

GAMBIA PUBLIC PROCUREMENT REGULATIONS 2003

Arrangement of Regulations

Regulation

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GAMBIA PUBLIC PROCUREMENT ACT 2001

GAMBIA PUBLIC PROCUREMENT REGULATIONS, 2003

IN EXERCISE of the powers conferred on the Authority by Section 59 of the Gambia Public Procurement Act 2001, these Regulations are hereby made.

PART I. GENERAL PROVISIONS

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| Short title | 1. These Regulations may be cited as the Gambia Public Procurement Regulations, 2003, and shall come into force on the 1 st day of July 2003. |
| Interpretation | 2. In these Regulations, unless the context otherwise requires:

“Act” means the Gambia Public Procurement Act 2001;

“Authority” means the Gambia Public Procurement Authority;

“Regulations” mean the Gambia Public Procurement Regulations, 2003;

“Secretary of State” means the Secretary of State responsible for Finance;

“SME” means Small and Medium Enterprises. |
| Supplemental instructions and public notification of information on public procurement instructions and decisions | 3. (1) The Authority may issue Instructions to supplement these Regulations with administrative guidance on operational aspects of public procurement in The Gambia.

(2) Notifications concerning the issuance of instructions and other administrative decisions of general character are subject to publication in the local media and by other means including the Internet.

(3) The Authority shall periodically issue an updated compilation of the main operating instructions and decisions governing public procurement. |
| Language | 4. The pre-qualification documents, bidding documents, all contract agreements and contract conditions, specifications, layouts, technical reports and correspondence shall in English. |

PART II. ORGANISATIONAL ASPECTS OF PUBLIC PROCUREMENT

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| Structure of The Gambia Public Procurement Authority | 5. The Gambia Public Procurement Authority (hereinafter “the Authority”) shall have the following Departments to implement the Act and Regulations: |
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- (a) Compliance and Procurement Practice,
- (b) Career Development and Training, and
- (c) Finance and Administration

PART III. OVERSIGHT AND MANAGEMENT OF PUBLIC PROCUREMENT

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| Random checking | 6. Pursuant to section 57 of the Act, the Authority may review transactions completed by procuring organisations with a view to verifying compliance with procurement procedures and instructions. |
| Observers at Contracts Committee meetings | 7. Representatives of the Authority are entitled to attend any meetings of Contracts Committees as non-voting observers. |
| Reporting of violations by procuring organisations | <p>8. (1) Where there is a violation of the Act or procurement regulations, including the failure to provide requested information to the Authority relating to procurement operations, the Authority may inform the Auditor-General and submit a report to the Secretary of State.</p> <p>(2) The Secretary of State, in accordance with the powers provided by the annual Appropriation Act and the Finance and Audit Act, may supervise and reduce the amount or temporarily stop part of the payment to a budget user that does not apply the procurement procedures.</p> <p>(3) Where the misconduct involved rises to the level of a criminal act, the Authority shall notify the Attorney General.</p> <p>(4) Where there is official misconduct, or breach of official duties, the authority may recommend possible disciplinary action to the relevant authorities.</p> |
| Gathering of data concerning public procurement | <p>9. (1) The Authority is authorised to collect information and require reports from procuring organisations and end-user entities concerning the conduct of public procurement activities in The Gambia.</p> <p>(2) The Authority shall inform procuring organisations, end-users and other organs of public administration as to the types of statistical and reporting information related to public procurement that are required to be collected and the periodicity of the collection of such statistical data and reports.</p> <p>(3) Procuring organisations in The Gambia shall collect the necessary information, and, as required by the Authority pursuant to sub-regulation 9, report on a quarterly basis to the Authority on implementation of procurement activity, or at such other interval as may be required by the Authority.</p> |

Analysis and annual report

10. (1) The Authority shall analyse the information collected and make recommendations to procuring organisations as to improvements in the implementation of procurement procedures.
- (2) The Authority shall submit an annual report to the Secretary of State on the implementation of the Act, the Regulations and instructions, and on related institutional arrangements, in relation to the implementation of the State budget, and the requirements of the legal and regulatory framework for public procurement.

Standard contracts and provisions

11. (1) Procuring organisations shall utilise the standard bidding documents issued by the Authority pursuant to the Act and the Regulations.
- (2) Departures from the provisions of standard forms of contract must be authorised by the head of a procuring organisation and shall be reported to the Authority and noted in the record of the procurement proceedings.

Thresholds for procurement transactions

12. The following thresholds apply to all procurement:
 - (a) Competitive threshold, as referred to in section 45(1)(a) of the Act, is set
 - (i) for goods and services at 3,500 dalasis;
 - (ii) for works at 10,000 dalasis;
 - (b) Threshold for the request for qualification documentation, as referred to in Regulation 30, is set at 35,000 dalasis;
 - (c) Threshold for use of request for quotations, as referred to in section 44(1) of the Act, is set at 350,000 dalasis;
 - (d) Threshold for international procurement proceedings, as referred to in section 42(1)(a) of the Act, is set at 3,000,000 dalasis .

Review of procurement transactions

13. (1) Any proposed contract award for procurement with a value of D1,000,000 or above shall be submitted by the Chairman of the concerned Contracts Committee to the Authority for its approval along with the complete contract file and a recommended course of action in the format prescribed by the Authority. Documents to be presented with the application for approval, shall include:
 - (a) Contract files, including the solicitation, qualification assessment reports, originals of bids, evaluation reports and the record of the procurement proceedings; and
 - (b) Committee approvals.

- (2) The approval procedure in sub-regulation 13 applies also to contract variations that increase the value of a contract by 1,000,000 dalasis or more, or that increase the value of a contract above the threshold referred to in sub-regulation 13. In conducting the approval procedure referred to in this sub-regulation, the Authority is not empowered to order the alteration or cancellation of the contract, but may restrict any contract extensions or additions.
- (3) The thresholds referred to in sub-regulation 13 are subject to periodic review by the Authority which may, by notice, adjust or waive the thresholds across the board as well as with respect to individual entities, taking into account increases in the capacity of ministries and other entities to absorb higher levels of procurement authority.

Valuation of procurement contracts

- 14. (1) For the purposes of applying monetary thresholds in these Regulations, selecting the appropriate procurement method and devising the most appropriate procurement package, the procuring organisation shall assess the expected value of a procurement contract or package of contracts taking into account:
 - (a) All forms of remuneration, including any premiums, fees, commissions and interest receivable;
 - (b) The likelihood and expected value of recurring orders;
 - (c) The minimum expected duration and expenditure for a lease or for a contract of indefinite duration, taking into account relevant experience of similar contracting actions in the past; and
 - (d) The estimated value of optional additional purchases to be permitted under the contract.
- (2) The selection of the valuation method by the procuring organisation shall not be used with the intention of avoiding monetary thresholds set forth in the Regulations.

PART IV. PROCUREMENT OPERATIONS

Co-ordination of procurement of common-use goods

- 15. (1) Pursuant to section 13(2)(a) of the Act, procuring organisations shall provide, and Authority shall collect and analyse, annual data on the items purchased and the suppliers providing the items in order to take appropriate measures for co-ordination of procurement of common-use goods and services.

- (2) Pursuant to section 13(2) of the Act, the Authority may designate a procuring organisation to award framework agreements with one or more suppliers on a competitive basis in accordance with the Act and these Regulations. So as to maintain ongoing competition, such framework arrangements shall, where feasible, be concluded with more than one supplier per item being procured.

Assistance to State bodies in carrying out procurement

16. The Authority shall devise and implement programmes aimed at assisting procuring organisations as well as bidders in conducting and participating in public procurement proceedings in the Gambia. That shall include but not be limited to the following:

- (a) Organising and conducting educational programmes and professional training;
- (b) Assisting in the development of specialised procurement units and expert officers for entities at various levels of administration and regions in The Gambia;
- (c) By developing proposals and plans for the phased introduction of professional procurement staff in procuring organisations;
- (d) Setting the minimum entry-level requirements, procedures for professional certification, descriptions of authority and responsibilities of procurement officers, and grounds for termination;
- (e) Assisting in the dissemination of information to bidders about the rules and procedures governing public procurement and about procurement opportunities in The Gambia;
- (f) Issuing opinions, providing advice, and proposing solutions to facilitate the work of procuring organisations with a view to fulfilling the objectives of the Act;
- (g) Establishing a central data bank for the purpose of categorising suppliers by area of specialisation and to record information on their performance record with respect to implementation of procurement contracts with procuring organisations in The Gambia so as to evaluate their past performance;
- (h) Developing proposals for methods of disseminating procurement-related information through the of a procurement bulletin or other medium;

- (i) Examining use of information technology and other technical innovations in procurement with a view to more cost effective and higher quality performance of public administration and delivery of public services;
 - (j) More effective management of operations of procuring organisations; and increased competition and participation by bidders, and
 - (k) Investigating the experiences and practices of other countries with a view to introducing innovations in The Gambia.
- Use of third-party procurement agents
17. The services of third-party procurement agents may be engaged only in consultation with and subject to the approval of the Authority.
- Scope of activity of Contracts Committees
18. (1) The Committee's decisions regarding the conduct of any proceeding for a procurement, the value of which exceeds the threshold set in Regulation 13, are subject to approval by the Authority.
- (2) The Authority shall periodically review the functioning of Contracts Committees, and may recommend to the Secretary of State adjustments to any limitations on their procurement authority, taking into account increases in the capacity of ministries and other entities to conduct procurement proceedings and with a view to implementing a policy of decentralisation of procurement.
- Appointment of Contracts Committee
19. The Accounting Officer of the procuring organisation shall appoint members of the contracts committee in accordance with the Instructions.
- Procedures of Contracts Committees
20. (1) Three members of the Contracts Committee will be required to attend each meeting to achieve a quorum.
- (2) Contracts Committees shall take their decisions by majority.
- (3) In accordance with section 48(6) of the Act, a Contracts Committee may delegate authority to make contract award decisions below a value threshold it establishes and promptly reports to the Director General of the Authority, to one or more officials within the specialised procurement unit of the procuring organisation. The Contracts Committee remains accountable for any action taken under such delegation. Any such delegation shall be made to an individual who:

- (a) Is of good and honest character,
- (b) Possesses a thorough knowledge of the Acts, Regulations and Instructions regulating public procurement in The Gambia, and
- (c) Will properly account for all purchases made under the authority as required by the Contracts Committee.

Staffing of specialised procurement units

21. (1) In accordance with section 52 of the Act, the head of the procuring organisation shall support the development of a pool of personnel for the specialised procurement unit with relevant qualifications to assume procurement responsibilities in the public as well as the private sector.
- (2) The Personnel Management Office (PMO) shall, in consultation with the Authority, develop staff on a permanent basis for the professional workforce on procurement.

Identifying applications of information and communications technology to public procurement

22. (1) Pursuant to the mandate set forth in section 13(2)(j) of the Act, the Authority shall examine and recommend ways of introducing in public procurement the use of information and communications technology, and other technical innovations.
- (2) The guiding principles for identifying and developing applications of information and communications technology to public procurement shall include:
- (a) Standardisation of key aspects of information and communications systems for public procurement throughout public administration, so as to facilitate internal sharing of information, and participation by bidders throughout the procurement market;
 - (b) Technological neutrality, so as to create a system that takes advantage of existing developments in information and communications technology, while remaining open to future technological developments;
 - (c) Avoiding, to the greatest extent possible, separate requirements not used in paper-based procurement procedures, unless establishing a functional electronic equivalent requires doing so;
 - (d) Maximising the utilisation of commercially developed and utilised software applications and structural elements and avoiding where feasible the devising of applications and structures uniquely for the public purchaser, with a view to limiting costs and facilitating the widest possible participation

by bidders;

- (e) Identifying ways in which the applicable legal framework should be modified and modernised to provide the requisite legal certainty in applying information and communications technology to public procurement; and
 - (f) Identifying ways in which traditional procurement processes should be revised in order to obtain the greatest possible benefit from the application of information and communications technology.
- (3) Principal elements in the application of information and communications technology to public procurement shall include:
- (a) Easy access to standard bidding documents and use of standard formats;
 - (b) Automated linkages between acquisition systems and other relevant systems, in particular supply and materials management systems and payment systems;
 - (c) Bidder (supplier) registration systems;
 - (d) Where appropriate, the development of special electronic procurement methods for conducting purchasing activity electronically (e.g., use of purchase cards for small purchases, catalogue shopping for standard goods);
 - (e) Electronic payment, involving, for example, electronic issuance of invoices, if invoices are necessary, or the automatic generation of payment upon report of the receipt of the procured object;
 - (f) Appropriate security to prevent unauthorised access to the bidding, approval, and award processes; and
 - (g) Accurate retrieval or conversion of electronic forms of information into a medium which permits inspection and copying.

Electronic
procurement
marketplace

23. (1) The Authority shall establish and manage an electronic procurement marketplace.
- (2) The Authority may enter into contracts with private or public entities to establish or maintain all or part of the databases comprising the marketplace, to the extent feasible.

- (3) The Authority shall, in consultation with the Department of State for Finance and Economic Affairs and the Department of State for Trade, Industry and Employment, define standards, including keyword and product code standards, for the electronic procurement marketplace. The marketplace may contain:
 - (a) Information relevant to the standard procurement specifications for goods, works and services;
 - (b) Information about vendors, including information from a centralised master bidders list and vendor performance information;
 - (c) Information about products, including product testing results;
 - (d) Historical purchasing information, qualified purchase lists, and trends; and
 - (e) Information about the availability of surplus property.
- (4) The Authority may adopt rules relating to the design and use of the electronic procurement marketplace, including rules that require state agencies to provide information for or receive information from the marketplace.
- (5) The Authority may make public procurement information available to political subdivisions through the electronic procurement marketplace on a fee-for-service basis.
- (6) The Authority shall set the fees in an amount that recovers the state's costs in providing the access to a political subdivision.
- (7) Before developing a contract for the procurement of a good or service, a state agency may use the electronic procurement marketplace to determine the most appropriate method for acquiring the good or service.

Participation by small enterprises

24. The Authority shall facilitate and encourage the participation of small and medium enterprises (SME's) in competing for public procurement contracts as set out in the Instructions.

PART V. PROCUREMENT PLANNING

Prerequisite steps for initiating procurement proceedings

25. (1) Procuring organisations shall provide to the Authority an annual procurement plan describing the extent, timing and purposes of projected procurement requirements for the budgetary period.

- (2) A procuring organisation may initiate actual procurement proceedings only after the determination and approval of budgetary allocations, and only after obtaining a certification from Department of State for Finance and Economic Affairs or other competent authority that budgetary allocations or other funds sufficient to fund the procurement are available for that purpose.
- (3) Procuring organisations shall devise procurement planning strategies and procurement packages taking into account the following factors and steps as appropriate under the circumstances:
 - (a) Identification and assessment of the need for the procurement;
 - (b) Designation of procurement planning team;
 - (c) Conducting market research in order to identify various technical solutions, in particular in the commercial market, to identify the range of available suppliers, contractors, and consultants, and to determine the most favourable contractual and guarantee terms available in the commercial market place that would be suitable for public procurement;
 - (d) Studying acquisition history for similar objects of procurement;
 - (e) Conducting feasibility and other pre-contract studies;
 - (f) Defining and describing the requirement;
 - (g) Estimation of the cost of a proposed procurement;
 - (h) Identification of the sources and amount of financing;
 - (i) Selection of contracting approach and structure, including verification of possible availability of umbrella or framework contract arrangements for the item in question;
 - (j) Selection of appropriate procurement method; and
 - (k) Determination of required contract administration resources;
- (4) The Authority may establish a means for providing information to procuring organisations as to the availability and source of common-use items procured on a centrally designated basis.

Selection of appropriate contract form

26. (1) In the planning and preparation of procurement, a procuring organisation shall determine the appropriate contracting approach and structure to be utilised for any given procurement.
- (2) A procuring organisation shall identify any standard contract form promulgated by the Authority and required to be utilised pursuant to Regulation 11 that may be applicable.
- (3) The Instructions provide guidance on the use of framework agreements.

Splitting awards of contract

27. (1) When apportioning or splitting an acquisition is technically or financially feasible, the acquisition may be divided into lots, which may then be awarded via separate procurement contracts.
- (2) If one or more lots are not awarded, the procuring organisation may initiate a new proceeding, modifying the content of the lots.
- (3) Any apportionment of procurement proceedings, and the grounds therefore, shall be noted in the record of the procurement proceedings.

Procurement requests

28. Preparation of the procurement request is the responsibility of the end user body that seeks to submit a requisition for procurement. The procurement request shall be prepared by using GPPA-Form 100: *Procurement Request, and in accordance with the Instructions*.

International procurement

29. (1) The procuring organisation shall advertise in international media when the value exceeds the threshold for international proceedings referred to in section 42(1)(a) of the Act and set in Regulation 12(d).
- (2) The international media referred to in sub-regulation 29 include international newspapers and other media of wide international circulation, including the internet.
- (3) In addition, in every case of international tendering, the procuring organisation shall publish an advance notice of the procurement in the media referred to in sub-regulation 29 at least twenty and not more than forty days prior to the publication of the invitation to bid or to apply for pre-qualification in accordance with sub-regulation 29.

PART VI. BIDDER QUALIFICATIONS

Threshold for required documentation of qualifications

30. The procuring organisation shall request bidders to provide supporting documentation showing that they fulfil the qualification requirements referred to in section 23(3) of the Act, for all procurement contracts whose estimated value exceeds the threshold set in Regulation 12(b).

Information as to economic and financial standing

31. Supporting documents to prove economic and financial standing may include, for example:

- (a) Appropriate statements from the bidder's bankers;
- (b) Statement of accounts or extracts therefrom relating to the business of the bidder;
- (c) Statements of liabilities and assets, and of profit and loss;
- (d) A statement of the overall inventory turnover of the business of the bidder and the turnover in respect of works in the previous three financial years of the bidder; and
- (e) Other information if the above types of information are not appropriate or available in order to assess the bidder's economic and financial standing.

Information as to technical capacity

32. Supporting documents to prove technical capacity may include, for example:

- (a) A list of the educational and professional qualifications;
- (b) Required expertise of the bidder where the bidder is an individual and a list of qualifications of the managerial staff of the bidder if any and those of the person or persons who would be responsible for carrying out the works or providing services under the contract;
- (c) Certificates of good standing of the bidder issued by the relevant trade or industry associations;
- (d) A list of works, or deliveries, in the case of supply contracts, carried out over the past two years together with certificates of satisfactory completion, or equivalent in the case of delivery of goods;
- (e) In the case of procurement of consultants' services, a list of consultancy contracts of the type in question carried out over the past two years;
- (f) A statement of the tools, plant and technical equipment available to the bidder for carrying out the work under the contract;
- (g) A statement of the average annual manpower and the number of managerial staff of the bidder over the previous three years; and

(h) A statement of the technicians or technical services which the bidder may call upon for the carrying out of the work or delivering the goods under the contract; where applicable, in particular in the case of procurement of consultant services from firms, statements of availability of key personnel.

Record of qualification determination

33. The procuring organisation shall maintain a record of qualification determination by using GPPA-Form 016: *Record of Qualification Determination*.

Selection followed by post-qualification procedure

34. In tendering proceedings that are not preceded by a pre-qualification proceeding, following the evaluation of bids and the determination of the lowest priced or best evaluated bid, the procuring organisation 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.

Solicitation of applications to pre-qualify

35. (1) The invitation to pre-qualify shall contain the information set forth in Regulation 42(2).

(2) Public notice shall be by publication of the invitation for pre-qualification, and shall be published in the local press, and, in the case of international tendering, also in accordance with Regulation 29(2), at least thirty days prior to the deadline for submission of evidence of qualification requirements.

(3) In addition to the publication referred to in sub-regulation (2), the invitation to apply for pre-qualification, shall be broadcast on local radio and television and shall be displayed in the head office of the procuring organisation in a publicly accessible place.

Record of pre-qualification determination

36. Pre-qualification determination shall be recorded using GPPA-Form 010: *Record of Pre-Qualification Determination*.

Registration and classification

37. (1) Bidders seeking registration or classification in any databases or lists of qualified bidders that may be established by the Authority may be required to provide the following:

(a) Completed registration application;

(b) Copy of the currently valid license and commercial registration for the activity practised;

(c) Copy of currently valid registration certificate from the bidder's chamber of trade and commerce or equivalent body;

- (d) Copies of contracts relating to agency, brokering and distribution arrangements; and
 - (e) Copy of last approved annual statement of accounts and budget.
- (2)
- (a) Requests to be entered in the database or list shall be receivable at any time from any interested bidder and shall be acted upon within a reasonably short period of time;
 - (b) When the database or list is utilised for the purposes of pre-qualification, entry in the database or list shall be subject to no qualification criterion more stringent than those set forth in section 23(3) of the Act.
 - (c) The existence of the database or list, the conditions to be satisfied by bidders to be entered in the database or list, the methods according to which satisfaction of each of those conditions is to be verified, the period of validity of an entry in the database or list and the procedures for entry and for renewal of the entry shall be generally and regularly publicised in a manner to bring them to the attention of bidders.
- (3) The sole absence of an application for entry in the registry or classification system is not ground for exclusion of a bidder from participation in procurement proceedings, though registration may be required as a condition for award of a contract.
- (4) A fee may be charged for registration and re-registration.
- (5) Inscription in the database or list shall be available at any time and shall be subject to annual renewal. Prompt notice shall be given to a bidder of his inscription on or removal from the database or list.
- (6) When the registration or entry of a bidder in a database or list constitute pre-qualification, in accordance with sub-regulation 37, the bidder will not have to re-submit the pre-qualification documents needed for a specific procurement proceeding, unless the procuring organisation has reason to believe circumstances for the bidder have significantly changed.
- (7) For pre-qualification for groups of contracts to be awarded over a period of time, a limit for the number or total value of awards to any one bidder may be made on the basis of the bidder's resources.

- (8) The conditions to be satisfied by bidders, the methods according to which satisfaction of each of those conditions is to be verified, the period of validity of a pre-qualification for a group of contracts, and the procedures for entry and for renewal of the pre-qualification shall be generally and regularly publicised, at least on an annual basis, in a manner to bring them to the attention of bidders.
- (9) Pre-qualification is subject to annual renewal.
- (10) Bidders shall be required to update the information on an annual basis as a precondition for renewal of their continued pre-qualification, and shall be informed of their removal from pre-qualified status.

Subcontractor qualifications

- 38. (1) A procuring organisation may require bidders to provide qualification information and documentation to subcontractors involved in the performance of the procurement contract.
 - (2) Where it is in the public interest to do so, a procuring organisation may directly determine the suitability of the qualifications of a subcontractor, in accordance with the qualification criteria set forth in section 23(3) of the Act.

Deficiencies in qualification information

- 39. Other than in a case to which section 23(8) of the Act applies, the procuring organisation 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. The bidder may be disqualified if it fails to remedy such deficiencies promptly upon request by the procuring organisation.

PART VII. PROCUREMENT METHODS

Conditions for use of single-source procurement

- 40. (1) Single source procurement may not be justified on the grounds that only one bidder has the capacity or the exclusive right to manufacture or deliver goods, works or services if functionally equivalent goods, works or services from other bidders would meet the needs of the procuring organisation.
 - (2) In the case of single-source procurement on the grounds of urgency referred to in section 45(1)(c) of the Act, the procuring organisation shall limit the procurement to the quantity needed to deal with the urgent circumstances.

Identification of procurement method to be used

- 41. The procuring organisation 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 proceeding.

Procedures for tendering proceedings

Contents of invitation to tender and invitation to pre-qualify

42. (1) The invitation to tender shall contain, at a minimum, the following information:
- (a) The address of a procuring organisation;
 - (b) The detailed specifications and quantity, and place of delivery of the goods to be supplied,
 - (c) The nature and location of the works to be effected, or
 - (d) The nature of the services and the location where they are to be provided;
 - (e) The desired or required time for the supply of the goods, for the completion of the works or for the performance of the services;
 - (f) The means of obtaining the bidding documents and the place from which they may be obtained;
 - (g) The price, if any, charged by a procuring organisation for the bidding documents;
 - (h) The currency and means of payment for the bidding documents;
 - (i) A statement that the language in which the bidding documents are available is English;
 - (j) The date of any pre-bid conference and site visit;
 - (k) The deadline for submission of inquiries and requests for clarification;
 - (l) The deadline for purchase of the bidding documents; and
 - (m) The place and deadline for the submission of tenders.
- (2) An invitation to pre-qualify shall contain, at a minimum, the information referred to in sub-regulation 42(a) to (f), (h), 42, (j) and, if it is already known, (l), as well as the following information:
- (a) The means of obtaining the pre-qualification documents and the place from which they may be obtained;
 - (b) The price, if any, charged by the procuring organisation for the pre-qualification documents;

- (c) The currency and terms of payment for the pre-qualification documents;
- (d) A statement that the language in which the pre-qualification documents are available is English; and
- (e) The place and deadline for the submission of applications to pre-qualify.

Public notice of tender

43. (1) The Contracts Committee, prior to the public notice of an invitation to bid, shall have available, in a sufficient number of copies, the bidding documents and shall assure that the invitation is in compliance with the requirements in the Act and these Regulations.
- (2) Public notice shall be by publication of the invitation to bid, as described in Regulation 42, in the local press, and, in the case of international tendering, also in accordance with Regulation 29(2), at least seven days prior to the issuance of the solicitation.
- (3) In addition to the publication referred to in sub-regulation (2), the invitation to bid, shall be broadcast on local radio and television and shall be displayed in the head office of the procuring organisation in a publicly accessible place.
- (4) Procuring organisations shall make known, as soon as possible after the beginning of their budgetary year, by means of a public notice, the total procurement by product area and other relevant categories, which they envisage awarding during the subsequent twelve months where the total estimated value is equal to or greater than D35,000 or its equivalent in foreign currency. The product area shall be established by procuring organisations by reference to nomenclature that may be designated by the Authority.

Formulation of evaluation criteria

44. (1) Quantifiable evaluation criterion shall be used to assess the qualifications of bidders, and the technical merit of their tenders.
- (2) The evaluation criteria shall be formulated in as clear, precise, and objective a manner as possible.

Preparation of bidding documents

45. (1) The bidding documents shall be prepared by the specialised procurement unit using standard formats issued by the Authority.
- (2) The information in the bidding documents shall, at a minimum, comply with details in Schedule 1-A.

Price of bidding documents

46. The price that the procuring organisation may charge for the bidding documents shall reflect only the cost of printing them and providing them to suppliers.

- Distribution of bidding documents
47. (1) Bidders interested in the tendering proceedings may preview the bidding documents at the office of the procuring organisation indicated in the invitation to bid.
- (2) Bidding documents shall be provided to all bidders responding to the invitation to bid or, in the event of pre-qualification proceedings, to all bidders that have been pre-qualified.
- (3) A record of the transmission of bidding documents shall be maintained by using GPPA-Form 011: *Record of Transmission of Bidding Documents*.
- Pre-bid conference
48. (1) A procuring organisation may organise a conference for the purpose of briefing bidders and taking their questions on the bidding documents, including the technical specifications and other requirements.
- (2) Any such conference should take place at an early point following the distribution of the bidding documents
- (3) Clarification of defects or ambiguities in the bidding documents at the conference does not relieve a procuring organisation of the obligation to amend the bidding documents.
- (4) Where a procuring organisation convenes a meeting of bidders, it shall prepare minutes of the meeting containing amongst others;
- (a) the requests submitted at the meeting for clarification of the bidding documents;
- (b) its responses to those requests, without identifying the sources of the requests.
- (5) The minutes shall be provided promptly to all bidders to which a procuring organisation provided the bidding documents
- Site visits
49. Procuring organisations shall provide reasonable access to project sites for visits by prospective bidders.
- Cancellation of proceedings before opening of tenders
50. (1) Cancellation of procurement proceedings should be avoided unless it is clearly in the public interest to do so.
- (2) Cancellation is in the public interest in cases such as the following:
- (a) Where the procurement need in question has ceased to exist; and

- (b) Where the bidding documents have to be modified to such an extent that economy and efficiency in procurement dictates the re-commencement of the tendering proceedings;
- (c) It would likely lead to an inevitable cancellation of the proceedings after the opening of tenders if no action is taken at this stage to cancel the proceedings.

Deadline for submission of tenders

51. (1) Subject to sub-regulation (3) deadlines for submission of tenders shall be no less than 30 days:-
- (a) from the date of publication of the invitation to tender, in the case of procurement whose estimated value is 1,000,000 dalasis or more;
 - (b) from the date of publication of the invitation to tender, in the case of procurement whose estimated value is D350,000 or more but is less than 1,000,000 dalasis; and
 - (c) from the dispatch of the invitation to tender, in the case of restricted tender.
- (2) Factors to be considered in determining the period of time to be allowed for preparation of tenders include:
- (a) The nature and complexity of the object of the procurement;
 - (b) Whether the item to be procured is readily available commercially or must be produced to the unique specifications of the procuring organisation;
 - (c) The time period during which the procuring organisation needs to have its requirement fulfilled;
 - (d) Whether it is anticipated that foreign bidders will participate; and
 - (e) The amount of time required for distribution of invitations to tender and bidding documents.
- (3) A procuring organisation may extend the deadline for submission of tenders for a period of no less than 14 days if, following a clarification or modification of the bidding documents, or the late issuance of minutes of a conference of bidders of a site.
- (4) Where an extension is necessary to allow bidders sufficient time to take the clarification, modification or other added information into account in preparing their tenders.

- Time and place of submission
52. (1) The date and specific (local) time that tenders must be submitted shall be stated in the bidding documents.
- (2) The specific address to which tenders must be lodged or submitted shall be stated in the bidding documents.
- Submission of signed tender in single envelope
53. (1) The method for submission will be a single envelope containing the complete tender as required in the bidding documents.
- (2) The bidder shall submit the tender signed, in the required number of copies and in a tightly closed and sealed envelope. The copy marked as the "original" shall be included amongst them.
- (3) In addition to direct deposit in the tender box, tenders may be submitted by registered mail, courier or any other means that may be permitted by the bidding documents.
- (4) The procuring organisation shall provide to the bidder a receipt showing the date and time when its tender was received, signed by the person receiving the tender with their name clearly written.
- Reception and security of bids
54. (1) The procuring organisation shall ensure that all bids, and any samples required thereunder, that it receives are kept in a confidential and secure manner to avoid disclosure of their characteristics prior to bid opening.
- (2) Further guidance on the receipt of bids is provided in the Instructions.
- Rejection of late bids
55. (1) A bid received by the procuring organisation after the deadline for its submission shall not be opened and shall be returned to the bidder that submitted it.
- (2) The date and time of arrival of a late bid shall be noted in the record of the procurement proceedings.
- Requirements applicable to bid securities
56. (1) Bid securities shall be required in all tendering proceedings whose estimated value exceeds 1,000,000 dalasis.
- (2) The amount of the bid security should be set in the bidding documents, at between two and three percent of the estimated value of the procurement.
- (3) When the procuring organisation requires bidders submitting tenders to provide a bid security the requirement shall apply to all bidders;

- (4) Prior to submitting a bid, a bidder may request the procuring organisation to confirm the acceptability of a proposed issuer of a bid security. The procuring organisation shall respond promptly to such a request;
- (5) Confirmation of the acceptability of a proposed issuer does not preclude the procuring organisation from rejecting the bid security on the ground that the issuer has become insolvent or otherwise lacks creditworthiness;
- (6) The bid security shall be subject to a demand for payment only in the following cases:
 - (a) Withdrawal or modification of the bid after the deadline for submission; or
 - (b) Failure to correct errors as provided for in Regulation 6565 or to sign the procurement contract if required by the procuring organisation to do so as provided for in Regulation 72 (7); or
 - (c) Failure to provide a required security for the performance of the contract after the bid has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the bidding documents.
- (7) The procuring organisation shall make no claim to the amount of the bid security, and shall promptly return, or arrange the return of, the bid security document, after whichever of the following that occurs earliest:
 - (a) The expiry of the bid security; or
 - (b) The entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the bidding documents; or
 - (c) The termination of the bid 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 tenders, unless the bidding documents stipulate that no such withdrawal is permitted.
- (8) A record of receipt of bid securities shall be maintained by using GPPA-Form 015: *Record of Receipt of Bid Security*.

Required validity period of bid security

- 57. (1) The bidding documents shall require that the bid securities provided by bidders should have a validity period extending for a period of four weeks beyond the expiry of the validity period of bids, in

order to allow the procuring organisation sufficient time to make a demand for payment under the bid security in accordance with Regulation 56(6).

(2) Bid securities shall be returned to unsuccessful bidders once it is determined that their bids will not be selected.

Basic provisions of bid validity period

58. The bidding documents shall set a bid validity period that is of a sufficient length to enable the procuring organisation to complete the evaluation and comparison of bids and to obtain all the necessary approvals so that the procurement contract can be awarded within that period. Normally, this period should be a minimum of ninety days.

Extension of bid validity period

59. (1) Where prior to the expiry of the validity period of bids, a procuring organisation requests bidders to extend the validity period of their bids, it should only address such a request to those bidders that in the judgement of the Contracts Committee of a procuring organisation have a reasonable chance of being selected.

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

(3) Extension of the bid validity period shall, however, be subject to extension of the bid security if one was required in the first place.

(4) Without an extension of the bid security, a bid shall be deemed not extended.

Modification or withdrawal of tender

60. A modification or notice of withdrawal of a tender is effective and not subject to forfeiture of the tender security only if it is received by the procuring organisation prior to the deadline for the submission of tenders.

Tender opening

61. (1) Tenders shall be opened in a session open to the public, including bidders and their representatives, at the time and place indicated in the bidding documents and in accordance with the Instructions.

(2) The time of tender opening shall coincide with the deadline for submission of tenders.

(3) The name and address of each bidder whose tender is opened and the tender price, and the price of any alternative tenders if they have been solicited or permitted, shall be announced to those persons present at the tender opening,

(4) Tender prices may be communicated on request to bidders that have submitted tenders but were not present or represented at the tender opening.

(5) The communication in (4) must be recorded immediately in the record of the tendering proceedings as required by section 36 of

the Act and Regulations 156 to 159 by using GPPA-Form 013:
Record of Tender Opening.

Timeframe for
evaluation of
tenders

62. The evaluation process shall normally be done within twenty days from the date of opening of tenders. This period may vary depending on the complexity or urgency of the procurement.

Purpose and scope
of preliminary
screening

63. (1) After the opening of tenders in accordance with Regulation 61, a preliminary screening of tenders shall be carried out.

(2) The preliminary screening shall determine whether tenders comply with a procuring organisation's requirements as to the tenders themselves and the accompanying documents. This may involve examining:

(a) Whether all the required documents, including any standard forms supplied with the bidding documents, have been submitted fully completed;

(b) Whether the bidder has met the qualification requirements, including the requirements applicable through the involvement of a financing institution;

(c) Whether the tender substantially conforms with the contractual terms and technical requirements set out in the invitation to tender and instructions to bidders;

(d) Whether the tender has been signed by an authorised representative of the bidder;

(e) Whether a tender security, if required, has been provided; and

(f) If any other stipulated requirement has been complied with.

(3) At the preliminary screening, tenders shall be checked for arithmetical errors or clerical errors that may appear on their face.

(4) Bidders that have submitted tenders that appear to contain such errors shall be contacted and given an opportunity to correct them, or to accept a correction made by a procuring organisation in accordance with Regulation 65.

(5) Any communication under (4) must be circulated to all other bidders.

(6) At the stage of preliminary screening, tenders may be classified

according to whether they contain deviations from the technical specifications and contractual terms set forth in the bidding documents in the following categories:

- (a) Those tenders that do not contain deviations or reservations;
- (b) Those tenders that contain material deviations, reservations or qualifications and are therefore to be rejected as non-responsive in accordance with Regulation 7070(d); and
- (c) Those tenders that contain minor deviations or reservations, but that may be considered responsive, provided that the deviations or reservations are quantified and taken into account in the evaluation and comparison of tenders.

Assessing
responsiveness of
tenders

64. (1) A procuring organisation may regard a tender as responsive 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 if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender.
- (2) Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation and comparison of tenders.

Correction of errors
on face of tender

65. (1) The Contracts Committee shall correct any arithmetical errors appearing on the face of the tender, and inform the bidder in question of the correction. The tender shall be rejected if the bidder refuses the correction, and the tender security is thereby subject to forfeiture.
- (2) If there is a discrepancy between the unit price and the total price, or the line item total, that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the procuring organisation there is an obviously gross misplacement of the decimal point in the unit rate or a similarly obvious gross mathematical error, in which cases the line item total, or total price, as the case may be, as quoted will govern and the unit rate will be corrected.
- (3) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.
- (4) Should any contradiction occur in the information between the submitted copies, the original copy shall be adopted.

Application of
evaluation criteria

66. (1) A procuring organisation shall evaluate and compare the bids that have been received in order to ascertain the successful bid, as defined in sub-regulation (4), in accordance with the procedures and

criteria set forth in the bidding documents.

- (2) No criterion shall be used that has not been set forth in the bidding documents.
- (3) A record of the evaluation of the each bid and the comparison between them shall be maintained by a procuring organisation by using GPPA-Form 017: Record of Evaluation of Each Tender, and GPPA-Form 018: Summary Report of Evaluation and Comparison of Tenders.
- (4) The successful bid shall be:
 - (a) The bid with the lowest bid price, subject to any margin of preference applied pursuant to sub-regulation (5)(d); or
 - (b) If a procuring organisation has so stipulated in the bidding documents, the lowest evaluated bid ascertained on the basis of criteria specified in the bidding documents, which criteria shall, to the extent practicable, be objective and quantifiable in monetary terms, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms wherever practicable;
- (5) In determining the lowest evaluated bid in accordance with sub-regulation (4)(b), a procuring organisation may consider only the following:
 - (a) The bid price, subject to any margin of preference applied pursuant to sub-regulation (5)(d);
 - (b) Life cycle costs, including the cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services;
 - (c) 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 bidders, the transfer of technology and the development of managerial, scientific and operational skills; and
 - (d) In evaluating and comparing bids a procuring organisation 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 or for the benefit of domestic suppliers. The margin of preference shall be accorded in accordance with Schedule 2 and be reflected in the record of the procurement proceedings.

- (6) Information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bids should be accepted, except as provided in section 36(3) and section 36(6) of the Act.

Evaluation of bids in different currencies

67. When bid prices are expressed in two or more currencies, the prices of all bids shall be converted to the same currency, and according to the rate specified in the bidding documents pursuant to Regulation 45, for the purpose of evaluating and comparing bids.

Prompt-payment discounts

68. (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 utilised by the procuring organisation if payment is made in accordance with the terms of the discount.
- (2) Prompt payment discounts shall not be considered in the evaluation and comparison of bids.

Confirmation of qualification information

69. (1) Whether or not it has engaged in pre-qualification proceedings pursuant to section 24 of the Act and Regulation 35, the procuring organisation may require the bidder submitting the bid that has been found to be the successful bid pursuant to Regulation 66 (4) to demonstrate again its qualifications in accordance with criteria and procedures conforming to the provisions of Part VI of the Regulations.
- (2) The criteria and procedures to be used for such further demonstration shall be set forth in the bidding documents.
- (3) Where pre-qualification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.
- (4) Where the bidder submitting the successful bid is requested to demonstrate again its qualifications in accordance with sub-regulation 69 but fails to do so, the procuring organisation shall reject that bid and shall select a successful bidder, in accordance with Regulation 66, from among the remaining bids, subject to the right of the procuring organisation, in accordance with section 32(2)(a) of the Act, to reject all remaining bids.

Rejection of bids

70. (1) The procuring organisation shall not accept a bid:
- (a) If the bidder that submitted the bid is not qualified, including

bidders that are debarred or suspended, or

(b) If bidder that submitted the bid has submitted, or participated in, another bid for the procurement in question, in which case both bids shall be rejected; or

(c) If the bidder that submitted the bid does not accept a correction of an arithmetical error made pursuant to Regulation 6565; or

(d) If the bid is not responsive; or

(e) For which a bid security is not provided, if such a security was required by the bidding documents; or

(f) In the circumstances referred to in section 28(4) of the Act.

(2) A record of tenders not accepted shall be maintained by using GPPA-Form 014: Record of Tenders Not Accepted.

(3) The Committee may reject any bid if its prices are much less than the cost or current prices or prices estimated by the competent unit of the procuring organisation, provided that, before doing so, the Committee shall request the bidder concerned to provide clarification as to the basis of the bid price.

(4) Where the Committee decides to reject the bid, it shall include in the record of the procurement proceedings a detailed statement of the reasons for rejection.

Cancellation of procurement proceedings after opening of bids

71. (1) The cancellation of procurement proceedings after opening of bids should be avoided to the greatest extent possible and limited strictly to exceptional cases.

(2) Cancellation of procurement proceedings after opening of bids is subject to approval by the Accounting Officer of a procuring organisation, taking into consideration the recommendation of the related Contracts Committee, and may be authorised only in the following cases:

(a) The object of the procurement is no longer required; or

(b) It has become necessary to modify the specifications; or

(c) Defects or gaps in the specifications have been revealed; or

(d) Failure to accommodate the fulfilment of the procurement need by a substantially less expensive and functionally equivalent article other than the one called for in the bidding documents, or

- (e) Failure to include all items of cost to a procuring organisation; or
- (f) There is evidence of collusion among bidders in setting bid prices; or
- (g) Where the bid prices exceed substantially the estimated value of the procurement or the financial allocations available.

Acceptance of bid and entry into force of contract

72. (1) Notice of acceptance of the bid shall be given promptly to the successful bidder.
- (2) The notice of acceptance shall not be sent until all the necessary approvals have been obtained.
- (3) A procurement contract, in accordance with the terms and conditions of the accepted bid, enters into force when that notice is dispatched to the successful bidder.
- (4) Provided that it is dispatched while the bid is in force, the notice is dispatched when it is properly addressed or otherwise directed and transmitted to the successful bidder.
- (5) Where a procurement contract is required to be signed, the successful bidder shall do so and return the contract within twenty days after the notice referred to in sub-regulation 72 is dispatched to the bidder, or other period of time set forth in the notice.
- (6) Between the time when the notice referred to in sub-regulation 72 is dispatched to the successful bidder and the entry into force of the procurement contract, neither a procuring organisation nor the successful bidder shall take any action that interferes with the entry into force of the procurement contract or with its performance.
- (7) Where a successful bidder fails to;
- (a) sign a written procurement contract as per the bidding documents; or
 - (b) provide any required security for the performance of the contract,

the procuring organisation shall select a successful bid in accordance with Regulation 66 from among the remaining bids that are in force.

- (8) Procuring organisations shall not request or require the successful bidder to sign a contract at variance with the terms

and conditions set forth in the bidding documents.

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| Submission of performance security | 73. If required to do so by the bidding documents, the successful bidder must submit the performance guarantee within the time stated following the date of the notification of acceptance of the bid. |
| Form of performance security | 74. (1) Procuring organisations may solicit and accept as security for the performance of the procurement contract.
(2) Security for performance may take the form of amongst others;
(a) guarantees,
(b) surety bonds,
(c) stand-by letters of credit,
(d) bankers drafts,
(e) cash deposits,
(f) promissory notes,
(g) bills of exchange, or
(h) surety or performance bonds, or
(i) other security acceptable to the Contracts Committee.
(3) Where the performance security takes the form of an independent guarantee or stand-by letter, the amount shall be set at a minimum of ten percent of the value of the procurement contract, or, in the case of an indefinite quantity contract, of the value estimated by a procuring organisation. |
| Validity period of performance security | 75. Unless otherwise stipulated in the procurement contract, the validity period of the performance security shall extend to at least one month beyond the;

a) latest date of the time of delivery, or

b) time for completion of performance, or

c) warranty or defects liability period, as the case may be, under the procurement contract. |
| Return of performance security | 76. Where a procurement contract in respect of which a performance security was given has been satisfactorily performed, or terminated for a reason that is not attributable to any fault of the bidder, and the procuring organisation has no claim against the supplier or contractor arising out of the contract or relating in any manner whatever to the |

contract, the performance security shall be returned to the bidder.

Maintenance
guarantee

77. (1) A procurement contract may require the supplier to provide a maintenance warranty in the form of a bank guarantee, or other form stipulated in the contract.
- (2) The value of the warranty shall be not less than three percent of the value of the guaranteed goods.
- (3) Where the contractor fails to provide the required maintenance, a procuring organisation (employer) shall be entitled to confiscate the warranty value and conduct the maintenance at the cost of the contractor.
- (4) The validity period of the maintenance warranty guarantee shall extend at least forty days beyond the expiry of the warranty period.
- (5) In supply and installation contracts, unless otherwise provided by contract, the maintenance period shall, in the event that a procuring organisation has not requested installation to be started at an earlier time, be deemed to begin 120 days after the receipt of the equipment or machinery.

Manufacturer's
warranty

78. (1) A procurement contract shall set forth the supplier's warranty obligations to replace, at its own expense, defective goods within a one year period or other period specified in the contract.
- (2) In the event of a breach of warranty, the procuring organisation shall be entitled to claim the entire value of the warranted goods and additional charge of fifteen percent of the value of the defective goods.

Notice to other
bidders

79. Upon the entry into force of the procurement contract, notice of the procurement contract shall be given to the other bidders, specifying the name and address of the successful bidder with whom a contract has been signed and the contract price.

Return of samples

80. (1) Samples that have not been destroyed in testing shall be returned to the respective bidders at their written request and expense.
- (2) The bidder shall lose the right of claiming return of samples two months following the date of notification of the award.
- (3) Samples approved in relation to the successful bid shall, after being signed for by the Contracts Committee, be kept by a procuring organisation for the purpose of comparison with the delivered goods.

- Debriefing of unsuccessful bidders
81. The information required by section 33 of the Act shall be provided orally within seven days of the date on which the request is received by the Contracts Committee and shall include only a general description of strengths and weaknesses of the requestor's bid, the characteristics and relative advantages of the bid selected (but without revealing any proprietary information) as well as the name of the successful bidder.
- Conditions for use of tendering for commodities
82. When tendering is used for procurement of raw materials and other commodities whose prices are quoted in established commodity markets, the following conditions shall apply:
- (a) Bidders shall be invited to quote prices linked to the market price at the time of or prior to the shipments;
 - (b) Tender validity periods shall be kept as short as possible; and
 - (c) The bidding documents may permit faxed tenders, if there is no requirement for a tender security or if standing tender securities valid over a specified period of time have been provided by pre-qualified bidders.
- Procedures for restricted tendering
83. (1) When restricted tendering is employed on the grounds referred to in section 40(a) of the Act, all suppliers capable of supplying the goods, works or services shall be solicited.
- (2) When restricted tendering is employed on the grounds referred to in section 40(b) of the Act, the procuring organisation shall solicit tenders from a minimum number of five bidders if possible.
- (3) The procedures for tendering proceedings set forth in Regulations 42 to 82 apply to restricted tendering proceedings, except to the extent they are modified by this Regulation.
- Public notice of restricted tendering
84. In the case of restricted tendering for procurement, the procuring organisation shall cause the publication of a notice concerning the procurement, stating the grounds for the use of the restricted tendering method.
- Procedures for two-stage tendering
85. (1) The bidding documents shall call upon bidders to submit, in the first stage of the two-stage tendering proceedings, initial tenders containing their proposals without a tender price.
- (2) The bidding documents may solicit proposals relating to the technical, quality or other characteristics of the goods, works or services as well as to contractual terms and conditions of supply, and, where relevant, to the professional and technical

competence and qualifications of the bidders.

- (3) A procuring organisation may, in the first stage, engage in discussions with any bidder whose tender has not been rejected.
- (4) In the second stage of the two-stage tendering proceedings, a procuring organisation shall invite bidders whose tenders have not been rejected to submit final tenders with prices with respect to a single set of specifications.
- (5) In formulating those specifications, a procuring organisation may delete or modify any aspect, originally set forth in the bidding documents.
- (6) Any deletion, modification or addition regarding the technical or quality characteristics of the goods, works or services to be procured, and any criterion originally set forth in those documents for evaluating and comparing tenders and for ascertaining the successful tender, shall be communicated to bidders in the invitation to submit final tenders.
- (7) A bidder not wishing to submit a final tender may withdraw from the tendering proceedings without forfeiting any tender security that the bidder may have been required to provide.
- (8) The procedures for tendering proceedings set forth in Regulations 42 to 82 apply to two-stage tendering proceedings, except to the extent they are modified by this Regulation.

Procedures for procurement of consultants' services

Scope of request
for proposals
method

86. (1) Regulations 86 to 107 present the procedures to be followed in the case of the request for proposals method. This procedure provides a competitive process among short-listed firms that takes into account the quality of the proposal and, when applicable, the cost of the services in the selection of the successful service provider.
- (2) After the procedures for solicitation of participation, the first stage involves an assessment of quality and technical aspects of proposals. In the second stage, in a quality and cost-based selection procedure, the financial proposals are evaluated.

Preparation of short
list

87. (1) A short list of at least three, but not more than six bidders, which possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement object, reputation and personnel, to perform the contract, shall be prepared.

- (2) In order to establish the short list a procuring organisation may seek expressions of interest by publishing a non-binding notice with the information described in Regulation 42 in the local or international media, including in a newspaper of wide circulation or in a relevant trade publication or technical or professional journal.
- (3) The information requested shall be the minimum required to make a judgement on the firm's suitability and not be so complex as to discourage consultants from expressing interest. Sufficient time (not less than forty days) shall be provided for responses, before preparation of the short list.
- (4) The short list may comprise entirely bidders from The Gambia for procurement with a value of 350,000 dalasis or less and when at least three national bidders are available at competitive costs. However, foreign bidders shall not be excluded from consideration, if they express interest.
- (5) Bidders that expressed interest, as well as any member of the general public that specifically so requests, shall be provided the final short list of firms.

Issuance of request for proposals

- 88. The procuring organisation shall provide the request for proposals to the short list of consultants as prepared in accordance with Regulation 87.

Avoidance of conflict of interest

- 89. (1) Consultants shall provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work.
- (2) Consultants shall strictly avoid conflicts with other assignments or their own corporate interests.
- (3) Consultants shall not be hired for any assignment that would, by its nature, be in conflict with their prior or current obligations to the Government of The Gambia or other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of a procuring organisation.
- (4) Without limitation on the generality of this rule, consultants shall not be hired under the circumstances set forth below:
 - (a) A firm hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project.

- (b) A firm assisting a client in the privatisation of public assets shall not purchase, nor advice purchasers of, such assets.
 - (c) A firm which has been engaged by a procuring organisation to provide goods or works for a project, and any of its affiliates, shall be disqualified from providing consulting services for the same project.
 - (d) Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services related to the initial assignment, 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.
- (5) This provision does not apply to the various firms (consultants, contractors, or suppliers) that together are performing the contractor's obligations under a turnkey or design-and-build contract.

Contents of requests for proposals for services

90. (1) The request for proposals shall provide bidders with the information necessary to enable them to participate in the procurement proceedings and to submit bids that are responsive to the needs of the procuring organisation.
- (2) At a minimum, the information set forth in Schedule 1-B shall be provided.

Clarification and modification of request for proposals

91. (1) A bidder may request a clarification of the request for proposals from a procuring organisation.
- (2) A procuring organisation shall respond in writing to any request by a bidder for clarification of the request for proposals within a reasonable time prior to the deadline for the submission of proposals.
- (3) A procuring organisation shall respond within a reasonable time without identifying the source of the request.
- (4) The response shall be in writing and communicated to all bidders to whom request for proposals were sent.
- (5) At any time prior to the deadline for submission of proposals, a procuring organisation may, for any reason, whether on its own initiative or as a result of a request for clarification by a bidder, modify the request for proposals, including modification of the criteria for evaluating proposals, by issuing an addendum.

- (6) The addendum shall be communicated promptly to all bidders to which a procuring organisation has provided the request for proposals and shall be binding on those bidders.
- (7) Where a procuring organisation convenes a meeting of bidders, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the request for proposals, and its responses to those requests, without identifying the sources of the requests.
- (8) The minutes shall be provided promptly to all bidders participating in the procurement proceedings.

Choice of selection procedures

92. (1) The procuring organisation shall use one of the following procedures for selection of the winning proposal, in accordance with the notice provided to bidders in the request for proposals:
- (a) Quality and Cost Based Selection (QCBS), which takes into account both the quality and the cost aspects in selecting the winning proposal;
 - (b) Quality-Based Selection (QBS), which focuses primarily on quality in selecting the winning proposal.
- (2) Subject to sub-regulation (3), the QCBS method shall be utilised.
- (3) Use of the QBS method is appropriate for the following types of assignments:
- (a) Complex or highly specialised assignments for which it is difficult to define precise TOR and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multisectoral 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 (for example, 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 not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis).

- (4) The procuring organisation shall include in the record required under section 36 of the Act a statement of the grounds and circumstances on which it relied to justify the use of a selection procedure pursuant to sub-regulation 92.
- Submission of proposals
93. (1) All submitted proposals shall be safeguarded by a procuring organisation to prevent unauthorised disclosure of information.
- (2) When the QCBS method is applied, the technical and financial proposals shall be submitted at the same time, in separate sealed envelopes.
- (3) When the QBS method is applied, bidders may be required to submit technical and financial proposals at the same time, in separate sealed envelopes, or
- (4) At the option of a procuring organisation, bidders may be requested to submit at the outset of the proceedings, only technical proposals.
- (5) A procuring organisation shall set the deadline for submission of proposals not less than thirty days from the date of the issuance of the request for proposals.
- Evaluation and selection
94. (1) Any award by the procuring organisation shall be made to the bidder whose proposal best meets the needs of the procuring organisation as determined in accordance with the criteria for evaluating the proposals and final selection procedures set forth in the request for proposals.
- (2) A record of the evaluation of the each proposal and the comparison between them shall be maintained by the procuring organisation by using GPPA-Form 020: Record of Evaluation of Each Proposal and GPPA-Form 021: Summary Report of Evaluation and Comparison of Proposals.
- Evaluation of proposals in quality and cost-based selection procedure
95. The evaluation of the proposals shall be carried out in two stages:
- (a) The technical envelopes shall be opened in the first stage, which shall concern only the quality and technical aspects of proposals. Evaluation of the technical proposals shall be in accordance with the Instructions;
- (b) The financial proposals shall remain sealed and evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded.
- (c) On conclusion of the technical evaluation, the financial

proposals shall be opened and evaluated in full compliance with the provisions of the request for proposals.

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| Rejection of proposals | 96. Following evaluation and rating of proposals, the procuring organisation shall reject proposals that are unresponsive to important aspects of the terms of reference or that fail to achieve the minimum threshold score as specified in the request for proposals. |
| Notification of results of first stage quality evaluation | 97. (1) After the evaluation of quality is completed, the procuring organisation shall notify those bidders whose proposals did not attain the minimum qualifying score or were considered non-responsive, indicating that their financial proposals will be returned unopened after completing the selection process.

(2) The procuring organisation shall simultaneously notify the bidders that have secured the minimum qualifying mark, and indicate the date and time set for opening the financial proposals.

(3) The opening date shall not be sooner than two weeks after the notification date. |
| Quality evaluation report and retention of evaluation records | 98. (1) The procuring organisation shall prepare an evaluation report of the “quality” of the proposals.

(2) The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals.

(3) All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit, subject to the requirements of Regulation 159. |
| Opening of financial proposals | 99. (1) The financial proposals shall be opened publicly in the presence of representatives of the bidders who choose to attend.

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

(3) The procuring organisation shall prepare the minutes of the public opening, which shall form part of the record of the procurement proceedings. |
| Evaluation of financial proposals | 100. (1) For the purpose of evaluation, “cost” shall exclude Gambian taxes, but shall include other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses.

(2) In the evaluation of financial proposals, only the conditions set forth in the request for proposals shall be applied. |
| Criteria for selection | 101. Following the evaluation of the quality and the financial proposals, the |

selection

successful proposal shall, in accordance with the approach disclosed in the request for proposals, be:

- (a) The proposal with the lowest price; or
- (b) The proposal with the best combined evaluation in terms of the criteria other than price referred to in the request for proposals and the price, in accordance with the procedures referred to in Regulation 102.

Combined quality and cost evaluation

102. (1) If the successful proposal is selected on the basis of a combined evaluation of quality and price aspects, the total score shall be obtained by weighting the quality and cost 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.
- (3) The weight for cost shall normally be in the range of 10 to 40 percent, but in no case shall exceed 40 percent out of a total score of 100. Only the weighting disclosed to bidders in the request for proposals may be used.

Final discussions and award of contract

103. (1) The bidder submitting the proposal determined to be successful in accordance with Regulation 101 shall be invited for technical discussions aimed at finalisation of the contract.
- (2) The technical discussions shall include discussions of the terms of reference, the methodology, staffing, the procuring organisation’s inputs, and special conditions of the contract. The discussions shall not substantially alter the original terms of reference or the terms of the contract. Major reductions in work inputs should not be made solely to meet the budget. The final terms of reference and the agreed methodology shall form part of the contract.
- (3) The selected bidder shall not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the bidder may be disqualified and the process continued with the next ranked bidder. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.
- (4) Financial discussions shall include clarification of the bidder’s tax liability in The Gambia (if any), and how this tax liability has been or would be reflected in the contract. Proposed unit rates for

staff-months and reimbursables shall not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons.

- (5) Discussions shall be summarised and recorded on GPPA-Form 022: *Record of Final Discussions*, pursuant to Regulation 156156(k).

Quality based
selection procedure

104. Where the procuring organisation uses the QBS procedure provided for in this Regulation, it shall engage in negotiations with bidders in accordance with the following procedure and as described further in the Instructions:

- (a) Establish a minimum quality threshold;
- (b) Conduct the technical evaluation using the same methodology as in the QCBS method;
- (c) Invite for negotiations on the price of its proposal the bidder that has attained the best rating;
- (d) 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;
- (e) Inform the other bidders that they did not attain the required threshold;
- (f) Where it becomes apparent to a procuring organisation that the negotiations with the bidder invited pursuant to subparagraph (c) will not result in a procurement contract, inform that bidder that it is terminating the negotiations; and
- (g) A procuring organisation shall then invite for negotiations the bidder that attained the second best rating; if the negotiations with that bidder do not result in a procurement contract, a procuring organisation shall invite the other bidders for negotiations on the basis of their ranking until it arrives at a procurement contract or rejects all remaining proposals.

Failure to reach
agreement with
successful bidder

105. (1) If the discussions with the first selected bidder fail to result in an acceptable contract, the procuring organisation shall terminate the discussions and invite the next ranked firm for discussions.

- (2) The bidder with whom discussions are being terminated shall be informed of the reasons for the termination.
- (3) Once discussions are commenced with the next ranked firm or individual, the procuring organisation shall not reopen the earlier

discussions. After discussions are successfully completed, the procuring organisation shall promptly notify other bidders on the short list that they were unsuccessful.

Rejection of all proposals

106. The procuring organisation may reject all proposals only if all proposals are non-responsive and unsuitable either because they contain major deficiencies in complying with the terms of reference, or because they involve costs substantially higher than the original estimate.

Role of advisory juries

107. (1) The procuring organisation may utilise juries for the purpose of obtaining independent recommendations as to the selection of the winning bid in design contests and other types of services contracting.
- (2) A jury shall consist exclusively of individuals that are independent of the participants in the competition. If a particular specialisation is required for participation in the competition, at least one third of the jury members shall possess that same or an equivalent specialisation.
- (3) The jury shall evaluate and compare the proposals in relation to the requirements set forth in the bidding documents, and shall rank the proposals.
- (4) The jury shall prepare a report to the procuring organisation summarising its deliberations and explaining its recommendations as to the winner or winners.

Application of request for proposals to BOT and similar forms of infrastructure and services procurement

BOT terminology

108. The expression “BOT and similar forms of infrastructure and services procurement” refers to various forms of contracting for the delivery of infrastructure projects and public services by way of private investment and private service providers, including “Build-Operate-Transfer” and other variants.

Preparation of short list

109. The procuring organisation shall prepare a short list in accordance with Regulation 87, in order to identify potential bidders that possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement object, reputation and personnel, to perform the contract.

Solicitation in one or two-stages

110. (1) A procuring organisation, having established a short list of bidders, may solicit proposals in one or in two stages.

- (2) A two-stage request for proposals procedure shall be used when it is not feasible for a procuring organisation to formulate project specifications or performance indicators and contractual terms in a manner sufficiently detailed and precise to permit final proposals to be formulated.
- (3) In the first stage of a two-stage procedure, a procuring organisation shall call upon the pre-selected bidders to submit proposals relating to output specifications and other characteristics of the project as well as to the proposed contractual terms;
- (4) In the second stage of a two-stage procedure, a procuring organisation should, following examination of the proposals received, review and, as appropriate, revise the initial project specifications and contractual terms prior to issuing a final request for proposals.

Contents of the final request for proposals

111. The final request for proposals should include at least the following:

- (a) General information as may be required by the bidders in order to prepare and submit their proposals;
- (b) Project specifications and performance indicators, as appropriate, including the procuring organisation's requirements regarding safety and security standards and environmental protection;
- (c) The contractual terms proposed by the procuring organisation; and
- (d) The criteria for evaluating the proposals, the relative weight to be accorded to each such criterion and the manner in which criteria are to be applied in the evaluation of proposals.

Evaluation criteria

112. (1) The criteria for the evaluation and comparison of the technical proposals should concern the effectiveness of the proposal submitted by the bidder in meeting the needs of the procuring organisation, including the following:

- (a) Technical soundness;
- (b) Operational feasibility;
- (c) Quality of services and measures to ensure their continuity; and
- (d) Social and economic development potential offered by the proposals.

- (2) The criteria for the evaluation and comparison of the financial and commercial proposals may include, as appropriate:
 - (a) The present value of the proposed tolls, fees and other charges over the concession period;
 - (b) The present value of the proposed direct payments by the procuring organisation, if any;
 - (c) The costs for design and works activities, annual operation and maintenance costs, present value of capital costs and operating and maintenance costs;
 - (d) The extent of financial support, if any, expected from the Government;
 - (e) Soundness of the proposed financial arrangements; and
 - (f) The extent of acceptance of the proposed contractual terms.

Final negotiations 113. (1) The procuring organisation should rank all responsive proposals on the basis of the evaluation criteria set forth in the request for proposals and invite for final negotiation of the project agreement the bidder that has attained the best rating.

(2) Final negotiations may not concern those terms of the contract which the procuring organisation stated as non-negotiable in the final request for proposals.

Unsolicited proposals 114. By way of exception to the selection procedures described in these Regulations, the procuring organisation may consider unsolicited proposals pursuant to this Regulation and Regulations 115 to 117.

Determining admissibility of unsolicited proposals 115. (1) Following receipt and preliminary examination of an unsolicited proposal, the procuring organisation shall inform the author, within a reasonably short period, whether or not there is a potential public interest in the project. If the project is found to be in the public interest, the procuring organisation shall invite the author to submit a formal proposal in sufficient detail to allow the procuring organisation to make a proper evaluation of the concept or technology and determine whether the proposal meets conditions set forth in Act and is likely to be successfully implemented on the scale of the proposed project.

(2) The author of an unsolicited proposal shall retain title to all documents submitted throughout the procedure and those documents should be returned to it in the event the proposal is rejected.

Unsolicited proposals not involving proprietary concepts or technology

116. (1) A procuring organisation should initiate competitive selection procedures under this Regulation if it is found that the envisaged output of the project can be achieved without the use of a process, design, methodology or engineering concept for which the author of the unsolicited proposal possesses exclusive rights or if the proposed concept or technology is not truly unique or new.

(2) The author of the unsolicited proposal should be invited to participate in such proceedings and may be given a premium for submitting the proposal.

Unsolicited proposals involving proprietary concepts or technology

117. (1) If it appears that the envisaged output of the project cannot be achieved without using a process, design, methodology or engineering concept for which the author of the unsolicited proposal possesses exclusive rights, the procuring organisation should seek to obtain elements of comparison for the unsolicited proposal.

(2) For that purpose, the procuring organisation should publish a description of the essential output elements of the proposal with an invitation for other interested parties to submit alternative or comparable proposals within a certain reasonable period.

(3) The procuring organisation may engage in negotiations with the author of the unsolicited proposal if no alternative proposals are received, subject to approval by a higher authority.

(4) Where alternative proposals are submitted, the procuring organisation should invite all the bidders to negotiations in accordance with the following:

(a) The procuring organisation should publish a notice of its intention to award a concession for the implementation for the proposed project and should engage in negotiations with as many bidders it judges capable of carrying out the project as circumstances permit;

(b) Offers should be evaluated and ranked according to the evaluation criteria established by the procuring organisation to select the best offer; and

(c) The procuring organisation shall publish a notice of the contract award, disclosing the specific circumstances and reasons for the award of the contract and the extent of competition involved.

Procedures for request for quotations

Procedures for request for quotations

118. (1) Quotations shall be requested from at least three bidders.
- (2) The request shall contain a clear statement of the requirements of the procuring organisation as to quality, quantity, terms and time of delivery as well as any other special requirements and shall be formed by using GPPA-Form 101: Request for Quotations.
- (3) Bidders shall be given adequate time to prepare their quotations. Each bidder is permitted one quotation, which may not be altered or negotiated, and which shall be submitted in written form. Quotations may also be submitted by facsimile or telex or in any other form that leaves a record of the content of the communication and is acceptable to the procuring organisation.
- (4) A purchase order, based on GPPA-Form 102: Purchase Order, shall be placed with the bidder that provided the lowest-priced responsive quotation.

Single-source procurement

Procedures for local purchase orders and petty contracts

119. (1) In accordance with section 45(1)(a) of the Act –
- (a) The Local Purchase Order Form shall be used for goods and non-consultant services below the threshold established in Regulation 12(a)(i); and
- (b) The Petty Contract Form shall be used for works below the threshold established in Regulation 12(a)(ii).
- (2) Procurement transactions referred to in sub-regulation 119 shall be documented, as a minimum, with two copies of the annotated invoice for the item with the name of the person who bought the item.
- (3) Any single source procurement actions under the thresholds set forth in Regulation 12(a) shall be aggregated into a summary monthly report identifying the types of items purchased, amounts and vendor for each such transaction.
- (4) The monthly summary report referred to in sub-regulation (3) shall be submitted to the Contracts Committee by the user units by using GPPA-Form 006: Monthly Summary Report of Local Purchase Orders and Petty Contracts.

Procedure for other single-source procurement

120. (1) Procurement carried out on a single source basis over the thresholds set forth in Regulation 12(a) shall be embodied in a written contract or purchase order as approved by the Contracts Committee in accordance with section 48(8) and section 50(c) of the Act.

- (2) When the procuring organisation engages in single-source procurement on the grounds referred to in section 45(1)(b) through (e) 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 shall be free to negotiate with the sole bidder.

PART VIII. CONTRACT ADMINISTRATION

Establishment and staffing of support operations for contract administration

121. (1) Procuring organisations shall establish and provide the staffing necessary for the operations involved in contract administration as described in the Instructions. Those include, but are not necessarily limited to, 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 co-ordinated processing and communication of and access to relevant information by all parties involved in contract administration, including document control services, for establishing and maintaining filing systems for correspondence and other paperwork and records relating to procurement contracts; and
 - (d) Legal services.
- (2) Procuring organisations shall make available to the Authority, the Auditor-General, and other authorised organs documentation, reports, and other information required by those bodies for the purposes of monitoring contract administration.

Contract variations

122. (1) Variations exceeding five percent of the contract value shall be submitted to the Contracts Committee for its approval.
- (2) Where the contract variation causes the threshold for review by the Authority in Regulation 13(2) to apply, contract variations shall be submitted to the Authority for approval, subject to the variation having first been approved by the Contracts Committee.

Subcontracting

123. (1) The acceptance of any committed SME subcontract by the procuring organisation shall be based on the requirements for non-burdensome contract provisions as set forth in the Instructions.
- (2) In cases other than covered by 123 and when the request for

subcontracting arises at the time of bid submission, the bidder should state in the bid:

- (i) The nature of the goods or services for which subcontracting is envisaged;
 - (ii) The name and address of the proposed subcontractor;
 - (iii) The amounts expected to be paid directly to the subcontractor;
 - (iv) The manner of payment;
 - (v) The conditions of payment foreseen in the draft subcontract and, if applicable, price revision; and
 - (vi) A declaration to the effect that the proposed subcontractor is not barred from participating in procurement proceedings pursuant to section 29(1) of the Act.
- (3) The notice of acceptance of the bid shall include the acceptance of the subcontractor and of the conditions of payment. Silence of the procuring organisation during a period of 21 days from the receipt of the request shall be deemed to constitute acceptance of the subcontractor and of the conditions of payment.
- (4) Where a request for subcontracting is submitted after the conclusion of the procurement contract, the procuring organisation is under no obligation to accept such request.
- (5) If the request is rejected by the procuring organisation, the contractor shall remain obligated to fully perform under the contract. Failure to perform after rejection of the subcontractor request can result in termination for default in accordance with Regulation 133.

Administration of
subcontracts

124. The prime contractor is responsible for administering its subcontracts. The procuring organisation's review of subcontracts is normally limited to evaluating the prime contractor's management of the subcontracts, unless:

- (a) The procuring organisation would otherwise incur undue cost; or
- (b) Successful completion of the prime contract is threatened; or
- (c) Certain high risk or critical subsystems in major systems acquisition require special surveillance.

- Inspection of goods 125. (1) The procuring organisation is entitled to carry out acceptance inspections and, in the case of custom made goods, observe and inspect the manufacture of the goods at the supplier's premises during regular working hours.
- (2) The supplier shall at its own expense place at the procuring organisation's disposal any premises, facilities and personnel needed for normal inspections.
- (3) The supplier and the procuring organisation shall each bear the expenses for the attendance of their respective representatives at the inspection.
- (4) Any deficiencies and omissions detected shall be remedied by and at the expense of the supplier.
- (5) The procuring organisation has no obligation to pay for any goods or accessories that have become unserviceable or lost value in the course of a normal inspection.
- (6) Should an item or consignment of goods inspected not meet the requirements set for it, the supplier shall bear all the expenses that renewed inspection, handling or transport may involve.
- (7) The observation and inspection of the manufacture of the goods affected by the procuring organisation do not in any way limit the supplier's responsibilities and liabilities.
- (8) If the supplier has been permitted to employ the services of a subcontractor, he shall in his contract with the subcontractor reserve to the procuring organisation the rights referred to in this Regulation.
- Pre-shipment inspection services 126. (1) The procuring organisation may engage an external agent for the purposes of conducting pre-shipment inspection of goods being purchased by procuring organisations.
- (2) Contracts with such firms shall be awarded by way of competitive procedures pursuant to the Act and Regulations.
- Examination and receipt committee 127. (1) The procuring organisation shall establish an Examination and Receipt Committee, or, as an alternative, appoint an individual who has not participated in the ordering of the items, for the purposes of inspecting and examining supplied goods.
- (2) The Committee shall inspect and examine the supplied items comparing them with the stamped and approved samples, putting aside the rejected goods to be returned to the supplier.

- (3) The Committee shall examine varying percentages of shipments, to be determined depending on the importance of the item.
- (4) The Committee shall prepare an examination report indicating acceptance or rejection of the goods.
- (5) The examination report shall indicate the percentage which the Committee have examined, the names, specifications, results of testing, and shall be included in the record of the procurement proceeding.
- (6) In the event of a dispute between the supplier and the Examination and Receipt Committee, the matter shall be submitted to dispute settlement procedures under the procurement contract.
- (7) Goods, whose value is below an amount set by the Contracts Committee of the procuring organisation, may be examined and received by the storekeeper without examination by the Examination and Receipt Committee. Such examination and receipt is also permitted in urgent circumstances referred to in section 45(1)(c) of the Act, subject to approval in accordance with the delegation of authority by the head of the procuring organisation.

Acceptance of works and services

128. A procuring organisation shall ensure that appropriate mechanisms and procedures are in place to ascertain that works and services, prior to being accepted by the procuring organisation, have been performed satisfactorily in accordance with the procurement contract.

Record of supplier performance

129. The Contracts Committee shall ensure that for all contracts in excess of the threshold established in Regulation 12(c), GPPA-Form 041: Record of Supplier Performance Assessment, is completed and made part of the contract record.

Remedies for breach of contract

130. The procurement contract shall specify remedies available to the procuring organisation in the event of breach of the procurement contract by the supplier. Those remedies include, but are not limited to:

- (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 of time, or part thereof, of delay;

(d) Termination of the contract for default 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 Act.

Rejection of goods 131. (1) In the event it is decided to reject goods provided under the procurement contract, the procuring organisation shall notify the supplier, by registered mail or courier with a return receipt, of the rejection and its reasons in order to withdraw those materials from the stores and supply replacements of the rejected goods within the specified duration.

(2) In case the supplier refuses to take delivery of the rejected goods, he shall be fined terrage and storage expenses at the rate to be specified in the procurement contract.

(3) Further, the procuring organisation is entitled to sell the goods by public auction and recover all expenses and fines from the sale value. The balance remaining shall be returned to the supplier.

Termination of contract 132. (1) The termination clauses or other contract clauses authorise the procuring organisation officers to terminate contracts for convenience, or for default, and to enter into settlement agreements under these Regulations.

(2) The contracting officer shall terminate contracts, whether for default or convenience, only when it is in the public interest.

(3) The procuring organisation shall terminate contracts for convenience or default only by a written notice to the supplier. When the notice is mailed, it shall be sent by certified mail, return receipt requested.

(4) Where the procuring organisation arranges for hand delivery of the notice, a written acknowledgement shall be obtained from the supplier. The notice shall state -

(a) That the contract is being terminated for the convenience of the Government (or for default) under the contract clause authorising the termination;

(b) The effective date of termination;

(c) The extent of termination;

(d) Any special instructions; and

(e) The steps the contractor should take to minimise the impact

on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the supplier's work force.

Termination for default

133. (1) The procuring organisation has the right, subject to the notice requirement in the contract, to terminate the contract completely or partially for default if the supplier -
- (a) Fails to make delivery of the supplies or perform the works or services within the time specified in the contract, or
 - (b) Fails to perform any other provision of the contract, or
 - (c) Fails to make progress and that failure endangers performance of the contract, or
 - (d) In the judgement of the procuring organisation, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- (2) In the event the procuring organisation terminates the contract in whole or in part, pursuant to sub-regulation 133, the procuring organisation may procure, upon such terms and in such manner as it deems appropriate, replacement performance similar to that undelivered, and the Supplier shall be liable to the procuring organisation for any excess costs for such similar performance. However, the supplier shall continue performance of the contract to the extent not terminated.
- (3) The procuring organisation shall authorise payment for the value of the work done, or goods or services supplied, and materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the contract.
- (4) If the total amount due to the procuring organisation exceeds any payment due to the supplier, the difference shall be a debt owed by the supplier to the procuring organisation.

Termination for convenience

134. (1) Where a contract is terminated for convenience, a procuring organisation shall authorise payment for;
- a) the value of the work done,
 - b) materials ordered, or
 - c) goods or services supplied, or
 - d) the reasonable cost of removal of equipment, or
 - e) repatriation of the supplier's personnel employed solely

on the works, or

- f) the supplier's costs of protecting and securing the works, where applicable, and less advance payments received up to the date of the certificate.

(2) No payment shall be made of unrealised profits.

(3) Notwithstanding sub-regulation 134, goods that are complete and ready for shipment within forty days after the supplier's receipt of notice of termination shall be accepted by a procuring organisation at the contract terms and prices.

(4) For the remaining goods, a procuring organisation may elect:

- (a) to have any portion completed and delivered at the contract terms and prices; and/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.

Basic pricing approaches

135. (1) The price of a procurement contract shall be set either on the basis of:

- (a) A unit price applied to the quantities actually delivered, or
- (b) On a lump-sum basis, applied to the entirety or to a part of the contract, irrespective of the actual quantity delivered.

(2) Procurement contracts shall be concluded on the basis of an initial definite price.

(3) In exceptional circumstances, subject to approval of the head of the procuring organisation, a procurement contract may be concluded on the basis of a provisional price, specifying the manner in which the price is to be made definite. The grounds for the use of such a pricing clause shall be noted in the record of the procurement proceedings.

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

Price adjustment

136. (1) Unless otherwise provided in the procurement contract, the price of a procurement contract is considered to be a fixed price when the price may not be modified in response to changes in economic or commercial conditions.

(2) The procurement contract may provide for the possibility of price adjustment to take into account changes in economic

circumstances.

- (3) Price adjustment may only be made if provided for in the procurement contract and shall be in accordance with the Instructions.

Payment

137. (1) Where goods are to be procured, unless otherwise stipulated in the procurement contract, payment for the delivery of goods shall be made on submission of invoices, together with any shipping or other required documents, in the prescribed form as indicated in the contract, and in accordance with the instructions given in the purchase order, letter of acceptance of bid or procurement contract, as the case may be.
- (2) Where works or services are to be procured, the procurement contract shall indicate the manner and timing of payment of the contract price.
- (3) (a) Payments that become due to the supplier shall be made in accordance with the deadlines set forth in the procurement contract,
(b) Notwithstanding sub-regulation 137, where intermediary or progress payments are made, the procurement contract may provide that a percentage of amounts due to the supplier may be withheld until performance of the procurement contract is completed.

Advance payments

138. (1) The procurement contract may provide for advance payments to the supplier.
- (2) The total amount of advance payment made under the procurement contract shall not exceed twenty percent of the initial contract price if permitted in the applicable standard bidding documents, and if it is against a performance bond, bank guarantee or insurance bond.
- (3) Unless otherwise stipulated in the procurement contract, an advance payment shall not be made unless and until the supplier furnishes an advance payment guarantee covering the amount of the advance payment and satisfies other terms set forth in the bidding documents.
- (4) Unless otherwise authorised by the procuring organisation or its representative, the supplier, and any of its subcontractors, shall utilise materials, equipment and personnel that are the subject of advance payment only for supply of goods or works related to the procurement contract.
- (5) Where a works contract is involved, unless otherwise authorised

by the procuring organisation or its representative, the contractor shall commit all materials, equipment and personnel exclusively to sites related to the works covered by the procurement contract.

- (6) Advance payments are not in the nature of final payments, but are subject to final accounting.
- (7) The procurement contract may provide for the making of progress payments. Progress payments may be issued to the 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 in performance.
- (8) A record for the authorisation of payment shall be maintained by the procuring organisation by using GPPA-Form 040: Payment Authorisation.

After-sale service 139. Unless technical or commercial factors dictate otherwise, the bidding documents should require a supplier to provide workshops and spare parts for goods that require such after-sale service. The period of the supplier's commitment in this regard should correspond to the average operating life of the goods in question.

Insurance requirements 140. (1) The bidding documents or other documents used to solicit proposals, offers or quotations and the procurement contract shall indicate the amount and essential terms of the insurance that the successful supplier or contractor may be required to obtain.

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

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

Arbitration of disputes 141. In accordance with section 31(2) of the Act, the parties to a procurement contract shall submit disputes arising under the procurement contract to settlement by arbitration as described in the General Provisions of the standard contract.

PART IX. STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

Declaration and disclosure requirements 142. (1) All members of the Contracts Committee, prior to commencing evaluation and comparison of bids, shall sign a declaration, using GPPA-Form 012 *Declaration by Member of Contracts Committee*,

to the effect that they have no relationship with bidders of the following types:

- (a) A marital or direct birth relationship with a bidder participating in the procurement proceedings, with its legal counsel or with its officers; or
 - (b) During last three years has been employee or officer of a bidder participating in the procurement proceedings, or has held a financial interest in a bidder; or
 - (c) Is negotiating or has an arrangement concerning prospective employment in a bidder involved in the procurement proceedings; or
 - (d) has a potential conflict of interest with regards to the procurement under consideration
- (2) An employee or consultant of the procuring organisation who becomes aware that it has a relationship with a bidder referred to in sub-regulation 142 shall immediately report that to the head of the procuring organisation and request exclusion from the procurement proceeding, including from any activities referred to in Regulation 143.
- (3) A report and request for exclusion shall be made a part of the record of the procurement proceeding.

Identification of activities on behalf of the procuring organisation subject to conflict of interest restrictions

143. Procurement-related activities on behalf of the procuring organisation that are subject to the conflict of interest restrictions referred to in section 28(1)(c) of the Act or in Regulation 142(2) include the following:

- (a) Preparation, review or approval of specifications or a statement of work for a particular procurement;
- (b) Assessment of requirements to be fulfilled by a procurement action;
- (c) Preparation of procurement documents, including for solicitation of participation in procurement proceedings;
- (d) Evaluation and comparison of bids, proposals, offers or quotations, including membership in Contracts Committees;
- (e) Conduct of technical discussions or negotiations;
- (f) Selection or approval of selection of bidder; and
- (g) Administration of the procurement contract.

- Post-employment restrictions on public procurement officials
144. (1) Individuals who have served as procurement officers or who have exercised some other activity referred to in Regulation 143 with respect to a procurement shall not:
- (a) participate in any manner, as an officer, employee, agent or representative of a supplier, in any negotiations or technical discussions leading to the award, modification, or extension of a contract for such procurement; or
 - (b) participate personally or substantially on behalf of a supplier in the performance of such contract.
- (2) The restriction referred to in sub-regulation (144 shall remain in effect for the duration of the procurement proceeding and contract, if any, in question.
- Contingent fee arrangements
145. (1) Activities prohibited pursuant to Chapter IX of the Regulations also include the retention of any person, including former public officials, on a contingent fee basis for the purposes of influencing the selection process in procurement proceedings, except when that person is acting as a bona fide commercial selling agent for the purpose of securing business.
- (2) The bidding documents shall require bidders to disclose any contingent fee arrangements entered into for the purposes of securing the procurement contract. That information shall be made a part of the record of the procurement proceedings.
- Conspicuous notice of prohibitions
146. Notice shall be given conspicuously in the solicitation and contract documents that bidders are not permitted to:
- (a) Enter into contingent fee arrangements prohibited by Regulation 145145; and
 - (b) Directly or indirectly offer, give or agree to give inducements of the type referred to in section 28(2) of the Act, and that rejection of the bid, offer or quotation results from a violation of that rule.
- Prohibition of award to consultant affiliated bidder
147. The procuring organisation shall not sign a procurement contract with a bidder associated as a parent company or branch, with a consultant who is responsible for preparing the specifications or bidding documents for the procurement contract or supervising the execution of the procurement contract. This provision does not apply to the various firms (consultants, contractors or suppliers) which together are performing the supplier's obligations under a turnkey or design and build contract.
- Confidentiality of procurement information
148. (1) In accordance with section 28(5) of the Act and subject to applicable oversight, auditing or other Acts, or to the order of a

information	<p>competent court, public officials are not permitted to disclose to any third party, whether for personal gain or for any other motive, confidential or proprietary commercial information obtained by virtue of their involvement in, or contact with officials involved in, procurement proceedings or the planning of procurement.</p> <p>(2) Prior to opening of bids, disclosure of the number of the bids and their identity shall be made only to public officials who as part of their official duties require that information.</p> <p>(3) Information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided in section 36(3) and section 36(6) of the Act.</p>
Confidentiality obligations of third parties	<p>149. (1) The requirement of confidentiality, imposed on procuring organisations by section 28(5) of the Act and Regulation 148, extends also to those acting on behalf of procuring organisations in procurement proceedings.</p> <p>(2) The requirement of confidentiality referred to in sub-regulation 149 is subject to the provisions in the Act, applicable legislation and these Regulations relating to oversight and auditing of the activities of procuring organisations.</p>
Dissemination of applicable conflict of interest rules to State employees	<p>150. (1) The Authority and the heads of all public authorities shall ensure that each public employee, including any member of a Contracts Committee, is provided a copy of the prohibitions and requirements set forth in Part IX of the Regulations.</p> <p>(2) After having been furnished the text of the provisions referred to in sub-regulation 150, each public employee shall be required to sign a statement, on a form issued by the Authority, to the effect that he or she is familiar with their content.</p>
Remedies against breach of conduct standards by employees of the State	<p>151. (1) Apart from any other existing civil and administrative remedies, and sanctions under the penal Act, the Authority may impose one or more of the following sanctions for breach of conduct standards:</p> <p style="margin-left: 40px;">(a) Written warnings or reprimands;</p> <p style="margin-left: 40px;">(b) Suspension with or without pay for specified periods of time; and</p> <p style="margin-left: 40px;">(c) Termination of employment.</p> <p>(2) All procedures under this regulation shall be in accordance with</p>

due process requirements and existing Act. In addition, notice and opportunity for a hearing shall be provided prior to imposition of any suspension or termination of employment.

Recovery in case of breach of conduct standards

152. The value of anything transferred or received in breach of the standards of conduct set forth in the Act or in these Regulations, and additional costs to the procuring organisation, resulting from the breach, may be recovered from both the employee and non-employee.

General policy for debarment

153. (1) Procedures for debarment of suppliers are set to provide public entities with a means to deny suppliers the opportunity to seek public contracts. This serious sanction must be administered fairly.

(2) A fundamental policy of public procurement is that public entities should contract only with qualified suppliers, that is those possessing satisfactory competence, capacity, financial resources, reputation and other requirements set out in Part VI of these Regulations. This policy is based upon the concept that a public entity's interests in acquiring goods, works and services are much broader than merely the economics of a proposed transaction. Such interests include ensuring not only that a prospective supplier will perform satisfactorily (e.g., timely performance, compliance with specifications, etc.), but also that such performance will be free of fraud and dishonesty.

List of debarred suppliers

154. (1) The list of debarred suppliers shall be maintained by the Authority.

(2) The Authority and all procuring organisations are to ensure that debarred suppliers do not participate in public contracting for the duration of the their debarment.

Procedures for debarment

155. (1) Only the Authority is authorised to debar a supplier,

(2) Procuring organisations shall encourage prompt reporting, investigation, and referral to the Authority of matters appropriate for Authority to consider taking a debarment action.

(3) Referral to the Authority from procuring organisations shall be under the signature of the Chairperson of the Contracts Committee. The referral documents shall identify the party or parties proposed to be debarred; the grounds for debarment; the information, facts and documents supporting allegations; and any other information that the procuring organisation believes the Authority should consider in the decision-making process including any mitigating factors.

(4) The Authority must consider a debarment petition referred to it

by a procuring organisation unless the allegations are clearly insubstantial, arbitrary, capricious or erroneous.

- (5) The debarment petition shall be placed before a three-member committee whose members shall be appointed by the Director General of the Authority, which shall reach a decision on the petition.
- (6) Immediately upon referral, the Authority may suspend the suppliers right to participate in public procurements pending the outcome of the debarment action if the alleged grounds for debarment include:
 - (a) Conviction of fraud or other criminal offence in connection with obtaining, attempting to obtain, or performing a public contract or subcontract; or
 - (b) Conviction for bribery, forgery falsification or destruction of records, making false statements, tax evasion, receiving stolen property or any other crime or corrupt acts or omissions.
- (7) A decision to exclude a supplier or bidder from participation in public procurement may be preceded by a suspension of the right to participate in public procurement proceedings. The period of suspension may not exceed six months.
- (8) A decision by the Authority to exclude a supplier or bidder from participation in its procurement proceedings may only be taken after written notice to the supplier or bidder of the proposed exclusion and of the grounds therefore. A copy of the notice shall be provided by the Authority to the procuring organisation or other entity or official that brought the debarment petition to the Authority. The notice shall:
 - (a) Specify if the supplier is temporarily suspended from participating in public procurements pending the outcome of the debarment action;
 - (b) Specifically describe the alleged impropriety in order to afford the supplier a meaningful opportunity to present evidence rebutting the allegation;
 - (c) Define the proposed scope of the debarment action (i.e. the legal and judicial persons subject to the debarment action);
 - (d) Inform the supplier or bidder of its right to a hearing prior to

any decision to exclude.

- (9) In considering the scope of the debarment action, the Authority should consider the following:
 - (a) The breath of power and control of the legal persons involved in the activity;
 - (b) The actions or omissions by others associated with the supplier;
 - (c) The existence of effective standards of conduct in force in the supplier's organisation; and
 - (d) Whether the supplier itself brought the misconduct of an employee to the attention of the procuring organisation, in which case the Authority might narrow the scope of the debarment action to the employee involved but find the supplier should not be debarred.
- (10) Within thirty days of receipt of the notice, the supplier may submit, in person, in writing or through a representative, information and arguments in opposition to the proposed debarment. In its submission, the supplier may also request a hearing before the Authority in which the supplier can submit documentary evidence, present witnesses and confront any person the Authority presents.
- (11) The Authority must grant the request for a hearing unless the supplier's written submission opposing the debarment is clearly arbitrary, capricious or erroneous.
- (12) The following procedures shall apply to hearings under this Regulation:
 - (a) The supplier or bidder has the right to be represented by counsel;
 - (b) The hearing shall be recorded and all evidence presented shall be preserved;
 - (c) Witnesses must testify under oath and may be cross-examined.
- (13) Within sixty days from the date notice of the debarment action is sent to the supplier, the Authority shall issue a final decision on the debarment action, either instituting the debarment or dismissing the action. Before issuing its decision, the Authority shall investigate the facts and weigh the response by the supplier as to why it should not be prohibited from engaging in

any public procurement transaction for a period of time.

- (14) The Authority's final decision shall define the scope and period of debarment.
- (15) The period of debarment shall not be less than one year, nor greater than five years.
- (16) The period of debarment shall be at the discretion of the Authority but shall be reasonably related to the cause of debarment and reasonably consistent with the Authority's decision in other debarment actions.
- (17) A debarment decision takes effect upon issuance of the written decision, and stays in effect until overturned on appeal by a court, or until the expiry date of the debarment period.
- (18) The three-member committee shall promptly notify its decision on debarment to the concerned supplier, the Authority and the procuring organisation or other entity or official that brought the petition for debarment.
- (19) Immediately following the decision to debar a supplier, the Authority shall place on the debarred list the names of all suppliers, that are subject to the debarment. and the duration of their debarment
- (20) The effect of a debarment action shall not be avoided by any scheme to circumvent the debarment.
- (21) The debarment shall also apply to any "successor in interest" which means any entity that is substantially similar to an entity that was previously debarred. A business entity that employs, or is associated with, any partner, member, officer, director, responsible managing officer, or responsible managing employee, or a business entity that was previously debarred shall be presumed to be a successor-in-interest.
- (22) A supplier that has been debarred may appeal against the debarment to the High Court within thirty days of the decision to debar the supplier or contractor.
- (23) Debarment does not relieve the supplier, of responsibility for existing obligations under a public contract.
- (24) Reinstatement of the supplier to participate in public procurements is not automatic after the term of debarment. It is the supplier's responsibility to reapply to the Authority after the period of debarment is over with affirmative declarations that

future problems will not arise.

- (25) A supplier incurring a third or subsequent debarment may be reinstated only if the decision to reinstate is approved by the Cabinet.

PART X. CONTROL OF PUBLIC PROCUREMENT

Required contents
of record of
procurement
proceedings

156. (1) Information to be contained in the record of procurement proceedings, in addition to the information listed in section 36(2) of the Act, shall include:

- (a) The names and titles of the members of the Contracts Committee, if one has been constituted;
- (b) The date and time of arrival of each late bid;
- (c) The price, or the basis for determining the price, and a summary of the other principal terms and conditions of each bid and of the procurement contract, where the procurement proceedings have resulted in a procurement contract;
- (d) A description of the application of any margin of preference pursuant to Regulation 66(5)(d);
- (e) Copies of any conflict of interest declarations and requests for members of the Contracts Committees, employees or consultants of the procuring organisation to be recused from the procurement proceedings pursuant Regulation 142;
- (f) Information on contingent fee arrangements, disclosed pursuant to Regulation 145(2);
- (g) In the procurement of services by means of request for proposals for services, a statement of the grounds and circumstances on which the procuring organisation relied to justify the selection procedure used;
- (h) In domestic procurement proceedings in which the procuring organisation limits participation on the basis of nationality, a statement of the grounds and circumstances relied upon by the procuring organisation for imposing the limitation;
- (i) A summary of any modification of the pre-qualification or bidding documents;
- (j) If a successful bidder in tendering proceedings fails to enter into a procurement contract, a statement of the grounds therefore; and

(k) A summary of final technical discussions in accordance with Regulation 103 (5).

(2) The record shall be in accordance with the relevant GPPA-Form depending on the procurement proceeding (GPPA-Form 001: *Record of Open Tendering*, GPPA-Form 002: *Record of Restricted Tendering*, GPPA-Form 003: *Record of Single-Source Procurement*, GPPA-Form 004: *Record of Request for Quotations*, or GPPA-Form 005: *Record for Request for Proposals*, and bidding documents shall be numbered and records identified as set forth in the Instructions.

Retention of documentation

157. The procuring organisation shall retain documents and records generated in conducting procurement proceedings, including the record of the procurement proceedings, for a period of five years, as specified in section 36(5) of the Act.

Disclosure

158. In disclosure of the record of the procurement proceedings, and in debriefing of bidders, and in other contexts, except when ordered to do so by a competent court, and subject to the conditions of such an order, the procuring organisation shall not disclose bid evaluation reports, except for the summary information referred to in section 36(2) of the Act.

Availability of record to oversight organs

159. The record of the procurement proceeding, as well as all other documents generated in planning and conducting procurement proceedings, and implementing procurement contracts, shall be made available for inspection upon demand by the Authority, Auditor-General, and other oversight organs authorised under the laws of The Gambia.

Record keeping requirements – Contracts Committee

160. (1) Each Contracts Committee shall prepare an annual register of the bids that have been issued for every year in serial numbers.

(2) Each Contracts Committee shall open a special file for every procurement proceeding. In accordance with section 36(1) of the Act, all the documentation relating to the procurement proceeding, including the bid invitation, decision of award, work take-over certificate and any other information on the method of the contractor's completion of his commitment shall be kept in the file. A contract file index shall be established for each contract file.

Reporting requirements – Contracts Committee

161. (1) The Contracts Committees at each procuring organisation shall file a monthly report on status of procurements by using GPPA-Form 200: *Monthly Report on Status of Procurements*.

(2) The Contracts Committees at each procuring organisation shall file an annual report of single-source procurements by using

GPPA-Form 201: Annual Report of Single-Source Procurements.

- Review procedures 162. (1) An application for review must be in writing and addressed to the Accounting Officer or Chief Executive Officer of the procuring organisation.
- (2) A review application is filed on a particular day when it is received by the Authority by close of business on that day.
- (3) A review application may be filed by hand delivery, mail, or commercial carrier. A review application may be filed via facsimile or other electronic means, provided that the necessary equipment is operational at the Authority.
- (4) The review procedures provided for in the Act and in Schedule 3 of these Regulations shall be followed.
- Compensation for aggrieved bidder 163. Any damages payable pursuant to the right of review under section 54 of the Act shall be limited to the cost of preparing and submitting a bid, 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 of action or omission.
- Recording of dispositions 164. Any decision by the procuring organisation, the Authority or by the court under section 54 of the Act and the grounds and circumstances therefore shall be made part of the record of the procurement proceedings.
- Notice of procurement contract award 165. (1) The price level referred to in section 35(1) of the Act is hereby set at 350,000 dalasis.
- (2) The notice referred to in section 35(1) of the Act shall refer to:
- (a) the announcement of the procurement published in the Official Gazette at the commencement of the procurement proceedings pursuant to Regulation 43 or other provisions in these Regulations,
- (b) the subject matter of the procurement,
- (c) the name and address of the successful bidder
- (d) the contract price; and
- (e) shall be written by using GPPA-Form 030: Notice of Award.
- Supervision and checking 166. All staff involved in purchasing shall be subject to supervision. This is to ensure that staff are performing to meet standards and in accordance with procedures and guidelines in force.

SCHEDULES

SCHEDULE 1 A - CONTENTS OF BIDDING DOCUMENTS

(Under Regulation 45)

The bidding documents shall contain:

- (a) Instructions for preparing bids, including:
 - (i) Any descriptive literature bidders are required to submit with their bids;
 - (ii) Any requirement that bidders provide samples, and the number and type of such samples;
 - (iii) Any requirement that bidders view samples to which goods must conform, and the circumstances under which such requirements would be waived;
 - (iv) Any requirement that bidders submit a list 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;
 - (v) Any requirement that the bidder should state in the bid the country of origin of the goods, the name of the manufacturer, the brand name, model and catalogue number;
 - (vi) A list of the specific documents that the bidder is required to submit, including a completed Tender Form, a completed price schedule, a completed manufacturers authorisation form (where required), an original bid security, an originally signed copy of the conditions of contract evidencing acceptance of the conditions of contract;
 - (vii) The deadline and place for submission of bids.
 - (viii) In setting the deadline for submission of bids, care should be taken to avoid the number format for dates as this is interpreted differently around the world (for example 4/5/2001 can mean 4 May 2001 in regions of Europe but mean April 5, 2001 in areas that follow the United States convention on dates). To avoid any ambiguity, bid submission deadlines should spell the month and specify local (Banjul/The Gambia) time as shown in the following example: 7 July 2001 at 11.00 A.M. local Banjul time.
- (a) Regarding the place of submission of bids, care must be taken to ensure that an actual physical location is identified. The bidding documents must not state a Post Office box number as the address for submission of bids. The address specified in the bidding documents must provide:
 - Name of the Procuring Organisation;
 - Compound / Plot Number and Street name;
 - District (if appropriate);

- Town / city;
- The Gambia (for international Bids); and
- Telephone and fax number of the Procuring Organisation.

The bidding documents should also specify the room number (if applicable) where bids are to be submitted or the physical location of the bid box in the procuring organisation if this is to be the chosen method of bid submission that the procuring organisation employs.

- (b) The criteria and procedures, in compliance with Regulation 30, relative to the evaluation of the qualifications of bidders and relative to the further demonstration of qualifications pursuant to Regulation 69.
- (c) The requirements as to documentary evidence or other information that must be submitted by suppliers to demonstrate their qualifications.
- (d) The nature and required technical and quality characteristics of the goods, works or services to be procured, in compliance with section 26 of the Act, including, but not limited to:
 - (i) Technical specifications, plans, drawings and designs as appropriate;
 - (ii) The quantity of the goods; any incidental services to be performed;
 - (iii) The location where the works is to be effected or the services are to be provided, and the desired or required time, if any, when the goods are to be delivered, the works is to be effected or the services are to be provided;
 - (iv) Any warranty and maintenance requirements;
 - (v) The tests, standards and methods to be employed to judge the conformity of goods or works with technical specifications provided in bidding documents;
 - (vi) Any requirement that goods, materials, spare parts should be brand new and original.
- (e) The criteria to be used by a procuring organisation in determining the successful bidder, including any margin of preference and its manner of application, and any criteria other than price to be used pursuant to Regulation 66 and the relative weight of such criteria.
- (f) The terms and conditions of the procurement contract, to the extent they are already known to the procuring organisation, and the contract form, if any, 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; whether the prices are fixed or adjustable and the formula therefor.
- (j) The currency or currencies in which the bid price is to be formulated and expressed. In respect of local bids, the price shall be expressed in dalasis and any convertible currency for international bids.
- (k) The language in which bids are to be prepared shall be in English.
- (l) Any requirements of the procuring organisation with respect to the issuer and the nature, form, amount and other principal terms and conditions of any bid security to be provided by suppliers submitting bids, and any such requirements for any security for the performance of the procurement contract to be provided by the winning bidder that enters into the procurement contract, including securities such as labour and materials bonds; when a bid security is required, an indication that withdrawal or modification of the bid after the deadline for submission of bids will result in forfeiture of the bid security amount.
- (m) A statement to the effect that if a bidder wishes to withdraw its bid prior to the deadline for the submission of bids he can do so without forfeiting its bid security.
- (n) The manner, place and deadline for the submission of bids, in compliance with Regulations 51 to 53.
- (o) The means by which suppliers may seek clarifications of the bidding documents, and a statement as to whether the procuring organisation intends, at this stage, to convene a meeting of suppliers.
- (p) The period of time during which bids shall be valid, in compliance with Regulations 58 to 60.
- (q) The place, date and time for the opening of bids, in accordance with Regulation 61
- (r) The procedures to be followed for opening and examining bids.
- (s) The currency that will be used for the purpose of evaluating and comparing bids pursuant to Regulation 67 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.
- (t) References to the Act, the Regulations and other Acts and regulations directly pertinent to the procurement proceedings, provided, however, that the omission of

any such reference shall not constitute grounds for review under section 54 of the Act or give rise to liability on the part of the procuring organisation.

- (u) The name, functional title and address of one or more officers or employees of the procuring organisation who are authorised to communicate directly with and to receive communications directly from bidders in connection with the procurement proceedings, without the intervention of an intermediary.
- (v) Any commitments such as the transfer of technology to be made by the supplier under the procurement contract.
- (w) Notice of the right provided under section 54 of the Act to seek review of an unlawful act or decision of, or procedure followed by, the procuring organisation in relation to the procurement proceedings.
- (x) A statement to the effect that the procuring organisation reserves the right to reject all bids pursuant to section 32(2)(a) of the Act.
- (y) 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 pursuant to Regulation 72 (5).
- (z) Any other requirements established by the procuring organisation in compliance with the Act and the procurement regulations relating to the preparation and submission of bids and to other aspects of the procurement proceedings.

SCHEDULE 1 B – CONTENTS OF REQUESTS FOR PROPOSALS

(Under Regulation 90)

The Requests For Proposals shall contain:

- (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 consultants' preparation of their proposals;
 - (ii) Outline of any transfer of knowledge or training that is required, including details of number of staff to be trained;
 - (iii) The services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys etc.);
 - (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 anticipated date on which the selected bidder shall be expected to commence the assignment and complete it;
 - (v) Details of the services, facilities, equipment, and staff to be provided by the procuring organisation;
- (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) A description of the two-stage process, in the case of a quality and cost base selection procedure;
 - (ii) The details of the financial evaluation, where applicable, including the relative weights for quality and cost in accordance with Regulation 102;
 - (iii) The minimum pass score for quality; and
 - (iv) The details on the public opening of financial proposals, where applicable;
- (d) An estimate of the level of key staff inputs (in staff-months, man-days or number of previous relevant assignments) required of the consultants;
- (e) Requirement that bidders identify the proposed key personnel that will carry out the assignment and that bidders provide the curriculum vitae of each proposed key person, which must be accurate, complete, and signed by an authorised official of the bidder and the individual(s) proposed;
- (f) An indication of minimum work experience, academic achievement, and so forth, expected of key staff;

- (g) Standard formats for the technical and, if applicable, financial proposals;
- (h) The place and deadline for submission of proposals, and the manner in which proposals shall be submitted, including the requirement that the technical proposals and price proposals, if price proposals are submitted at the outset, 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 organisation whether or not it will be submitting a proposal;
- (j) The short list of bidders being invited to submit proposals, and whether or not associations between short-listed consultants are acceptable;
- (k) The period for which the bidders' proposals shall be held valid (normally ninety days from the closing date of submission) and during which:
 - (i) the bidders shall undertake to maintain, without change, the proposed key staff, and shall hold to both the 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 not 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, , such activities would constitute a conflict of interest with the services provided under the assignment;
- (m) A statement indicating –
 - (i) whether or not the consultant's contract and personnel shall be tax-free, or not; and if not,
 - (ii) what the likely tax burden will be or where this information can be obtained; and a statement requiring that the consultant should include in its financial proposal a separate amount clearly identified, to cover taxes;
- (n) Phasing of the assignment, if appropriate; and likelihood of follow-up assignments; and
- (o) Any conditions for subcontracting part of the assignment.

SCHEDULE 2 - PREFERENCES FOR EVALUATION

(Under Regulation 66 (5) (d))

1. Preference for domestically manufactured goods

- (1) If the procuring organisation intends in the evaluation of bids in tendering proceedings, to grant a margin of preference for goods manufactured in The Gambia, then the bidding documents shall clearly indicate the preference to be granted to goods manufactured in The Gambia and the information required to establish the eligibility of a bid for such preference. The nationality of the manufacturer or supplier shall not be a condition for such eligibility. The methods and stages set forth hereunder shall be followed in the evaluation and comparison of bids.
- (2) For comparison, responsive bids shall be classified in one of the following three groups:
 - (a) Group A: bids offering goods manufactured in The Gambia if the bidder establishes to the satisfaction of the procuring organisation that
 - (i) labour, raw materials and components from within The Gambia will account for more than thirty percent of the EX-Works price of the product offered, and
 - (ii) The production facility in which those goods will be manufactured or assembled has been engaged in manufacturing or assembling such goods at least since the time of bid submission.
 - (b) Group B: all other bids offering goods from within The Gambia.
 - (c) Group C: bids offering the goods from abroad and to be directly imported.
- (3)
 - (a) The EXW price quoted by a Group A bidder shall include all duties and taxes paid or payable on the basic materials or components purchased in the domestic market or imported.
 - (b) The prices quoted by Group B bidders shall include all duties and taxes on components and raw materials.
 - (c) The price quoted by Group A and B bidders shall exclude the sales and similar taxes on the finished product.
 - (d) The price quoted by Group C bidders shall be on CIF or CIP border point or other destination, exclusive of customs duties and other import taxes.

(4) In the initial phase, all evaluated bids in each group shall be compared to determine the lowest evaluated bid in each. The lowest evaluated bids in each group shall then be compared with each other, and,

(a) 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.

(b) If, as a result of the comparison, the lowest evaluated bid is a bid from Group C, then it shall be further compared with the lowest evaluated bid from Group A after adding to the evaluated bid price of the imported goods in Group C bid, for the purpose of this further comparison only, an amount equal to the higher of:

- (i) The amount of duties and other related import charges which a non-exempt importer would have to pay for the importation of the goods offered in such Group C bid; or
- (ii) Fifteen percent of the CIF or CIP bid price of such goods if said duties and charges exceed fifteen percent of such price, and

if the Group A bid in such further comparison is the lowest, it shall be selected for the award; if not, the lowest evaluated bid from Group C, as determined from the comparison under paragraph (a) shall be selected.

(5) 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 (and if customs duties are excluded from the bid prices, and the price of imported goods quoted is on a CIF or CIP basis),

- (a) the preference margin shall not be applied to the whole package, but only to the locally-manufactured equipment within the package.
- (b) Equipment offered from abroad shall be quoted CIF or CIP and equipment offered locally EX-Works (excluding sales tax and similar taxes); all other components, such as design, works, installation, and supervision, shall be quoted separately.
- (c) Bids should not be classified into groups A, B, or C.
- (d) In the comparison of bids, only the CIF or CIP price in each bid of the equipment offered from outside The Gambia shall be increased by the applicable duty and other taxes payable by a non-exempt importer or fifteen percent whichever is less.
- (e) If duties vary from item to item within a package, the appropriate tariff for each piece of equipment shall apply. No preference shall be applied for any associated services or works included in the package.

2. Preference for domestic contractors

- (1) For contracts for works to be awarded on the basis of tendering, procuring organisations may grant a margin of preference of 7.5 percent to domestic contractors subject to the following provisions:
 - (a) Contractors applying for a margin of preference shall be required to provide, as part of the data for qualification at the pre-qualification stage and/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. 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.
 - (b) After bids have been received and reviewed by the procuring organisation, responsive bids shall be classified into the following groups:
 - (i) Group A: bids offered by domestic contractors eligible for the preference;
 - (ii) Group B: bids offered by other contractors.
- (2) For the purpose of evaluation and comparison of bids, an amount equal to 7.5 percent of the bid amount shall be added to bids received from contractors in Group B.

SCHEDULE 3 – REVIEW PROCEDURES

(Under Regulation 162(4))

1. Required contents of application for review

- (1) An application for review under Part IX of the Act shall be in writing and signed by the applicant or its representative and shall:
 - (a) Include the name, address, and telephone and facsimile numbers of the applicant;
 - (b) Identify the procuring organisation and the solicitation and/or contract number;
 - (c) Set forth a detailed statement of the legal and factual grounds of the application for review including copies of relevant documents;
 - (d) Set forth all information establishing that the applicant is, for the purpose of filing an application for review, an actual or prospective bidder whose direct economic interest would be affected by the award of a contract or by the failure to award a contract;
 - (e) Set forth all information establishing the timeliness of the application for review;
 - (f) Specifically request a ruling and state the form of relief requested;
 - (g) In addition, an application for review may request:
 - (i) special measures for handling proprietary commercial or other confidential information;
 - (ii) specific documents, explaining the relevancy of the documents to the grounds underlying the application for review; and
 - (iii) 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 organisation not later than 2 working days after the application for review is filed.
- (3) If the applicant believes that the application for review contains certain confidential information that should be withheld from the public, a statement advising of this fact must be on the front page of the submission, and on each page where the information appears. The applicant must file a redacted copy of the application for review which omits the information with the procuring organisation within 2 working days after the application for review is filed..

2. Time Periods and Decisions on Applications for Review

- (1) An application for review based upon alleged improprieties in a solicitation which are apparent prior to bid opening shall be filed prior to bid opening.
- (2) Applications for review other than those covered by sub-regulation (1) shall be filed not later than fourteen working days after the basis of application for review is known or should have been known, whichever is earlier.
- (3) If a timely application for review was previously filed, any subsequent application for review filed within seven working days of actual or constructive knowledge of initial adverse action by the procuring organisation shall be considered.
- (4) The procuring organisation shall, in accordance with 55 (3) of the Act, render a decision within ten working days of the submission of the application for review

3. Review by the Authority

An application for review may be submitted to the Authority, for disposition in accordance with section 55(4) of the Act, in the following circumstances.

- (a) in the form of an appeal by the complaining bidder against a decision by the head of the procuring organisation, provided that the appeal is submitted within ten working days of the date of the decision;
- (b) where the head of a procuring organisation fails to render a decision within the required time frame, provided that the application for review is filed within ten working days of the expiry of the time for the decision by the head of the procuring organisation referred to in sub-regulation (3) of this Schedule;
- (c) in the case of an application for review submitted in the first instance to the Authority, if the procurement has already entered into force, the application shall not be entertained unless it is submitted to the Authority within ten working days of when the bidder submitting it became aware of the circumstances giving rise to the complaint or of when that bidder should have become aware of those circumstances, whichever is earlier.

4. Notice of application for review

- (1) The procuring organisation shall immediately give notice of the application for review to all bidders with the nature of the allegations set forth in the application for review.
- (2) If an application for review is filed with the Authority, the Authority shall notify the procuring organisation by telephone, fax or electronic mail within 1 day after the filing of an application and, unless the application for review is dismissed, shall promptly send a written confirmation to the procuring organisation and an acknowledgement to the applicant.

5. Dismissal of Application For Review

An application for review may be dismissed for:

- (a) Failure to comply with any of the requirements of this Schedule except for the items in sub-regulation (1)(g) and sub-regulation (2) of regulation 1 of this Schedule where the procuring organisation has actual knowledge of the basis of the application for review, or the procuring organisation was not prejudiced by the applicant'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 before the procuring organisation or Authority;
- (e) Concerning contract administration rather than contract award;
- (f) Challenging an affirmative determination of qualifications;

6. Comments by procuring organisation on application for review by the Authority

- (1) Where an application is filed with the Authority, the procuring organisation, in consultation with the Contracts Committee, shall provide comments on the application within seven working days after being informed, by phone or otherwise, of the filing of the application for review with the Authority.
- (2) The comments of the procuring organisation shall include a statement of the relevant facts, including a best estimate of the contract value, an assessment of the allegations in the application for review memorandum of law, and a list of all documents relevant to the procurement proceedings.
- (3) The procuring organisation may, if it feels that there are grounds for so doing, file a request for dismissal before filing a report required under sub-regulation (1).
- (4) Subject to special measures issued in the application for review, the procuring organisation shall simultaneously furnish a copy of its comments on the application for review to the applicant, and any interveners within 1 day of the submission of its comments to the Authority.
- (5) The applicant shall be given an opportunity to comment on the comments of the procuring organisation on the application for review submitted to the Authority.
- (6) The applicant may submit to the Authority comments on the procuring organisation's comments on the application for review within two working days after receipt by the applicant of the procuring organisation's comments, and also provide the procuring organisation and other participating parties with copies of the applicant's comments.

7. Disclosure by procuring organisation

- (1) The procuring organisation shall promptly make available to the Authority any information and documentation that the Authority may request, including but limited to:
 - (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.

In appropriate cases, the procuring organisation may request that the applicant produce relevant documents, or portions of documents, that are not in the procuring organisation's possession.

- (2) Upon receipt of the procuring organisation's comments, the applicant may request the procuring organisation to provide documents, at the applicant's expense, required by the applicant effectively to prosecute its application for review.
- (3) Where, under a special measure to protect confidential information pursuant to sub-regulation (1)(g)(i) of regulation 1 of this Schedule, or pursuant to the obligation of the procuring organisation to protect the confidential information of competing bidders, documents are withheld from the applicant in accordance with this part, the procuring organisation shall provide documents adequate to inform the applicant of the basis of the procuring organisation's position.
- (4) The procuring organisation shall respond promptly to a request pursuant to sub-regulation (2) and shall provide a list of the documents that the procuring organisation has released to the applicant, and of the documents that the procuring organisation intends to withhold from the applicant and the reasons for the proposed withholding. A copy of that list shall be provided promptly to the applicant. Any objection to the scope of the procuring organisation's proposed disclosure or nondisclosure of documents must be filed within two working days of receipt of the list.
- (5) Upon the request of the applicant, the Authority shall decide whether the procuring organisation must provide any withheld documents, or portions of documents, and whether this should be done under a special measure to protect confidentiality.

- (6) The Authority may request or permit the submission of additional statements by the parties and by other persons not participating in the application for review as may be necessary for the fair resolution of the application for review.

8. Expeditious delivery of communications

All communications related to the application for review shall be sent by means reasonably calculated to effect expeditious delivery.

9. Special measures for confidentiality

- (1) At the request of a party or on its own initiative, the Authority may apply special measures controlling the treatment of proprietary, confidential, or other information the release of which could result in a competitive advantage to one or more firms. It is the responsibility of applicant to request that a special measure be applied and to apply in a timely fashion for access to information in a controlled manner under the special measures.
- (2) If no special measures have been applied, the procuring organisation may withhold from the parties those portions of its report which would ordinarily be subject to special measures. The Authority shall review *in camera* all information not released to the parties.
- (3) Any violation of the terms of a special measure may result in the imposition of such sanctions as the Authority deems appropriate, including referral to appropriate professional disciplinary bodies.

10. Hearings

- (1) At the request of a party or on its own initiative, the Authority may conduct a hearing in connection with an application for review.
- (2) Hearings generally will be conducted as soon as practicable after receipt by the parties of the procuring organisation comments and relevant documents.
- (3) All parties participating in the application for review shall be invited to attend the hearing. The Authority may restrict attendance during all or part of the proceeding.
- (4) Hearings shall normally be recorded and/or transcribed. If a recording and/or transcript is made, any party may obtain copies at its own expense.

11. Remedies

In determining the appropriate remedies pursuant to section 55(6) of the Act, the Authority may consider all circumstances surrounding the procurement or proposed procurement including the seriousness of the procurement deficiency, the degree of prejudice to other parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the Government, the urgency of the procurement, and the impact of the remedies on the procuring organisation's mission.

12. Notice to the Authority of action taken

The procuring organisation shall promptly notify the Authority of the action taken by the procuring organisation in response to the decision of the Authority.

13. Distribution of decisions

- (1) Unless it contains information subject to special measures, a copy of a decision by the Authority shall be provided to the applicant, any interveners, and the head of the procuring organisation. A copy of a decision containing information subject to special measures shall be provided only to the procuring organisation and to individuals granted access to the information pursuant to the special measures. A public version omitting the information subject to special measures shall be prepared wherever possible.
- (2) Decisions on applications for review shall be made available to the parties by the Authority.

DATED THIS 30th DAY OF JUNE 2003

**HABIB A.O. JENG
DIRECTOR GENERAL**