL FORM

Declaration by the Procurement and Disposal Unit	*Declaration by the IPDC*
The information contained in this Form and the attached documents are complete, true and accurate and are in accordance with the Public Procurement and Disposal of Public Assets Act, 2024.	The information contained in this Form is a true and accurate record of the decision of the Internal Procurement and Disposal Committee meeting held on the above-mentioned date.
Name:	Name: ....
Position:	Position: *Chairperson, IPDC*
Signature:	Signature: ....
Date:	Date: ....
	Name: ....
	Position: *Secretary, IPDC*
	Signature: ....
	Date: ....

FORM 4 (reg. 28 (1))

RECORD OF BIDS RECEIVED

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL

Subject of disposal

Deadline for bid submission (*date and time*)

Location for bid closing

PARTICULARS OF BIDS RECEIVED /BID CLOSING							
No	*Name and address of bidder*	*Date of receipt*	*Time of receipt*	*Number of envelopes*	*Method of receipt: Tender Box*	*Name of officer who recorded bid submission*	*Signature of officer who recorded the bid submission*

Witnesses

Name: .... Position: ....

Signature: .... Date: ....

Name: .... Position: ....

Signature: .... Date: ....

FORM 5 (reg. 28 (3))

RECORD OF BID OPENING

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL

Subject of disposal

Date and time of bid opening

Location for bid opening

PARTICULARS OF BID OPENING

PART I—RECORD OF BIDS OPENED AND DETAILS READ OUT

No.	*Name and address of the bidder*	*Bid price*	*No. of copies (including original) [If applicable]*

Name: .... Position: ....
Signature: .... Date: ....

Name: .... Position: ....
Signature: .... Date: ....

PART II—ATTENDANCE

No	*Name and address*	*Position*	*Bidder*	*Contact details i.e. phone number and email address*	*Signature*

FORM 6 (reg. 29 (7))

BID EVALUATION REPORT

(*insert the method of disposal used*)

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

*Please read notes for preparing an evaluation report at the end of this Form before completing the Form.

1. Introduction—

(1) The asset(s) being disposed of is/are [*description of asset and number in Asset Inventory*] ....

(2) The disposal method used and approved by the IPDC was [*insert the disposal method used*] ....

2. Details of invitation—

{*For public bidding/bid with sealed bid*}

(1) The bidding document was approved by the IPDC on [*date*] ....

(2) The bid notice was advertised on the [*date*] .... in [*name of publications*] ....

(3) The list of persons issued with the bidding documents was recorded using Form 3 which is attached.

{*For trade-in*}

(1) The bidding document and proposed bidder were approved by the IPDC on [*date*] ....

(2) The bidding document was issued on [*date*] ....

3. Inspection of assets—

Potential bidders were given the opportunity to inspect the assets at [*location*] .... on [*date* (*s*)] ....

4. Details of bid closing—

{*For public bidding and sale to public officers*}

(1) Bidding was closed on [*date*] .... at [*time*] .... at [*location*] ....

(2) The receipt of bids was recorded using Form 4 which is attached.

{*For Trade-In*}

The sealed bid was received on [*date*].

5. Details of bid opening—

(1) A public bid opening was held at [*location*] .... on [*date*] .... at [*time*] ....

(2) The bid opening and attendance was recorded using Form 5 which is attached.

6. Details of Board of Survey—

The Board of Survey approved by the Internal Procurement and Disposal Committee on [date] .... comprised of the following:

[Name] .... [*Designation and department*] ....

[Name] .... [*Designation and department*] ....

[Name] .... [*Designation and department*] ....

{*For evaluation based on price only*}

7. Details of evaluation—

(1) The evaluation was based on price only.

Refer to Table 1, which summarises the bid prices.

(2) The highest bid received was [*price of highest bid*].

(3) The official valuation/reserve price was [*valuation or reserve price, if any*].

{*For evaluation based on price and other factors*}

8. Details of evaluation methodology—

The evaluation was based on price and other factors, using the following three stage methodology. {*amend as appropriate*}.

(*a*) preliminary examination on a pass/fail basis to determine the eligibility of the bidders. Non- eligible bidders were eliminated from further evaluation;

(*b*) application of other evaluation criteria in the manner stated in the bidding document. The technically non-compliant bids were eliminated from further evaluation/bids were awarded scores according to merit; and

(*c*) financial evaluation to correct any errors in calculations, convert to a common evaluation currency and rank the bids according to price or score. The bids were compared to the official valuation/reserve price.

9. Preliminary examination—

[*Brief narrative on the result of the preliminary examination and detailed justification with reasons why any bidders were declared not eligible*].

Refer Table 2, which summarizes the preliminary examination.

10. Other evaluation criteria (*if any*)—

[*Brief narrative on the application of any other evaluation criteria and detailed justification with reasons why any bids were declared non-compliant or for the scores awarded*].

Refer to Table 3, which summarizes the technical evaluation.

11. Financial evaluation—

[*Describe any errors in calculation and corrections made and the conversion to a common currency if necessary*.]

[*Describe the ranking of bids according to price or scores*].

Refer to Table 4, which summarizes the price evaluation.

(1) The best evaluated bid was [*name of bidder*] at a total bid price of [*price of bid*].

(2) The official valuation/reserve price was [*valuation or reserve price, if any*].

12. Recommendation {*amend as appropriate*}—

{*Where the highest bid is equal to or higher than the valuation or reserve price, if any*}

On the basis of evaluation based on price only, it is recommended that the award be made to [*name of bidder*] for a total contract value of [*currency and amount*] for [*list all items that the award relates to*].

{*Repeat recommendation for multiple contracts.*}

{*Where the highest bid is lower than the valuation or reserve price*}

(1) The best evaluated bid is less than the valuation/reserve price and it is, therefore, recommended that no contract award be made.

(2) It is further recommended that the asset(s) be revalued/disposed of by [*method of disposal*].

{or}

The highest bid received is only [*state percentage*] ....% below the valuation/reserve price and it is therefore recommended that negotiations be held with [*name of bidder*] .... relation to the bid price.

{or}

The highest bid received is only [*state percentage*] ....% below the valuation/reserve price and it is therefore recommended that the award be made to [*name of bidder*] .... for a total contract value of [*currency and amount*] .... for [*list all items that the award relates to*] ....

{*or*} [*State other appropriate recommendation.*] ....

13. Disagreement by the Board of Survey (*delete if not applicable*)—

The Board of Survey could not reach a unanimous decision on the evaluation and this evaluation report details the view of the majority of the team.

[*Give details of the issues where the team disagreed, the discussions held, the alternative views and the names of those with alternative views*].

14. Signed by the Board of Survey—

We confirm that this evaluation report gives a complete and accurate report of the evaluation conducted:

Name: .... Signature: .... Date: ....

Name: .... Signature: .... Date: ....

Name: .... Signature: .... Date: ....

Annexes: {*amend as appropriate*}

Table 1: Summary of bid prices

Table 2: Summary of preliminary examination and assessment of eligibility

Table 3: Summary of application of other evaluation criteria

Table 4: Summary of financial evaluation

Documents available from the Procurement and disposal unit: {amend as appropriate}

Copy of invitation to submit sealed bids.

Copies of all bids.

TABLE 1: SUMMARY OF BID PRICES

ITEM/ LOT NUMBER: ....

EVALUATION CURRENCY: ....

ASSET INVENTORY NUMBER: ....

VALUATION/ RESERVE PRICE: ....

No.	*Name of bidder*	*Bid Price*	*Bid total read out*	*Evaluated total*	*Rank*

(The highest price should be ranked as number 1. Attach a separate table for each item or lot)

TABLE 2—PRELIMINARY EXAMINATION AND ASSESSMENT OF ELIGIBILITY

Disposal Reference Number		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

Name of bidder	1	2	3	4	5	6
Eligibility criteria						
{*Complete criteria as per bidding document*}	C/NC	C/NC	C/NC	C/NC	C/NC	C/NC
	C/NC	C/NC	C/NC	C/NC	C/NC	C/NC
	C/NC	C/NC	C/NC	C/NC	C/NC	C/NC
Administrative compliance criteria {*Complete criteria as per bidding document*}	C/NC	C/NC	C/NC	C/NC	C/NC	C/NC
	C/NC	C/NC	C/NC	C/NC	C/NC	C/NC
	C/NC	C/NC	C/NC	C/NC	C/NC	C/NC
Conclusion	C/NC	C/NC	C/NC	C/NC	C/NC	C/NC

KEY: C = Compliant NC = Non-Compliant {*delete that which is not applicable from the table above*}

This preliminary examination eliminated [*number*] bidders, [*Names of bidders*]

TABLE 3—SUMMARY OF APPLICATION OF OTHER EVALUATION CRITERIA

Disposal Reference Number		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

	1	2	3	4	5	6
Bidder Name						
Other evaluation criteria	{*Enter compliant/non-compliant or score*}					
{*Complete criteria as listed in bidding document*}						
Conclusion						

This examination eliminated [*number*] ....…........ bidders, [*Names of Bidders*] ....….......

TABLE 4—SUMMARY OF FINANCIAL EVALUATION

Disposal Reference Number		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

ITEM/ LOT NUMBER: ....

EVALUATION CURRENCY: ....

ASSET INVENTORY NUMBER: ....…

PRICE VALUATION/ RESERVE: ....

No	*Name of bidder*	*Bid price*	*Bid total as read out*	*Evaluated total*	*Rank*

NOTES:

1. This form provides an outline format to assist Board of Surveys in drafting evaluation reports for asset disposal. The content should be amended as appropriate.

2. Italic text in { } brackets indicates either a drafting instruction, which should be deleted from the final report or a section included for a possible option, where not applicable the whole section should be deleted.
3. Normal text in [ ] brackets indicate data which should be completed for each individual evaluation.
4. Attach a separate table for each item or lot.
5. The highest priced bid should be ranked as number 1.

FORM 7 (reg. 33 (1))

REQUEST BY THE PROCUREMENT AND DISPOSAL UNIT TO INTERNAL PROCURMENT AND DISPOSAL COMMITTEE FOR APPROVAL OF DISPOSAL BY TRADE- IN

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL	
Subject of disposal	
Disposal plan reference	
Location/site of asset	

DETAILS RELATING TO SUBMISSION AND DECISION BY THE INTERNAL PROCUREMENT AND DISPOSAL COMMITTEE

	Submission by the Procurement and Disposal Unit		*Decision by the IPDC*	*Conditions/ justification for decision*
	Date of submission to the IPDC		Date/ reference of IPDC meeting	
1.	Assets to be disposed of, proposed reserve price and justification for using trade in.			
2.	Individual / company who/which valued the asset and estimated trade-in value, if different.			
3.	Procurement requirement in which trade in will be included.			
4.	Any other information			

Documents attached:

REQUISITION FOR DISPOSAL FORM

Declaration by the Procurement and Disposal Unit	*Declaration by the IPDC*
The information contained in this Form and the attached documents are complete, true and accurate and are in accordance with the Public Procurement and Disposal of Public Assets Act, 2024.	The information contained in this Form is a true and accurate record of the decision of the Internal Procurement and Disposal Committee meeting held on the above-mentioned date.
	Name: ....
Name:	Position: *Chairperson, IPDC*
Position:	Signature: ....
Signature:	Date: ....
Date:	Name: ....
	Position: *Secretary, IPDC*
	Signature: ....
	Date: ....

FORM 8 (reg. 34 (1))

REQUEST BY THE PROCUREMENT AND DISPOSAL UNIT TO INTERNAL PROCUREMENT AND DISPOSAL COMMITTEE FOR APPROVAL OF DISPOSAL BY TRANSFER OF ASSET TO ANOTHER PROCURING AND DISPOSING ENTITY

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL	
Subject of disposal	
Disposal plan reference	
Location/site of asset	

DETAILS RELATING TO SUBMISSION AND DECISION BY THE IPDC

	Submission by the Procurement and Disposal Unit		*Decision by the IPDC*	*Conditions/ justification for decision*
	Date of submission to the IPDC		Date/ reference of IPDC meeting	
1.	Assets to be disposed of, proposed reserve price and justification for using transfer to another entity.			
2.	Individual/ company who/which valued the asset and value of the asset to be transferred.			
3.	Procuring and disposing entity/ entities with potential interest in asset to be transferred.			
4.	Any other information			

Declaration by the Procurement and Disposal Unit	*Declaration by the IPDC*
The information contained in this Form and the attached documents are complete, true and accurate and are in accordance with the Public Procurement and Disposal of Public Assets Act, 2024.	The information contained in this Form is a true and accurate record of the decision of the Internal Procurement and Disposal Committee meeting held on the above-mentioned date.
Name:	Name: ....
Position:	Position: *Chairperson, IPDC*
Signature:	Signature: ....
Date:	Date: ....
	Name: ....
	Position: *Secretary, IPDC*
	Signature: ....
	Date: ....

FORM 9 (reg. 34 (3))

AGREEMENT FOR TRANSFER OF AN ASSET TO ANOTHER PROCURING AND DISPOSING ENTITY

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL	
Subject of disposal	
Disposal plan reference	

DETAILS OF THE TRANSFER			
Transferring procuring and disposing entity			
Recipient procuring and disposing entity			
Description of asset (s) to be transferred	*Assets (description) number*	*Asset reference*	*Quantity*
Cost of transfer, if any, to be borne the by recipient procuring and disposing entity			
Date of transfer			
Date and method of payment, if applicable			
Documentation to be provided by transferring procuring and disposing entity e.g. manual, handbook, registration certificate, licence, etc;			
Any items or accessories linked to, or excluded from, the transfer			
Additional information or terms			

I hereby certify the release of the asset(s) for transfer on the terms and conditions described above.

Name: .... Position: ....

Name of Transferring entity: ....

Signature: .... Date: ....

I hereby accept the assets(s) on the terms and conditions described above.

Name: .... Position: ....

Name of Receiving entity: ....

Signature: .... Date: ....

FORM 10 (reg. 35 (2))

REQUEST BY THE PROCUREMENT AND DISPOSAL UNIT TO INTERNAL PROCUREMENT AND DISPOSAL COMMITTEE FOR APPROVAL OF DISPOSAL BY DESTRUCTION OR WRITE-OFF

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL	
Subject of disposal	
Disposal plan reference	
Location/site of asset	

DETAILS RELATING TO SUBMISSION AND DECISION BY THE INTERNAL PROCUREMENT AND DISPOSAL COMMITTEE

	Submission by the Procurement and Disposal Unit		*Decision by the IPDC*	*Conditions/ justification for decision*
	Date of submission to the Internal Procurement and Disposal Committee		Date/ reference of IPDC meeting	
1.	Assets to be disposed of, proposed reserve price and justification for using destruction or write-off.			
2.	Competent authority or service provider to undertake destruction.			
3.	Cost to be paid for the destruction			
4.	Any other information			

Documents attached:

REQUISITION FOR DISPOSAL FORM

Declaration by the Procurement and Disposal Unit	*Declaration by the IPDC*
The information contained in this Form and the attached documents are complete, true and accurate and are in accordance with the Public Procurement and Disposal of Public Assets Act, 2024.	The information contained in this Form is a true and accurate record of the decision of the Internal Procurement and Disposal Committee meeting held on the above-mentioned date.
	Name: ....
Name:	Position: *Chairperson, IPDC*
Position:	Signature: ....
Signature:	Date: ....
Date:	Name: ....
	Position: *Secretary, IPDC*
	Signature: ....
	Date: ....

DECISION OF CONTROLLING OFFICER

Name: .... Position: *Controlling Officer*

Signature: .... Date: ....

**Delete as necessary*

FORM 11 (reg. 35 (5))

CERTIFICATE OF DESTRUCTION

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL	
Subject of disposal	
Disposal plan reference	
Location/site of asset	
Date of IPDC Approval	
Date of approval by Controlling Officer	

DESTRUCTION CERTIFICATION

Declaration by the person with authority to destroy or write-off the asset. I hereby certify that I have undertaken disposal of the above specified asset by destruction / write-off in accordance with the Public Procurement and Disposal of Public Assets Act, 2024. Name: .... Position: .... Signature: .... Date:	

FORM 12 (reg. 36 (1))

REQUEST BY THE PROCUREMENT AND DISPOSAL UNIT FOR APPROVAL TO DISPOSE OF AN ASSET BY CONVERSION OR CLASSIFICATION

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL	
Subject of disposal	
Disposal plan reference	
Location/site of asset	

DETAILS RELATING TO SUBMISSION AND DECISION BY THE INTERNAL PROCUREMENT AND DISPOSAL COMMITTEE				
Submission by the Procurement and Disposal Unit			*Decision by the IPDC*	*Conditions/ justification for decision*
	Date of submission to the Internal Procurement and Disposal Committee		Date/ reference of IPDC meeting	
1.	Assets to be disposed of, proposed reserve price and justification for using conversion or classification of asset into another form.			
2.	Competent authority or service provider to undertake the conversion or classification			
3.	Cost of the conversion or classification, if any.			
4.	Any other information			

Documents attached:

REQUISITION FOR DISPOSAL FORM

Declaration by the Procurement and Disposal Unit	*Declaration by the IPDC*
The information contained in this Form and the attached documents are complete, true and accurate and are in accordance with the Public Procurement and Disposal of Public Assets Act, 2024.	The information contained in this Form is a true and accurate record of the decision of the Internal Procurement and Disposal Committee meeting held on the above-mentioned date.
	Name: ....
Name:	Position: *Chairperson, IPDC*
Position:	Signature: ....
Signature:	Date: ....
Date:	Name: ....
	Position: *Secretary, IPDC*
	Signature: ....
	Date: ....

DECISION OF CONTROLLING OFFICER

Name: .... Position: *Controlling Officer*

Signature: .... Date: ....

**Delete as necessary*

FORM 13 (reg. 36 (4))

CERTIFICATE OF CONVERSION / CLASSIFICATION*

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL	
Subject of disposal	
Disposal plan reference	
Location/site of asset	
Date of IPDC Approval	

CONVERSION OR CLASSIFICATION CERTIFICATION

Declaration by the Person disposing asset by Conversion or Classification. I hereby certify that I have undertaken an asset disposal by conversion or Classification in accordance with the Public Procurement and Disposal of Public Assets Act, 2024. Name: .... Position: .... Signature: .... Date:	

**Delete whichever is not applicable.*

FORM 14 (reg. 37 (1))

REQUEST BY THE PROCUREMENT AND DISPOSAL UNIT TO INTERNAL PROCUREMENT AND DISPOSAL COMMITTEE FOR APPROVAL TO DISPOSE OF ASSET TO AN EMPLOYEE

DISPOSAL REFERENCE NUMBER		
Name of Procuring and Disposing Entity	*Financial year*	*Sequence number*

PARTICULARS OF DISPOSAL	
Subject of disposal	
Disposal plan reference	
Location/site of asset	

DETALS RELATING TO SUBMISSION AND DECISION BY THE IPDC				
Submission by the Procurement and Disposal Unit			*Decision by the IPDC*	*Conditions/ justification for decision*
	Date of submission to the Internal Procurement and Disposal Committee		Date/ reference of IPDC meeting	
1.	Assets to be disposed of, proposed reserve price and justification for using transfer to another entity.			
2.	Individual/ company who/which valued the asset and value of the asset to be transferred.			
3.	Procuring and disposing entity/ entities with potential interest in asset to be transferred.			
4.	Any other information			

Declaration by the Procurement and Disposal Unit	*Declaration by the IPDC*
The information contained in this Form and the attached documents are complete, true and accurate and are in accordance with the Public Procurement and Disposal of Public Assets Act, 2024.	The information contained in this Form is a true and accurate record of the decision of the Internal Procurement and Disposal Committee meeting held on the above-mentioned date.
	Name: ....
Name:	Position: *Chairperson, IPDC*
Position:	Signature: ....
Signature:	Date: ....
Date:	Name: ....
	Position: *Secretary, IPDC*
	Signature: ....
	Date: ....

FORM 15 (reg. 44)

QUARTERLY REPORT ON ASSET DISPOSAL

Name of Procuring and Disposing Entity ....

Reporting Period	
Financial year	

DISPOSALS DURING THE REPORTING PERIOD

Disposal reference number	*Subject of disposal*	*Method of disposal*	*Name of buyer*	*Date of award*	*Reserve price (currency and amount)*	*Contract price (currency and amount)*
					TOTAL	

I hereby certify that the above is a true and accurate record of the disposal transactions for this procuring and disposing entity during the reporting period.

Name: .... Position: ....

Controlling Officer

Signature: .... Date: ....

THIRD SCHEDULE (reg. 26 (2)

The following public assets shall be disposed by bid with sealed bid—

1. Motor vehicles
2. Plants e.g. construction equipment
3. Equipment e.g. generators, transformer
4. Office Buildings
5. Residential houses
6. Data Servers
7. Aeroplane / aircrafts

FOURTH SCHEDULE (reg. 38)

ADMINISTRATIVE REVIEW FEES

CATEGORY	*VALUE OF DISPOSAL CONTRACT*	*FEES*
		K t
1.	Asset value up to K10 million	50, 000.00
2.	Asset value above K10 million	120, 000.00

Made this 3rd day of August, 2026.

J. M. Mwanamvekha
Minister of Finance,
Economic Planning and Decentralization

(FILE NO: MOF/PFMS/PPDA/3/1)

GOVERNMENT NOTICE NO. 80

LAND ACQUISITION AND COMPENSATION ACT

(CAP. 58:04)

NOTICE OF INTENTION TO ACQUIRE LAND FOR A PUBLIC UTILITY

IN EXERCISE of the powers conferred by section 3 of the Lands Acquisition and Compensation Act, I, CHIMWEMWE MAZABUKA CHIPUNGU, Minister of Lands, Housing and Urban Development, hereby give notice of Government intention to acquire land measuring approximately six hectares situated at Chitungu Village, Traditional Authority Kapeni, Blantyre District for public utility.

The land proposed for acquisition is occupied and/or owned by persons of Chitungu Village, Traditional Authority Kapeni, Blantyre District.

Particulars of the intended acquisition—

Land location:	Matindi
Village:	Chitungu
Traditional Authority:	Kapeni
District:	Blantyre
Land size:	Approximately 6.0 Hectares
Purpose of acquisition:	Establishment of a Malawi Bureau of Standards Calibration Centre
Reason for land choice:	Proximity to— (*a*) fuel storage facilities; (*b*) Matindi Industrial Park (Special Economic Zone); (*c*) railway line; and (*d*) proposed Matindi Escom substation site.

FURTHER NOTICE IS GIVEN that officers of the Ministry Lands, Housing and Urban Development together with other duly authorized officers, may enter upon the said land during official working hours upon giving a seven days' notice for the purpose of carrying out survey, inspection, demarcation, valuation and any investigation necessary to facilitate the acquisition of the land in accordance with the Act.

Any person claiming an estate, right, title or interest in the said land, or entitlement to any compensation in respect of the land, is hereby required to submit such claim, together with any supporting evidence, to me at the following address within two months of the date of the publication of this notice in the *Gazette*.

Ministry of Lands, Housing and Urban Development
P.O. Box 568
Blantyre
Attention: The Commissioner for Valuation
Email: ps@lands.gov.mw

Any compensation for eligible interests in land and improvements thereon shall be assessed and paid in accordance with the Act.

Made this 20th day of August, 2026.

C. M. Chipungu
Minister of Lands, Housing and Urban Development

(ML/VA/MAT/1/26)

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