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STATUTORY INSTRUMENTS.

2003 No. 70.

THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS REGULATIONS, 2003.

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STATUTORY INSTRUMENTS.

2003 No. 70.

The Public Procurement and Disposal of Public Assets Regulations, 2003.

(Made under section 96 of the Public Procurement and Disposal of Public Assets Act, 2003, Act No 1 of 2003).

In exercise of the powers conferred upon the Minister responsible for finance by section 96 of the Public Procurement and Disposal of Public Assets Act, these Regulations are made, this 5th day of September, 2003.

Part I-Regulatory Framework

Division I-Preliminary.

1. These Regulations may be cited as the Public Procurement and Disposal of Public Assets Regulations, 2003.

2. Subject to the provisions of the Act, these Regulations shall apply to all public procurement and disposal activities.

3. (1) A dispute under the Act and these Regulations relating to the application of the Act or the Regulations shall be submitted in writing to the Authority by the accounting officer or Chief Executive Officer of the procuring and disposing entity within fifteen working days from the date the entity first became aware of the circumstances giving rise to the dispute.

(2) The submission in sub-regulation (1) shall include-

(a) the full details of the procuring and disposing entity, including its legal status and a copy of the legislation or other document by which it is established or governed;

(b) full details of the entity's funding, including the source and amount of its funds and any legislation, document or other agreement applicable to the funding;

(c) a clear statement of which aspect of the Act or Regulations is disputed, including-

(i) the status of the entity as a procuring and disposing entity; or

(ii) the status of the funding as public funds; and

(d) any other relevant information.

(3) The Authority shall issue its decision in writing within ten working days from receipt of the dispute.

(4) The decision shall indicate-

(a) whether or not the Act and Regulations apply to the procurement and disposal activities of the entity, giving reasons; and

(b) if the Act and Regulations apply to only a part of the procurement and disposal activities of the entity, the part to which they apply, including a clear definition of the funding, activity or expenditure which is subject to the Act and Regulations.

4. In these Regulations, unless the context otherwise requires-

"accounting officer" means the accounting officer defined in section 3 of the Act;

"Act" means the Public Procurement and Disposal of Public Assets Act, 2003;

"Authority" means the Public Procurement and Disposal of Public Assets Authority established by section 5 of the Act;

"Board" means the Board of Directors of the Authority established by section 10 of the Act;

"competent authority" means a government office which has the mandate to perform a specified function;

"consultancy service" means a service of an intellectual or advisory nature, provided by a practitioner who is skilled and qualified in a particular field or profession and includes, but is not limited to, engineering design or supervision, accountancy, auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice and assistance with institutional reforms;

"contracts committee" is the committee provided for under sections 27 and 28 of the Act;

"contract management" means the management of a contract including, but not limited to, performance and compliance with the terms and conditions of the awarded contract by the provider and the procuring and disposing entity;

"currency point" has the meaning assigned to it in the First Schedule to the Act;

"day" means any day of the week, except Saturday, Sunday and public holidays;

"framework contract" means a contractual arrangement which allows the procuring and disposing entity to procure works, services or supplies that are needed continuously or repeatedly at an agreed price over a period of time, through the placement of a number of orders;

"guidelines" means directives issued by the Authority under section 97 of the Act;

"INCOTERMS" means international commercial terms issued by the International Chamber of Commerce;

"non-consultancy service" means a service of a skilled or non-skilled nature, which is not a consultancy service, and includes, but is not limited to, cleaning, security and maintenance and repair services;

"public asset" means any property owned by the Government of Uganda, tangible and intangible, including but not limited to physical property, land, shares or proprietary rights;

"public officer" means any officer employed in the public service, and includes an officer employed in a statutory body, a department of the central government, local government and any other body established by government to carry out public functions;

"record" means any document relating to any stage of a procurement or disposal process and shall be the original document, unless otherwise stated in writing by the Authority;

"registered provider" means a provider registered by the Authority in accordance with the Act;

"resident provider" means a provider registered in Uganda who is not a national provider;

"specification" means the description of an object of procurement or disposal in accordance with national and international standards adopted and approved by the Authority after consultation with the National Bureau of Standards or other appropriate trade associations and professions, which shall be mandatory in all bidding documents;

"statement of requirements" means a document that contains a full and complete description of the requirement that is the subject of the procurement or disposal;

"third party procurement provider" means a provider pre-qualified by the Authority and contracted independently by a procuring and disposing entity on a competitive basis to offer specific services which shall in each instance be defined by the procuring and disposing entity.

5. (1) Where an international agreement requires a procuring and disposing entity to use an alternative procurement or disposal method, the entity shall inform the Authority in writing with supporting documents, including a copy of the international agreement embodying the obligation.

(2) The Authority shall issue its opinion within fifteen working days from receipt of an application made under sub-regulation (1).

(3) Where an international agreement contains provisions favourable to a national or resident provider, a procuring and disposing entity shall bring these provisions to their attention through a notice in a local newspaper of wide circulation, and shall also detail the favourable terms in the solicitation documents.

Division II-The Public Procurement and Disposal of Public Assets Authority.

6. In the exercise of its functions under the Act, the Authority shall undertake procurement and disposal audits, inspections and investigations and shall-

(a) analyse procurement and disposal performance data and reports from a procuring and disposing entity;

(b) analyse information and data received from providers;

(c) consider all deviations requested by a procuring and disposing entity to the use of-

(i) the basic procurement or disposal rules or methods by the issue of deviations in accordance with regulation 340;

- (ii) the solicitation documents in accordance with regulation 129; and
- (iii) any provisions of these Regulations;

prior to their use or issue;

(d) consider all requests for accreditation of an alternative procurement or disposal system in accordance with regulation 342; and

(e) investigate the following-

(i) the conduct or performance of providers of works, services and supplies;

(ii) the conduct or performance of procuring and disposing entities and their subsidiary bodies, including the conduct of procurement proceedings, procedure for contracts placement or the management of awarded contracts;

(iii) compliance with the use of guidelines, solicitation documents and specification standards issued by the Authority; and

(iv) any breach, wrongdoing, mismanagement or collusion that has been alleged, reported or proven against any procuring and disposing entity or provider.

7. (1) The Authority shall avail the documents listed in the Third, Fourth, Fifth, Sixth and Seventh Schedules to a procuring and disposing entity in both paper and electronic form.

(2) The standard solicitation documents issued by the Authority shall include, where appropriate-

(a) instructions to bidders;

(b) a bid data sheet;

(c) evaluation qualification criteria;

(d) bidding forms;

(e) a statement of requirements;

(f) general conditions of contract or a statement of the general conditions of contract that will apply;

(g) special conditions of contract; and

(h) contract forms or a statement of the contract form that will apply.

8. (1) The Authority shall obtain the approval of the Attorney General to the standard bidding documents prior to their issue for use by a procuring and disposing entity.

(2) The Authority, in consultation with the Attorney General, shall determine the procedure for the review and approval of alternative standard bidding documents, where requested by a procuring and disposing entity in accordance with regulation 129.

9. (1) The Authority shall-

(a) organise and maintain a system for the publication of data on public procurement and disposal opportunities, contract awards and other information of public interest as may be determined by the Authority from time-to-time;

(b) ensure that the system for publication of a bidding opportunity, and the results of public procurement proceedings, take into account the principle of the efficient and economic use of the media; and

(c) ensure that a bid notice is widely disseminated to the general public through a local newspaper of wide circulation or any other appropriate information medium.

(2) The Authority shall issue guidelines to procuring and disposing entities detailing the procedures and other cost arrangements agreed with local and international newspapers and publications where applicable.

(3) The Authority shall compile a database for providers of works, services and supplies, which shall be systematically maintained and made accessible to the public for ease of reference.

(4) The Authority shall determine, introduce, develop, maintain and update a database of information, including staff responsible for procurement and disposal in a procuring and disposing entity, a procurement and disposal record of each procuring and disposing entity, assets sold to public officers, trends in public procurement and disposal, procurement budgets and disbursement patterns.

10. (1) The Authority shall position a notice board at a location, within its premises, which is freely accessible to members of the public.

(2) The notice board shall display the following information-

(a) a list of documents comprising current legislation on public procurement and disposal, including but not limited to the Act, these Regulations and guidelines;

(b) a list of standard forms issued by the Authority;

(c) a list of solicitation documents issued by the Authority;

(d) a list of specification standards;

(e) a list of registered providers;

- (f) a list of suspended providers;
- (g) a list of common user items;
- (h) a list of training courses available;
- (i) a list of training institutions from which accredited training is available;
- (j) information on registration procedures and procedures for updating registrations; and
- (k) any other information which may be of interest to the public.

(3) The Authority shall create and maintain a website which shall have the information listed in subregulation (2).

(4) The procedures relating to access and use of the Authority's website by a procuring and disposing entity shall be detailed and issued in the guidelines.

11. In carrying out its capacity-building functions under the Act, the Authority shall-

(a) set training standards, competence levels, certification requirements and professional development paths in consultation with the competent authority in respect of staff employed in procurement and disposal discipline within the public sector;

(b) develop and maintain an operational plan on capacity building, both for institutional and human resource development;

(c) develop, establish and maintain institutional relationships, alliances or agreements with-

(i) academic or training entities with direct or related interest in public sector procurement and disposal; and

(ii) professional, research, charitable or any other entity having a direct or related interest in public sector procurement and disposal including, but not limited to, ethical conduct, professional and personal development; and

(d) undertake surveys, investigations, reviews or any other related activity nationally or internationally to meet the objectives of the Authority, and in furtherance of best practices to enhance and develop standards of procurement and disposal in Uganda.

12. (1) The Authority shall investigate any public procurement or disposal process where a breach, wrong doing, mismanagement or collusion has been alleged or reported against a procuring and disposing entity or provider.

(2) Upon conclusion of an investigation of a procuring and disposing entity, the Authority shall produce a written report detailing its findings and recommendations, if any, to the competent authority.

(3) The recommendations of the Authority referred to in subregulation (2) may include one or more of the following-

- (a) suspension of the officer concerned with the procurement or disposal process in question;
- (b) replacement of the head or member of a procurement and disposal unit;
- (c) replacement of the chairperson or selected member of the contracts committee;
- (d) disciplining of the accounting officer;
- (e) transferring the procurement and disposal function of a procuring and disposing entity to a third party procurement provider or any other procuring and disposing entity;
- (f) withholding the funds of a procuring and disposing entity which continuously contravenes the Act, these Regulations or the guidelines made under the Act.

(4) In this regulation, competent authority shall be-

- (a) in respect of recommendations in subregulation (3)(a), (3)(b) and (3)(c), the accounting officer;
- (b) in respect of subregulation (3)(d), the head of the Public Service; and
- (c) in respect of subregulation (3)(e) and (3)(f), the Permanent Secretary or the Secretary to the Treasury.

(5) The competent authority shall respond in writing to the Authority's report within a period of ten working days from the date of receipt of the report of the Authority, indicating the action that will be taken or any disagreement with the report or both.

13. (1) The Authority shall cooperate and work closely with any other authority responsible for investigation and for that purpose may establish a mechanism for sharing information and methodologies with other authorities.

(2) In undertaking any investigation or administrative review, the Authority shall use a method or documentation, which is consistent with and satisfy the standards of those used by other government bodies responsible for investigations.

(3) The Authority shall initiate or participate in existing periodic joint meetings with other oversight agencies, in order to exercise its supervisory and monitoring role for the public procurement and disposal system.

(4) The Authority shall contribute agenda items regarding public procurement and disposal issues and, unless otherwise agreed, shall be responsible for follow-up and conclusion on procurement and disposal matters.

14. (1) Where a competent authority disagrees with the findings or the recommendations of the Authority, the competent authority shall state-

(a) the findings or recommendations of the report with which it disagrees;

(b) the reasons for the disagreement; and

(c) any alternative recommendations or measures proposed.

(2) Upon receipt of a response stating a disagreement, the Authority shall, within a period of ten working days, call a meeting with the competent authority seeking to resolve the disagreement.

15. (1) Where the Authority recommends the transfer of a procurement and disposal function from a procuring and disposing entity, it shall recommend-

(a) the body to which the function should be transferred;

(b) the functions and powers which should be transferred; and

(c) the period of time for which the transfer is recommended or the conditions which need to be fulfilled before the functions and powers are returned to a procuring and disposing entity.

(2) A recommendation made under subregulation (1) shall ensure that independence of functions and powers is maintained.

(3) An accounting officer shall put in place appropriate arrangements for the transfer, which shall be confirmed in writing and which shall state-

(a) the functions or powers to be transferred;

(b) the mechanisms for implementation of the procurement and disposal requirement;

(c) reporting and monitoring procedures and responsibilities;

(d) any limitations or exceptions to the transfer; and

(e) any costs to be paid.

(4) A transfer to a third party procurement or disposal provider shall be in accordance with regulations 81 and 82.

16. The Authority may contract a third party to carry out procurement audits, investigations and inspections.

17. The Executive Director shall prepare an annual management plan which shall include-

(a) business and development objectives for the following year;

(b) a detailed plan describing how the business development objectives are to be achieved; and

(c) a budget for implementation of the detailed plan.

18. (1) The Authority shall be responsible for contract management, once a contract is placed.

(2) The procurement and disposal activities of the Authority shall be audited by an independent auditor.

19. (1) In the absence of the Chairperson, the Executive Director shall call the meetings and the members present shall elect, from among themselves, an acting Chairperson.

(2) A notice of a Board meeting shall be given in writing to each member at least five days before the date of the meeting.

(3) A notice of a meeting shall contain, as a minimum, details of the time and date of the meeting and the proposed business to be transacted at the meeting.

(4) A special meeting of the Board may be called, giving notice of not less than five days, upon written request of at least two members addressed to the Chairperson.

(5) The Chairperson in consultation with the Secretary and the Executive Director shall be responsible for the preparation and distribution of the agenda.

(6) The Board shall appoint a non-voting secretary, who shall be responsible for the servicing of the board, including the preparation of the agenda, minutes of the previous meeting of the board and relevant discussion papers or proposals.

(7) Board papers shall be separated into information papers and decision papers.

(8) The minutes of each Board meeting shall be clearly and concisely taken with full regard to their potential use as legal documents.

(9) The minutes of a Board meeting shall be signed by the Chairperson and the Secretary at the next meeting of the Board and shall then be adopted as a true record of the preceding meeting.

(10) A decision of the Board may be taken without a formal meeting but by circulation of the relevant papers among the members of the board and the expression of the views of the majority of members in writing, but any member shall be entitled to request that the decision be deferred and that the matter on which a decision is sought be considered at a formal meeting of the Board.

(11) A member, on receiving the agenda of the meeting of the Board, or on notification of a matter being brought to the attention of the Board shall sign the standard declaration form specified in the Second Schedule to the Act, indicating whether he or she has, or intends to acquire, a direct or indirect personal interest in any agenda item or in a specific matter requiring the Board's consideration and decision.

(12) A member with an interest shall not participate in the deliberations or decision-making process of the Board in relation to the agenda item or the matter in which he or she has an interest.

(13) Where there is no quorum for the continuation of a meeting because of the exclusion of a member from the deliberations on a matter in which he or she has declared a personal interest, the other members present shall postpone the consideration of the matter until a quorum, without that member, is realised.

20. (1) In the exercise of its powers under subsection (2) of section 5 of the Act, the Authority shall only acquire or dispose of assets or borrow money on the authority of a written resolution of the Board, using the format provided in the First Schedule to these Regulations.

(2) The resolution in subregulation (1) shall not be valid unless it is signed and sealed by the Chairperson of the board and the executive director.

21. The executive director shall be the custodian of the seal of the Authority.

Division III-Registration of Providers and Preference and Reservation.

22. (1) The Authority shall establish and maintain a register of providers of works, services and supplies.

(2) The purpose of the register of providers is to offer to a procuring and disposing entity-

(a) reliable and up-to-date information on the competencies of existing providers in the market, and the structure of the market for various works, services and supplies; and

(b) a record of current and past contracts and performance by a provider.

(3) A provider shall not be required to register with the Authority as a condition of participation in any procurement or disposal process except where a provider wishes to benefit from a reservation or preference scheme.

(4) The register of providers shall not be a pre-qualification list and shall offer no entitlement to a registered provider.

(5) The register of providers shall be reviewed and updated on a regular basis.

23. (1) The procedure which shall govern registration in the register of providers shall be in accordance with guidelines issued by the Authority.

(2) The Authority shall-

- (a) from time-to-time, publish a notice advertising the registration scheme;
- (b) state in the notice the procedure and criteria for registration; and
- (c) make application for registration forms available for collection by a provider.

(3) The registration documents issued by the Authority to a provider shall fully describe the rules, procedures and process of registration, classification and disciplining of providers.

(4) Registration shall be open to all qualified providers and shall be continuous.

24. (1) A registered provider shall be classified by-

- (a) physical and financial capacity (size);
- (b) core operational area (disciplines or codes);
- (c) performance track record (record);
- (d) certificate of compliance with applicable national, regional or international quality standards in the relevant disciplines or codes (certification); and
- (e) ownership or control (ownership).

(2) The Authority's register of providers shall indicate-

- (a) the qualifications of a provider;
- (b) the physical and financial capacity of a provider;
- (c) the core operational area and disciplines of a provider;
- (d) the provider's performance record, if any;
- (e) the ownership and control of providers, including names of directors; and
- (f) whether a provider is suspended, or has previously been suspended in accordance with regulation 351.

25. (1) The Authority shall inform each applicant for registration, in writing, of the results of the application and, if registered, the registration reference.

(2) An applicant whose application for registration is rejected shall be informed of the Authority's decision, including the reasons for the decision, within twenty-one working days from the date of receipt of the application for registration as a provider.

(3) An applicant whose application for registration is rejected may resubmit an application for registration as a provider.

26. (1) A registered provider shall inform the Authority of any material change in the circumstances or details relating to the registration within ten working days of the change.

(2) Where a provider fails to notify the Authority of any change, the Authority may delete that provider from the list of registered providers and notify the provider of the fact of their de-registration.

(3) A deregistered provider may submit a new application for registration.

27. (1) A procuring and disposing entity may use the Authority's register of providers in the preparation of a shortlist in accordance with the Act and these Regulations.

(2) The selection of a provider from the register of providers maintained by the Authority shall not relieve a procuring and disposing entity of the need to pre-qualify or post-qualify a provider, where appropriate, in accordance with regulations 120 and 218 respectively.

28. (1) The procurement of works, services or supplies may be subject to a preference scheme consistent with the Government economic and social policies, or with international obligations.

(2) A preference scheme shall have as its objective the development of local businesses, giving local businesses a competitive advantage when competing for public procurement contracts, by adding a specified margin to the evaluated price of non-local bidders during the financial comparison stage of the evaluation.

(3) A preference scheme shall-

(a) only be determined and developed by a competent authority;

(b) be based only on the bid price;

(c) apply to all competitive procurement methods;

(d) clearly state-

(i) the target group of providers and eligibility requirements; and

(ii) the period of the scheme and arrangements for phasing in and out;

(e) contain quantifiable objectives to be achieved and benchmarks to assess progress;

(f) compare the estimated costs of implementing the scheme against the costs of implementing the relevant procurement activities without the preference scheme; and

(g) be non-discriminatory in terms of the capacity, specialisation and ownership classifications of eligible providers.

(4) Eligibility for participation in a preference scheme shall require certification by a competent authority.

(5) The band or level of preference to be accorded to a provider shall-

(a) be related to the percentage of a procurement activity to be undertaken as local inputs;

(b) be proportional to the percentage of the contract to be actually executed by a national or resident provider and a national or resident sub-contractor; and

(c) take into account the complexity of a procurement activity to be assigned to a national or resident provider in terms of technology transfer, on-the-job training; and

(d) be in accordance with guidelines prescribed by the Authority.

(6) For the purpose of evaluation, comparison and ranking of bids, the applicable percentage preference shall be added to the bids of all bidders not entitled to the preference or the full measure of the preference.

(7) The preference margin shall be clearly stated in the standard bidding documents.

29. (1) A preference scheme shall apply in the following order-

(a) a sole national provider or joint venture or association agreement between national providers;

(b) a joint venture or association agreement between a national provider and a resident provider;

(c) a sole resident provider or joint venture or association agreement between resident providers;

(d) a joint venture or association agreement between a national provider and a foreign provider;

(e) a joint venture or association agreement between a resident provider and a foreign provider; and

(f) a sub-contracting arrangement between a national or resident sub-contractor and a foreign provider.

(2) The preference to be accorded shall be proportional to the percentage of the contract to be actually executed by national or resident providers or sub-contractors.

30. (1) The procurement of works, services and supplies, may be subject to a reservation scheme.

(2) A reservation scheme shall have as its objective the development of a target group and community, by reserving certain public procurement contracts for such groups and communities.

(3) Membership of a target group or community shall be a requirement for eligibility to participate in a reservation scheme.

(4) A reservation scheme shall apply to-

(a) a targeted provider of works and services, both consultancy and non-consultancy; and

(b) a specific disadvantaged community and geographic area that is subject to conflict, calamity or neglect.

(5) A competent authority may determine and develop a reservation scheme.

(6) A reservation scheme shall-

(a) clearly state the target group of providers and eligibility requirements;

(b) clearly state the period of the scheme and arrangements for phasing in and out;

(c) contain quantifiable objectives to be achieved and benchmarks to assess progress;

(d) compare the estimated costs of implementing the scheme against the costs of implementing the relevant procurement activities without the preference scheme;

(e) be non-discriminatory in terms of the capacity, specialisation and ownership classifications of eligible providers; and

(f) be in accordance with the guidelines issued by the Authority.

(7) A procurement under a reservation scheme shall, at all times, be based on-

(a) competition among the eligible providers; and

(b) qualification of a provider to fully satisfy the requirements of each procurement activity.

31. Eligibility for participation in a reservation scheme shall-

- (a) require the provider to register in the register of providers maintained by the Authority;
- (b) be based on the capacity, area of specialisation and ownership classifications obtained at the time of registration with the Authority; and
- (c) require certification by the competent authority.

32. (1) A disposal requirement may be subject to a reservation scheme, where limiting participation on the basis of nationality is necessary or preferable due to-

- (a) end-user restrictions;
- (b) export restrictions;
- (c) national security or public interest issues;
- (d) legal or human rights issues;
- (e) environmental considerations;
- (f) a need to monitor compliance with the conditions of the sale contract; or
- (g) any other reasonable ground.

(2) A procuring and disposing entity shall apply to the Authority in writing for permission to use a reservation scheme for a disposal requirement and shall state in the application-

- (a) the requirement to which the scheme shall apply;
- (b) the reason for limiting participation on the basis of nationality; and
- (c) the nationality which shall be eligible to bid.

(3) The Authority shall issue its decision within ten working days and shall state whether the reservation scheme is approved with or without modifications or is rejected.

33. A procuring and disposing entity shall include details of the reservation scheme it shall apply, in the solicitation documents and invitation notice.

34. (1) A procuring and disposing entity may at any time during a procurement and disposal process carry out a due diligence test on a bidder or a provider.

(2) A due diligence test may cover any area of a provider's operations that a procuring and disposing entity determines requires verification or checking in exercising an obligation of due care in a procurement or disposal process.

(3) A due diligence test may be carried out at any stage of a procurement or disposal process and shall not be confined to the pre- or post-qualification stage or the procedure or content relating to these stages.

(4) The nature and extent of the due diligence test conducted shall be determined by the nature, size and type of the potential contract, the risks associated with non performance of the bidder or provider and the procuring and disposing entity's existing knowledge or past association with the bidder or provider.

35. (1) Unless otherwise specified in the solicitation document, a bidder shall be permitted to submit bids as part of a joint venture, consortium or association.

(2) Where a bidder submits a bid as part of a joint venture, consortium or association, the solicitation or contract document shall state where appropriate-

(a) that a party to a joint venture, consortium or association shall be jointly and severally liable for the performance of the contract;

(b) that a party to a joint venture, consortium or association shall be eligible to participate in the procurement and where one party is deemed to be ineligible, the whole joint venture or association shall be declared ineligible;

(c) that a copy of the joint venture, consortium or association agreement, or the proposed agreement, may be required to be submitted as part of the bid or as a condition of contract effectiveness;

(d) that a member of a joint venture, consortium or association shall nominate a lead member who shall have authority to bind the joint venture, consortium or association and shall at the time of contract award confirm the appointment by submission of a power of attorney to the procuring and disposing entity;

(e) that any bid from a joint venture, consortium or association shall indicate the part of the proposed contract to be performed by each party and each party shall be evaluated or pre- or post-qualified with respect to its contribution only;

(f) that the responsibilities of each party in paragraph (e) shall not be substantially altered without the prior written approval of the procuring and disposing entity; or

(g) that association between short-listed bidders is only permitted with the prior written approval of the procuring and disposing entity.

36. Where sub-contracting of a procurement activity is permitted, the solicitation or contract document shall state where appropriate-

- (a) that the bidder is permitted to subcontract a part of the proposed contract and the limits on sub-contracting;
- (b) that a subcontractor must be eligible, in the same way as the prime contractor;
- (c) the information required in the bid relating to a subcontractor;
- (d) the approval required before entering into a subcontract, or before amending a subcontract agreement or the proportion of work allocated to a subcontractor, if not specified in the bid;
- (e) that the approval is required before substantially changing any other condition, agreement or details of the bid relating to subcontracting;
- (f) that subcontracting shall not relieve the prime provider of any of its obligations, duties, responsibilities or liabilities under the contract;
- (g) the obligations or conditions imposed on a provider, which the provider shall also impose on a subcontractor, including an undertaking of confidentiality or a requirement to maintain adequate liability insurance;
- (h) that a provider shall not impose onerous obligations or conditions on a subcontractor, including 'pay when paid' clauses; and
- (i) the manner in which a preference scheme shall be applied to a national or resident subcontractor.

Part II-Procuring and Disposing entities.

Division I-Preliminary.

37. (1) The accounting officer, the contracts committee, the procurement and disposal unit and the user department of a procuring and disposing entity shall each act independently in relation to their respective functions and powers.

(2) None of the parties referred to in sub-regulation (1) shall seek to influence the decisions or activities of the others, except as permitted under the Act or these Regulations.

(3) Every party referred to in sub-regulation (1) shall ensure that its duty is properly and professionally performed in accordance with the legal requirements and in order to guarantee independence of action with the objective of eliminating corrupt or fraudulent practices.

38. (1) A procuring and disposing entity shall ensure that a procurement and disposal notice is published or displayed as prescribed in Parts IV, V and VII of these Regulations-

- (a) using the prescribed format;
- (b) in all appropriate media;
- (c) at the prescribed time; and
- (d) for the prescribed period of time.

(2) The procedure and cost arrangements agreed with a local or international newspaper or publication by the Authority shall be as issued in guidelines.

39. (1) A procuring and disposing entity shall position a notice board at a location within its premises, which is freely accessible to members of the public.

(2) The notice board shall display the following for public information-

- (a) a pre-qualification notice;
- (b) a bid notice;
- (c) notices of a shortlist;
- (d) a bid opening record;
- (e) a notice of best evaluated bidder;
- (f) a notice of award of contract, for both procurement and disposal;
- (g) a monthly report of all micro procurement transactions;
- (h) a notification of public auctions; and
- (i) a public invitation notice under disposal by public bidding.

(3) Where a procuring and disposing entity has a website, it may post the notice on its website in addition to displaying it on the notice board.

(4) The use of a notice board or website shall not relieve a procuring and disposing entity of its responsibility to publish a relevant notice publicly in the media or on the Authority's website where provided for in the Act or these Regulations.

40. A procuring and disposing entity shall submit a report required by the Authority under the Act and these Regulations in accordance with the Fifth Schedule of these Regulations.

Division II-Accounting Officer.

41. An accounting officer shall have the overall responsibility for the successful execution of the procurement, disposal and contract management processes in the procuring and disposing entity and shall-

- (a) certify the availability of funds prior to the commencement of any procurement activities;
- (b) implement the recommendations of the Authority;
- (c) submit all reports as required under the Act, these Regulations and as may be required by the Authority; and
- (d) submit applications to the Authority, for any deviations from procedures in the Act.

42. (1) Where an accounting officer disagrees with a contracts committee on any decision pertaining to the application or interpretation of any procurement or disposal method, process or practice under these Regulations, the accounting officer may-

- (a) return the decision to the contracts committee for review; or
- (b) request for an independent review by the Authority.

(2) The accounting officer shall state the reasons for the disagreement in writing.

(3) The contracts committee may request for an independent review by the Authority in relation to any disagreement with the accounting officer.

43. (1) Where a procuring and disposing entity has a board of directors or a governing body by whatever name called, the accounting officer shall work in consultation with the board of directors or the governing body in the execution of his or her functions and powers under these Regulations.

(2) A member of the board of directors and governing body of a procuring and disposing entity shall not be a member of a contracts committee and shall not seek to influence a decision of a contracts committee, except as permitted under the Act or these Regulations.

(3) The board of directors or governing body shall approve any appointment to the contracts committee in accordance with regulation 45(3)(b).

Division III-Contracts Committee.

44. The accounting officer shall not be a member of the contracts committee and shall not seek to influence any decision of a contracts committee, except as permitted under the Act or these Regulations.

45. (1) The accounting officer shall appoint a member of a contracts committee in writing, by letter of appointment, using the appropriate standard format prescribed in the Second Schedule to these Regulations.

(2) The accounting officer shall ensure that any appointment to the contracts committee is made from among serving public officers employed on a full time basis with the procuring and disposing entity or an appropriate external body.

(3) The appointment shall be subject to the prior approval of the Secretary to the Treasury using PP Form 220 in the Ninth Schedule to these Regulations.

(4) In assessing a candidate for suitability for appointment to a contracts committee, the accounting officer shall seek to establish a balance of skills and experience among members to ensure that the contracts committee-

(a) has a proven track record of sound judgment;

(b) has an appropriate level of seniority and experience in decision-making;

(c) includes experience in at least one recognised professional discipline;

(d) does not have more than two members from one department;

(e) includes experience in the procuring and disposing entity; and

(f) includes experience in public procurement and disposal.

(5) When reappointing members to a contracts committee, the accounting officer shall consider the need for both continuity and rotation of personnel in the membership of the contracts committee.

(6) The accounting officer may appoint a temporary member of the contracts committee, with the prior approval of the Secretary to the Treasury or the board of directors or governing body, as the case may be, to replace a permanent member who may be absent for a prolonged period.

(7) The accounting officer shall appoint a member of the procuring and disposing entity, who shall not be a member of the procurement and disposal unit, to be the secretary to the contracts committee.

(8) The secretary shall be a voting member of the contracts committee.

46. (1) A person shall be a member of a contracts committee in his or her individual capacity, as distinct from his or her position or designation.

(2) A member of a procurement and disposal unit shall not be appointed a member of a contracts committee.

(3) Where a member of a contracts committee is unable to attend a meeting, he or she shall not nominate an alternate member or proxy.

(4) A temporary member appointed under regulation 45(6) shall be appointed only for the period for which the permanent member is absent.

47. (1) The accounting officer may at any time terminate the appointment of a member of the contracts committee-

(a) for abuse of office;

(b) for corruption;

(c) for incompetence;

(d) for physical or mental incapacity which renders the member incapable of performing his or her duties;

(e) for failure to attend three consecutive scheduled meetings without reasonable grounds;

(f) for conviction of an offence involving moral turpitude;

(g) declared bankrupt by a court of law; or

(h) on any other reasonable ground.

(2) The accounting officer may remove and substitute any member of the contracts committee, prior to the expiry of his or her term of office where it is necessary, in accordance with regulation 45(4), and in particular where-

(a) the structure or status of the procuring entity has changed; or

(b) the post of an incumbent contracts committee member has changed.

(3) Termination of office or removal of a contracts committee member shall be subject to the prior approval of the Secretary to the Treasury.

48. In executing its powers under section 29 of the Act, a contracts committee shall ensure that all decisions meet the basic principles and rules of public procurement and disposal and in particular shall-

(a) approve solicitation documents and any addenda before their issue to bidders and, in particular, authorise and ensure the following components-

(i) the completeness and suitability of the statement of requirements;
(ii) the appropriateness and applicability of the proposed evaluation methodology and criteria contained in the solicitation documents;

(iii) the appropriateness of the type of contract to the procurement requirement;

(iv) the appropriateness of the special conditions of contract proposed for any resulting contract; and

(v) that the bidding period is reasonable, having regard to the complexity of the requirement in accordance with regulations 143(5) and 145;

(b) nominate contracts committee members to attend and witness pre-bid meetings, bid closings, bid openings and contract negotiation meetings;

(c) approve-

(i) the membership of evaluation committees;

(ii) technical, financial or combined evaluation reports;

(iii) the membership and objectives of a negotiation team; and

(iv) the outcome of any negotiations;

(d) approve contract documents in line with the award decision; and

(e) approve contract amendments.

49. (1) The secretary of a contracts committee shall co-ordinate submissions for procurement and disposal requirements from a procurement and disposal unit and user department.

(2) A procurement and disposal unit shall make a submission using the appropriate sections of PP Form 1, 2, 3 or 4 for procurement requirements and DPA Form 101, 102, 103, 104, 105, 106, 107 or 108 for disposal requirements, in the Ninth Schedule to these Regulations.

(3) A submission shall be made in respect of-

(a) the choice of a procurement or disposal method;

(b) pre-qualification and solicitation documents or any addenda before issue;

- (c) a nomination for membership of evaluation and negotiation teams;
- (d) a technical, financial or combined evaluation report;
- (e) a recommendation for award of contract;
- (f) a letter of bid acceptance and contract document;
- (g) a contract amendment; and
- (h) a proposed delegation of authority.

50. (1) A member of a contracts committee, on receiving the agenda of a meeting of a contracts committee, or on notification of a matter being brought to the attention of the contracts committee, shall immediately inform the chairperson and the accounting officer in writing of any item on the agenda or specific matter requiring the contracts committee's consideration and decision, where he or she has, or intends to acquire, a direct or indirect personal interest.

(2) A member with an interest shall not disclose the specific details of the personal interest but shall leave the meeting while the matter is considered and shall not participate in the deliberations or decision-making process of the contracts committee in relation to the item or the matter in which he or she has an interest.

51. (1) The quorum for a meeting of the contracts committee shall be any three members.

(2) A contracts committee shall consider each submission made and, based on the information contained in the forms and the supporting documents submitted, approve or reject the submission made.

(3) A contracts committee may give a conditional approval to a submission, where there is a minor issue to be resolved.

(4) A contracts committee shall give in writing the reasons for rejecting a submission.

(5) Notwithstanding the recommendations of the procurement and disposal unit, a contracts committee shall take an independent decision based on the Act, these Regulations, the guidelines and best practices, and shall act in good faith.

(6) A decision of a contracts committee shall be unanimous or, where unanimity cannot be achieved, shall be by simple majority of the members present.

(7) Where a vote of the contracts committee is tied, the chairperson shall not have a second or casting vote and the submission shall be rejected.

(8) A decision of the contracts committee shall be recorded and communicated to the officer who made the submission, using PP Form 209 in the Ninth Schedule to these Regulations.

52. (1) Where a contracts committee disagrees with a procurement and disposal unit, concerning any decision pertaining to the application or interpretation of procurement method, process or practice under these Regulations, the contracts committee may-

- (a) return the submission to the procurement and disposal unit for review; or
- (b) request for an independent review by the Authority.

(2) The contracts committee shall state the reasons for its disagreement in writing.

(3) A procurement and disposal unit may also request for an independent review by the Authority in relation to any disagreement with the contracts committee.

53. (1) The secretary of the contracts committee shall record the minutes of each contracts committee meeting using PP Form 210, which may be supported by detailed minutes if so required.

(2) The minutes of each contracts committee meeting shall include-

(a) a register of attendance, signed by all members, advisors and observers using PP Form 210, Part 1 indicating whether each member's attendance was for all or only part of the meeting and indicate the items on the agenda in which the members participated;

(b) the code of ethics, signed by all members and other persons attending the meeting using PP Form 210, Part 1; and

(c) a record of the decisions made for each submission considered by the contracts committee using PP Form 210, Part 2, together with details of any conditions to approved submissions, and reasons for the rejected submissions.

(3) A procuring and disposing entity may abbreviate the information contained in Part 2 of PP Form 210 in the Ninth Schedule to these Regulations, provided copies of PP Form 209 with full details or detailed minutes are attached to the form.

(4) The record of each contracts committee meeting shall include the key issues discussed in relation to each submission or item on the agenda, including any advice given by an advisor or any disagreement between members.

54. (1) A contracts committee may co-opt an adviser to assist it in the discharge of its functions.

(2) An advisor shall not take part in the decisions of the contracts committee and shall only attend a part of a meeting which considers the matter on which the advice is required.

(3) A contracts committee shall require a member of a procurement and disposal unit to attend a contracts committee meeting as an advisor to offer clarifications on a submission.

(4) A contracts committee may require any member of a user department, an evaluation committee or a negotiation team to attend a contracts committee meeting as an advisor to offer clarifications on a submission.

(5) An observer to the contracts committee shall be permitted, where the contracts committee and the accounting officer agree, and where they would be acting either on behalf of the procuring and disposing entity or the Authority.

(6) The adviser and observer shall sign the register of attendance in accordance with regulation 53(2)(a).

(7) The observer or adviser to the contracts committee shall not be permitted to vote at the contracts committee meetings.

55. (1) The chairperson of a contracts committee shall preside over the meeting of the contracts committee and, in the chairperson's absence, a member from among those present shall be elected to preside over the meeting.

(2) The chairperson shall be responsible for-

(a) guiding the secretary in drawing up the agenda;

(b) ensuring that the agenda specifies-

(i) the date, time and venue of the contracts committee meeting;

(ii) the submissions to be considered;

(iii) issues to be discussed; and

(iv) any adviser or observer to attend the meeting;

(c) ensuring that-

(i) the performance of the contracts committee is in accordance with all legal requirements, codes of conduct and standards established by the Authority;

(ii) order is maintained and productive work done at all meetings;

(iii) open and participatory debate by members present is possible at all meetings;

(iv) specialist advice is obtained if so required; and

(v) the minutes of the contracts committee meetings are confirmed by members and signed as required.

56. The secretary of a contracts committee shall be responsible for-

(a) liaising with the procurement and disposal unit regarding the timing and need for a contracts committee meeting and submission;

(b) assisting the chairperson in convening meetings and preparing the agenda;

(c) organising and providing the necessary facilities for meetings of the contracts committee;

(d) ensuring that the agenda, submissions and any other documentation are distributed to members of the contracts committee within a reasonable time before any meeting;

(e) recording the minutes of the meetings;

(f) keeping all records of the contracts committee, including, but not limited to agendas, submissions and minutes;

(g) promptly notifying the relevant officials, and in particular the procurement and disposal unit, of the decisions of the contracts committee;

(h) co-ordinating all activities of the contracts committee, including correspondence with the Authority and other bodies;

(i) preparing reports of the contracts committee; and

(j) monitoring the term of membership of contracts committee members and notifying the accounting officer at least two months prior to the expiry of the term of membership.

Division IV-Procurement and Disposal Unit and User Departments.

57. (1) The appropriate levels and grades of a procurement and disposal unit shall be determined by the anticipated-

(a) number of procurement and disposal requirements;

(b) value of procurement and disposal requirements;

(c) complexity of procurement or disposal requirements; and

(d) range of different procurement and disposal methods to be used.

(2) The accounting officer shall inform the Authority of the membership of the procurement and disposal unit and the qualifications of its staff within a period of ten

working days from its establishment or from any change in staff, using PP Form 221, supported by PP Form 222 in the Ninth Schedule to these Regulations.

(3) A member of a procurement and disposal unit shall, upon his or her appointment, sign the Code of Ethical Conduct in Business using PP Form 211 in the Ninth Schedule to these Regulations.

58. A procurement and disposal unit shall have the following responsibilities-

(a) to advise user departments on individual procurement and disposal methods and practices;

(b) to liaise with the secretary of the contracts committee to ensure that submissions are made to the contracts committee on time and in the correct manner and to request additional meetings when required;

(c) to manage pre-bid meetings;

(d) to manage bid closings and bid openings;

(e) to manage the evaluation process;

(f) to monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the awarded contract; and

(g) to report any significant departures from the terms and conditions of an awarded contract to the accounting officer.

59. In the exercise of its functions under the Act and these Regulations, a procurement and disposal unit shall-

(a) advertise bid opportunities;

(b) issue solicitation documents and any amendments;

(c) make recommendations for award of contract to the contracts committee;

(d) inspect the records of user departments relating to contract management; and

(e) require reports from user departments relating to contract management.

60. Every user department shall prepare a work plan for procurement based on the approved budget, which shall be submitted to the procurement and disposal unit for implementation and may seek technical assistance, where necessary.

61. (1) A procurement and disposal unit shall manage the procurement or disposal process up to the point of contract placement.

(2) For each procurement or disposal requirement, a user department shall nominate an official who shall be responsible for liaison with the procurement and disposal unit on all matters relating to that procurement or disposal requirement.

(3) A user department shall inform the procurement and disposal unit of the name of the nominated official who shall, unless otherwise indicated by the user department, be the officer signing as the originating officer on the standard forms for initiation of a procurement and disposal requirement as prescribed by these Regulations.

(4) A user department shall decide whether one officer shall be responsible for liaison with the procurement and disposal unit for all the procurement and disposal requirements of the department or whether a different officer shall be nominated for each requirement.

(5) A user department shall be responsible for contract management, once a contract is placed.

(6) A procurement and disposal unit shall monitor contract management and prepare contract amendments that may be required.

(7) A procurement and disposal unit shall provide a complete copy of the contract to the user department and, where the user department has any reservation or difficulty with the terms or conditions of the contract, it shall be discussed with the procurement and disposal unit.

(8) The user department shall inform the procurement and disposal unit of the name of the official responsible for managing each contract.

(9) The user department shall report any departure from the terms and conditions of the contract to the procurement and disposal unit.

Division V-Delegation of Functions.

62. (1) Subject to the Act and these Regulations, an accounting officer may-

(a) delegate certain procurement and disposal functions of the accounting officer, contracts committee or procurement and disposal unit to-

(i) a sub-division of the procuring and disposing entity in accordance with regulation 71;
or

(ii) a member of staff of the procuring and disposing entity in accordance with regulations 63 or 74 as appropriate; and

(b) contract out certain procurement and disposal functions of the contracts committee, procurement and disposal unit or user departments to-

(i) any other procuring and disposing entity in accordance with regulation 75; or

(ii) a third party procurement or disposal provider in accordance with regulation 81.

(2) For the avoidance of doubt, the delegation of functions shall be within a procuring and disposing entity and contracting out of functions shall be outside of a procuring and disposing entity.

63. (1) An accounting officer may delegate in writing the following functions to a member of staff of the procuring and disposing entity-

(a) certifying the availability of funds prior to the commencement of any procurement or disposal activity;

(b) committing funds prior to contract placement;

(c) communicating award decisions;

(d) ensuring that the implementation of an awarded contract is in accordance with the terms and conditions of the award; and

(e) implementing the recommendations of the Authority.

(2) The Accounting Officer shall remain accountable for all decisions taken under the delegated authority.

64. The Accounting Officer shall not delegate the following powers and functions-

(a) establishment of a contracts committee;

(b) appointment of the members of the contracts committee;

(c) establishment of a procurement and disposal unit;

(d) investigation of a complaint by a bidder; and

(e) submission of reports of findings in respect of the complaints to the Authority.

65. In order to maintain independence of functions, the functions of the Accounting Officer prescribed in regulation 63(1) shall not be delegated to-

(a) a member of a contracts committee or any delegated contracts committee; or

(b) a member of staff of a procurement and disposal unit or any delegated procurement and disposal unit.

66. (1) An accounting officer may, on the recommendation of the contracts committee, delegate any of the procurement or disposal functions of the contracts committee or the procurement and disposal unit to-

(a) a sub-division of the procuring and disposing entity in accordance with regulation 71;
or

(b) a member of staff of the procuring and disposing entity in accordance with regulation 74.

(2) The accounting officer shall remain accountable for all decisions taken under the delegated authority.

(3) Where a function is delegated, an accounting officer shall ensure the independence of functions and powers in accordance with section 38 of the Act.

(4) A function may be delegated where it is cost effective because of the workload or type of work or circumstances of a procuring and disposing entity's procurement or disposal.

(5) Delegation shall not be used for the purpose of avoiding the provisions of the Act, these Regulations or the guidelines.

(6) A person to whom a function is delegated shall at all times comply with these Regulations, the guidelines and any conditions of the delegation.

67. An accounting officer shall not delegate any of the following functions of a contracts committee to a sub-division of the procuring and disposing entity-

(a) providing overall guidance on procurement development within the procuring and disposing entity;

(b) liaising directly with the Authority on matters within its jurisdiction;

(c) preparing any reports required for submission to the Authority; and

(d) making recommendations to the accounting officer in respect of delegation of functions.

68. An accounting officer shall not delegate any of the following functions of a procurement and disposal unit to a sub-division of the procuring and disposing entity-

(a) advising a user department on any individual procurement method or practice;

(b) liaising directly with the Authority on matters within its jurisdiction;

(c) acting as procurement coordinator for the procuring and disposing entity;

(d) planning the procurement of the procuring and disposing entity;

(e) liaising with the Authority in respect of the Authority's register of providers;

(f) monitoring contract management by a user department to ensure implementation of a contract in accordance with the terms and conditions of the awarded contract;

(g) reporting any significant departures from the terms and conditions of the awarded contract to the accounting officer; and

(h) preparing any reports required for submission to the contracts committee or the accounting officer.

69. (1) With the exception of the delegation of his or her own functions, an accounting officer may only delegate a procurement or disposal function following a written recommendation by a contracts committee, signed by the chairperson of the contracts committee.

(2) A procurement and disposal unit may submit a recommendation to delegate a function to the contracts committee in writing, stating the reasons for the recommendation.

(3) A recommendation to delegate a function shall be considered by the contracts committee in the same way as any other contracts committee decision and the chairperson of the contracts committee shall seek to obtain a unanimous decision among the members before any delegation of authority is recommended to the accounting officer.

(4) A recommendation shall be forwarded to the accounting officer using Part 1 of PP Form 212, in the Ninth Schedule for delegation of procurement functions and Part 1 of PP Form 213, for delegation of disposal functions.

(5) A recommendation to delegate a function shall state-

(a) the body or individual to whom the delegation is recommended;

(b) the functions to be delegated;

(c) any value limitations on the delegation;

(d) any other limitations or exceptions to the delegation;

(e) the proposed reporting mechanisms to monitor the delegation;

(f) the commencement date of the delegation; and

(g) the duration of the delegation, which may be for a specified period of time or indefinite.

(6) On receipt of a recommendation to delegate functions, an accounting officer shall issue his or her decision within ten working days using Part 2 of PP Form 212 in the Ninth Schedule, for delegation of procurement functions and PP Form 213, Part 2 for delegation of disposal functions.

(7) Where the accounting officer approves a recommendation for delegation without modifications, he or she shall forward the decision to the authorised body to whom the functions are delegated and send a copy of the approved delegation to the contracts committee.

(8) Where the accounting officer approves a recommendation for delegation with modifications, he or she shall discuss the modifications with the contracts committee before issuing his or her decision.

(9) Where the accounting officer rejects a recommendation to delegate functions, he or she shall forward the decision to the contracts committee, stating the reasons for rejection.

70. (1) A delegation of functions may be revoked at any time by the accounting officer either-

(a) at his or her own initiative; or

(b) following a written recommendation by the contracts committee.

(2) A procurement and disposal unit may submit a recommendation to revoke a delegation to the contracts committee, stating the reasons for the recommendation.

(3) A delegation of functions may be revoked-

(a) where the circumstances prompting the delegation have changed;

(b) where a malpractice is alleged, proved or suspected;

(c) where the holder of the delegated functions is not complying with the Act, these Regulations, the guidelines, reporting requirements or any conditions of the delegation;
or

(d) for any other justified reason.

(4) Where an accounting officer revokes a delegation of functions at his or her own initiative, he or she shall inform the contracts committee in writing, stating the reasons for the revocation.

(5) A delegation of functions shall be revoked through written instructions to the holder of a delegated function and shall have immediate effect unless otherwise stated.

71. A contracts committee may recommend to the accounting officer the delegation of the entire procurement and disposal function to a sub-division of the procuring and disposing entity, subject to any value limitations or other exceptions-

(a) where the sub-division has a large procurement or disposal workload which would be more effectively managed by the subdivision;

(b) where the sub-division has a specialised procurement or disposal workload which would be more effectively managed by the subdivision;

(c) where the sub-division is geographically distant from the procuring and disposing entity and a delegation would reduce practical or logistical problems or reduce costs;

(d) where the sub-division operates in practical terms as an independent entity and would operate more effectively under delegated authority; or

(e) in any other reasonable circumstances.

72. (1) Where an accounting officer approves a delegation of authority to a sub-division, he or she shall, in the same way as the procuring and disposing entity-

(a) appoint a delegated contracts committee for the respective sub-division; and

(b) cause to be established a delegated procurement and disposal unit for the respective sub-division.

(2) The main contracts committee and procurement and disposal unit of the procuring and disposing entity shall-

(a) remain responsible for the work and decisions of the bodies to whom the procurement and disposal functions are delegated;

(b) monitor or audit the delegated bodies as required;

(c) submit consolidated reports covering all the procurement and disposal activities of the procuring and disposing entity to the Authority or any other body;

(d) liaise with the Authority or any other body on behalf of the body to whom the procurement and disposal functions are delegated; and

(e) advise the body to whom the procurement and disposal functions are delegated on all matters relating to public procurement and disposal of public assets.

(3) A contracts committee and a procurement and disposal unit to whom the procurement and disposal functions are delegated shall-

(a) submit such reports to the main contracts committee of the procuring and disposing entity as may be required;

(b) give a copy of the minutes of all its meetings to the main contracts committee of the procuring and disposing entity;

(c) seek advice from the main contracts committee and procurement and disposal unit on all matters relating to public procurement and disposal of public assets; and

(d) request the main contracts committee and procurement and disposal unit of the procuring and disposing entity to act on its behalf in any matters requiring liaison with the Authority or any other body.

73. (1) A sub-division which is unable to comply with the Act, these Regulations, the guidelines or any conditions or limitations of the delegated authority shall notify the accounting officer of the procuring and disposing entity immediately, stating-

(a) the provision with which it is unable to comply; and

(b) the reason why it is unable to comply with the provision.

(2) The accounting officer may, on receipt of a notice under subregulation (1) in consultation with the contracts committee of the procuring and disposing entity-

(a) revoke the delegation of authority;

(b) continue the delegation of authority; or

(c) continue the delegation of authority with revised conditions or limitations.

74. (1) A contracts committee may recommend to the accounting officer, the delegation of functions to any member of staff of the procuring and disposing entity, including a member of the contracts committee or procurement and disposal unit-

(a) where the procuring and disposing entity has a large procurement or disposal workload and the contracts committee would function more effectively if certain functions were delegated;

(b) where the contracts committee meets infrequently and the delegation would facilitate the procurement or disposal process in the procuring and disposing entity; or

(c) in any other reasonable circumstances.

(2) The contracts committee shall only delegate functions to an individual who-

(a) is familiar with the Act, these Regulations and the guidelines; and

(b) has appropriate seniority and experience to take the necessary decisions.

(3) A decision taken by a member of staff to whom a function is delegated shall be documented in the same way as a decision taken by the contracts committee and shall be reported to the next meeting of the contracts committee.

75. Subject to the provisions of the Act and these Regulations, an accounting officer may contract out to another procuring and disposing entity-

- (a) the entire procurement and disposal function in accordance with regulation 76; or
- (b) limited procurement and disposal requirements in accordance with regulation 78.

76. (1) An accounting officer may contract out the entire procurement and disposal function to another procuring and disposing entity-

- (a) where the procuring and disposing entity is unable to comply with the Act, these Regulations or the guidelines due to its size or any other factor;
- (b) where the accounting officer decides that it would be more economical or efficient to delegate the function; or

(c) in any other reasonable circumstances.

(2) The functions contracted out may have value limitations or other limitations or exceptions.

(3) The accounting officer shall remain accountable for all decisions taken by the procuring and disposing entity to which the function is contracted out.

77. (1) Where the entire procuring and disposal function is contracted out to another procuring and disposing entity, the accounting officers of the two procuring and disposing entities shall agree on-

- (a) any functions that may be excluded from the contract;
- (b) the mechanisms for implementation of a procurement and disposal requirement;
- (c) reporting and monitoring procedures and responsibilities;
- (d) any limitations or exceptions to the contract; and
- (e) any costs to be paid.

(2) The agreement for contracting out shall be confirmed in writing and signed by the accounting officers of the two procuring and disposing entities.

78. (1) A contracts committee may recommend the contracting out of limited procurement or disposal requirements to another procuring and disposing entity-

- (a) where that other procuring and disposing entity has specialised knowledge, expertise or experience in the subject matter of the procurement or disposal;
- (b) where a requirement is subject to common procurement or disposal;

- (c) where a project is being jointly implemented;
- (d) where it would be more economical or efficient to contract out a requirement; or
- (e) in any other reasonable circumstances.

(2) A contract with another procuring and disposing entity may be for-

- (a) an individual requirement;
- (b) a certain category or type of procurement or disposal; or
- (c) a particular project.

79. (1) Where a limited procurement and disposal requirement is contracted out the accounting officers of the two procuring and disposing entities shall agree on-

- (a) the requirements, types of requirements or projects subject to the contract;
- (b) the mechanisms for implementation of a procurement and disposal requirement;
- (c) the procedure for approving a procurement and disposal requirement in accordance with regulation 80;
- (d) reporting and monitoring procedures and responsibilities;
- (e) any limitations or exceptions to the contract; and
- (f) any costs to be paid.

(2) An agreement for contracting out a limited procurement and disposal function shall be confirmed in writing and signed by the accounting officers of the two procuring and disposing entities.

80. (1) Where a limited procurement and disposal requirement is contracted out to another procuring and disposing entity, the institutional arrangements for the approval of the requirements shall be agreed upon by the accounting officers, but may include-

- (a) approval by the contracts committee of the procuring and disposing entity initiating the requirements;
- (b) approval by the contracts committee of the procuring and disposing entity to which the requirement has been contracted;
- (c) approval by the contracts committees of both or all procuring and disposing entities;

(d) a requirement that a representative of the initiating contracts committee may observe or participate in the meetings of the contracts committee to which the requirement is contracted; or

(e) a requirement for approval by a joint contracts committee established by both or all of the initiating procuring and disposing entities.

(2) The accounting officer and the contracts committee of a procuring and disposing entity initiating and funding the requirements shall remain accountable for all decisions taken by the procuring and disposing entity to which procurement or disposal requirements are contracted out.

81. (1) A procuring and disposing entity may contract out any of the following procurement and disposal functions of a procurement and disposal unit to a third party procurement or disposal provider-

(a) advising a user department on an individual procurement and disposal method or practice;

(b) recommending appropriate procurement and disposal methods;

(c) preparing-

(i) a statement of requirements;

(ii) solicitation documents and any clarifications or amendments;

(iii) contract documents; or

(iv) contract amendments;

(d) receiving bids;

(e) coordinating bid openings; or

(f) managing the bid evaluation process.

(2) A procuring and disposing entity may contract out any of the following contract management functions of a user department to a third party procurement or disposal provider-

(a) administering and managing contracts;

(b) reporting to the procurement and disposal unit any departure from the terms and conditions of an awarded contract;

(c) preparing change orders in accordance with the terms and conditions of the contract;
or

(d) certifying invoices for payments to providers.

(3) A procuring and disposing entity shall not contract both the procurement or disposal functions and the contract management functions to the same third party procurement and disposal provider.

(4) The functions of the accounting officer and the contracts committee shall not be contracted out to a third party procurement or disposal provider.

82. (1) Where a procuring and disposing entity contracts a third party procurement provider, it shall select the provider from among providers pre-qualified by the Authority.

(2) The procurement process for contracting the third party procurement provider shall be in accordance with these Regulations and the guidelines.

(3) Notwithstanding subregulation (1), where a provider pre-qualified by the Authority is not competent to provide services for a particular specialised procurement requirement, a procuring and disposing entity may identify a competent third party procurement provider and apply to the Authority to pre-qualify that provider.

83. A contract with a third party procurement and disposal provider shall clearly state-

(a) the functions which are to be undertaken by the third party procurement and disposal provider;

(b) the requirement subject to the contract, which may be defined by value, type, procurement or disposal method or any other criteria;

(c) limitations or exceptions to the services to be provided;

(d) that a procurement or disposal activity undertaken by the third party provider shall be in accordance with the Act, these Regulations and the guidelines;

(e) that a procurement or disposal assignment undertaken by the third party provider shall be submitted to the contracts committee for approval;

(f) the procedure and any costs payable where a submission is rejected or is required to be re-submitted;

(g) that the services may not be sub-contracted by the third party provider without the prior written approval of the procuring and disposing entity;

(h) any reporting requirements;

- (i) the ownership of procurement, disposal or contract management records after completion of the assignment;
- (j) the fee or unit rates payable for the services;
- (k) the maximum response times for the provision of services from the date of each request;
- (l) the procedural arrangements for implementation of the services;
- (m) the authorised signatories within the procuring and disposing entity and the third party procurement and disposal provider; and
- (n) any other contract provisions based on the appropriate standard bidding document for services.

84. (1) A procurement or disposal assignment undertaken by a third party provider shall be submitted through the procurement and disposal unit to the contracts committee for approval.

(2) The contracts committee may require a representative of the third party provider to attend a contracts committee meeting as an adviser in relation to any assignment undertaken, and the third party provider shall have the same status as any other adviser to the contracts committee in accordance with regulation 54.

Part III-Basic Procurement and Disposal Principles.

85. (1) Effective competition shall be evidenced by use of the open bidding, restricted bidding or quotations and proposals procurement methods described in these Regulations. (2) A procuring and disposing entity shall use open bidding as the preferred method of procurement.

86. (1) Economy and efficiency shall be promoted through the consistent application of the procurement and disposal method, processes and documents in these Regulations and by enabling both a procuring and disposing entity or a bidder to become familiar with their provisions.

(2) All procurement shall be conducted to deliver best value for money, irrespective of the method of procurement used, the procuring and disposing entity or the nature of the works, services or supplies to be procured.

(3) Value for money shall be the optimum combination of whole life costs and the appropriate total quality appropriate to meet the requirements of the procuring and disposing entity.

87. (1) The guiding principles of ethical behaviour shall be impartiality, independence and integrity.

(2) The conduct of staff and any official engaged in procurement and disposal shall not foster the suspicion or create the impression that there is any conflict between their official duties and their private interests.

(3) A procuring and disposing entity shall at all times be fair, honest and even-handed.

(4) A public officer who is involved in procurement or disposal, a bidder or a provider shall observe the relevant codes of ethics-

(a) in the Act and these Regulations;

(b) issued by the Authority in the guidelines; and

(c) issued by a professional body or association, of which the public officer, bidder or provider is a member.

88. (1) Copies of the Act, these Regulations, the guidelines, standard bidding documents and decisions of the Authority shall be made available to the public by the Authority on written request.

Part IV-Public Procurement Rules and Processes.

Division I-Preliminary.

89. The following records of a procuring and disposing entity shall be open to inspection by the Authority during working hours-

(a) a record of the procurement process;

(b) a record of contracts management;

(c) all records of the contracts committee; and

(d) any records of the accounting officer which relate to procurement, contracts management, disagreements with the contracts committee, investigations of complaints, or any other matter related to the Act or these Regulations.

90. Procurement records maintained by a procurement and disposal unit shall contain, where appropriate-

(a) a request to initiate procurement proceedings;

(b) a copy of the published advertisement or shortlist;

- (c) a copy of the pre-qualification and solicitation documents and any amendments or clarifications;
- (d) a record of bid closing and bid openings;
- (e) a copy of all bids evaluated or clarifications requested and responses received;
- (f) the evaluation report;
- (g) minutes of meetings on procurement, including pre-bid and negotiation meetings;
- (h) a notice of best evaluated bidder;
- (i) any letter of bid acceptance to the provider;
- (j) the contract document;
- (k) contract amendments;
- (l) all correspondences between a procuring and disposing entity and a bidder or potential bidder; and
- (m) a copy of all submissions to and all decisions of the contracts committee related to the procurement including, but not limited to, the choice of procurement method, approval of pre-qualification and solicitation documents, approval of evaluation reports, contract award, approval of contract documents and contract amendments and any decision to suspend or cancel procurement proceedings.

91. Contract management records maintained by a user department shall include-

- (a) a copy of the signed contract document, including any signed contract amendments;
- (b) any variations or change orders issued under the contract;
- (c) post-contract documents relating to the fulfilment of contract obligations, in particular, copies of bank guarantees or payment guarantees;
- (d) minutes of any meetings related to contracts management, including contract progress or review meetings;
- (e) delivery documents evidencing delivery of supplies or completion certificates in relation to a contract for services or works under the contract;
- (f) a copy of all invoices for works, services or supplies including work papers verifying the accuracy of payments claimed and details of the actual payment authorised by a contract manager;

(g) a copy of cumulative payment worksheets evidencing management of all payments made;

(h) a copy of any claims made by the contract manager on behalf of the procuring and disposing entity in respect of any warranty, non-warranty, short supply, damage and other claims upon the provider or upon the procuring and disposing entity;

(i) all correspondence between the procuring and disposing entity and the provider; and

(j) a copy of all submissions to the contracts committee and decisions related to the contract management including, but not limited to, the approval of contract amendments.

92. (1) A security, negotiable document or other financial instrument received by a procurement and disposal unit or a user department shall be deposited by the officer responsible for the procurement or contract management in a secure place under arrangements made by each procurement and disposing entity.

(2) A copy of the documents referred to in subregulation (1) shall be kept as a procurement record and shall be annotated with details of the location of the original documents and the date of receipt of the original documents.

(3) For the avoidance of doubt, the following original documents shall not be retained in a procurement or contract management record-

(a) a bid bond;

(b) a performance bond;

(c) an advance payment guarantee or security;

(d) a stage payment guarantee or security;

(e) a retained payment guarantee or security;

(f) any other payment guarantee or security;

(g) a bill of lading, airway bill or similar documents; and

(h) a power of attorney.

(4) The following original documents may, where they are of high value or if it is considered necessary by the procuring and disposing entity, need not be retained in a procurement or contract management record-

(a) a contract;

(b) a contract amendment;

(c) a document certifying the handover of title or risk in respect of works, other than minor works completed or services provided; and

(d) any other document deemed of intrinsic or inherent value.

(5) The requirements to be met by a procuring and disposing entity in providing safe custody for the documents in subregulation (3) and (4) may be issued by the Authority as guidelines.

93. (1) English shall be the language of communication in all procuring and disposing proceedings.

(2) The language of communication shall be specified in all solicitation documents.

(3) Subject to the provisions of these Regulations minutes of a meeting between a procuring and disposing entity and a bidder or provider shall be taken and kept, and any agreement shall be confirmed in writing.

(4) The Authority may issue guidelines regarding the use of electronic media where appropriate.

94. (1) A contracts committee or a holder of delegated authority shall approve-

(a) the choice of a procurement method prior to commencement of the procurement process;

(b) pre-qualification documents prior to issue;

(c) solicitation documents and any amendments prior to issue;

(d) evaluation reports prior to post-qualification or negotiations;

(e) cancellation of a procurement process;

(f) contract award decisions prior to publication of any notice of best evaluated bidder or release of a contractual document;

(g) a letter of bid acceptance and contract documents prior to issue;

(h) contract amendments prior to issue; and

(i) termination of a contract.

95. (1) A procurement and disposal unit or a user department shall, if it deems it necessary, prepare a recommendation to a contracts committee for cancellation of a procurement process.

(2) A recommendation for cancellation of a procurement process in subregulation (1) shall indicate-

- (a) the procurement reference number and subject of procurement;
- (b) detailed reasons why cancellation is recommended;
- (c) the status of the procurement process;
- (d) an alternative procurement process recommended, if any; and
- (e) any other relevant information.

(3) Reasons for cancellation may include, but shall not be limited to-

- (a) lack of adequate funding;
- (b) a significant change in the technical details of the requirement;
- (c) a significant change in the circumstances of the procurement;
- (d) the circumstances giving rise to the need have changed significantly; or
- (e) a lack of responsive bids.

(4) A procurement process shall not be cancelled prior to obtaining the approval of a contracts committee.

Division II-Procurement Planning.

96. (1) A user department shall prepare a multi-annual, rolling work plan for procurement based on the approved budget, which shall be submitted to the procurement and disposal unit to facilitate orderly execution of annual procurement activities.

(2) A procurement plan shall be integrated into the annual and multi-annual sector expenditure programme to enhance financial predictability, accounting and control over procurement budgets.

(3) A procurement and disposal unit shall use the combined work plan to plan, organise, forecast and schedule the procuring and disposing entity's procurement activities for the financial year.

97. The combined work plan for the procuring and disposing entity shall include-

- (a) a detailed breakdown of activities of works, services or supplies to be procured;
- (b) a schedule of procurement requirements in order of priority;

- (c) a statement of required resources supported by a schedule of the projected funding;
- (d) a plan of the likely method of procurement for each requirement and the likely time required for each stage in the procurement cycle; and
- (e) details of measures to be taken to prevent recourse to the use of direct procurement.

98. Planning for a procurement activity shall take into account the following considerations-

- (a) aggregation of requirement to achieve lower unit costs;
- (b) allocation of biddable lots to ensure that requirements are not split up without justified reason;
- (c) common procurement of common user items with other procuring and disposing entities;
- (d) joint procurement with other procuring and disposing entities, where possible;
- (e) pre-qualification to cover groups of contracts where similar works, services or supplies requiring a pre-qualification exercise are required during the financial year, or where it would facilitate shortlisting of bidders;
- (f) scheduling of available resources to process the procurement requirements of the procuring and disposing entity, in particular those relating to evaluations teams; and
- (g) the need for framework contracts where appropriate, to the individual procurement requirements.

99. (1) Requirements shall be aggregated for-

- (a) all departments of a procuring and disposing entity;
- (b) a complete financial year or other appropriate period of time; and
- (c) any other appropriate circumstance.

(2) The aggregation of requirements shall take into account-

- (a) the market structure for the items required;
- (b) items which are of a similar nature and which are likely to attract the same potential bidders;
- (c) the optimum size and type of contract to attract the greatest and most responsive competition or the best prices;

(d) items which shall be subject to the same method of procurement and bidding conditions;

(e) items which shall be ready for bidding at the same time;

(f) items which shall be subject to the same conditions of contract;

(g) potential savings in time or transaction costs;

(h) the appropriate size of contract to facilitate the application of any preference and reservation schemes; and

(i) the optimum number and size of contracts to facilitate management and administration of contracts by the procuring and disposing entity.

100. (1) A procuring and disposing entity shall not, with the intention of avoiding a particular method of procurement or the benefits of scale, split up procurement requirements which can be procured as a single contract.

(2) Splitting of procurement or disposal requirements, which are broadly similar or related, shall only be permitted when the split offers clear and calculable economic or technical advantages.

101. (1) A procuring and disposing entity may divide requirements allocated to a single procurement process into separate lots, where it is anticipated that the award of several separate contracts would result in the best overall value for the procuring and disposing entity.

(2) Where requirements are divided into lots, which may result in separate contracts, the choice of a procurement method shall be determined by the estimated value of each individual lot and not the total value of all the lots.

(3) Where a number of lots are to be procured under the same procurement process, the solicitation documents shall clearly state-

(a) the number of lots included in the procurement process;

(b) the nature and size of each lot;

(c) the minimum and maximum number of lots, if any, for which a bidder may bid;

(d) the proportion of each lot for which a bidder may bid, or whether a bid shall be for complete lots; and

(e) the method of evaluating multiple lots.

102. (1) A procuring and disposing entity shall, where possible, seek to undertake common procurement for procurement requirements that are in common use by more than one procuring and disposing entity.

(2) A procuring and disposing entity shall be guided by the list of common user items published by the Authority.

(3) A list of common user items published by the Authority shall not be considered as exhaustive.

(4) Any requirement for works, services or supplies may be subject to common procurement.

(5) A procuring and disposing entity may consult with another in relation to common procurement, and the consultations shall include-

(a) the availability of individual budgets;

(b) the payment for requirements delivered; and

(c) the conclusion of the optimal contract, including the delivery arrangements.

103. (1) The procuring and disposing entities to undertake common procurement shall agree on the arrangements to be used for common procurement prior to approval of the procurement, in accordance with regulation 80.

(2) The procuring and disposing entities may agree on-

(a) cost sharing and payment arrangements; and

(b) reimbursement to a nominated procuring and disposing entity for the costs associated with procurement work undertaken on their behalf.

(3) Costs in subregulation (2) may include advertising costs, photocopying costs and the cost of the personnel involved in the procurement proceedings.

104. (1) Procurement requirements shall be documented using PP Form 20 in the Ninth Schedule, and shall include-

(a) a clear indication of the works, services or supplies required;

(b) the estimated value of the works, services or supplies;

(c) confirmation of availability of funding in accordance with regulation 105; and

(d) the approval of the procurement requirement in accordance with subregulation (4).

(2) In estimating the value of the works, services or supplies required and confirming the availability of funds, a procuring and disposing entity shall ensure that the estimate is realistic and that-

(a) the estimate is based on up-to-date information;

(b) technical advice is sought, where required; and

(c) the confirmation of availability of funding takes into account the total acquisition cost in accordance with regulation 227.

(3) A specific reference number shall be allocated to each procurement requirement at the initiation stage, using the numbering system given in the guidelines.

(4) Approval of procurement requirements shall be evidenced by the signature of the authorised official on PP Form 20.

105. (1) A procuring and disposing entity shall not initiate any procurement proceedings or activities for which funds are neither available nor adequate, except where-

(a) the delivery of goods, services or supplies and consequent payments to a provider are anticipated to be effected from future financial years;

(b) for framework contracts, funds will be committed at the time of issue of each specific call of order; or

(c) the Secretary to the Treasury has confirmed in writing that the required funding shall be made available.

(2) Availability of funds shall be evidenced by budgeted or supplementary funds for the current financial year or an allocation for subsequent years.

(3) Certification of the availability of funds shall be made by the accounting officer or by any officer authorised by the accounting officer.

(4) Where payment to a provider is anticipated to last more than one financial year, the accounting officer shall ensure that financial provision is made in the budget estimates for the appropriate year to support the procurement during the subsequent years.

(5) The accounting officer shall ensure that sufficient funds are budgeted for framework contracts every financial year, to cover the full cumulative cost of call off orders anticipated for each year for a framework contract.

Division III-Methods of Procurement.

106. (1) A procuring and disposing entity shall use the procurement methods specified in Part VI of the Act for all procurement.

(2) The choice of a procurement method shall be in accordance with the Fourth Schedule to the Act, these Regulations and the guidelines, and shall be on the basis of-

(a) the estimated value of the requirement; or

(b) the circumstances pertaining to the requirement.

(3) The estimated value of the requirement shall be the main criterion for determining the choice of procurement method.

(4) The choice of procurement shall be in accordance with the thresholds issued by the Authority by guidelines.

(5) The circumstances pertaining to the requirement to procure, may be used as additional criteria in determining the choice of procurement method, in accordance with regulations 110, 111 and 113.

107. (1) A foreign bidder who participates in open domestic bidding shall be bound to the same extent as a national or resident provider, by the conditions set out in the solicitation documentation.

(2) A procuring and disposing entity may request permission from the Authority to use a procurement method other than open domestic bidding where prevailing circumstances are not provided for under these Regulations.

108. Micro procurement may be used where the estimated value of the procurement does not exceed 100 currency points.

109. (1) Where direct procurement is used in the circumstances set out in paragraphs 6(1)(a)(iii), (iv) and (v) of the Fourth Schedule to the Act-

(a) the contract amendment shall be placed in accordance with regulation 262;

(b) the value of the new works, services or supplies shall not exceed 15% of the original or existing contract value; and

(c) the original or existing contract shall have been awarded through a competitive procurement process.

(2) Where direct procurement is used more than once in the circumstances set out in subregulation (1) more than once, the cumulative value of all new works, services or supplies shall not exceed 25% of the value of the original or existing contract.

110. (1) An emergency situation shall constitute circumstances that may determine the choice of procurement method, regardless of the estimated value of the requirement.

(2) An emergency situation shall include circumstances which are urgent, unforeseeable or a situation not caused by dilatory conduct where-

(a) the country is seriously threatened by or actually confronted with a disaster, catastrophe, war or an act of God;

(b) life or the quality of life or environment may be seriously compromised;

(c) the conditions or quality of goods, equipment, buildings or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or

(d) an investment project is seriously delayed for want of minor items.

(3) A recommendation to use an emergency situation as the criterion for determining the choice of a procurement method shall include a comprehensive justification for its use and shall state the reasons giving rise to the emergency situation.

(4) Where an emergency situation is used as a criterion for determining the choice of a procurement method, competition shall not automatically be excluded from the procurement proceeding solely on the basis of the emergency situation.

(5) A procuring and disposing entity shall obtain maximum competition to the extent practicable in the procurement under an emergency situation.

(6) A procuring and disposing entity shall, before considering the use of the direct procurement method in an emergency situation, give priority to other competitive procurement methods in accordance with subregulations (7), (8), (9) and (10).

(7) Where the value of a procurement requirement requires the use of open bidding, a procuring and disposing entity shall, prior to deciding on the use of a direct procurement method, give priority in descending order to the use of-

(a) restricted bidding;

(b) quotations and proposals procurement; or

(c) any competitive method, with appropriate modifications, in accordance with subregulation (10).

(8) Where the value of a procurement requirement requires the use of restricted bidding, a procuring and disposing entity shall, prior to deciding on the use of the direct procurement method, give priority in descending order to the use of-

(a) quotations and proposals procurement; or

(b) any competitive method, with appropriate modifications, in accordance with subregulation (10).

(9) Where the value of a procurement requirement requires the use of quotations and proposals procurement, a procuring and disposing entity shall, prior to deciding on the use of a direct procurement method, consider the use of quotations and proposals procurement, with appropriate modifications, in accordance with subregulation (10).

(10) Where a procuring and disposing entity is unable to comply with all regulations or guidelines relating to a competitive method of procurement, it shall, prior to deciding on the use of a direct procurement method, consider the use of any competitive method with-

(a) a bidding period which is less than the minimum bidding period stated in regulation 145;

(b) a minimum shortlist of two bidders;

(c) simplified documentation;

(d) a simplified bid submission method;

(e) a simplified evaluation methodology; or

(f) any other modification which would make the use of the competitive method possible.

(11) An urgent procurement requirement shall not constitute an emergency situation where the circumstances-

(a) should have been foreseen by the procuring and disposing entity;

(b) are the result of inadequate planning; or

(c) are the result of delays by or within the procuring and disposing entity.

(12) A contracts committee may allow urgent procurement to determine the choice of a procurement method, but shall require the responsible officer to submit a detailed and realistic plan, indicating the steps to be taken to prevent any recurrence of similar circumstances.

111. (1) The availability of works, services or supplies from only a limited number of providers or a sole provider shall constitute circumstances which may determine the choice of a procurement method, regardless of the estimated value of the requirement.

(2) The number of providers available may be limited by-

(a) the existence of copyrights, intellectual property rights, patent or proprietary rights;

(b) the existence of a monopoly, prevailing government regulations or legislation;

- (c) an approved standardisation policy;
- (d) the need for compatibility or interchangeability with existing works, services or supplies;
- (e) the existence of exclusive rights given to a provider for the servicing and maintenance of objects of procurement; or
- (f) any other justified circumstances.

(3) A recommendation to use availability of works, services, or supplies from a limited number of providers as the criterion for determining the choice of a procurement method shall include-

- (a) a comprehensive analysis of the market for the required works, services or supplies made at the manufacturer level and not at distributor or local agent level and the number of potential providers in the market;
- (b) full details of the relevant circumstances in subregulation (1);
- (c) a clear statement that no other source could be used to open the requirement to a more competitive procurement method; and
- (d) an analysis of the statement of requirements, with justification for any parts of the statement of requirements that restrict the number of potential providers.

(4) The use of availability of works, services or supplies from a limited number of providers as a criterion to determine the choice of a procurement method shall not be based on a brand name, make or model, unless the use has been authorised under a standardisation policy or for reasons of compatibility.

112. (1) The need for compatibility with existing works, services or supplies or for continuity from an existing provider may be used as circumstances justifying the use of a direct procurement, regardless of the estimated value of the procurement requirement.

(2) A recommendation to use direct procurement on grounds of compatibility or continuity shall include a comprehensive justification of the need for compatibility or continuity.

(3) The recommendation to use direct procurement on grounds of compatibility or continuity shall contain-

(a) an analysis of the statement of requirements explaining the need for or benefits of compatibility or continuity, which may include-

- (i) technical reasons;

(ii) legal reasons, such as continued liability or preservation of warranties; or

(iii) other reasons, such as use of experience acquired or savings in mobilisation costs;
and

(b) a clear statement that no other items or providers could reasonably be used to open the requirement up to a more competitive method.

(4) The need for compatibility or continuity shall not be used to recommend direct procurement solely for reasons of convenience or due to a lack of an adequate statement of requirements.

113. (1) The procurement process under open domestic bidding shall follow the procurement process set out in this Part and Part V of these Regulations.

(2) Open domestic bidding shall be open to all bidders and shall be by public advertisement of a bid notice in at least one newspaper of wide national circulation.

(3) Notwithstanding subregulation (2), a bidder may be selected through a pre-qualification process, following publication of a pre-qualification notice in at least one newspaper of wide national circulation.

(4) Bidding documents may be sold to a prospective bidder at a cost agreed by the contracts committee in accordance with regulation 171.

(5) A submission to a contracts committee in respect of procurement under open domestic bidding shall be made using PP Form 1 in the Ninth Schedule.

114. (1) The procurement process under open international bidding shall follow the procurement process in this Part and Part V of these Regulations.

(2) Open international bidding shall be open to all bidders and shall be by public advertisement of a bid notice in at least one publication of wide international circulation.

(3) Notwithstanding subregulation (2), a bidder may be selected through a pre-qualification process, following publication of a pre-qualification notice in at least one publication of wide international circulation.

(4) Bidding documents may be sold to a prospective bidder at a cost agreed by the contracts committee in accordance with regulation 146(6).

(5) A submission to the contracts committee in respect of procurement under open international bidding shall be made using PP Form 1 in the Ninth Schedule.

115. (1) The procurement process under restricted domestic bidding shall follow the procurement process set out in this Part and Part V of these Regulations, as modified by the provisions of this regulation.

(2) The selection of a bidder shall be by development of a shortlist in accordance with regulation 142.

(3) A submission to the contracts committee, in respect of procurement under restricted domestic bidding shall be made using PP Form 2 in the Ninth Schedule.

116. (1) The procurement process under restricted international bidding shall follow the procurement process set out in this Part and Part V of these Regulations.

(2) The selection of bidders shall be by development of a shortlist in accordance with regulation 142.

(3) A submission to the contracts committee in respect of procurement under restricted international bidding shall be made using PP Form 2 in the Ninth Schedule.

117. (1) The procurement process under quotations and proposals procurement shall follow the procurement process set out in this Part and Part V of these Regulations, as modified by the provisions of this regulation.

(2) The selection of bidders shall be by development of a shortlist in accordance with regulation 142.

(3) A procuring and disposing entity shall, as far as is practicable, obtain at least three bids.

(4) A submission to the contracts committee in respect of procurement under quotations and proposals procurement shall be made using PP Form 4 in the Ninth Schedule.

118. (1) The procurement process under micro procurement shall follow the procurement process set out in this Part and Part V of these Regulations.

(2) The selection of a provider shall be conducted on a single provider basis without competition in accordance with regulation 143.

(3) A procuring and disposing entity may obtain competitive bids for a procurement process under micro procurement.

(4) A micro procurement process shall not require-

(a) a written solicitation document;

(b) publication of a notice of the single provider;

(c) a written bid;

(d) a public bid opening;

(e) a notice of best evaluated bidder;

(f) a signed contract document; or

(g) a notice of award of contract.

(5) An original invoice or receipt for the procurement of works, services or supplies and the price paid shall be obtained and annotated with the name of the official undertaking the procurement.

(6) The procuring and disposing entity shall be responsible for ensuring that value for money is obtained to the extent practicable, under the micro procurement method.

(7) A procuring and disposing entity may delegate authority to a user department to undertake micro procurement up to the maximum value specified in the guidelines or a lower limit set by the contracts committee.

(8) Micro procurement shall be reported to the contracts committee on a monthly basis by the holder of delegated authority, using PP Form 202 in the Ninth Schedule to these Regulations.

(9) Micro procurement shall be reported to the Authority, in Part 4 of PP Form 200, in the Ninth Schedule to these Regulations.

(10) A report of micro procurement shall be published on a procuring and disposing entity's notice board on a monthly basis using PP Form 202 in the Ninth Schedule to these Regulations.

(11) A procuring and disposing entity shall, where appropriate, use a framework contract for the frequent procurement of regularly required items.

119. (1) A procurement process under direct procurement shall follow the procurement rules and process set out in this Part and Part V of these Regulations, as far as is practicable and as modified by the provisions of this regulation.

(2) A contracts committee shall approve a direct procurement method prior to the commencement of a procurement process using this method.

(3) A procuring and disposing entity shall use the appropriate document from the standard documentation, modified as necessary for the requirements of the procurement.

(4) A bidder shall submit a bid in writing.

(5) Evaluation under direct procurement shall be by technical compliance selection.

(6) Financial evaluation under direct procurement shall-

- (a) be done in the currency of the bid, without any conversions;
 - (b) not rank bids; and
 - (c) undertake an analysis of value for money, through comparison with prices previously obtained through a competitive method or a breakdown analysis of the costs of each component, taking into account the circumstances and value of the procurement.
- (7) An evaluation committee shall not determine the best evaluated bid, but shall recommend whether-
- (a) the bid should be considered for contract award, subject to any negotiations required;
 - (b) further competition should be obtained, where possible, in order to ensure value for money or to meet the technical or other requirements of the procuring and disposing entity; or
 - (c) the requirement should be cancelled or redefined.
- (8) The contract shall be confirmed in writing, using the appropriate document from the standard documentation issued by the Authority, modified as necessary for the requirements of the procurement and signed by both parties.
- (9) Regulation 223(4) shall not apply where direct procurement is used in an emergency situation.
- (10) Value for money must be demonstrated prior to award of a contract.
- (11) A submission to the contracts committee in respect of procurement under direct procurement shall be made using PP Form 3 in the Ninth Schedule.

Division IV-Pre-Qualification.

120. (1) Pre-qualification may be used under open domestic or open international bidding to obtain a shortlist of bidders using the criteria for evaluation prescribed by a procuring and disposing entity in accordance with regulation 124.

(2) Pre-qualification may be used where-

(a) the works, services or supplies are highly complex, specialised or require detailed design or methodology;

(b) the costs of preparing a detailed bid would discourage competition;

(c) the evaluation is particularly detailed and the evaluation of a large number of bids would require excessive time and resources from a procuring and disposing entity; or

(d) the bidding is for a group of contracts, in accordance with regulation 126.

121. (1) Pre-qualification shall be open to all providers using public advertisement of a pre-qualification notice, which shall invite potential bidders to-

(a) obtain the pre-qualification documents from a procuring and disposing entity; or

(b) submit an expression of interest directly to a procuring and disposing entity.

(2) A pre-qualification notice shall be published in at least one publication of wide circulation to ensure effective competition.

(3) A procuring and disposing entity shall use the list of standard documents in the Seventh Schedule for pre-qualification notices.

(4) Where a procuring and disposing entity issues a pre-qualification document, it shall use the appropriate standard document issued by the Authority.

(5) A pre-qualification notice or document, shall contain-

(a) details of the scope of the procurement;

(b) a statement of the requirements and criteria for pre-qualification;

(c) a statement of the information required from a provider;

(d) instructions on the location and deadline for submission of pre-qualification submissions or expressions of interest; and

(e) instructions on the sealing and labelling of pre-qualification submissions or expressions of interest.

(6) The information required from a provider shall be the minimum required to make a judgement on the firm's suitability and shall not be so complex as to discourage a provider from expressing interest.

(7) A provider shall submit sealed written pre-qualification submissions or expressions of interest to a procuring and disposing entity.

122. (1) The advertising period for a pre-qualification shall start on the date the pre-qualification notice is first published.

(2) The minimum advertising period shall be the period given for the appropriate procurement method in regulation 141.

(3) Where no pre-qualification document is issued and a provider is requested to submit expressions of interest directly to the procuring and disposing entity, no advertising period shall apply.

123. (1) The bidding period for pre-qualification shall start from the date when the pre-qualification documents are available to a provider, or from the date of publication of the pre-qualification notice, where no document is issued, to the date for submission of pre-qualification submissions or expressions of interest by a bidder.

(2) An advertising period shall be excluded from the calculation of the bidding period.

(3) In determining the bidding period for pre-qualification, a procuring and disposing entity shall take into account the factors in regulation 144(3).

(4) The minimum bidding period for prequalification under-

(a) domestic bidding, shall be ten working days; and

(b) open international bidding, shall be fifteen working days.

124. (1) Pre-qualification shall be based on the capability and resources of a bidder, taking into account-

(a) experience in similar contracts within the country, region or internationally;

(b) performance on similar contracts within the country, region or internationally;

(c) capabilities with respect to equipment, manufacturing or construction facilities;

(d) the qualifications and experience of personnel;

(e) financial capability to perform the proposed contract;

(f) facilities or representation at or near the location for performance of the contract;

(g) the available capacity to undertake the assignment;

(h) litigation record; and

(i) any other relevant criteria.

(2) The criteria for pre-qualification shall be limited to that necessary for performance of the intended contract and shall not be unduly restrictive.

(3) The assessment of pre-qualification submissions or expressions of interest shall be in accordance with the requirements and criteria stated in the pre-qualification notice or pre-qualification document and shall be recorded using PP Form 25 in the Ninth Schedule.

125. (1) A procuring and disposing entity shall send the solicitation documents to-

(a) a provider who submits pre-qualification submissions or expressions of interest and who meets the specified pre-qualification criteria; or

(b) a number of bidders which is appropriate to ensure effective competition from among the providers who submitted pre-qualification submissions or expressions of interest and who meet the pre-qualification criteria.

(2) A pre-qualification notice or document shall state whether the solicitation document shall be addressed to all pre-qualified providers or to a limited number of pre-qualified providers.

(3) Where the solicitation document is not addressed to all pre-qualified bidders, the bidder selected shall be one who is ranked highest in the evaluation of pre-qualification submissions or expressions of interest.

126. (1) Pre-qualification may be used to pre-qualify a bidder for a group of similar contracts to facilitate the preparation of a shortlist.

(2) The pre-qualification process for a group of contracts shall follow the process stated in regulations 121,122,123 and 124.

(3) A pre-qualification notice or document, shall contain an estimate of the period of time covered by the pre-qualification and an estimate of the number and value of contracts to be awarded.

(4) Where pre-qualification is used for a group of contracts, a procuring and disposing entity shall rotate pre-qualified providers on successive shortlists.

(5) A limit on the number or total value of awards to a provider may be made on the basis of the provider's resources.

(6) The list of pre-qualified providers shall be updated periodically, where pre-qualification is for a group of contracts.

(7) Pre-qualification information submitted by a provider shall be verified prior to contract award.

Division V-Solicitation Documents.

127. (1) Standard solicitation documents, and other documents issued by the Authority, may be customised for use by a procuring and disposing entity.

(2) Customisation of standard solicitation documents and other documents issued by the Authority shall be limited to-

(a) the entry of a procuring and disposing entity's contact details such as, name and address; and

(b) the addition of a logo or any other form of identification of a procuring and disposing entity.

(3) When customising a document, a procuring and disposing entity shall not alter or amend the content or substance of the standard documentation, including the style and format of the documents, without the prior written approval of the Authority.

(4) The customised documents referred to in subregulation (3) shall be approved by the contracts committee for use by a procuring and disposing entity.

(5) Customised standard documents shall be used for drafting documents for individual procurement or disposal requirements.

(6) Under this regulation-

(a) 'customisation' means the process of completing identification details in the standard documentation issued by the Authority to make it suitable for drafting by the procuring and disposing entity; and

(b) 'drafting' means the process of modifying customised standard documents to make them suitable for a particular procurement or disposal requirement.

128. (1) The use of the standard solicitation documents issued by the Authority, as the basis for each individual solicitation document shall be mandatory, except where otherwise provided in these Regulations.

(2) A procuring and disposing entity shall use the appropriate standard solicitation documents issued by the Authority for each procurement requirement.

(3) The selection of the appropriate document shall be dependent upon the type, value and relative complexity of the procurement requirement.

129. A procuring and disposing entity may apply to the Authority using the procedure in regulation 340, to deviate from the use of standard solicitation documents issued by the Authority.

130. (1) The following basic rules shall apply to the drafting of individual solicitation documents, using standard solicitation documents-

(a) no textual or other changes shall be made to the instructions to bidders section, general conditions of contract section or bidding forms section except in accordance with this regulation;

(b) changes to the instructions to bidders shall be effected only by an entry in the bid data sheet;

(c) changes to the general conditions of contract shall be effected only by an entry to the special conditions of contract;

(d) the statement of requirements shall be modified as may be required; and

(e) the evaluation and qualification criteria shall be modified in accordance with the options available on the documents and these Regulations.

(2) Notwithstanding subregulation (1), simplified standard solicitation documents, such as requests for quotations or proposals or purchase orders, shall be drafted in accordance with the instructions issued by the Authority with the standard documents.

131. (1) A procuring and disposing entity shall plan the drafting of each solicitation document with a view to ensuring that-

(a) the statement of requirements defines the requirement precisely and in a manner that leaves no doubt or assumption by a bidder;

(b) the most equitable evaluation methodology is chosen to compare and evaluate bids received;

(c) the evaluation criteria is included to ensure that the evaluation considers all appropriate factors;

(d) the most appropriate type of contract shall result from the procurement proceedings in terms of contractual protection to the procuring and disposing entity, structure of payment, payment terms and method of payment;

(e) the basis of the prices and costs required are adequately defined so that they can be meaningfully compared and later inserted into any resulting contract to represent the full cost of the procurement requirement; and

(f) a practical method of achieving the objectives of the procurement requirements is detailed to meet any logistics and supply requirements.

(2) Solicitation documents for supplies, works and services shall be drafted in accordance with regulations 266, 279 and 286 respectively.

132. (1) A solicitation document shall clearly state the type of contract to be entered into in accordance with regulation 233 and shall contain the draft contract, including all the proposed contract forms and conditions, or a statement of the contract form and conditions that shall apply.

(2) A contract shall be placed against standard general conditions of contract as modified by the special conditions of contract contained in the draft contract.

(3) A draft contract included in solicitation documents shall be drafted in accordance with regulation 229(2).

(4) A draft contract included in solicitation documents shall specify the basis of pricing and payment in accordance with the provisions of Part V, Division II.

133. (1) A solicitation document shall state the taxes, duties and levies to be included in the evaluated price.

(2) In the case of supplies, a procuring and disposing entity shall-

(a) use the delivery terms defined in INCOTERMS to state the export and import taxes, duties or levies that are the responsibility of the provider; and

(b) state any other taxes, duties or levies that are the responsibility of the provider.

(3) In the case of works or services, a procuring and disposing entity shall state the liability to taxes and other such charges for the duration of the proposed assignment or project for a provider and the employees of a provider.

(4) Unless otherwise stated in the solicitation documents, where a preference scheme applies, the cost of any taxes, duties or levies shall be included in the evaluated price prior to the application of any margin of preference.

134. (1) The works, services or supplies required shall be stated in the statement of requirements, which shall be included in the solicitation document and the final contract.

(2) A statement of requirements shall give a correct and complete description of the subject of the procurement, for the purposes of creating fair and open competition and in particular, the statements of requirements shall include the following clear and unambiguous requirements, or their equivalent-

(a) generic, functional or performance specifications;

(b) terms of reference;

(c) a brief;

(d) scope of works;

(e) drawings;

(f) bills of quantities;

(g) a delivery and completion schedule;

(h) a schedule of quantities; and

(i) a description of any incidental works, services or supplies,

as may be appropriate.

(3) A statement of requirements shall be used to inform a bidder of the procuring and disposing entity's requirements and to determine how closely and effectively a bidder can meet these requirements.

(4) The description in the statement of requirements shall be prepared with a view to ensuring that the works, services or supplies are fit for the purpose for which they are being purchased and are of appropriate quality.

(5) A statement of requirements for supplies, works or services shall be drafted in accordance with regulations 264, 278 and 285 respectively.

135. (1) A statement of requirements shall use common specification standards issued by the competent authority to support specifications, bills of quantity and other definitions of procurement requirements.

(2) A procuring and disposing entity shall use the common specification standards and where no appropriate common specification standard has been issued, the procuring and disposing entity shall apply to the Authority in accordance with regulation 136.

(3) A procuring and disposing entity shall select a common specification standard taking into account the nature of the procurement requirement and the anticipated location or region of use of the procurement requirement.

(4) The common specification standards issued by the competent authority shall, in order of priority, use-

(a) national standards set by the Uganda National Bureau of Standards or other competent authority;

(b) international standards set by the International Standards Organisation, where appropriate standards exist;

(c) standards set by specialised agencies or bodies such as WHO, UN or IATA;

(d) internationally-recognised standards set by the competent authority of another country, that are used extensively and are appropriate for use in Uganda, such as BS (UK), AS (USA), or SAS (RSA); or

(e) standards or particular specifications used by a trade or profession and obtained from their associations.

(5) The Authority may vary the provisions of subregulation (4) where the relevant body is not able to provide a satisfactory standard to meet the requirements of a procuring and disposing entity.

136. (1) Where no specification standard has been issued by the competent authority, a

procuring and disposing entity shall identify a suitable standard using the order of priority stated in regulation 135(4) and apply to the competent authority to adopt it as a common specification standard.

(2) An application from a procuring and disposing entity for the Authority to adopt a common specification standard for future use shall include-

(a) a full description of the subject of the procurement, including the proposed statement of requirements;

(b) a statement of any similar specification standard already issued by the Authority and the reason why it is unsuitable or the modifications required;

(c) any appropriate existing standard known to the procuring and disposing entity;

(d) an indication of whether the requirement is a one-off or regular requirement and if it is regular, the estimated number and value of similar future requirements; and

(e) any other relevant information.

(3) The Authority shall, within a period of fifteen working days of receipt of the application, advise on an appropriate specification standard.

137. In cases of emergency, a procuring and disposing entity may proceed with the procurement process, without applying to the competent authority for the issue of a specification standard, but the procuring and disposing entity shall notify the Authority as soon as practicable, detailing the information in regulation 136(2).

138. A procuring and disposing entity shall obtain the approval of the Authority to any individual solicitation or contract document prior to their use, where applicable.

Division VI-Bidding.

139. (1) The method for selection of a bidder to be invited to bid shall be either-

(a) by publication of a bid notice in accordance with regulation 140;

(b) through a pre-qualification exercise in accordance with Part IV, Division IV;

(c) by development of a shortlist in accordance with regulation 142; or

(d) by selection of a sole or single provider in accordance with regulation 143.

(2) The method used shall be in accordance with the provisions of Part IV, Division III for each procurement method.

140. (1) A bid notice shall be based on the standard format provided in the Seventh Schedule.

(2) A bid notice shall be published in at least one newspaper which must be of wide circulation to reach sufficient prospective bidders to ensure effective competition.

(3) A bid notice shall be displayed on the Authority's website and the procuring and disposing entity's notice board not later than the date of publication of the bid notice and shall remain on display until after the closing date for submission of bids.

141. (1) The advertising period shall start on the date the bid notice is first published in a newspaper of wide circulation and the advertising period shall not be included in the calculation of the bidding period.

(2) The advertising period shall be used to allow a potential bidder sufficient time to respond to a bid notice and obtain the solicitation document from the procuring and disposing entity prior to commencement of the bidding period.

(3) The advertising period does not signify the number of times a bid notice shall be published but shall be calculated from the date of the first or only publication of the bid notice, as appropriate.

(4) The advertising period shall be determined taking into consideration the location of potential bidders and the time required for the delivery or transmission of the solicitation document to the bidders.

(5) The minimum advertising period for each procurement method shall be as follows-

(a) open domestic bidding, four working days;

(b) open international bidding, eight working days;

(c) restricted domestic bidding, no advertisement required;

(d) restricted international bidding, no advertisement required;

(e) quotations and proposals procurement, no advertisement required;

(f) direct procurement, no advertisement required; and

(g) micro procurement, no advertisement required.

142. (1) A shortlist shall include sufficient bidders to ensure effective and real competition.

(2) A procuring and disposing entity shall use the following data and information in developing a shortlist for procurement requirements-

- (a) the Authority's register of providers;
- (b) a procuring and disposing entity's own list of pre-qualified providers following a pre-qualification for a group of contracts in accordance with regulation 126;
- (c) any other procuring and disposing entity's list of pre-qualified providers; and
- (d) the procuring and disposing entity's own knowledge of the market.

(3) Where a shortlist is to be developed, the following considerations shall be taken into account-

- (a) a fair and equal opportunity shall be afforded to all bidders and there shall be no barrier created to deter competition;
- (b) there shall be a rotation of different bidders on successive shortlists;
- (c) a bidder shall not be included unless they are expected to fully satisfy the eligibility requirements;
- (d) a bidder shall not be included unless they are expected to fully satisfy the qualification requirements of competence, capacity, resources and experience required for the execution of the procurement in question; and
- (e) the bidders included shall not all have the same ownership.

(4) The proposed shortlist shall be recorded, with reasons for the selection of each bidder, and submitted to the contracts committee for approval using PP Form 32 in the Ninth Schedule prior to the issue of the solicitation document.

(5) The approved shortlist shall be displayed on the procuring and disposing entity's notice board, not later than the date of issue of the invitation and shall remain on display until after the closing date for submission of bids.

143. (1) A single source is where one bidder is selected from among a number who are able to meet the requirements of the procurement, such as in an emergency situation or for micro procurement.

(2) A sole source is where only one bidder exists who is able to meet the requirements of the procurement, due to patents or a monopoly situation or any other reason.

(3) A procuring and disposing entity shall use the following data and information in identifying single or sole sources for procurement requirements-

- (a) the Authority's register of providers;
- (b) a procuring and disposing entity's own list of pre-qualified providers;

(c) any other procuring and disposing entity's list of pre-qualified providers; and

(d) the procuring and disposing entity's own knowledge of the market.

(4) Where a single source is being selected, the following provisions shall apply-

(a) there shall be a rotation of different bidders for successive requirements;

(b) the procuring and disposing entity shall ensure that the selected bidder is eligible and qualified prior to finalising the recommendation of the source; and

(c) where possible, the bidder shall not be informed that the proposed procurement is based on single sourcing.

(5) Where only a sole source exists, the procuring and disposing entity shall verify that only a sole source exists and ensure that the sole bidder is eligible and qualified prior to finalising the recommendation of the source.

(6) The proposed single or sole source shall be recorded, with reasons for the selection of a single source or reasons why there is only a sole source, and submitted to the contracts committee for approval using PP Form 32 in the Ninth Schedule prior to the issue of the solicitation document.

(7) The approved single or sole source shall be displayed on the procuring and disposing entity's notice board, not later than the date of issue of the invitation and shall remain on display until after the closing date for submission of bids.

144. (1) The bidding period shall start on the date of expiry of the advertising period, where an advertising period applies or issue of the solicitation documents to bidders, where no advertising period applies, and shall end on the date for submission of bids by bidders.

(2) The advertising period, if any, shall be excluded from the calculation of the bidding period.

(3) The bidding period shall be determined taking into consideration the following factors-

(a) the time required for the preparation of bids, taking into account the level of detail required and the complexity of bids;

(b) the need for bidders to submit authenticated legal documents or similar documents as part of their bids and the time required to obtain such documents;

(c) the location of shortlisted or potential bidders and the time required for the delivery and submission of bids to the procuring and disposing entity;

- (d) the anticipated duration of the procurement process; and
- (e) the minimum bidding period.

145. (1) The minimum bidding period for each procurement method shall be as follows-

- (a) open domestic bidding, twenty-two working days;
- (b) open international bidding, thirty-three working days;
- (c) restricted domestic bidding, fifteen working days;
- (d) restricted international bidding, twenty working days;
- (e) quotations and proposals procurement, five working days;
- (f) direct procurement, no minimum period; and
- (g) micro procurement, not applicable.

(2) Where the publication of a bid notice is delayed, the deadline for submission of bids shall be extended by an appropriate period to ensure that both the minimum advertising period and the minimum bidding period are complied with.

146. (1) A procuring and disposing entity shall issue or sell solicitation documents to-

- (a) a bidder who requests the documents in the case of open bidding;
- (b) the single or sole source approved by the contracts committee in the case of direct procurement; or
- (c) a bidder on the shortlist approved by the contracts committee in the case of all other methods of procurement.

(2) Where solicitation documents are sold, the procuring and disposing entity shall allow a potential bidder to inspect the solicitation document prior to purchasing.

(3) A procuring and disposing entity shall record the issue or sale of all solicitation documents using-

- (a) PP Form 30 in the Ninth Schedule where a fee is payable for the document; or
- (b) PP Form 31 in the Ninth Schedule where no fee is payable for the document.

(4) A procuring and disposing entity shall obtain a signed receipt or other confirmation of receipt of the documents from a bidder to whom the documents are sold or issued.

(5) Solicitation documents may be sold in order to recover costs but the price shall be

calculated to cover only those costs related to printing, copying and distribution and shall not include any element of profit.

(6) The price of solicitation documents shall be approved by the contracts committee prior to issue of the bid notice or solicitation documents and shall be included in any bid notice.

(7) Where solicitation documents are sold, a procuring and disposing entity shall issue signed receipts for payment to bidders.

147. (1) A bid shall be rejected during the preliminary examination of bids if it is received from a bidder who-

(a) is not listed on PP Form 30 or 31 as having bought or obtained the solicitation document directly from the procuring and disposing entity; or

(b) is not included on the shortlist approved by the contracts committee.

(2) Where a bid referred to in subregulation (1) is received, a procuring and disposing entity shall investigate how the bidder obtained the solicitation document and shall, where appropriate, recommend measures against any bidder or member of staff of the procuring and disposing entity found to be in breach of these Regulations, or refer the matter to the Authority for investigation.

148. (1) The solicitation documents shall state that a bidder may seek clarification of the solicitation documents and shall state the final date, after which such clarification may not be sought; the final date shall be determined with a view to allow adequate time for all bidders to receive and study the solicitation documents.

(2) Where a request for clarification is received, the procuring and disposing entity shall promptly provide a clarification in writing and the clarification response shall be copied to all bidders who obtained the solicitation documents directly from the procuring and disposing entity, and shall include a description of the inquiry, but without identifying the source.

(3) At any time prior to the deadline for submission of bids, the procuring and disposing entity may, either at its own initiative or in response to a request for clarification from a bidder, amend the solicitation documents by issuing an addendum.

(4) To give a bidder reasonable time in which to take an addendum into account in preparing a bid, the procuring and disposing entity shall, where less than one third of the bidding period remains, extend the deadline for the submission of bids by a reasonable period; where more than one third of the bidding period remains, the procuring and disposing entity may also, at its discretion, extend the deadline for the submission of bids.

(5) The addendum, including any extension to the bidding period, shall be issued in writing and the same information shall be provided to all bidders.

(6) All addenda to solicitation documents shall be approved by the contracts committee prior to issue to bidders and shall be numbered sequentially.

(7) All clarifications and amendments to the solicitation documents shall be binding on bidders.

149. (1) A procuring and disposing entity may hold pre-bid meetings to allow potential bidders to seek clarification or access to project sites where applicable.

(2) Arrangements for a pre-bid meeting shall be included in the solicitation documents and where they are not included in the solicitation documents, information on a pre-bid meeting shall be sent to all bidders who purchased or were issued the solicitation documents.

(3) Where attendance at a pre-bid meeting is compulsory for bidders, notice to this effect shall be included in the solicitation document and any bid notice.

(4) A potential bidder shall be given sufficient notice of a pre-bid meeting to offer a reasonable opportunity for him or her to attend and the notice period shall be extended under international methods of procurement.

(5) A pre-bid meeting shall allow sufficient time before the deadline for bidding to enable a bidder to take any additional information into account in preparing the bid.

(6) Minutes shall be recorded for all pre-bid meetings using PP Form 33 in the Ninth Schedule and copies of the minutes shall be provided to all bidders who purchased or were issued the bidding documents.

(7) A pre-bid meeting shall be managed by the procurement and disposal unit with a member of the contracts committee present, to witness the meeting.

150. (1) The solicitation documents shall contain instructions to bidders on-

(a) the format and documentation required in bids;

(b) the procedure for signing and authorising bids; and

(c) the number of copies of bids to be submitted which shall be one original bid marked ORIGINAL and a specified number of copies, each marked COPY.

151. (1) Solicitation documents shall state the period within which a bid is to remain valid.

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

(3) When determining the duration of a bid validity period, sufficient time shall be allowed to enable-

(a) the procuring and disposing entity to undertake an evaluation, post-qualification and negotiations, as appropriate;

(b) the contracts committee to adjudicate the award of contract recommendation;

(c) a bidder to challenge the award decision before a contract is formed; and

(d) the procurement and disposal unit to prepare a letter of bid acceptance or contract document and obtain all necessary approvals prior to issue of the letter or document,

within the validity period of the bid.

(4) An extension to the initial period of a bid validity shall not normally be requested from a bidder.

(5) Where an extension to the bid validity period becomes necessary, a bidder shall be requested in writing, before the expiry of validity of their bid, to extend the validity for a minimum period to complete the process outlined in subregulation (3).

(6) In extending the validity of a bid, the bidder shall not be permitted to change the price or any other details of the bid.

(7) A bidder shall be free to refuse to extend the validity of the bid, without forfeiting his or her bid security.

152. (1) A solicitation document shall state any requirement for a bid security.

(2) The amount of a bid security shall be specified in the guidelines.

(3) A bid security may be requested to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids.

(4) A procuring and disposing entity shall require a bid security to be-

(a) in a format provided by the Authority and included in the solicitation documents;

(b) in a form and from an institution that is wholly acceptable to the Bank of Uganda in accordance with the guidelines; and

(c) valid for a period prescribed in the solicitation documents.

(5) A bid security shall be released promptly by a procuring and disposing entity to an unsuccessful bidder upon expiry of the term of the security or upon the formation of a contract with the successful bidder.

(6) The bid security of the successful bidder shall not be returned to the bidder until a corresponding performance security is received, if so required by the contract.

(7) The proposed release of a bid security shall be communicated to the bidder and returned in accordance with the bidder's instructions.

153. The conditions for forfeiture of a bid security shall be specified in the solicitation document and include the following-

(a) a bidder withdraws its bid during the period of bid validity; or

(b) the successful bidder fails to-

(i) accept the correction of its bid price;

(ii) sign the contract within the specified period; or

(iii) furnish the required performance bond within the specified period.

154. Solicitation documents shall state any limitations on the currency of bidding and payment that may apply to a procurement proceeding or resulting contract.

155. (1) Solicitation documents shall contain instructions on the method of bid submission, which shall either be-

(a) the one stage-single envelope method, in which a bid is submitted in one sealed envelope, which is opened on the specified date and time in a single bid opening;

(b) the one stage-two envelope method, in which a bid is submitted in an outer sealed envelope, containing two separately sealed and labelled technical and financial bids, which are opened on different dates in separate bid openings;

(c) the two stage-two envelope method, in which-

(i) during the first stage, a bid is submitted in an outer sealed envelope, containing two separately sealed and labelled technical and financial bids, of which only the technical bid is initially opened and evaluated; and

(ii) during the second stage, a revised technical bid and a supplementary financial bid are submitted, which are opened and evaluated together with the original financial bid; or

(d) two stage method, in which-

(i) during the first stage, a technical bid only is submitted, opened and evaluated; and

(ii) during the second stage, a revised technical bid and a financial bid are submitted, opened and evaluated together.

(2) Where the two stage methods in subregulation (1)(c) or (1)(d) are used, a bidder shall be invited to submit bids during the second stage, unless he or she has been declared non compliant or non responsive.

(3) The bid submission method shall be selected in accordance with the rules for each evaluation methodology and using the following as guidance-

(a) the one stage-single envelope method shall be used where all stages of the evaluation are to be conducted together and a combined technical and financial evaluation report produced;

(b) the one stage-two envelope method may be used where the detailed technical and commercial evaluation is to be conducted without reference to financial information;

(c) the two stage-two envelope method may be used where alternative technical bids are possible and the procuring and disposing entity needs to evaluate the initial technical bids in order to determine a single technical standard with which all bidders are invited to conform by submitting revised technical bids and supplementary financial bids; and

(d) the two stage method may be used for large and complex contracts, where technically unequal bids are likely and more than one equally acceptable technical solution is available to the procuring and disposing entity, which needs to ensure that all technical bids conform to the same technical standard before a financial bid is prepared.

(4) The solicitation documents shall state that the bid shall be submitted in a plain outer envelope, securely sealed in such a manner that opening and resealing cannot be achieved undetected.

(5) A bidder shall choose his or her preferred method of envelope sealing, but a procuring and disposing entity may, at the opening, reject any envelope that is unsealed.

(6) The solicitation documents shall contain instructions on the details of labelling and references to be detailed on each envelope which shall include-

(a) the procurement reference number;

(b) the name of the bidder;

(c) "TECHNICAL" or "FINANCIAL" where one stage-two envelope or two stage bid submission method is used;

(d) "WITHDRAWAL" or "REPLACEMENT" where a bid is being withdrawn or replaced; and

(e) "NOT TO BE OPENED BEFORE THE DATE AND TIME OF THE BID OPENING."

156. (1) The solicitation documents shall contain instructions that a bidder may, at any time before the deadline for submission of bids-

(a) withdraw his or her bid;

(b) submit a replacement bid; or

(c) modify his or her bid by withdrawal of the original bid and submission of a replacement bid.

(2) The solicitation documents shall specify the procedure for withdrawal, replacement or modification of a bid and shall state that the deadline for withdrawal, replacement or modification shall be the same as the deadline for submission of bids.

(3) Withdrawal shall be by submission of a letter notifying the procuring and disposing entity of the withdrawal and it shall be authorised and submitted in the same way as the bid; the envelope containing the withdrawal letter shall be clearly marked "WITHDRAWAL".

(4) A bidder withdrawing his or her bid may submit a new bid in accordance with the bid submission instructions in the solicitation document and the envelope containing the new bid shall be clearly marked "REPLACEMENT".

(5) A bid may only be modified by withdrawal of the original bid and submission of a replacement bid in accordance with subregulations (3) and (4) and any modifications submitted in any other way shall not be taken into account in the evaluation of bids.

157. (1) The method for receipt of bids and closing of bids shall be either by-

(a) receipt of bids in person and issue of a receipt by staff of the procurement and disposal unit in accordance with regulation 158; or

(b) use of a bid box in accordance with regulation 159.

(2) Where a bid is delivered by registered mail or courier, a procuring and disposing entity shall not be held liable for risk of loss or delay in delivery.

(3) Submission of electronic bids shall not be permitted unless specifically authorised by the Authority.

158. (1) A procurement and disposal unit shall ensure that an officer is available at the location for submission for a reasonable period of time before the deadline, to receive bids and issue receipts.

(2) The procurement and disposal unit shall issue a signed receipt for each bid received, stating the date and time received.

(3) A procuring and disposing entity shall maintain a record of all bids received using PP Form 34 in the Ninth Schedule which shall indicate the name of each bidder, the date and time when each bid was received and name of the staff member of the procurement and disposal unit who received the bid.

(4) Bidding shall be closed at the precise time and date of the closing deadline.

(5) A bid that arrives at the location of submission after the deadline for submission of bids shall not be accepted.

(6) Any bid received after the deadline for submission of bids shall be declared late, labelled as such, and returned unopened to the bidder and any late bid which is not labelled with the bidder's name shall be left unopened and destroyed.

(7) The bid closing process shall be managed by at least one member of the procurement and disposal unit and shall be witnessed by a representative of the contracts committee; all of whom shall sign the completed PP Form 34 in the Ninth Schedule to confirm that bidding was closed at the precise time and date of the deadline.

(8) Immediately after the bid closing process, the bids received shall be moved to the location of the bid opening and where the bid opening is not immediately after the bid closing, the bids received shall be moved to a secure location.

159. (1) A procurement and disposal unit shall ensure that a bidder has access to the bid box at all times during working hours until the closing deadline.

(2) Where a bid is too large to be placed in the bid box, the procurement and disposal unit shall-

(a) issue a receipt for the bid, in accordance with the procedure in regulation 158;

(b) ensure that the bid is kept securely until the deadline for bid submission; and

(c) ensure that the bid is taken to the location for bid opening with the sealed bid box and included in the bid opening procedure.

(3) Where a procuring and disposing entity considers it appropriate, it may require a bidder to register the bid and obtain a receipt prior to placing the bid in the bid box; such registration shall be in accordance with the procedure in regulation 158.

(4) Bidding shall be closed at the precise time and date of the deadline by sealing the bid box and any bids that arrive at the location of submission after the deadline for submission of bids shall not be placed in the bid box or accepted in any other way.

(5) The bid closing process shall be managed by at least one member of the procurement and disposal unit and witnessed by a representative of the contracts committee, all of

whom shall sign the completed PP Form 34 in the Ninth Schedule to confirm that the bid box was sealed at the precise time and date of the deadline.

(6) Immediately after the bid closing process, the sealed bid box shall be moved to the location of the bid opening and where the bid opening is not to take place immediately after the bid closing, the sealed bid box shall be moved to a secure location.

(7) The bid box shall not be opened until the time of the public opening.

160. (1) Open and restricted bidding processes shall include a public bid opening and the solicitation document shall contain instructions to bidders regarding the-

(a) date and time of the bid opening;

(b) precise location of the bid opening; and

(c) information to be read out and recorded at the bid opening.

(2) Where the information in subregulation (1) is not available at the time of issue of a solicitation document, it shall be communicated to all bidders who purchased or were issued with the solicitation document, before the deadline for bid submission.

161. (1) The information to be read out at the bid opening shall be in accordance with the solicitation document and shall include-

(a) the name of the bidder;

(b) the presence or absence of a bid security and the form or amount of any bid security, where such bid security was requested in the solicitation document;

(c) the total price of the bid, including the currency and amount;

(d) the technical score obtained by the bid under one stage-two envelope, two stage-two envelope or two stage submission methods where applicable; and

(e) any other information required as may be stated in the solicitation documents.

162. (1) Prior to the bid opening, the procurement and disposal unit shall ensure that-

(a) the required room is available, suitably equipped for the opening and arranged in such a way that any bidders' representatives are seated at a short distance from the table where the opening is to be conducted;

(b) sufficient staff are available for the opening, including the required witness from the contracts committee;

(c) staff involved in the opening understand the bid opening procedure and their respective duties;

(d) the procedure for opening and the information to be read out has been agreed in accordance with these Regulations and the solicitation document; and

(e) the required resources are available and ready, including any forms or checklists required.

(2) The bid opening shall be managed by the procurement and disposal unit, assisted as may be required by other staff of the procuring and disposing entity and shall be witnessed by a representative of the contracts committee.

(3) The bid opening shall be conducted in an organised and methodical manner in accordance with these Regulations and the agreed opening procedure.

(4) Envelopes marked "WITHDRAWAL" shall be opened first and read out and the envelope containing the corresponding bid shall be located and returned to the bidder unopened.

(5) A bid withdrawal shall only be accepted if the bid withdrawal notice is authorised in accordance with the solicitation document and read out at the bid opening.

(6) All other envelopes, including those marked "REPLACEMENT", shall be opened one at a time and the relevant details read out in accordance with the solicitation document.

(7) A replacement bid shall be recorded as such on the record of bid opening.

(8) All bids opened shall be stamped on key pages with the procuring and disposing entity's stamp and signed or initialled by the chairperson of the opening.

(9) The chairperson of the opening shall determine the key pages to be stamped and initialled, but these shall always include the typed pages of the bid that are unique to the bid, including the bid form or bid submission sheet and all pages containing financial information.

(10) A printed or illustrative page contained in a bid shall not be regarded as a key page unless the chairperson of the opening states otherwise.

(11) With the exception of late bids, no bid shall be accepted, rejected or evaluated in any way at the public bid opening.

(12) The procuring and disposing entity shall note any discrepancies or missing documents in the record of bid opening, but shall not otherwise comment on such discrepancies or missing documents.

163. (1) Public bid openings shall be conducted in full view of a bidder's representative but a bidder's representative shall not be permitted to participate in the opening process.

(2) The procuring and disposing entity shall permit a bidder's representative to approach the opening table only to confirm that the bid is intact and sealed and no addition, deletion or modification to the exterior or the contents of the sealed bid shall be permitted.

(3) A bidder's representative shall be permitted to ask questions after all bids have been opened, but a procuring and disposing entity shall not enter into discussion on the specific details of any bid.

(4) Bidders' representatives shall not be permitted to attend internal bid openings.

164. (1) The bid opening shall be recorded using PP Form 35 in the Ninth Schedule.

(2) Any person who attends or participates in a bid opening shall sign Part 2 of PP Form 35 in the Ninth Schedule to indicate his or her attendance.

(3) After all bids have been opened, read out and recorded, the record of the opening shall be signed by the chairperson and countersigned by the secretary; copies of the record shall be made available to a bidder's representative upon request, and on payment of a prescribed fee.

(4) The record of the bid opening shall be posted on the procuring and disposing entity's notice board using the format specified in the Seventh Schedule within one working day of the opening and shall be displayed for a minimum of four weeks.

165. The opened bids shall be taken immediately to a secure location where they shall be kept until the evaluation begins.

166. (1) Where only a single bid or a limited number of bids has been received in response to a solicitation document, under a competitive procurement method, the evaluation may proceed for the bid received, provided that the evaluation committee agrees that-

(a) the minimum bidding period was sufficient for the procurement method and requirement;

(b) the terms and conditions of the solicitation document were reasonable and not so excessive as to deter competition;

(c) the bid notice, if any, was published in an appropriate publication and on the required date;

(d) the shortlist, if any, included a sufficient number of bidders;

(e) all short listed bidders or all bidders responding to the bid notice were issued the solicitation documents and there were no delays in issuing the documents;

(f) any amendments to the solicitation documents allowed sufficient time for bidders to take the amendment into account in preparing their bids;

(g) that there were no other extraneous events or circumstances that may have affected the ability of bidders to respond;

(h) there is no suspicion of collusion between potential bidders; and

(i) the original choice of procurement method was appropriate for the market and an adequate number of potential bidders exist to have made competition possible.

(2) A limited number of bids means bids from only a small proportion of the bidders who bought or were issued the solicitation documents.

(3) Where the evaluation committee proceeds with the evaluation of a single or limited number of bids, the evaluation report-

(a) shall include the discussions and findings of the evaluation committee in relation to subregulation (1); and

(b) shall indicate whether the best evaluated bid offers value for money.

(4) Where only a single bid was received, the evaluation committee may recommend negotiations on any element of the bid where necessary; negotiations shall normally be limited to the areas listed in regulation 219(2), but may in exceptional circumstances relate to additional areas.

167. (1) Where a procurement and disposal unit or contracts committee suspects collusion between bidders, they may request the Authority to undertake an investigation.

(2) Where a procurement and disposal unit or contracts committee suspects mismanagement or malpractice within the procuring and disposing entity, they shall report it to the accounting officer who shall take appropriate action.

(3) Where a bidder wishes to complain about a bidding process, he or she shall do so in accordance with the provisions of Part IX.

Division VII-Evaluation.

168. (1) The evaluation shall be conducted in accordance with the methodology and criteria stated in the solicitation document and a written evaluation report shall be produced.

(2) No other methodology or criteria shall be used except that stipulated in the solicitation document.

169. (1) An evaluation shall be conducted by an evaluation committee, which shall report to the procurement and disposal unit.

(2) The membership of the evaluation committee shall be recommended by the procurement and disposal unit, and approved by the contracts committee using PP Form 40 in the Ninth Schedule.

(3) The number of members of the evaluation committee shall depend on the value and complexity of the procurement requirement, but shall in all cases be a minimum of three.

(4) The members shall be of an appropriate level of seniority and experience, depending on the value and complexity of the procurement requirement.

(5) The evaluation committee shall include members with a relevant type of skills and experience and the skills required shall be determined by the nature of the procurement requirement, but may include-

(a) end-user representatives;

(b) procurement and contracting skills;

(c) financial management skills;

(d) technical skills relevant to the subject of the procurement;

(e) legal expertise; or

(f) industry development expertise.

(6) A member of a procurement and disposal unit or a user department may be a member of an evaluation committee, where he or she has appropriate skills or experience.

(7) In order to maintain independence of functions and powers, a member of a contracts committee shall not be a member of an evaluation committee.

(8) A member of the evaluation committee may be external to the procuring and disposing entity, where the required skills or experience are not available within the procuring and disposing entity, or where there is a conflict of interest.

(9) A member of an evaluation committee shall sign the Code of Ethical Conduct in Business using PP Form 211 in the Ninth Schedule, declaring that he or she does not have a conflict of interest in the procurement requirement.

170. (1) Members shall select a chairperson from among their number.

(2) The chairperson of the evaluation committee shall be responsible for-

- (a) ensuring all members have a common understanding of the evaluation methodology and criteria to be used;
- (b) ensuring the evaluation is in accordance with all legal requirements and the provisions of the solicitation document;
- (c) chairing all meetings of the evaluation committee and ensuring that discussions are productive, open and participatory;
- (d) ensuring all members are aware of their responsibilities, including the need for confidentiality;
- (e) ensuring the security of bids and other documentation;
- (f) ensuring that decisions are made in a timely manner;
- (g) managing communications between the evaluation committee and a bidder or any other body;
- (h) ensuring that the evaluation committee has access to adequate resources; and
- (i) ensuring the final evaluation report is prepared accurately and on time.

(3) The chairperson of the evaluation committee shall supervise and coordinate team members during the evaluation process, but shall not direct members in decisions relating to the evaluation or canvas them on any issue for a specific outcome.

171. (1) A meeting shall not be held unless all members of the evaluation committee are present.

(2) Notwithstanding subregulation (1), a meeting of the evaluation committee may be held without all members present, where the absent member has so agreed or where it is not possible or practical for all members to meet.

(3) Where a member is absent from a meeting of the evaluation committee, he or she shall be informed of the proceedings and decisions of the meeting.

(4) If the absent member disagrees with any of the decisions taken, he or she shall immediately inform the chairperson of the evaluation committee, who shall call a further meeting to resolve the disagreement.

(5) Minutes of all meetings shall be signed by all members of the evaluation committee to confirm that the minutes are an accurate and complete record of each meeting and shall be kept as part of the procurement record; the minutes shall form an annex to the evaluation report

(6) The business of the meeting shall be determined by the evaluation methodology specified in the solicitation documents.

(7) A decision of the evaluation committee shall be by unanimity, except where individual scores or marks are required in accordance with the evaluation methodology.

(8) Notwithstanding subregulation (7), where the evaluation committee is unable to reach a unanimous decision, the findings and recommendations of the majority shall be stated in the evaluation report.

(9) The evaluation report shall also state any disagreements, including the reasons, the discussions held on the issue and the names of those holding alternative views.

(10) The evaluation report shall be signed by all members of the evaluation committee.

(11) Where an evaluation committee is unable to agree on any part of an evaluation and the disagreement is significant and likely to substantially affect the results of an evaluation, they shall consult the procurement and disposal unit.

172 (1) The evaluation criteria to be used shall be stated in the solicitation document and the evaluation shall be conducted in accordance with these criteria without amendments or additions to the criteria.

(2) Evaluation criteria shall be used to assess compliance with the statement of requirements, ability to perform the proposed contract or ability to meet the objectives of the procurement.

(3) Evaluation criteria which are not related to the statement of requirements, proposed contract or objectives of the procurement shall not be included in the solicitation document.

(4) Evaluation criteria shall not be drafted in a way which restricts competition, unless such criteria is required to meet the objectives of the procurement.

(5) Where criteria is given scores or weighted, the maximum score or weight allocated shall be directly related to the importance of the criteria to the procurement.

173 (1) Where a merit point evaluation is used, the solicitation document shall state the technical evaluation criteria, which shall consist of a number of main criteria, which may be divided into sub-criteria.

(2) The number of main criteria shall normally be no more than five and the number of sub-criteria within each main criteria shall normally be no more than four.

(3) The number of sub-criteria shall be limited so that the evaluation is not reduced to a merely mathematical exercise.

(4) The solicitation document shall state a maximum number of points for each main criterion; the total number of points for all the criteria shall equal 100 and the solicitation

document shall not normally state the sub-criteria or the number of points allocated to each sub-criteria.

(5) The following main criteria and maximum number of points are indicative and may be adjusted to the specific circumstances of the procurement requirement-

(6) Alternatively, where the evaluation is particularly complex or a detailed evaluation of sub-criteria or curriculum vitae is required, each criterion may be scored out of a total of 100 points; the scores for each criterion shall then be weighted to obtain a maximum total score of 100. The weights for each criterion shall be stated in the solicitation document, using the indicative points scores in subregulation (5) as percentages.

(7) Where appropriate, a proportion of the points under a merit point system may be allocated to the performance of bidders or key staff of the bidder in interviews in accordance with regulation 176.

174. (1) The evaluation committee shall conduct the evaluation jointly during meetings, except where otherwise indicated in these Regulations.

(2) The preliminary examination shall always be conducted jointly by the evaluation committee.

(3) Where the detailed evaluation uses an assessment of whether the bid conforms to all terms and conditions of the solicitation document in accordance with regulation 188(4)(a) or a pass or fail system in accordance with regulation 188(4)(b), the detailed evaluation shall be conducted jointly by the evaluation committee.

(4) Where the detailed evaluation uses a merit point system in accordance with regulation 188(4)(c), it shall be conducted in accordance with the procedure in subregulation (7).

(5) The financial comparison shall always be conducted jointly by the evaluation committee.

(6) Notwithstanding subregulation (3), where a detailed evaluation is particularly complex or lengthy, the evaluation committee may-

(a) initially conduct a detailed evaluation individually, before discussing and agreeing their results at a meeting of the evaluation committee; or

(b) request two or more members of the evaluation committee to conduct specific detailed evaluation work and prepare recommendations on behalf of the whole team, which shall subsequently review, discuss and agree on such work and be jointly responsible for the work in the same way as if it had been conducted jointly by the whole evaluation committee.

(7) All records relating to the evaluation, including individual signed score sheets for a merit point evaluation, shall be retained as part of the procurement record.

175. (1) Where a detailed technical evaluation uses a merit point system in accordance with regulation 188(4)(c), the following procedure shall apply-

- (a) the evaluation committee shall jointly discuss the criteria and any sub-criteria to ensure that all members have a common understanding of the criteria and their relative importance;
 - (b) each member of the evaluation committee shall conduct an evaluation independently, considering each bid and awarding scores for each against each criterion; the evaluator shall record his or her scores using a score and shall sign his score sheet;
 - (c) the chairperson of the evaluation committee shall call a meeting to collect and compare scores; individual scores shall not be collected by the chairperson or any member of the team except at an evaluation committee meeting;
 - (d) the scores from each evaluator shall be compiled during the meeting to produce a score sheet for each bid, from which the average score for each bid shall be calculated;
 - (e) the evaluation committee shall jointly compare the scores of each evaluator for each bid in order to verify that there has been a consistency of approach to the evaluation and a common understanding of the criteria and of each bid by all members of the evaluation committee;
 - (f) the evaluation committee shall note any significant deviation from the average score or inconsistencies in scoring and these shall be discussed and each evaluator shall explain and justify his or her scores where required;
 - (g) where the evaluation committee agrees that there has not been a consistency of approach or where discussions reveal a misunderstanding of a criterion or a bid, one or more evaluators may be permitted to adjust his or her individual scores; and
 - (h) no evaluator shall be obliged to make adjustments to his or her scores.
- (2) The evaluation committee shall agree which member of the evaluation committee may adjust their scores and for which bids or criteria they may be adjusted.
- (3) An adjustment shall only be permitted to the extent necessary to correct any inconsistency of approach or genuine misunderstanding of a criterion or a bid; no adjustment shall be permitted except for that specifically agreed by the evaluation committee.
- (4) Where any score is adjusted, the original score sheet shall be kept as part of the record of the evaluation and the adjusted score shall be recorded on a new score sheet.
- (5) An adjustment of a score shall be completed as soon as possible after the original meeting and a further meeting shall be called; until such time as a further meeting is called, the chairperson of the evaluation committee shall keep all copies of individual and consolidated score sheets in a secure location.

(6) Once an individual score has been finalised, the calculation of the final technical score for each bid and all other aspects of the evaluation shall be conducted jointly by the evaluation committee.

176. (1) Where an interview is conducted as part of a merit point evaluation, the solicitation document shall state that-

(a) an interview may be conducted;

(b) a bidder invited for an interview will be required to bear all costs of attendance at the interview;

(c) a bidder invited for an interview shall be notified of arrangements for the interview at a later date; and

(d) a bidder who fails to attend an interview may be rejected.

(2) The solicitation document shall state which staff shall be interviewed; interviews shall be limited to key staff or consultants of the bidder, such as the team leader.

(3) The interview shall be conducted after the evaluation of all other commercial and technical evaluation criteria and only a bidder who is still able to reach any minimum score or threshold shall be invited for interview.

(4) A bidder invited for an interview shall be given sufficient notice of the proposed date, time and location of the interview to offer him or her a reasonable opportunity to attend.

(5) A procuring and disposing entity shall, after a reasonable cause is shown, offer an alternative date and time for an interview to enable a bidder to attend, particularly when a foreign bidder is invited for interview.

(6) An interview shall be conducted by at least three members of the evaluation committee; staff involved in the interview shall prepare a plan for the interview, which shall be agreed by all members of the evaluation committee prior to the interview.

(7) Detailed minutes of the interview shall be kept and shall form part of the evaluation report.

177. (1) The solicitation documents shall state that no change in the substance of bids including changes in price shall be sought, offered or permitted after the date and time of bid closing.

(2) The solicitation documents shall state that any bidder attempting to make changes to his or her bid after the date and time of bid closing shall be rejected and reported to the Authority.

178. (1) A procuring and disposing entity's determination of a bid's compliance and responsiveness shall be based on the contents of the bid itself.

(2) A substantially compliant and responsive bid shall be one that conforms to all the instructions, requirements, terms and conditions of the solicitation documents without material deviation, or omission.

(3) If a bid is not substantially compliant and responsive to the solicitation documents, it shall be rejected by the procuring and disposing entity and may not subsequently be made compliant or responsive by the bidder by correction of the material deviation, or omission.

(4) Where a bid is substantially compliant and responsive, the procuring and disposing entity may waive, clarify or correct any non-conformity or omission in the bid that does not constitute a material deviation.

(5) Where a bid is to be evaluated on a pass or fail basis, any bid which is determined to be substantially compliant and responsive in accordance with subregulation (2) may be determined to have passed.

179. (1) Notwithstanding regulation 177, the evaluation committee may request the clarification of information or the submission of documentation from a bidder, which relate to-

(a) nonconformity or omission, which are not material as determined by regulation 183; or

(b) the correction of arithmetic errors.

(2) A clarification shall not seek and the bidder shall not be permitted to-

(a) alter or amend the bid price except to correct errors in accordance with regulation 192;

(b) change the substance of the terms and conditions of the bid; or

(c) substantially alter anything which forms a crucial or deciding factor in the evaluation of the bid.

180. (1) A request for clarification, including the correction of arithmetic errors, shall be addressed to a bidder in writing; the evaluation committee shall agree on the wording and content of all such requests prior to their issue.

(2) A request for clarification shall be signed and sent to a bidder by the chairperson of the evaluation committee and all requests for clarifications shall be copied to all bidders for information purposes only and noted in the evaluation report.

(3) A bidder shall be instructed to reply to clarifications in writing within a specified time, addressing their response to the head of the procurement and disposal unit.

(4) The head of the procurement and disposal unit shall ensure that all replies are promptly forwarded to the chairperson of the evaluation committee.

(5) Failure of a bidder to respond to a request for clarification may result in the rejection of its bid.

181. (1) Requests for clarification shall not be permitted to become negotiations.

(2) For the avoidance of doubt-

(a) clarifications are a process used during evaluation to clarify details that a bidder included in the original bid; and

(b) negotiations are discussions aimed at resolving differences between the best evaluated bid and the procuring and disposing entity's requirements or agreeing mobilisation, implementation or any other arrangements.

(3) Negotiations shall be carried out by the negotiation team after the determination of the best evaluated bid, but before an award decision is made in accordance with the provisions of Division VIII of this Part.

182. (1) Notwithstanding regulation 177, an evaluation committee may correct any non-conformity or omission in the bid that does not constitute a material deviation.

(2) The nonconformity or omission shall be quantified and expressed in monetary terms and the bid price shall be adjusted, for evaluation purposes only, to reflect the price of the missing or non-conforming item or component.

183. (1) A material deviation, reservation, or omission is one that-

(a) affects in any substantial way the scope, quality, or performance of the works, services or supplies specified in the solicitation documents;

(b) would limit in any substantial way, inconsistent with the solicitation documents, the procuring and disposing entity's rights or the bidder's obligations under any resulting contract; or

(c) if corrected would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.

(2) A material deviation shall result in the rejection of the bid.

(3) A non-material deviation, reservation or omission is one that-

(a) affects the scope, quality, or performance of the works, services or supplies specified in the solicitation document in only a minor way, which is acceptable to the procuring and disposing entity;

(b) would limit the procuring and disposing entity's rights or the bidder's obligations under any resulting contract in only a minor way, which is acceptable to the procuring and disposing entity; and

(c) would not unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids if corrected.

(4) A non-material deviation may be waived, clarified by the bidder or corrected by the procuring and disposing entity.

(5) The classification of a deviation, reservation or omission as material or non-material shall be determined by the objectives and requirements of the individual procurement requirement, as stated in the solicitation document.

(6) In classifying a deviation, reservation or omission as material or non-material, the procuring and disposing entity shall consider whether the impact on key factors, such as cost, risk, time and quality are major or minor and the following guidance shall apply-

(a) material deviation, reservation or omission shall include-

(i) unacceptable time schedules, where it is stated in the solicitation document that time is of the essence;

(ii) unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; and

(iii) unacceptable counter-proposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty; and

(b) a non-material deviation, reservation or omission shall include-

(i) minor differences in time schedules, where time is not of the essence;

(ii) the omission of minor items;

(iii) arithmetic errors;

(iv) alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies, which are substantially responsive to the statement of requirements and acceptable to the procuring and disposing entity; and

(v) minor amendments to contract terms and conditions, which are acceptable to the procuring and disposing entity.

(7) The classification of a deviation, reservation or omission as material or non-material shall be consistently applied to all bids.

184. (1) An evaluation shall be conducted in three sequential stages-

(a) a preliminary examination to determine the eligibility of a bidder and the administrative compliance of bids received in accordance with regulation 185;

(b) a detailed evaluation to determine the commercial and technical responsiveness of the eligible and compliant bids in accordance with regulation 188; and

(c) a financial comparison to compare costs of the eligible, compliant, responsive bids received and determine the best evaluated bid in accordance with regulation 190.

185. (1) A preliminary examination shall be conducted to determine-

(a) whether a bidder is eligible; and

(b) the administrative compliance of a bid to the basic instructions and requirements of the solicitation document.

(2) Eligibility shall be determined in accordance with regulation 186.

(3) Administrative compliance shall be determined in accordance with regulation 187.

(4) Eligibility and administrative compliance shall be determined on a pass or fail basis and a bid which is not eligible or substantially compliant shall be rejected.

(5) Only bids that pass the preliminary examination shall be considered further.

186. (1) In order to participate in public procurement, a bidder shall be eligible and the minimum eligibility requirements are that-

(a) a bidder has the legal capacity to enter into a contract;

(b) a bidder is not-

(i) insolvent;

(ii) in receivership;

(iii) bankrupt; or

(iv) being wound up;

- (c) a bidder's business activities have not been suspended;
 - (d) a bidder is not the subject of legal proceedings for any of the circumstances mentioned in paragraph (b);
 - (e) a bidder has fulfilled his or her obligations to pay taxes and social security contributions;
 - (f) a bidder does not have a conflict of interest in relation to the subject of the procurement; and
 - (g) a bidder is not subject to suspension by the Authority in accordance with regulation 351.
- (2) A procuring and disposing entity shall include the eligibility requirements in the solicitation documents and shall, where it deems fit, require a bidder to provide documentary evidence to certify his or her eligibility.
- (3) The documentary evidence required shall include-
- (a) a copy of the bidder's trading licence or equivalent;
 - (b) a copy of the bidder's certificate of registration or equivalent;
 - (c) a copy of the bidder's income tax clearance certificate or equivalent;
 - (d) a copy of the bidder's VAT registration or its equivalent;
 - (e) a signed statement that the bidder does not have a conflict of interest in the subject of the procurement; and
 - (f) any other relevant documents or statements which shall be stated in the solicitation documents.
- (4) The procuring and disposing entity shall verify the accuracy, validity and authenticity of the eligibility documents provided by a bidder.
- (5) Verification of eligibility shall form an integral part of the preliminary examination in accordance with these Regulations.
- (6) Notwithstanding subregulation (2), where eligibility has been verified as part of a pre-qualification process, the solicitation document shall not require documentary evidence of eligibility and verification of eligibility shall not form part of the preliminary examination.

(7) Solicitation documents shall state that any bidder whose circumstances in relation to eligibility change during a procurement or contract management process shall immediately inform the procuring and disposing entity.

(8) Eligibility shall always be evaluated on a pass or fail basis and any bid which fails the eligibility examination shall be rejected and not evaluated further.

(9) Notwithstanding subregulation (8), where the omission of any documentary evidence to certify eligibility is determined to be a non-material omission in accordance with regulation 183, the evaluation committee may request a bidder to submit such documentation as a clarification in accordance with regulation 180.

187. (1) Administrative compliance is determined by measuring whether a bidder has conformed satisfactorily to the basic instructions and requirements detailed in the solicitation document and may include but shall not be limited to-

(a) submission of a bid security, if required, in the correct form and amount;

(b) submission of the correct number of copies of the bid;

(c) submission of the bid in the required format;

(d) signature and authorisation of bids in accordance with the instructions in the solicitation document;

(e) signature of curriculum vitae, if required;

(f) correct bid validity; and

(g) submission of any additional documentation or samples required.

(2) The examination of administrative compliance shall always be conducted on a pass or fail basis and any bid which is not substantially compliant shall be rejected and not evaluated further.

188. (1) A detailed evaluation shall be conducted to assess-

(a) the commercial responsiveness of a bid to the terms and conditions of the solicitation document; and

(b) the technical responsiveness of bids to the statement of requirements or the relative quality of bids received.

(2) The detailed evaluation shall only be conducted on a bid that is determined to be eligible and compliant during the preliminary examination.

(3) The detailed evaluation shall compare the details of the bid received with the terms, conditions and criteria stated in the solicitation documents; the detailed evaluation shall

not be based on any terms, conditions or criteria that was not included in the solicitation document.

(4) The method of detailed evaluation shall be in accordance with the methodology selected and the solicitation document and may use-

(a) an assessment of whether the bid conforms to all the terms and conditions of the solicitation document, including the statement of requirements, without material deviation or reservation;

(b) a pass or fail system against a minimum technical standard detailed in the statement of requirements to determine whether a bid is substantially responsive to the minimum standard required;

(c) a merit point system, with a variable number of points awarded to each bid for set criteria out of a maximum number of points stated in the statement of requirements to obtain a total score indicating the relative quality of each bid; or

(d) a combination of paragraphs (a), (b) and (c).

(5) Any bid which is not substantially responsive to the minimum standard or does not reach any minimum score required shall be rejected and not evaluated further.

189. (1) Unless otherwise indicated in the solicitation documents, an alternative bid shall not be considered.

(2) A procuring and disposing entity may permit alternative bids where it is anticipated that a bidder may be able to offer works, services or supplies, which do not conform precisely to the statement of requirements, but which satisfy the objectives of the procurement in an alternative manner.

(3) An alternative bid may be permitted in areas of rapidly changing technology or where a need could be satisfied in a number of different ways and the procuring and disposing entity wishes to encourage cost efficient and technically innovative approaches by bidders.

(4) Where solicitation documents permit alternative bids, the solicitation document shall state that the alternative bid does not need to conform precisely to the statement of requirements, but must-

(a) meet the objectives or performance requirements prescribed in the Statement of Requirements;

(b) be substantially within any delivery or completion schedule, budget or other performance parameters stated in the solicitation document; and

(c) clearly state the benefits of the alternative bid over any solution which conforms precisely to the statement of requirements, in terms of technical performance, price, operating costs or any other benefit.

(5) Where solicitation documents permit alternative bids, the procuring and disposing entity shall ensure that the statement of requirements contains a clear, accurate and comprehensive description of the objectives or performance requirements of the subject of the procurement.

(6) A bidder may submit both a main bid which conforms precisely to the statement of requirements and an alternative bid.

(7) Where a bidder submits more than one bid, each bid shall be submitted as a completely separate bid and shall conform to the instructions for preparation and submission of bids in its own right, without any reliance on any other bid; each bid shall be separately signed, authorised, sealed, labelled and submitted in accordance with the instructions for submission of bids and shall be accompanied by a separate bid security, if so required; such a bid shall be labelled "Main Bid" and "Alternative Bid".

(8) The evaluation of an alternative bid shall use the same methodology, criteria and weight as the evaluation of a main bid, except that the detailed technical evaluation shall take into account only the objectives or performance requirements prescribed in the statement of requirements and shall not be required to conform precisely to the statement of requirements.

(9) An alternative bid shall be evaluated by the same evaluation committee as a main bid.

(10) Where an alternative bid is permitted, the skills required for evaluation of the alternative bid shall be taken into account when proposing the membership of the evaluation committee.

(11) The evaluation committee may seek additional advice or assistance where required in order to conduct a fair and comprehensive evaluation of an alternative bid.

190. (1) A financial comparison shall be conducted to examine and compare financial bids and determine the best evaluated bid.

(2) The financial comparison shall only be conducted on a bid that is-

(a) eligible and administratively compliant; and

(b) substantially, commercially and technically responsive or meet the required minimum technical standard or score.

(3) The financial comparison shall-

(a) determine the bid price;

- (b) correct any arithmetic errors in the bids in accordance with regulation 192;
- (c) apply any non-conditional discounts offered in a bid in accordance with regulation 193;
- (d) determine whether the financial bids are complete, costing any missing items and adding them to the original bid price in accordance with subregulation (4);
- (e) make adjustments for any non-material nonconformities or omissions in accordance with regulation 182(2);
- (f) convert all bids to a single evaluation currency for purposes of comparison if required;
- (g) apply any margin of preference in accordance with the procedure specified in the solicitation documents;
- (h) determine the total evaluated price of each bid;
- (i) award a financial score or rank bids, in accordance with the evaluation methodology selected; and
- (j) determine which is the best evaluated bid in accordance with the methodology and criteria in the solicitation document.

(4) Where a conditional discount has been offered, it shall be incorporated in a further financial comparison prior to determining the best evaluated bid.

(5) A financial bid shall be determined to be complete if the price has been included for all items required and included in the corresponding technical bid and unless otherwise stated in the solicitation document, any missing items shall be costed using the highest price from the other bids, and added to the original bid price.

(6) The solicitation document shall state the evaluation currency and the date and source of the exchange rates to be used for conversion to a single currency.

191. (1) The solicitation document shall state which costs shall be taken into account in the financial comparison and which costs shall be excluded.

(2) The costs may include, but are not limited to-

- (a) fee rates or unit prices, based on either a fixed or estimated total quantity;
- (b) reimbursable costs, such as travel, translation, report printing, communication costs, secretarial expenses or similar costs;
- (c) packing, packaging, freight and inland delivery;
- (d) insurance;

- (e) installation and commissioning;
- (f) inspection and tests;
- (g) operating costs for a specified period of time;
- (h) cost of service, maintenance and spare parts for a specified period of time;
- (i) duties, taxes or other levies; and
- (j) contingencies.

(3) The financial comparison may include an assessment of whole life-cycle costs for equipment which is expected to be in use for a long period of time or where maintenance and operating costs are a significant proportion of the overall cost in accordance with regulation 269.

(4) Where the evaluation of bids requires the consideration of factors other than cost, the solicitation document may also state the way in which non-cost factors will be quantified and expressed in monetary terms for purposes of the financial comparison.

(5) The factors referred to in subregulation (4) shall relate to the terms and conditions or performance characteristics of the bid, such as the gain in value of early delivery or completion or a penalty for late delivery or completion.

192. (1) Notwithstanding regulation 177, an evaluation committee may correct purely arithmetical errors.

(2) Unless otherwise stated in the solicitation document, an arithmetic error shall be corrected on the following basis-

(a) if there is a discrepancy between the unit price and the total price 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 evaluation committee there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

(b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to paragraphs (a) and (b).

(3) A bidder shall be promptly notified of and requested to agree to the arithmetic correction within five working days, in accordance with the procedure for clarification of bids in regulation 180.

193. (1) A bidder shall be encouraged to offer a discount or reduction to the bid prior to the date and time for bid closing.

(2) A bidder shall not be permitted and shall not be requested to offer any discount or reduction after the date and time for bid closing.

(3) Bidding forms shall include specific areas in which a bidder can declare the level of discount applicable to the bid.

(4) The impact of the individual discount offered shall be fully reflected in the evaluation of bids and the original bid price shall be modified by the individual discount offered at the financial comparison stage of the evaluation process as described in regulation 190.

194. (1) A bidder shall be permitted to offer a cross discount that is conditional on the simultaneous award of a contract for other lots contained in the solicitation document; such a discount shall not be incorporated until the completion of all other evaluation steps.

(2) A cross or conditional discount shall be included in a further financial comparison, using the methodology specified in the solicitation documents, once the ranking of each lot has been determined incorporating any individual discount.

(3) In evaluating a conditional discount, the evaluation committee shall seek to obtain the best overall value for money for the procuring and disposing entity.

195. (1) An evaluation report shall be prepared for each evaluation using PP Form 41, 42, 43, 44, 45, 46, 47 or 48 in the Ninth Schedule as appropriate and submitted to the contracts committee for approval.

(2) The evaluation report shall be signed by all member of the evaluation committee.

(3) Where a bid is submitted using the one stage-one envelope bid submission method, a combined evaluation report shall be prepared and submitted to the contracts committee after completion of the evaluation.

(4) Where a bid is submitted using the one stage-two envelope, two stage-two envelope or two stage bid submission method-

(a) a technical evaluation report shall be prepared and submitted to the contracts committee after completion of the detailed evaluation and shall be approved prior to inviting or opening a financial bid as applicable; and

(b) a financial evaluation report shall be prepared and submitted to the contracts committee after completion of the financial comparison.

(5) An evaluation report shall contain reasons for the rejection of any bid and details of any non-material deviations accepted and the way in which they have been quantified and taken into account in the financial comparison.

(6) A technical evaluation report shall contain recommendations on which a bidder should proceed to the financial comparison.

(7) A combined and financial evaluation report shall contain recommendations on-

- (a) the best evaluated bidder and the evaluated price;
- (b) whether the recommended bidder should be subject to post-qualification;
- (c) whether negotiations should be held with the recommended bidder; and
- (d) the price of the proposed contract, subject to any changes following negotiations.

(8) Any post qualification shall be carried out in accordance with regulation 218.

(9) Any negotiations shall be carried out in accordance with the provisions of Division VIII of this Part.

196. (1) The evaluation committee shall ensure that the evaluated price of the best evaluated bid is used only as the basis for evaluating a bid and not as the contract price of any resulting contract.

(2) The following elements of the financial evaluation shall not be included in the components of the proposed contract price-

- (a) any price additions for items omitted from the bidder's bid;
- (b) any adjustments made for non-material non-conformities;
- (c) any margin of preference that was allocated to the bidder during evaluation;
- (d) any conversion to a common currency; and
- (e) any weightings applied to the financial bids.

(3) For the avoidance of doubt, the following elements of a financial evaluation shall be included in the components of the proposed contract price-

- (a) the cost of all taxes, duties and levies originally included in the bid price;
- (b) any adjustments made for arithmetical errors; and
- (c) any discounts offered with the bid, whether conditional or non-conditional.

197 (1) The evaluation shall use one of the following evaluation methodologies-

(a) Quality and Cost Based Selection, (QCBS), in accordance with regulations 198, 199, 200 and 201;

(b) Quality Based Selection, (QBS), in accordance with regulations 202, 203, 204 and 205;

(c) Fixed Budget Selection, (FBS), in accordance with regulations 206, 207, 208 and 209;

(d) Least Cost Selection, (LCS), in accordance with regulations 21210, 211, 212 and 213;
or

(e) technical compliance selection, (TCS), in accordance with regulations 214, 215, 216 and 217.

(2) A procuring and disposing entity shall choose the evaluation methodology that best suits the procurement requirement in accordance with regulations 268, 280 or 287 as appropriate.

(3) Notwithstanding subregulation (2), evaluation under direct procurement shall always use Technical Compliance Selection, modified in accordance with regulation 119(6).

(4) A procuring and disposing entity shall seek the consent of the Authority to use any other evaluation methodology.

198. (1) Quality and Cost Based Selection is the evaluation methodology that takes into account both the quality and the cost of bids in a process under which technical bids are evaluated without access to financial bids.

(2) Quality and Cost Based Selection shall use the following three stage methodology in accordance with the provisions of regulations 199, 200 and 201-

(a) a preliminary examination to determine whether a bidder is eligible and to determine administrative compliance with the basic instructions and requirements of the solicitation document;

(b) a detailed evaluation to assess-

(i) responsiveness to the terms and conditions of the solicitation document; and

(ii) the technical quality of bids against set criteria on a merit point system, to determine the technical score of each technical bid and to determine which technical bid reached the minimum technical score; and

(c) a financial comparison to determine the financial score of each financial bid, to weight the technical and financial scores and to determine the total score of each bid.

(3) The bid submission method shall be the one stage-two envelope method in accordance with regulation 155(1)(b).

(4) Notwithstanding subregulation (3), the bid submission method may be the two stage-two envelope or two stage method in accordance with regulation 155(3)(c) or 155(3)(d); where an alternative bid submission method is used, the rules for the evaluation methodology shall be modified as required.

(5) The solicitation document shall state-

(a) the technical evaluation criteria and the maximum scores;

(b) a minimum technical qualifying mark, below which a bid shall be rejected; and

(c) the relative weights allocated to the technical and financial components, in accordance with subregulation (6).

(6) The relative weights to be given to the technical and financial components of the evaluation shall be chosen taking into account the nature of the assignment, the complexity of the assignment and the relative importance of the technical aspect of the bid.

(7) The weight for the financial score shall be no less than 10 points and no more than 30 points out of a total of 100.

(8) The highest total score shall be the best evaluated bid and shall be recommended for award of contract.

(9) The evaluation of bids using Quality and Cost Based Selection shall be recorded using-

(a) PP Form 42 in the Ninth Schedule, for consultancy services; or

(b) PP Form 48 in the Ninth Schedule, for works.

199. (1) Following the deadline for submission of bids, a bid opening shall be conducted to open the technical bids only.

(2) A financial bid shall be kept unopened in a secure location.

(3) A preliminary examination shall be conducted to determine whether a bidder is eligible and whether a bid is administratively compliant to the basic instructions and requirements of the solicitation document.

(4) The preliminary examination shall be conducted on a pass or fail basis only.

(5) A bid which is non qualified or non compliant shall be rejected and eliminated from further evaluation.

200. (1) A detailed evaluation shall be conducted only on a bid which is determined to be eligible and compliant during the preliminary examination.

(2) An assessment shall be conducted jointly by the evaluation committee of whether each bid conforms to all the terms and conditions of the solicitation document, without material deviation or reservation.

(3) Any bid which is declared to be non responsive shall be rejected and not evaluated further; a responsive bid shall be further subject to a merit point evaluation.

(4) A detailed merit point evaluation of each bid shall initially be conducted independently by each member of the evaluation committee in accordance with the procedure stated in regulation 175.

(5) The evaluation committee shall collect and compare the scores of each evaluator, discuss any major inconsistencies and agree on any permitted adjustments to a score in accordance with the procedure stated in regulation 175.

(6) Once all individual scores have been finalised, the scores of each evaluator shall be totalled and divided by the number of evaluators to obtain an average score by the evaluation committee for each bid.

(7) The average score shall be the total technical score for the bid and where a weighted score is being used in accordance with regulation 173(6), the weightings shall be applied prior to calculating the average score.

(8) The total technical score of each bid shall be compared to the minimum qualifying technical mark stated in the solicitation document; a bid which is less than the minimum qualifying technical mark shall be rejected and eliminated from further evaluation.

(9) The evaluation committee shall prepare a technical evaluation report using Part 1 of PP Form 42 or 48 in the Ninth Schedule, as appropriate.

(10) The technical evaluation report shall include-

(a) the results of the preliminary examination;

(b) the results of the assessment of responsiveness to the terms, conditions and requirements of the solicitation document;

(c) the technical scores of each evaluator for each bid;

(d) a description of the relative strengths and weaknesses of each bid;

(e) an analysis of any discrepancies in scores between evaluators and a summary of any discussions held and adjustments made;

(f) the total technical score for each bid;

(g) a list of the bids which reached the minimum qualifying technical mark; and

(h) a recommendation to open the financial bid of a bidder who reached the minimum qualifying technical mark.

(11) The technical evaluation report shall be approved by the contracts committee prior to the opening of a financial bid or the financial comparison.

201. (1) Following the approval of the technical evaluation report by the contracts committee, a bidder who has reached the minimum qualifying technical mark shall be notified of the date and time set for the opening of the financial bids; the opening date shall not be sooner than two weeks after the notification date.

(2) A bid opening shall be conducted to open the financial bids.

(3) The following information shall be read out at the opening-

(a) the name of the bidder;

(b) the bidder's technical score; and

(c) the total bid price.

(4) A financial comparison shall be conducted in accordance with regulation 190(3).

(5) The bid with the lowest evaluated price shall be given a financial score of 100; other bids shall be given a financial score that is inversely proportional to the lowest evaluated price.

(6) Notwithstanding subregulation (5), a directly proportional or other methodology may be used in allocating marks for the cost, providing it has been fully described in the solicitation document.

(7) The technical and financial scores shall be weighted, using the weights stated in the solicitation document.

(8) The total score shall be obtained by adding the weighted technical and financial scores together.

(9) A bidder obtaining the highest total score shall be recommended for award of contract, subject to any post-qualification or negotiations that may be required.

(10) The evaluation committee shall prepare a financial evaluation report using Part 2 of PP Form 42 or 48 in the Ninth Schedule, as appropriate.

(11) The financial evaluation report shall include-

- (a) the total bid prices and technical scores read out at the financial opening;
- (b) the evaluated price of each bid, following any corrections or adjustments to the price and the conversion to a single currency;
- (c) the financial score of each bid and the methodology for allocating the financial score;
- (d) the weighting of the technical and financial scores;
- (e) the total score for each bid;
- (f) a recommendation to award the contract to the bidder obtaining the highest total score, subject to any post-qualification or negotiations which may be required; and
- (g) the price of the proposed contract, subject to any changes following negotiations.

202. (1) Quality Based Selection is the evaluation method that uses quality as the primary factor in a process under which a technical bid is evaluated without access to a financial bid and a financial comparison is undertaken only for the best technical bid.

(2) A bidder may be present at the opening of both the technical and financial bids.

(3) Quality Based Selection shall use the following three stage methodology in accordance with the provisions of regulations 203, 204 and 205-

(a) a preliminary examination to determine whether a bidder is eligible and to determine administrative compliance to the basic instructions and requirements of the solicitation document;

(b) a detailed evaluation to assess-

(i) responsiveness to the terms and conditions of the solicitation document; and

(ii) the technical quality of a bid against set criteria on a merit point system, to determine the technical score of each technical bid and to determine which is the best technical bid; and

(c) a financial comparison to examine the financial bid of the best technical bidder only and prepare for negotiations.

(4) The bid submission method shall be the one stage-two envelope method in accordance with regulation 155(1)(b).

(5) Notwithstanding subregulation (4), the bid submission method may be the two stage-two envelope method or the two stage method in accordance with regulation 155(3)(c) or 155(3)(d); where an alternative bid submission method is used, the rules for the evaluation methodology shall be modified as required.

(6) The solicitation document shall state the technical evaluation criteria and their maximum scores, in accordance with regulation 173.

(7) The highest technical score shall be the best evaluated bid and shall be recommended for award of contract, subject to negotiation of the financial bid.

(8) The evaluation of bids using Quality Based Selection shall be recorded using PP Form 43 in the Ninth Schedule.

203. (1) Following the deadline for submission of bids, a bid opening shall be conducted to open the technical bids only; the financial bids shall be kept unopened in a secure location.

(2) A preliminary examination shall be conducted to determine whether a bidder is eligible and administratively compliant to the basic instructions and requirements of the solicitation document.

(3) The preliminary examination shall be conducted on a pass or fail basis only; a bid which is not eligible or which is non compliant shall be rejected and eliminated from further evaluation.

204. (1) A detailed evaluation shall be conducted only on a bid which is determined to be eligible and compliant during the preliminary examination.

(2) An assessment shall be conducted jointly by the evaluation committee of whether each bid conforms to all the terms and conditions of the solicitation document, without material deviation or reservation.

(3) Any bid which is declared to be non responsive shall be rejected and not evaluated further; a responsive bid shall be further subject to a merit point evaluation.

(4) A detailed merit point evaluation of each bid shall initially be conducted independently by each member of the evaluation committee in accordance with the procedure stated in regulation 175.

(5) The evaluation committee shall collect and compare the scores of each evaluator, discuss any major inconsistencies and agree on any permitted adjustment to a score in accordance with the procedure stated in regulation 175.

(6) Once all individual scores have been finalised, the scores of each evaluator shall be totalled and divided by the number of evaluators to obtain an average score by the evaluation committee for each bid; the average score shall be the total technical score for the bid; where a weighted score is being used, the weightings shall be applied prior to calculating the average score.

(7) The evaluation committee shall prepare a technical evaluation report using Part 1 of PP Form 43 in the Ninth Schedule.

(8) The technical evaluation report shall include-

(a) the results of the preliminary examination;

(b) the results of the assessment of responsiveness to the terms, conditions and requirements of the solicitation document;

(c) the technical scores of each evaluator for each bid;

(d) a description of the relative strengths and weaknesses of each bid;

(e) an analysis of any discrepancies in scores between evaluators and a summary of any discussions held and adjustments made;

(f) the total technical score for each bid;

(g) a statement of which bid obtained the highest technical score; and

(h) a recommendation to open the financial bid of the bidder who obtained the highest technical score.

(9) The technical evaluation report shall be approved by the contracts committee prior to the opening of the financial bid or the financial comparison.

205. (1) Following the approval of the technical evaluation report by the contracts committee, the bidder who submitted the best technical bid shall be notified of the date and time set for the opening of his or her financial bid; and the opening date shall not be sooner than two weeks after the notification date.

(2) A bid opening shall be conducted to open the financial bid of the selected bidder.

(3) The following information shall be read out at the opening-

(a) the name of the bidder;

(b) the bidder's technical score; and

(c) the total bid price.

(4) A financial comparison shall be conducted in accordance with regulation 190(3), modified as appropriate to take into account that only one financial bid is being evaluated.

(5) A bidder shall be recommended for award of contract, subject to any post-qualification or negotiations that may be required.

(6) The evaluation committee shall prepare a financial evaluation report using Part 2 of PP Form 43 in the Ninth Schedule.

(7) The financial evaluation report shall include-

(a) the total bid price and technical score read out at the financial opening;

(b) the evaluated price of the bid, following any corrections or adjustments to the price;

(c) a recommendation to award the contract to the bidder, subject to any post-qualification or negotiations which may be required; and

(d) the price of the proposed contract, subject to any changes following negotiations.

(8) The financial bid shall be negotiated by the procuring and disposing entity in accordance with regulations 219(5) and 220.

206. (1) Fixed Budget Selection is the evaluation methodology that recommends the bidder with the best technical bid, which is within the budget.

(2) Fixed Budget Selection shall use the following three stage methodology in accordance with the provisions of regulations 207, 208 and 209-

(a) a preliminary examination to determine whether a bidder is eligible and to determine administrative compliance to the basic instructions and requirements of the solicitation document;

(b) a detailed evaluation to assess-

(i) responsiveness to the terms and conditions of the solicitation document; and

(ii) the technical quality of bids against set criteria on a merit point system, to determine the technical score of each technical bid and to determine which technical bid reached the minimum technical score; and

(c) a financial comparison to reject a bid which exceeds the budget and determine the best technical bid which is within the budget.

(3) The bid submission method shall be the one stage-two envelope method in accordance with regulation 155(1)(b).

(4) Notwithstanding subregulation (3), the bid submission method may be the two stage-two envelope method or the two stage method in accordance with regulation 155(3)(c) or 155(3)(d); where an alternative bid submission method is used, the rules for the evaluation methodology shall be modified as required.

(5) The solicitation document shall state-

- (a) the technical evaluation criteria and their maximum scores, in accordance with regulation 173;
 - (b) a minimum qualifying mark, below which a bid shall be rejected; and
 - (c) the available budget.
- (6) The statement of requirements shall be well prepared to make sure that the budget is sufficient for a bidder to perform the expected tasks.
- (7) The highest ranked technical bid that is within the budget shall be the best evaluated bid and shall be recommended for award of contract.
- (8) The evaluation of bids using Fixed Budget Selection shall be recorded using PP Form 44 in the Ninth Schedule.

207. (1) Following the deadline for submission of bids, a bid opening shall be conducted to open the technical bids only; the financial bids shall be kept unopened in a secure location.

(2) A preliminary examination shall be conducted to determine whether a bidder is eligible and administratively compliant to the basic instructions and requirements of the solicitation document.

(3) The preliminary examination shall be conducted on a pass or fail basis only.

(4) A bid which is not eligible or which is non compliant shall be rejected and eliminated from further evaluation.

208. (1) A detailed evaluation shall be conducted only on a bid which is determined to be eligible and compliant during the preliminary examination.

(2) An assessment shall be conducted jointly by the evaluation committee, of whether each bid conforms to all the terms and conditions of the solicitation document, without material deviation or reservation.

(3) A bid which is declared to be non responsive shall be rejected and not evaluated further; a responsive bid shall be further subject to a merit point evaluation.

(4) A detailed merit point evaluation of each bid shall initially be conducted independently by each member of the evaluation team in accordance with the procedure stated in regulation 175.

(5) The evaluation committee shall collect and compare the scores of each evaluator, discuss any major inconsistencies and agree on any permitted adjustment to a score in accordance with the procedure stated in regulation 175.

(6) Once all individual scores have been finalised, the scores of each evaluator shall be totalled and divided by the number of evaluators to obtain an average score by the evaluation committee for each bid; the average score shall be the total technical score for the bid and where a weighted score is being used in accordance with regulation 173(6), the weightings shall be applied prior to calculating the average score.

(7) The total technical score of each bid shall be compared to the minimum qualifying technical mark stated in the solicitation document; a bid which is less than the minimum qualifying technical mark shall be rejected and eliminated from further evaluation.

(8) The evaluation committee shall prepare a technical evaluation report using Part 1 of PP Form 44.

(9) The technical evaluation report shall include-

(a) the results of the preliminary examination;

(b) the results of the assessment of responsiveness to the terms, conditions and requirements of the solicitation document;

(c) the technical scores of each evaluator for each bid;

(d) a description of the relative strengths and weaknesses of each bid;

(e) an analysis of any discrepancies in scores between evaluators and a summary of any discussions held and adjustments made;

(f) the total technical score for each bid;

(g) a list of the bids which reached the minimum qualifying technical mark; and

(h) a recommendation to open the financial bids of those bidders who reached the minimum qualifying technical mark.

(10) The technical evaluation report shall be approved by the contracts committee prior to the opening of financial bids or the financial comparison.

209. (1) Following the approval of the technical evaluation report by the contracts committee, a bidder who has reached the minimum qualifying technical mark shall be notified of the date and time set for the opening of the financial bids; the opening date shall not be sooner than two weeks after the notification date.

(2) A bid opening shall be conducted to open the financial bids.

(3) The following information shall be read out at the opening-

(a) the name of the bidder;

(b) the bidder's technical score; and

(c) the total bid price.

(4) A financial comparison shall be conducted in accordance with regulation 190(3).

(5) A bid which exceeds the budget indicated in the solicitation document shall be rejected.

(6) A bid which is within the budget shall be ranked according to its technical score and the bidder who has submitted the highest ranked technical bid of those within the budget shall be recommended for award of contract, subject to any post-qualification or negotiations that may be required.

(7) The evaluation committee shall prepare a financial evaluation report using Part 2 of PP Form 44 in the Ninth Schedule.

(8) The financial evaluation report shall include-

(a) the total bid price and technical score read out at the financial opening;

(b) the evaluated price of each bid, following any corrections or adjustments to the price and the conversion to a single currency;

(c) the bid which exceeded the budget and was rejected;

(d) a ranking of the bid within the budget, according to its technical score;

(e) a recommendation to award the contract to the bidder obtaining the highest technical score, which is within the budget, subject to any post-qualification or negotiations which may be required; and

(f) the price of the proposed contract, subject to any changes following negotiations.

210. (1) Least Cost Selection is the evaluation methodology that recommends the lowest priced bid, which meets all the requirements of the procuring and disposing entity, both commercial and technical.

(2) Least Cost Selection shall use the following three stage methodology in accordance with regulations 211, 212 and 213-

(a) a preliminary examination to determine whether bidders are eligible and to determine administrative compliance with the basic instructions and requirements of the solicitation document;

(b) a detailed evaluation to assess-

- (i) responsiveness to the terms and conditions of the solicitation document; and
 - (ii) the technical quality of a bid against set criteria on a merit point system, to determine the technical score of each technical bid and to determine which technical bid reached the minimum technical score; and
 - (c) a financial comparison to determine the lowest priced bid which meets the minimum technical score.
- (3) The bid submission method shall be the one stage-two envelope method in accordance with regulation 155(1)(b).
- (4) Notwithstanding subregulation (3), the bid submission method may be the two stage-two envelope method or the two stage method in accordance with regulation 155(3)(c) or 155(3)(d); where an alternative bid submission method is used, the rules for the evaluation methodology shall be modified as required.
- (5) The solicitation document shall state-
- (a) the technical evaluation criteria and their maximum scores, in accordance with regulation 173; and
 - (b) a minimum qualifying mark, below which bids shall be rejected.
- (6) The lowest priced bid which is eligible, compliant, responsive and meets the minimum qualifying technical mark shall be the best evaluated bid and shall be recommended for award of contract.
- (7) The evaluation of bids using Least Cost Selection shall be recorded using PP Form 45 in the Ninth Schedule.

211 (1) Following the deadline for submission of bids, a bid opening shall be conducted to open the technical bids only; a financial bid shall be kept unopened in a secure location.

(2) A preliminary examination shall be conducted to determine whether a bidder is eligible and whether a bid is administratively compliant to the basic instructions and requirements of the solicitation document.

(3) The preliminary examination shall be conducted on a pass or fail basis only; a bid which is not eligible or which is non compliant shall be rejected and eliminated from further evaluation.

212. (1) A detailed evaluation shall be conducted only on a bid which is determined to be eligible and compliant during the preliminary examination.

(2) An assessment shall be conducted jointly by the evaluation committee of whether each bid conforms to all the terms and conditions of the solicitation document, without material deviation or reservation.

(3) Any bid which is declared to be non responsive shall be rejected and not evaluated further; a responsive bid shall be further subject to a merit point evaluation.

(4) A detailed merit point evaluation of each bid shall initially be conducted independently by each member of the evaluation committee in accordance with the procedure stated in regulation 175.

(5) The evaluation committee shall collect and compare the scores of each evaluator, discuss any major inconsistencies and agree on any permitted adjustments to scores.

(6) Once all individual scores have been finalised, the scores of each evaluator shall be totalled and divided by the number of evaluators to obtain an average score by the evaluation committee for each bid. The average score shall be the total technical score for the bid. Where weighted scores are being used in accordance with regulation 173(6), the weightings shall be applied prior to calculating the average score.

(7) The total technical score of each bid shall be compared to the minimum qualifying technical mark stated in the solicitation document; a bid which is less than the minimum qualifying technical mark shall be rejected and eliminated from further evaluation.

(8) The evaluation committee shall prepare a technical evaluation report using Part 1 of PP Form 45 in the Ninth Schedule.

(9) The technical evaluation report shall include-

(a) the results of the preliminary examination;

(b) the results of the assessment of responsiveness to the terms, conditions and requirements of the solicitation document;

(c) the technical scores of each evaluator for each bid;

(d) a description of the relative strengths and weaknesses of each bid;

(e) an analysis of any discrepancies in scores between evaluators and a summary of any discussions held and adjustments made;

(f) the total technical score for each bid;

(g) a list of the bids which reached the minimum qualifying technical mark; and

(h) a recommendation to open the financial bids of those bidders who achieved the minimum qualifying technical mark.

(10) The technical evaluation report shall be approved by the contracts committee prior to the opening of financial bids or the financial comparison.

213. (1) Following the approval of the technical evaluation report by the contracts committee, a bidder who has reached the minimum qualifying technical mark shall be notified of the date and time set for the opening of the financial bids; the opening date shall not be sooner than two weeks after the notification date.

(2) A bid opening shall be conducted to open the financial bids.

(3) The following information shall be read out at the opening-

(a) the name of the bidder;

(b) the bidder's technical score; and

(c) the total bid price.

(4) A financial comparison shall be conducted in accordance with regulation 190(3).

(5) A bid shall be ranked, according to their total bid price.

(6) A bidder who has submitted the lowest priced bid, which is qualified and meets the minimum qualifying technical mark shall be recommended for award, subject to any post-qualification or negotiations that may be required.

(7) The evaluation committee shall prepare a financial evaluation report using Part 2 of PP Form 45 in the Ninth Schedule.

(8) The financial evaluation report shall include-

(a) the total bid prices and technical scores read out at the financial opening;

(b) the evaluated price of each bid, following any corrections or adjustments to the price and the conversion to a single currency;

(c) the ranking of the bids, according to their total bid price; and

(d) a recommendation to award the contract to the bidder with the lowest bid price, which is qualified and meets the minimum qualifying technical mark, subject to any post-qualification or negotiations which may be required.

214. (1) Technical Compliance Selection is the evaluation methodology that recommends the lowest priced bid, which is substantially responsive to the commercial and technical requirements of the procuring and disposing entity.

(2) Technical Compliance Selection shall use the following three stage methodology in accordance with regulations 215, 216 and 217-

(a) a preliminary examination to determine whether a bidder is eligible and to determine administrative compliance to the basic instructions and requirements of the solicitation document;

(b) a detailed evaluation to-

(i) assess responsiveness to the terms and conditions of the solicitation document;

(ii) determine whether a bid is technically responsive to the statement of requirements in the solicitation document; and

(c) a financial comparison to determine the lowest priced bid which is eligible, compliant and responsive.

(3) The bid submission method shall be the one stage-single envelope method in accordance with regulation 155(1)(a).

(4) Notwithstanding subregulation (3), the bid submission method may be the one stage-two envelope, two stage-two envelope method or two stage method in accordance with regulation 155(3)(b), 155(3)(c) or 155(3)(d); where an alternative bid submission method is used, the rules for the evaluation methodology shall be modified as required.

(5) The solicitation document shall state the minimum technical requirements.

(6) The lowest priced bid which is qualified, compliant and responsive shall be the best evaluated bid and shall be recommended for award of contract.

(7) The evaluation of bids using Technical Compliance Selection shall be recorded using-

(a) PP Form 41 in the Ninth Schedule, for supplies;

(b) PP Form 46 in the Ninth Schedule, for non-consultancy services; or

(c) PP Form 47 in the Ninth Schedule, for works.

215. (1) Following the deadline for submission of bids, a bid opening shall be conducted.

(2) A preliminary examination shall be conducted to determine whether-

(a) a bidder is eligible; and

(b) a bid is administratively compliant to the basic instructions and requirements of the solicitation document.

(3) The preliminary examination shall be conducted on a pass or fail basis only; a bid

which is not eligible or non compliant shall be rejected and eliminated from further evaluation.

216. (1) A detailed evaluation shall be conducted only on those bids which were determined to be eligible and compliant during the preliminary examination.

(2) The detailed evaluation shall determine whether a bid is commercially responsive to the terms and conditions of the solicitation document and technically responsive to the requirements stated in the statement of requirements.

(3) Responsiveness may include, but is not limited to-

(a) conformity to the terms and conditions of the solicitation document, without material deviation or reservation;

(b) compliance of supplies with the minimum technical specification stated;

(c) understanding of an assignment, as demonstrated by comments on the terms of reference;

(d) supervisory or management capacity;

(e) qualifications of supervisory or management staff; or

(f) conformity to all requirements of the statement of requirements, including specifications, drawings or terms of reference, without material deviation or reservation.

(4) The detailed evaluation shall be conducted on a pass or fail basis; a non responsive bid shall be rejected and eliminated from further evaluation.

217. (1) A financial comparison shall be conducted only on a bid which is determined to be responsive during the detailed evaluation.

(2) A financial comparison shall be conducted in accordance with regulation 190(3).

(3) The bid shall be ranked, according to its total bid price.

(4) A bidder who has submitted the lowest priced bid, which is qualified, compliant and responsive shall be recommended for award of contract, subject to any post-qualification or negotiations that may be required.

(5) The evaluation committee shall prepare an evaluation report using PP Form 41, 46 or 47 in the Ninth Schedule, as appropriate.

(6) The evaluation report shall include-

(a) the results of the preliminary examination;

- (b) the results of the detailed evaluation;
- (c) the reasons for rejection of any bids;
- (d) any nonmaterial deviations accepted and the way in which they have been quantified and taken into account;
- (e) the evaluated price of each bid, following any corrections or adjustments to the price and the conversion to a single currency;
- (f) the ranking of the bids, according to their total bid price; and
- (g) a recommendation to award the contract to the bidder with the lowest bid price, which is qualified, responsive and technically compliant, subject to any post-qualification or negotiations which may be required.

Division VIII-Post-Qualification And Negotiations.

218. (1) Where appropriate, a post-qualification may be undertaken to determine whether the best evaluated bidder has the capability and resources to effectively carry out the contract.

(2) The criteria for post-qualification shall be set out in the solicitation document and may include-

- (a) experience on similar contracts in the country, region or internationally;
- (b) performance on similar contracts in the country, region or internationally;
- (c) capability with respect to equipment, and manufacturing or construction facilities;
- (d) qualifications and experience of personnel;
- (e) financial capability to perform the proposed contract;
- (f) facilities or representation at or near the location for performance of the contract;
- (g) available capacity to undertake the assignment;
- (h) litigation record; or
- (i) any other relevant criteria.

(3) A procuring and disposing entity may seek independent references from a bidder and the results of reference checks may be used in determining award of contract.

(4) The criteria for post-qualification shall be limited to that which is necessary for performance of the intended contract and shall not be unduly restrictive.

(5) Post-qualification shall be undertaken for the best evaluated bidder only and shall be recorded using PP Form 55 in the Ninth Schedule.

(6) Where the best evaluated bidder does not meet the qualification criteria -

(a) the bid shall be rejected; and

(b) a post-qualification shall be undertaken for the next best evaluated bidder.

(7) Approval shall be obtained from the contracts committee prior to rejecting any bid or undertaking an additional post-qualification on any other bidder.

(8) Where a bidder has been pre-qualified, a full post-qualification is not required, but the pre-qualification information submitted shall be verified and an award may be denied to the best evaluated bidder if he or she is judged to no longer meet the pre-qualification requirements and criteria.

(9) In particular, the procuring and disposing entity shall consider-

(a) any material change in circumstances since submission of the pre-qualification information; and

(b) any information which has become available since the pre-qualification submission, which, in the procuring and disposing entity's judgment, materially affects the capacity of the bidder to perform the contract.

219. (1) Negotiations may be undertaken under any method of procurement, in accordance with this regulation and the procedure for negotiations in regulation 220.

(2) Where a competitive procurement method is used, negotiations may relate to-

(a) a minor alteration to the technical details of the statement of requirements;

(b) reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the solicitation documents;

(c) a minor amendment to the special conditions of contract;

(d) finalising the payment arrangements;

(e) mobilisation arrangements;

(f) agreeing final delivery or works schedules to accommodate any changes required by the procuring and disposing entity;

(g) the proposed methodology or staffing;

(h) inputs required from the procuring and disposing entity; or

(i) clarifying details that were not apparent or could not be finalised at the time of bidding.

(3) Negotiations under competitive procurement methods shall not be conducted-

(a) to substantially change the technical quality or details of the requirement, including the tasks or responsibilities of the bidder;

(b) to materially alter the terms and conditions of contract stated in the solicitation documents;

(c) primarily for the purposes of reducing prices; or

(d) to substantially alter anything which formed a crucial or deciding factor in the evaluation of the bid.

(4) Notwithstanding subregulations (2) and (3), where a competitive procurement method was used, but only a single bid was received, negotiations may relate to any aspects of the bid in accordance with regulation 166.

(5) Where direct procurement is used, or the evaluation methodology is Quality Based Selection, negotiations may relate to-

(a) alterations to the technical details of the statement of requirements;

(b) reduction of scope or quantities for budgetary reasons, where the reduction is in excess of any provided for in the solicitation documents;

(c) amendments to the special conditions of contract;

(d) finalising the payment terms and arrangements;

(e) mobilisation arrangements;

(f) agreeing final delivery or works schedules;

(g) the proposed methodology or staffing;

(h) inputs required from the procuring and disposing entity;

(i) clarifying details that were not apparent or could not be finalised at the time of bidding; or

(j) the total bid price and its constituent costs to obtain value for money.

220. (1) Negotiations with a bidder are not permitted until after the contracts committee has approved the evaluation committee's recommendation-

(a) of the best evaluated bidder and the need to hold negotiations in the case of competitive methods of procurement; or

(b) that the single or sole bidder should be considered for contract award, subject to negotiations in the case of direct procurement.

(2) Negotiations shall only be held with the best evaluated bidder.

(3) The evaluation committee shall prepare a negotiations plan, using PP Form 50 in the Ninth Schedule, which shall specify the issues to be negotiated and the objectives to be achieved and wherever possible, quantify the objectives and set maximum and minimum negotiating parameters for the negotiations team.

(4) The contracts committee shall approve the negotiations plan and the membership of the negotiation team prior to any negotiations taking place.

(5) Negotiations shall be conducted by the negotiation team, who shall not commit the procuring and disposing entity to any proposed arrangements or agreements, but shall seek the approval of the contracts committee prior to confirming any agreement reached.

(6) The negotiation team shall produce minutes of the meeting using PP Form 51 in the Ninth Schedule, and shall obtain the bidder's written agreement that it is a true and accurate record of the negotiations held.

(7) The negotiation team shall report to the contracts committee on the results of the negotiations, stating whether the objectives of the negotiations plan have been substantially achieved and submitting minutes of the meeting.

(8) The negotiation team shall submit a recommendation to the contracts committee to either proceed with contract award to the recommended bidder, incorporating the agreements reached during negotiations, revise the negotiation objectives and hold further negotiations or terminate the negotiations and reject the bidder.

(9) Where a negotiation team recommends rejection of the bidder, it may also, where appropriate, recommend inviting the next ranked bidder for negotiations in the case of competitive methods of procurement or a new bidder to submit a bid in the case of direct procurement.

(10) The contracts committee may-

(a) approve the recommendations;

(b) request further negotiations on specific points;

(c) reject the recommendations with reasons; or

d) cancel the negotiations in their entirety.

(11) The results of any approved negotiation shall be specified in any letter of bid acceptance and incorporated into the contract document.

(12) Where negotiations are commenced with the next ranked bidder or a new bid is invited, the procuring and disposing entity shall not reopen earlier negotiations; and the original bidder shall be informed of the reasons for termination of the negotiations.

221. (1) The membership of a negotiation team shall be recommended by the procurement and disposal unit, using PP Form 40 in the Ninth Schedule and the membership shall be approved by the contracts committee.

(2) The number of members of the negotiation team shall depend on the value and complexity of the procurement requirement, but shall in all cases be a minimum of three; the negotiation team may include members of the original evaluation committee or different officers.

(3) A member of the negotiation team shall be of an appropriate level of seniority and experience, depending on the value and complexity of the procurement requirement.

(4) The negotiation team shall include members with a relevant mix of skills and experience.

(5) The skills required shall be determined by the nature of the procurement requirement, but may include-

(a) end-user representatives;

(b) negotiation skills;

(c) procurement and contracting skills;

(d) financial management skills; or

(e) technical skills relevant to the subject of the procurement.

(6) A member of the negotiation team may be external to the procuring and disposing entity, where the required skill or experience are not available within the procuring and disposing entity, or where there is a conflict of interest.

(7) A member of the negotiation team shall sign the Code of Ethics, declaring that he or she does not have a conflict of interest in the procurement requirement; the declaration shall use PP Form 211 in the Ninth Schedule to these Regulations.

222. (1) Members shall select a chairperson from among their number.

(2) The chairperson of the negotiation team shall be responsible for-

(a) ensuring all arrangements for negotiation meetings are made;

(b) chairing all negotiations;

(c) ensuring the negotiations are conducted in accordance with all legal requirements;

(d) ensuring all members are aware of their responsibilities, including the need for confidentiality;

(e) ensuring all members have a common understanding of the process of negotiations and the objectives to be achieved;

(f) ensuring all members understand their own role in the negotiations and the standard approach of the team;

(g) managing communications between the negotiation team and the bidder or any other body;

(h) ensuring that the negotiation team has access to adequate resources; and

(i) preparing the final report on the negotiations or ensuring that it is prepared.

Part V-Contracts

Division I-Commencement Of Contracts.

223. (1) A procurement and disposal unit shall submit a recommendation for award of a contract to the contracts committee after completion of the evaluation process and any post-qualification and negotiation process.

(2) The contracts committee shall consider the recommendation in the same way as any other submission to the contracts committee.

(3) Approval of a recommendation by a contracts committee shall be an award of contract decision.

(4) For the purpose of these Regulations, an award of contract decision by the contracts committee shall not amount to a contract binding a procuring and disposing entity to a provider.

224. (1) A procuring and disposing entity shall, within five days of the decision of the contracts committee to award a contract, display a notice of best evaluated bidder, using the format provided in the Seventh Schedule.

- (2) A notice of best evaluated bidder shall not amount to a contract.
- (3) A notice of best evaluated bidder shall be displayed on a procuring and disposing entity's notice board and on the Authority's website.
- (4) A notice of best evaluated bidder shall be published for a minimum of-
- (a) ten working days prior to contract award in the case of open or restricted bidding; and
 - (b) five working days prior to contract award, in the case of quotations and proposals procurement or direct procurement.
- (5) A notice of best evaluated bidder shall, at the time it is displayed in accordance with subregulation (6), be sent to all bidders who participated in the procurement.
- (6) A procuring and disposing entity shall obtain proof of receipt of the notice of best evaluated bidder by all bidders.
- (7) Where a decision to award a contract is changed after the publication of a notice of best evaluated bidder, a new notice of best evaluated bidder shall be displayed, in accordance with this regulation, prior to contract award or placement.
- (8) This regulation shall not apply to micro procurement and procurement in emergency circumstances, irrespective of the procurement method used.

225. (1) The solicitation documents shall state the procedure for award of contract, which shall be-

- (a) by placement of a written contract document; or
 - (b) by issue of a letter of bid acceptance, which shall be confirmed by placement of a written contract document.
- (2) A contract document, purchase order, letter of bid acceptance or other communication in any form conveying acceptance of a bid that binds a procuring and disposing entity to a contract with the provider, shall not be issued prior to-
- (a) an award of a contract decision by the contracts committee;
 - (b) the display of a notice of best evaluated bidder;
 - (c) the elapse of the period of the notice of best evaluated bidder;
 - (d) confirmation by an accounting officer that the procurement is not subject to any administrative review;
 - (e) commitment of the full amount of the funding for the period of the proposed contract;
- and

(f) approval by all relevant agencies, including, the Attorney General.

(3) A contract award shall, except for an award under micro procurement, be displayed, using the format specified in the Seventh Schedule, within one working day of the contract award, on a procuring and disposing entity's notice board and the Authority's website.

(4) After an award of a contract to the successful bidder, the unsuccessful bidders shall be notified of the award and their bids shall be rejected by a procuring and disposing entity.

226. (1) A procuring and disposing entity shall not enter into a contract until the accounting officer or an officer with delegated authority confirms in writing that the required funds have been committed for the proposed contract, except where-

(a) payment to a provider is to be effected in a proceeding financial year;

(b) for framework contracts, funds are committed at the time of issue of each specific call off order; or

(c) the Secretary to the Treasury has issued written instructions confirming that the required funding shall be made available in accordance with a specified schedule of payment.

(2) Where payment to a provider spans more than one year, an accounting officer shall make financial provision for the payment, in the budgets submitted to the Secretary to the Treasury, for the duration of the contract.

(3) In respect of framework contracts, the accounting officer shall ensure that-

(a) the minimum payment guaranteed to the provider is committed prior to the award of contract;

(b) sufficient funds are budgeted for in a financial year to cover the full cumulative costs of all call off orders anticipated for the year; and

(c) the funds required for each call off order are committed prior to its release.

(4) Where the Secretary to the Treasury confirms that the required funds shall be availed, the accounting officer shall make the necessary adjustments to the current and future budgets and comply with any other instructions issued by the Secretary to the Treasury.

227. (1) An accounting officer shall ensure that the total acquisition cost of a procurement is committed prior to contract placement.

(2) The total acquisition cost shall include-

(a) the total contract price;

(b) contingencies, such as anticipated contract variations or permitted exchange rate fluctuations; and

(c) other incidental costs, not included in the contract price, but for which a procuring and disposing entity shall be liable, such as local clearance, inland delivery and import taxes or duties.

(3) A procuring and disposing entity shall, for a contract for supplies using FOB delivery terms, ensure that additional costs are included in the total acquisition cost committed prior to contract placement, where the procuring and disposing entity is liable for payment of the costs.

(4) The additional costs referred to in subregulation (3) shall include-

(a) freight costs;

(b) local clearance and delivery costs;

(c) insurance costs;

(d) taxes, duties and levies due on importation;

(e) inspection costs; or

(f) any other costs,

in the total acquisition cost prior to contract placement.

228. (1) A procuring and disposing entity shall use the standard format for a letter of bid acceptance issued in guidelines.

(2) A letter of bid acceptance shall state-

(a) all items in the bid, which are excluded from the awarded contract; and

(b) all correspondence between a procuring and disposing entity and a bidder since the submission of the bids which shall form part of the awarded contract.

229. (1) A contract form shall be in accordance with the form in the solicitation document, which shall be the appropriate standard document issued by the Authority, and modified during drafting.

(2) A contract document shall-

(a) clearly identify the obligations of each party;

(b) correlate all payments by a procuring and disposing entity with the corresponding

input, obligation or deliverables by a provider, in a specific identifiable and measurable manner;

- (c) minimise risk for a procuring and disposing entity;
- (d) maximise value for money for the procuring and disposing entity;
- (e) be fair and equitable to the parties;
- (f) provide effective supervision arrangements, where required;
- (g) provide adequate monitoring and cost control measures, where required; and
- (h) include adequate and clear delivery, acceptance and handover or commissioning arrangements, where required.

(3) A contract signatory shall initial all pages of a contract.

(4) At least three originals of the contract shall be produced and a procuring and disposing entity and a provider shall each get an original signed by both parties.

230. (1) Where a bid is still valid and the letter of bid acceptance or contract document do not contain any counter offer, a contract shall be formed when the letter of bid acceptance or the contract document is signed and issued by a procuring and disposing entity.

(2) Where a contract is formed by the issue of a letter of bid acceptance, the letter shall remain in force until replaced by a contract document which shall state that it replaces the letter of bid acceptance and that it is not a separate or additional contract.

(3) A procuring and disposing entity may require the provider to countersign and return a copy of the contract document, but such signature shall be for confirmation purposes only and shall not constitute acceptance of the contract.

231. (1) Contract effectiveness shall be as specified in the contract but may depend upon the fulfilment of one or more conditions which may include, but are not limited to receipt by-

- (a) a procuring and disposing entity of a performance security;
- (b) a procuring and disposing entity of an advance payment guarantee;
- (c) a provider of an advance payment; or
- (d) a provider of an acceptable letter of credit.

(2) A procuring and disposing entity shall promptly fulfil all its obligations relating to contract effectiveness.

(3) Where a provider-

(a) fails or refuses to sign a contract without due cause;

(b) fails to provide the required performance security within the specified time; or

(c) fails to fulfil any other condition of contract effectiveness,

the procuring and disposing entity shall proceed to award a contract to the next best evaluated bidder from among the remaining bidders.

232. (1) A performance security may be requested to protect against non performance of a contract.

(2) Solicitation documents shall state the requirement for a performance security.

(3) The amount of performance security shall be as specified in guidelines.

(4) A performance security shall be-

(a) in a format provided by the Authority and included in the solicitation documents;

(b) in a form and from an institution that is wholly acceptable to the Bank of Uganda in accordance with the guidelines; and

(c) valid for a period prescribed in the solicitation documents.

(5) Where a provider is required to provide a performance security, a bid security from that provider shall not be released until a satisfactory performance security is received by a procuring and disposing entity.

(6) A performance security shall not be released by a procuring entity until all the provider's obligations which are subject to the performance security have been fulfilled.

(7) A performance security may cover warranty obligations if stated in the solicitation documents.

(8) A proposed release of a performance security shall be communicated to the provider and returned in accordance with the provider's instructions.

Division II-Types of Contract.

233. (1) A procuring and disposing entity shall use any of the following types of contracts, in accordance with the provisions of this Division-

(a) lump sum;

- (b) time-based;
- (c) admeasurement;
- (d) framework;
- (e) percentage;
- (f) cost reimbursable;
- (g) target price;
- (h) retainer;
- (i) contingency or success fee; or
- (j) a combination of any of these types of contracts.

(2) A procuring and disposing entity shall obtain the written approval of the Authority to use any other type of contract, other than the type specified in subregulation (1), prior to the issue of solicitation documents.

(3) A procuring and disposing entity shall select the contract type which is most appropriate to the procurement requirement, most advantageous to the procuring and disposing entity and which offers an equitable contract to the provider.

(4) The choice of a contract type shall be determined in accordance with regulations 270, 281 and 289 as applicable and shall take into account -

- (a) the nature of the procurement requirement;
- (b) the need for effective competition;
- (c) the need to minimise risk for a procuring and disposing entity;
- (d) the need to maximise value for money for a procuring and disposing entity;
- (e) the likelihood of any delays or unforeseen circumstances requiring contract extensions, or variations of change of orders; and
- (f) the need for effective contract management and cost control.

234. (1) A lump sum contract shall be used where the content, duration and outputs of the procurement are well defined.

(2) A lump sum contract may include either, fixed prices or price adjustment, in accordance with regulation 245.

(3) A lump sum contract may include interim or stage payments in accordance with regulation 250.

(4) Payment for a lump sum contract shall be linked to clearly specified outputs or deliverables, which may include-

(a) deliveries of supplies, evidenced by the appropriate delivery documentation;

(b) reports;

(c) drawings;

(d) bills of quantities;

(e) activity schedules;

(f) payment schedules;

(g) bidding documents;

(h) software programs; or

(i) any other outputs or deliverables appropriate to a contract.

235. (1) A time-based contract shall be used where the scope and duration of the procurement requirement is difficult to define.

(2) Payment for a time-based contract shall be based on agreed hourly, daily, weekly, or monthly fees for either nominated personnel or a certain type or grade of personnel and reimbursable items using either actual expenses or agreed unit prices.

(3) Payment rates for personnel may include salary, social costs, overhead, fee or profit and, special allowances.

(4) Reimbursable items may include-

(a) subsistence, such as per diem or housing;

(b) transport, which may be international or local;

(c) monies for mobilisation and demobilisation;

(d) services and equipment such as vehicles, office equipment, furniture and supplies;

(e) office rent;

(f) insurance;

(g) printing of documents;

(h) surveys;

(i) training, if it is a major component of the assignment; and

(j) any other appropriate items.

(5) A time-based contract shall include a maximum amount of total payments to be made which may include a contingency allowance for unforeseen work and duration.

(6) A time-based contract may include interim or stage payments in accordance with regulation 250.

(7) A contract manager shall closely monitor the progress of a time-based contract and that the payments claimed by the provider are appropriate and in accordance with the contract terms.

236. (1) An admeasurement contract means a re-measurement, unit rate or bill of quantities contract and shall be used for works-

(a) which are not well defined;

(b) which are likely to change in quantity or specification; or

(c) where difficult or unforeseen site conditions, such as hidden foundation problems, are likely.

(2) Works shall be split into various items and the quantity of each item needed to complete the assignment shall be estimated and indicated in a solicitation document.

(3) A bidder shall price each work item by indicating a unit rate for each item in the bill of quantities.

(4) The initial total contract price shall be calculated by multiplying the unit rate by the estimated quantity to give a total for each item, and then calculating the sum of the line item totals.

(5) The actual work done shall be measured during the performance of the contract and shall be finally reconciled upon completion of the contract.

(6) Payment shall only be made for the final contract price, which shall be the total of the actual quantity of work performed.

(7) An admeasurement contract may include fixed prices or price adjustment in accordance with regulation 245.

(8) An admeasurement contract may include interim or stage payments in accordance with regulation 250.

237. (1) A framework contract is a schedule of rates or indefinite delivery contract and shall be used-

(a) where a requirement is needed "on call", but where the quantity and timing of the requirement cannot be defined in advance; or

(b) to reduce procurement costs or lead times for a requirement which is needed repeatedly or continuously over a period of time by having them available on a "call off" basis.

(2) A bidder shall indicate the unit rate for each item.

(3) A procuring and disposing entity shall indicate the estimated quantity or value where this is possible or necessary to obtain competitive bids, but shall not make a commitment to purchase the full quantity or value.

(4) Notwithstanding subregulation (3), a procuring and disposing entity may make a commitment to purchase a minimum quantity or value or to purchase all similar requirements from a successful bidder, where this is necessary or preferable to obtain competitive prices.

(5) A framework contract shall state the arrangements for obtaining specific requirements during the period of the contract, using placement of "call-off" or delivery orders where appropriate.

(6) Payment shall be made on the basis of the works, services or supplies actually delivered or performed.

(7) A framework contract may include fixed prices or price adjustment in accordance with regulations 244 and 245.

238. (1) A percentage-based contract shall be used where it is appropriate to relate the fee paid directly to the estimated or actual cost of the subject of the contract.

(2) A percentage-based contract shall clearly define the total cost from which the percentage is to be calculated.

(3) A bidder shall be required to indicate his or her fee rate as a percentage of the total cost of the requirement.

(4) A percentage contract may include-

(a) a fixed target cost;

(b) minimum or maximum fees;

(c) sliding scales of fees, related to the value of the subject of the contract; or

(d) incentive fees, related to any savings made through economic design, discounts obtained, cost reductions or similar fees.

239. (1) A cost reimbursable contract shall be used-

(a) for emergency works, where there is insufficient time to fully calculate the costs involved; or

(b) for high risk works, where it is more economical for the procuring and disposing entity to bear the risk of price variations than to pay a provider to accept the risk or where a provider will not accept the risk.

(2) A procuring and disposing entity shall pay a provider-

(a) for the actual cost of the works, as evidenced by receipts and other appropriate documentation; and

(b) a fee or profit to be agreed upon and as specified in the contract.

240. (1) A target price contract may be used instead of a cost reimbursable contract where a target price can be agreed and cost savings may be achieved by offering an incentive payment to the provider for any cost savings below the target price.

(2) A procuring and disposing entity shall pay a provider for the actual cost of the works, as evidenced by receipts and other appropriate documentation and a fee, profit or agreed percentage of any cost savings below the target price.

241. (1) A retainer contract is used to retain a provider to provide services over a prescribed period of time, without defining the level and actual amount of services required.

(2) Payment for a retainer contract may include a flat fee-

(a) which represents the total payment due, irrespective of the level and amount of services provided during the prescribed period; or

(b) as a retainer for the prescribed period plus a pre-agreed unit rate for services provided.

242. (1) A contingency or success fee contract is used to link a provider's fee to an achieved objective to provide an incentive to the successful completion of a particular task, event or action.

(2) Payment for a contingency or success fee, may be a-

- (a) pre-agreed amount linked to the successful completion of a target or event;
 - (b) percentage of a predetermined amount or proceeds; or
 - (c) a basic flat rate, which is not linked to the successful completion of a particular task, event or action.
- (3) A contingency or success fee contract shall describe the nature of the success to which a success fee shall be applicable and the timescale in which the task, event or action shall be achieved.

243. (1) Where a procuring and disposing entity wishes to use another type of contract or contracting arrangement, including, acquisition by rental, lease, hire purchase, licence, tenancy or franchise, it shall seek guidance from the Authority on the applicable procurement procedures and documents.

(2) Where a project is to be financed or partially financed under a Build Own Operate (BOO), Build Own Transfer (BOT), Build Own Operate Transfer (BOOT), Public Private Partnership (PPP) or similar type of private sector arrangement, a procuring and disposing entity shall seek guidance from the Authority on the applicable procurement procedures and documents.

(3) The applicable procurement procedures shall be in accordance with the basic procurement principles of public procurement in the Act and these Regulations.

(4) The Authority may, issue guidelines for private sector contracting arrangements.

Division III-Contract pricing and payment.

244. (1) A procuring and disposing entity shall place a contract based on fixed and firm prices for a procurement requirement that is to be completed within eighteen months from the placement of a contract.

(2) A procuring and disposing entity may place a contract with price adjustment provisions for a procurement requirement that will not be completed within eighteen months from the placement of a contract, in accordance with regulation 245.

(3) The Authority shall provide a procuring and disposing entity with advice in connection with internationally accepted practices in relation to pricing standards for differing procurement requirements.

245. (1) A price adjustment provision may be included in a contract extending beyond eighteen months, where it is more economical for a procuring and disposing entity to accept the inflation risk than to pay an additional cost for the supplier to accept the risk.

(2) Where a price adjustment provision is included, the method for calculating adjustments, and any restrictions or conditions on adjustments, shall be clearly stated in the solicitation documents.

(3) A price adjustment shall be calculated using a predefined formula, which shall separate the total price into components, such as labour, equipment, materials, and fuel, adjusted by price indices specified for each component.

(4) Where the payment currency is different from the source of the input and corresponding index, a correction factor shall also be applied in the formula, to avoid incorrect adjustment.

(5) The formula, price indices, correction factors and base date for application shall be clearly stated in the solicitation documents and in the contract.

(6) The formula and price indices shall be appropriate to the type of procurement and source of the inputs and shall use industry standards wherever possible.

(7) Where no industry standard or other appropriate formula is available, a procuring and disposing entity shall use the sample formula in the Eighth Schedule.

246. Solicitation documents and the resulting contracts shall specify the payment terms that shall apply to a contract and these shall include-

(a) payment method;

(b) payment structure;

(c) payment documents;

(d) payment period; and

(e) payment currency.

247. (1) A procuring and disposing entity shall agree with a provider on the method of payment for a contract.

(2) Where a bidder proposes a payment method, the bidder shall include the full cost of the method in the bid price.

(3) The method of payment shall be comprehensively defined in a contract and shall indicate the person who pays any costs associated with the agreed method.

248. (1) A procuring and disposing entity shall state in the solicitation documents and the resulting contract, the structure of the payment to be made.

(2) A payment structure and amount of payment for each procurement requirement shall be determined by best practices.

(3) A payment structure may include-

(a) advance payments;

(b) stage payments, which shall be linked to specific deliverables or milestones and which may be stated in percentage terms of the defined amount or in specific amounts;

(c) regular interim payments, which shall be based on general progress or the work performed and may relate to a specified time period or a measurement of work performed; or

(d) a retained payment, which shall be linked to a specific contract event, such as installation or warranty.

249. (1) Except where best practices or market forces dictate, a procuring and disposing entity shall not enter into a contract which requires an advance payment.

(2) Where an advance payment is consistent with best practices, an advance payment security shall be required and the requirement for a payment security shall be stated in the solicitation documents in accordance with regulation 252.

(3) An advance payment shall be recovered from subsequent payments made to a provider, which shall be subject to a percentage deduction equal to the percentage paid as advance payment.

(4) An advance payment may be made for-

(a) mobilisation or start up costs for the provision of works or services; or

(b) the provision of supplies, such as items that have to be specially or custom manufactured.

250. (1) Where best practices dictate, a procuring and disposing entity may enter into a contract in which an interim or stage payment is permitted.

(2) Where an interim or stage payment is permitted, it shall comply with the following conditions-

(a) the payment shall be linked to specific and verifiable deliverables, contract event, time period, or work which should be stated in the solicitation documents and the resulting contract;

(b) individual payments shall not exceed the cost or value of the deliverable, period or work to which it is linked; and

(c) payment may require the provision of a payment security if, during the delivery of the works, services or supplies, risk or title remains with the provider.

(3) Where a payment security is deemed appropriate under paragraph (2) (c), regulation 252 shall apply.

251. (1) Where a procuring and disposing entity has determined that a retained payment is appropriate, the contract shall state-

(a) the percentage or amount of the total contract value to be retained;

(b) the period or the event at which the retention is to be released; and

(c) the documents that shall prove or certify the period or event in paragraph (b).

(2) A provider may be permitted to substitute a payment security for a retention payment in accordance with regulation 252.

252. (1) No payment shall be made to a provider under a contract for works, services or supplies, without receipt of the deliverables specified in the contract.

(2) Notwithstanding sub-regulation (1), payment may be made to a provider prior to receipt of deliverables where an appropriate payment security is obtained.

(3) The solicitation documents and contract shall state the requirement for a payment security.

(4) A payment security shall-

(a) be in a format provided by the Authority which shall be included in the solicitation documents;

(b) be in a form and from an institution that is wholly acceptable to the Bank of Uganda in accordance with the guidelines;

(c) be valid for a prescribed period beyond the expected final transaction date of a contract or expected release date; and

(d) where appropriate, allow for the progressive reduction of the secured sum, where a successive payment is released against the secured sum.

(5) The period in subregulation (4)(c) shall be determined taking into account the circumstances of a procurement requirement and the likelihood of extensions or delays to the final completion date.

(6) The validity period for a payment security for procurement for works shall be for three to six months after the final expected transaction date.

(7) The validity period for a payment security for procurement for services or supplies shall be for one to three months after the final expected transaction date.

(8) A payment security shall be released promptly by a procuring and disposing entity upon expiry of the term of the security or upon reduction of the secured sum to zero, whichever comes later.

(9) The proposed release of a payment security shall be communicated to a provider and returned in accordance with the provider's instructions.

253. (1) A procuring and disposing entity shall clearly state in the solicitation documents, the documents against which each payment shall be made.

(2) A payment document may include a document certifying or proving-

(a) the delivery or receipt of goods, works or services in accordance with the terms of the contract;

(b) the content of the consignments delivered;

(c) the insurance coverage of the delivered items;

(d) the successful inspection of the delivered items;

(e) the origin or eligibility of the delivered items;

(f) payment of costs specified in a contract, such as duties, levies or taxes that may be due and payable by a provider on the delivered items;

(g) the acceptance of installation or commissioning of the delivered items by a user;

(h) the receipt or acceptance of reports, manuals, guides, or other documents;

(i) the actual time period worked;

(j) the actual works or services completed;

(k) the payment of sums due to sub-contractors; or

(l) the actual sums paid for reimbursable costs, such as air tickets.

(3) A payment request from a provider shall require an original invoice from the provider certifying the payment due.

254. (1) Payment for any sum of money due under a contract may only be made in the name of a provider stated in a contract through recognised banking channels and practices.

(2) No payment shall be made to any person other than a provider, unless the provider requests and confirms in writing the details of the recipient of a payment.

255. The period for payment shall be thirty days from certification of invoices, except where this is varied in the special conditions of contract.

256. (1) A procuring and disposing entity shall ensure that all payment requests are processed promptly within the payment period specified in a contract.

(2) A provider shall make a request for payment to a procuring and disposing entity in accordance with the terms of a contract placed by the procuring and disposing entity.

(3) A procuring and disposing entity shall, within five working days of receipt of a payment request from a provider, examine and ascertain that the request is correct, accurate and in accordance with the terms of a contract.

(4) Where a payment request is accurate and in accordance with the terms of a contract, a procuring and disposing entity shall certify it for payment and make payment in accordance with the terms of the contract.

(5) Where a payment request contains errors or discrepancies or is supported by incorrect or incomplete documentation or is not in accordance with the terms of a contract the payment request shall not be certified but it shall be returned to a provider, specifying the reasons for the rejection.

(6) A provider whose payment request is rejected shall be entitled to present a new or amended payment request, which shall be treated as the original payment request.

(7) Notwithstanding subregulation (5), where a procuring and disposing entity queries any part of a payment invoice from a provider, that query shall not delay payment of the unchallenged portion of the invoice to the provider.

257. (1) Payment shall be made in the currency stated in the contract.

(2) When permitted under a contract, where a payment to a provider is to be made in Uganda, and he or she is required to remit all or part of the amount outside Uganda, the contract amount in Ugandan shillings shall be paid to the provider, less or plus, as the case may be, an amount specified in the provider's invoice representing any of the following exchange movements-

(a) the fluctuations which may have occurred between the date of conversion of the payment to Uganda Shillings, reflected in the solicitation documents and bid, and the date of invoice, except that the invoice date shall not be more than ten days after the date of delivery or shipment; and

(b) any further fluctuation in the rate of exchange, which may occur between the invoice date and the actual date of remittance abroad, except that such further fluctuation shall be

more than three percent, and the remittance is made within ten days of the date of a contract or purchase order.

(3) A claim by a provider for exchange rate movements shall be accompanied by-

(a) a copy of the relevant invoice from the foreign supplier;

(b) a copy of the bank remittance voucher;

(c) a copy of the purchase order;

(d) a certificate of audit, or similar document, in cases where amounts that are not related to a specific order are included in the remittance voucher; and

(e) any other information which may be reasonably requested by a contract manager.

(4) Where a bidder fails to comply with the requirements of a contract affecting the admissibility of a claim, the cost of exchange rate movements shall be borne by the provider.

Division IV-Contract management.

258. (1) After a contract has been placed, contract management, except the capacity to amend or terminate, shall pass from a procuring and disposal unit to a user department.

(2) A procurement and disposal unit shall provide a copy of the contract to a user department.

(3) Upon receipt of a contract, a contract manager shall prepare a contract implementation plan, using PP Form 60 in the Ninth Schedule, and forward a copy to the procurement and disposal unit for monitoring purposes.

(4) Where a user department has any reservations or difficulties with the terms or conditions of the contract, they shall be discussed and resolved with the procurement and disposal unit.

(5) A user department shall report to a procurement and disposal unit-

(a) any departure from the terms and conditions of a contract; and

(b) any alterations to the conditions of a contract, either before or during the course of implementation, that in effect could have impacted on the evaluation and rankings of the bid and the choice of provider.

259. (1) A user department shall nominate an existing member of staff with appropriate skills and experience, or who is supervised by a member of staff with appropriate skills and experience, as a contract manager.

(2) A user department may nominate a member of staff of another user department as contract manager, where appropriate.

(3) A contract of high value or which is complex or forms part of a larger project, may be assigned to a contract management team, which shall have the same responsibilities as a contract manager.

(4) A contract may be managed by a body or person external to a procuring and disposing entity, provided the user department supervises the external contract manager.

260. (1) A contract manager shall-

(a) manage the obligations and duties of the procuring and disposing entity specified in the contract; and

(b) ensure that the provider performs the contract in accordance with the terms and conditions specified in the contract and a procuring and disposing entity's requirements.

(2) The functions of the contract manager are-

(a) to ensure that-

(i) a provider meets all performance or delivery obligations in accordance with the terms and conditions of a contract;

(ii) a provider submits all required documentation in accordance with the terms and conditions of a contract;

(iii) a procuring and disposing entity meets all payment and other obligations in accordance with the terms and conditions of a contract;

(iv) there is adequate cost, quality and time control where appropriate;

(v) there is compliance with the provisions of the Act, these Regulations, the guidelines and best practices;

(vi) all contract obligations are complete prior to closure of the contract file; and

(vii) all contract management records are kept and archived as required;

(b) to issue any required variations or change orders, in accordance with the terms and conditions of a contract;

(c) to provide full details of a required contract amendment to the procurement and disposal unit and to obtain a contracts committee's approval prior to issue of any amendment;

(d) to manage handover or acceptance procedures;

(e) to provide full details of any proposed termination of a contract to a procurement and disposal unit and to obtain the approval of the contracts committee prior to termination; and

(f) to submit reports on the progress or completion of a contract as required by a procurement and disposal unit or an accounting officer.

261. (1) A contract variation or change order is a change to the price, completion date or statement of requirements of a contract, which is provided for in the contract to facilitate adaptations to unanticipated events or changes in requirements.

(2) A contract variation or change order may be issued with the approval of the contracts committee.

(3) Notwithstanding subregulation (2), any additional funding required for a variation or change order shall first be committed.

(4) A contract may be varied in accordance with a compensation event or the issue of a variation, change order or similar document, as provided in the contract.

(5) A variation or change order shall be in accordance with the terms and conditions of a contract and shall be authorised by a competent officer.

(6) A contract which provides for a variation or change order shall include a limit on a variation or change order which shall not be exceeded without a contract amendment.

(7) A competent officer, for purposes of this regulation, shall be defined in the contract.

262. (1) An amendment to a contract refers to a change in the terms and conditions of an awarded contract.

(2) Where a contract is amended in order to change the original terms and conditions, the amendment to the contract shall be prepared by the procurement and disposal unit.

(3) A contract amendment shall not be issued to a provider prior to-

(a) obtaining approval from a contracts committee;

(b) commitment of the full amount of funding of the amended contract price over the required period of the revised contract; and

(c) obtaining approval from other concerned bodies including the Attorney General, after obtaining the approval of a contracts committee.

(4) A contract amendment for additional quantities of the same items shall use the same or lower unit prices as the original contract.

(5) No individual contract amendment shall increase the total contract price by more than fifteen percent of the original contract price.

(6) Where a contract is amended more than once, the cumulative value of all contract amendments shall not increase the total contract price by more than 25 percent of the original contract price.

263. (1) Where the contract manager or a procurement and disposal unit believe that a contract should be terminated, the contract manager or the procurement and disposal unit shall submit a recommendation for termination with a copy of the contract to a contracts committee.

(2) A recommendation for termination of a contract shall state-

(a) the name of a provider and the procurement reference number;

(b) reasons for the termination;

(c) the actions taken to avoid termination, where applicable;

(d) the contractual grounds for the termination;

(e) the costs, if any, resulting from the termination; and

(f) any other relevant information.

(3) No contract shall be terminated prior to obtaining the approval of a contracts committee.

(4) Where a contract is terminated, a procuring and disposing entity shall, where appropriate, inform the Authority of the provider involved, the reasons for the termination and make a recommendation on the provider's registration status.

Part VI-Special Provisions for Procurement of Supplies, Works and Services.

Division I-Procurement of supplies.

In addition to the provisions of Parts III, IV and V, the procurement of supplies shall also be subject to the provisions in this Division.

The provisions in this Division shall also apply, where appropriate, to the procurement of supplies, which are incidental to the procurement of services or works.

264. (1) A statement of requirements for the procurement of supplies shall be defined by-

- (a) a delivery and completion schedule;
- (b) a list of supplies and quantities, including any services incidental to the provision of those supplies;
- (c) specification; or
- (d) drawings.

(2) A specification shall contain a complete, precise and unambiguous description of the supplies required and shall include, where appropriate-

- (a) a clear definition of the scope of the proposed purchase;
- (b) the purpose and objectives of the proposed purchase;
- (c) a full description of the requirement;
- (d) a generic specification to an appropriate level of detail;
- (e) a functional description of the qualities, including any environmental or safety features required of the subject of the procurement;
- (f) performance parameters, including outputs, timescales, and any indicators or criteria by which the satisfactory performance of the specification can be judged;
- (g) process and materials descriptions;
- (h) dimensions, symbols, terminology, language, packaging, marking and labelling requirements;
- (i) a common specification standard issued by the Authority in accordance with regulation 135; and
- (j) the relevant industry standard.

265. (1) No specification shall be issued with reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item.

(2) Where there is no other sufficiently precise or intelligible way of characterising a requirement except by the use of a reference in subregulation (1), the description shall be

used, followed by the words "or equivalent", and shall only serve as a benchmark during the evaluation process.

(3) Notwithstanding subregulation (1), where a standardisation policy has been approved, the corresponding trademark, brand name, patent, design, type, specific origin, manufacturer, producer, catalogue or numbered item may be used in the statement of requirements.

266. Where a standardisation policy has been approved by the competent authority, the accounting officer of a procuring and disposing entity shall submit the following information to the Authority-

- (a) the technical, economic and logistical case for standardisation;
- (b) a copy of all correspondence with a competent authority or technical expert consulted in relation to the specification;
- (c) the case for the selection of the proposed standardised supplies, including their advantages over alternative supplies;
- (d) projections for future procurement of the object of standardisation;
- (e) plans to ensure transparency and value for money in the procurement of the standardised supplies; and
- (f) any other information relevant to the standardisation policy.

267. (1) Solicitation documents for a procurement requirement for supplies shall be drafted using the format issued by the Authority.

(2) Solicitation documents for supplies shall specify the following information -

- (a) the specification and list of supplies;
- (b) amount and form of bid security required;
- (c) amount and form of any performance security;
- (d) form of a valid bid;
- (e) bid submission methodology;
- (f) currency in which a bid is to be submitted;
- (g) the procedure for conversion of prices to a single currency for evaluation purposes, including the source and date of exchange rates to be used for conversion;

- (h) the currency in which a contract shall be paid;
- (i) the payment terms, including any advance payment, stage payments, payment retentions and payment securities;
- (j) the basis for fixed or variable prices, and the method for calculating variations in variable prices, if required;
- (k) the method of payment;
- (l) the documentation required for payment;
- (m) the required delivery terms in accordance with regulation 272;
- (n) any special requirements for packaging, marking and labelling;
- (o) the delivery documentation required, if different from that required under subregulation (l);
- (p) the required delivery period;
- (q) any inspection or tests required;
- (r) any insurance requirements;
- (s) any required warranty;
- (t) the evaluation methodology and criteria;
- (u) the type of contract to be placed, in accordance with regulations 233 and 269; and
- (v) any other information, terms or conditions in accordance with these Regulations and the guidelines.

(3) Where a procurement is conditional upon the acceptance of a trade-in requirement under regulation 311, the solicitation documents shall include details of the asset to be traded in, in order that a costing can be offered for the asset to offset against the cost of the new procurement requirement.

268. (1) The evaluation methodology for supplies shall be by the technical compliance selection methodology.

(2) Consent shall be obtained from the Authority, to use any other evaluation methodology.

269. (1) To ensure that the best evaluated bid offers best value for money over the anticipated lifetime of the supplies, a procuring and disposing entity shall include an assessment of the whole life-cycle cost in the financial comparison of bids for supplies.

(2) The solicitation documents shall state any of the following life-cycle cost factors to be included in a financial comparison-

- (a) the initial purchase price of the supplies;
- (b) packing, packaging, freight and inland delivery;
- (c) insurance;
- (d) inspection and testing;
- (e) installation and commissioning;
- (f) the cost and availability of any extended warranty;
- (g) the cost of training in operation, maintenance or repair of the supplies, taking into account the level of training required and the number of staff requiring training;
- (h) the quantity, cost and availability of consumables for operation over the anticipated lifetime of the supplies;
- (i) the quantity, cost and availability of spare parts for operation over the anticipated lifetime of the supplies;
- (j) the frequency, cost and availability of maintenance and servicing;
- (k) the cost and availability of repair services;
- (l) energy costs for operating the supplies;
- (m) the level of manpower required for use of the supplies;
- (n) the anticipated lifetime of the supplies; or
- (o) the likely residual value and cost of disposal of the supplies.

270. (1) A lump sum contract shall be used where the specification, required quantity and delivery schedule of a contract are known.

(2) A framework contract may be used-

- (a) for supplies, which are needed repeatedly or continuously over a period of time, including stationery, office supplies, food stuffs and spare parts;

(b) where there are logistical and procurement reasons for having the requirement available on a call off basis; or

(c) where the arrangement would reduce procurement costs or lead times.

(3) Consent shall be obtained from the Authority to use a type of contract other than one stated in this regulation.

271. (1) A contract for supplies shall clearly indicate the scope of a provider's responsibilities under a contract, which may include-

(a) supply and delivery of supplies, in accordance with the specified INCOTERM;

(b) installation and commissioning of supplies;

(c) training in use, maintenance or repair of the supplies; or

(d) provision of after-sales services, which may include the supply and delivery of consumables and spare parts and servicing, maintenance, repair, calibration and modification of equipment.

(2) Consent shall be obtained from the Authority, to use a contract whose scope is outside this regulation.

272. (1) Delivery terms for supplies shall be in accordance with the INCOTERMS.

(2) A solicitation document shall state the INCOTERMS to be used for delivery.

273. (1) The freight and delivery requirements for each procurement requirement shall be specified in the solicitation documents by stating the delivery terms using the appropriate INCOTERMS.

(2) Solicitation documents shall state the required mode of transportation and freight.

(3) A procuring and disposing entity shall ensure that its address is clearly stated as the consignee address.

274. (1) Solicitation documents shall state the minimum packing and packaging criteria and the requirements for labelling and marking of packages, where applicable.

(2) Solicitation documents shall state that packing standards shall withstand rough handling, storage and protection against the effects of moisture, where applicable.

275. (1) Solicitation documents and a contract shall specify the required level of insurance against loss, damage and theft.

(2) A procuring and disposing entity shall state in the solicitation documents whether a bidder is required to arrange insurance and shall include the cost of insurance using the appropriate INCOTERM.

(3) Where a provider is required to arrange insurance in the name of a procuring and disposing entity, the solicitation documents and contract shall state that the minimum insurance coverage shall be one hundred and ten percent of the delivered cost, covering Institute of Cargo Clauses (A), including "all risks" "warehouse to warehouse", "strikes", "war" and "civil commotion".

276. (1) The solicitation documents and the contract shall specify the responsibility for export and import licences, or similar documentation or formalities, using the appropriate INCOTERMS.

(2) Where a procuring and disposing entity wishes to vary the provisions of INCOTERMS, the revised provisions shall be clearly stated in the solicitation documents and the contract.

(3) Solicitation documents and the contract shall state that either party shall provide assistance to the other, to obtain the necessary export or import licences.

277. (1) Supplies may be inspected or tested by a procuring and disposing entity during manufacture, prior to shipment, on delivery or prior to acceptance to verify their technical quality, quantity, packaging or any other detail.

(2) Inspection and testing may include an independent technical inspection or test conducted under a provider's own internal quality control procedures.

(3) The requirement for inspection shall take into account-

(a) the technical complexity of the supplies;

(b) the quantity and value of the supplies;

(c) the estimated cost, delay or other effect of receiving the wrong quantity or sub-standard or damaged supplies to a procuring and disposing entity;

(d) the cost of inspection; and

(e) a provider's internal quality control procedures.

(4) Where inspection is required, the solicitation documents shall indicate-

(a) the type of inspection or test to be performed and the standards to be met;

(b) the location where the inspection or test is to be performed;

- (c) the person to carry out the inspection or test;
- (d) when inspection or testing is to be performed;
- (e) the notification or documentation required from a provider;
- (f) the party to pay for the cost of the inspection, including the cost of facilities, labour, apparatus and materials and whether the cost should be included in the bid;
- (g) that samples required for inspection shall be provided at no additional cost;
- (h) the arrangement and cost for any re-inspection required; and
- (i) any other relevant details.

(5) A contract shall describe a provider's obligations and responsibilities with regard to inspection.

(6) Where a third party provider is required to inspect supplies, the services shall be contracted following the appropriate procurement method and rules for the procurement of services.

(7) Where inspection or testing consists of the provider's own internal quality control procedures, the procuring and disposing entity may, if so specified in the solicitation document or contract, send a representative to witness the internal tests or request copies of the reports from such tests.

Division II-Procurement of works.

In addition to the provisions of Parts III, IV and V, the procurement of works shall be subject to the provisions in this Division.

The provisions in this Division shall also apply, where appropriate, to the procurement of works which are incidental to the procurement of services or supplies.

278. A statement of requirements for the procurement of works shall contain a clear, unambiguous and precise description or comprehensive scope of works, bill of quantities, specifications, drawings or the equivalent, and shall include as appropriate-

- (a) a background narrative to the required works;
- (b) the objectives of the required works;
- (c) a list of specific tasks to be performed;
- (d) the supervision requirements, working relationships and specific administrative arrangements to be applied;

- (e) the duration of the works;
- (f) a common specification standard issued by the Authority in accordance with regulation 135;
- (g) the relevant industry standard; and
- (h) any other relevant information.

279. Solicitation documents for each individual procurement requirement for works shall be drafted using the format issued by the Authority and shall specify the following information, terms or conditions in accordance with these Regulations and the guidelines-

- (a) design, specifications, drawings, bill of quantities or equivalent as may be applicable;
- (b) the amount and form of the required bid security;
- (c) the amount and form of the required performance security ;
- (d) the bid format;
- (e) the bid submission methodology;
- (f) the currency in which a bid is to be submitted;
- (g) the procedure for conversion of prices to a single currency for evaluation purposes, including the source and date of exchange rates to be used for conversion;
- (h) the currency in which a contract shall be paid;
- (i) the payment terms, including any advance payments, interim or stage payments or payment retentions and the required payment securities;
- (j) the basis for fixed or variable prices, and the method for calculating variations in variable process, if required;
- (k) the method of payment;
- (l) the documentation required for payment;
- (m) the schedule of execution of the works;
- (n) the functions and authority of the client's technical representative, if any;
- (o) any inspection or tests required, and the test methods;
- (p) requirements relating to certification of conformity;

- (q) the insurance cover or indemnity required;
- (r) the evaluation methodology and criteria;
- (s) the type of contract;
- (t) preference or reservation scheme applicable to the procurement; and
- (u) any other required information, terms or conditions.

280. (1) The evaluation methodology for works shall be the technical compliance selection methodology.

(2) A quality and cost based selection methodology may be used for procurement of works for design and build or turnkey contracts, where there is a consultancy element or where comparative elements including the quality of finish, performance and operating costs need to be included in the evaluation.

(3) Notwithstanding subregulation (2), a procuring and disposing entity shall use technical compliance selection under direct procurement in accordance with regulation 119(6).

(4) Consent shall be obtained from the Authority to use any other evaluation methodology other than the methodology specified in this regulation.

281. (1) A lump sum contract shall be used for buildings and other forms of construction where the works are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions, such as hidden foundation problems, is unlikely.

(2) An admeasurement contract shall be used for buildings and other forms of construction where the works are not well defined or are likely to change in quantity or specification, and where encountering difficult or unforeseen site conditions, such as hidden foundation problems, is likely.

(3) A framework contract shall be used where the quantity of works is not defined and where-

(a) there is a need to have works "on call" and the extent and timing of the requirement cannot be defined in advance; or

(b) requirements are needed repeatedly or continuously over a period of time and having the requirement available on a "call off" basis would reduce procurement costs or lead times.

(4) A cost reimbursable contract may be used-

(a) for emergency works, where there is insufficient time to calculate the full costs involved; or

(b) for high risk works, where it is more economical for a procuring and disposing entity to bear the risk of price variations than to pay a provider to accept the risk or where a provider does not accept the risk.

(5) A target price contract shall be used instead of a cost reimbursable contract where-

(a) a target price is agreed; and

(b) cost savings may be achieved by offering an incentive payment to a provider for any cost savings below the target price.

(6) Consent shall be obtained from the Authority to use a type of contract other than one stated in this regulation.

282. (1) A contract for works shall clearly indicate the scope of work and responsibility for design.

(2) The contract for works may be-

(a) a standard contract, where the works shall be fully designed by a procuring and disposing entity or its consultant prior to bidding and a provider is responsible for construction only;

(b) a design and build contract, where a provider shall be responsible for design and construction of the works based on a procuring and disposing entity's parameters; or

(c) a turnkey contract, where a provider shall be responsible for the design, engineering, supply, installation of equipment and the complete construction, based on a procuring and disposing entity's performance specifications, except where a procuring and disposing entity is responsible for the design and engineering, and invite bids for a single contract for the supply and installation of all works and supplies required for the project component.

(3) A management contracting contract may be used where appropriate, subject to the provisions of these Regulations governing the procurement of services.

(4) Consent shall be obtained from the Authority to use a contract, whose scope is outside this regulation.

283. (1) A procuring and disposing entity shall ensure that all procurement requirements for works are adequately and appropriately insured, from the commencement of works to the end of the defects liability period, for events which are due to a provider's risks, including-

(a) loss of or damage to the works, plant, materials, equipment, property; and

(b) personal injury or death.

(2) Insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

(3) A procuring and disposing entity shall state the insurance required in the solicitation documents and shall require a bidder to include the costs of insurance in the bid.

284. A works contract shall clearly state-

(a) the procedure for transfer of the completed works to a procuring and disposing entity, including the transfer of title and the documentation of the transfer;

(b) the ownership of the property on site during implementation of a contract;

(c) the obligations of a provider in relation to the custody and care of property of a procuring and disposing entity, occupied or used during implementation of a contract; and

(d) arrangements for the temporary handover and return of all property of a procuring and disposing entity, occupied or used during implementation of the contract.

Division III-Procurement of services.

In addition to the provisions of Parts III, IV and V, the procurement of services, both consultancy and non-consultancy, shall be subject to the provisions of this Division.

The provisions in this Division shall also apply, where appropriate, to the procurement of services, which are incidental to the procurement of works or supplies.

285. (1) A statement of requirements for the procurement of services shall be defined in the terms of reference or brief.

(2) The terms of reference, or brief, shall contain a clear, unambiguous and precise description of the services required including-

(a) a background narrative to the required services;

(b) the objectives of the services required and a list of targets to be achieved by a provider;

(c) a list of the specific tasks or duties to be performed;

(d) a schedule of deliverables for the assignment or outputs against which the achievements of the services shall be measured;

(e) the management and reporting lines of a provider, to a procuring and disposing entity and the specific administrative arrangements and reporting requirements that shall apply;

(f) the duration and timetable of the assignment; and

(g) the applicable industry standards for implementing an assignment.

(3) The solicitation documents shall require a bidder to comment on the terms of reference.

286. (1) Solicitation documents for a requirement for services shall be drafted using the format issued by the Authority.

(2) Solicitation documents for services shall specify-

(a) the terms of reference or brief and expected input of key personnel, where applicable;

(b) the amount and form of the required bid security;

(c) the amount and form of performance security that shall be required;

(d) the form of a valid bid;

(e) the bid submission methodology;

(f) the currency in which a bid shall be submitted;

(g) the procedure for conversion of prices to a single currency for evaluation purposes, including the source and date of exchange rates to be used;

(h) the currency in which the contract price shall be paid;

(i) the basis for either fixed or variable, and the method for calculating variations in variable prices, if required;

(j) the method of payment;

(k) the payment terms, including any advance payment, stage payments or payment retentions and payment securities;

(l) the duration, timing of inputs and completion schedule;

(m) the required deliverables or outputs;

(n) the evaluation methodology and criteria;

(o) the type of contract to be placed, in accordance with regulations 233 and 289; and

(p) any other information terms or conditions required in accordance with these Regulations and the guidelines.

287. Solicitation documents shall state, where appropriate, that-

(a) the bidder shall confirm the availability of key professional staff, whose curriculum vitae are included in a bid and form part of the evaluation, prior to submission of a bid;

(b) signed statements of availability from key professional staff shall be included in the bid; and

(c) where a substitution of key professional staff is unavoidable or is agreed to by a procuring and disposing entity, the substitute staff shall be of equivalent or superior qualifications and experience.

288. (1) Where the terms of reference are well defined, the quality and cost based selection methodology shall be used for consultancy services.

(2) The quality based selection methodology may be used for consultancy services for-

(a) highly specialised assignments, where it is difficult to define precise terms of reference and the required input and for which a procuring and disposing entity expects a provider to demonstrate innovation in his or her bid;

(b) assignments that have a high downstream impact and in which, the objective is to have the best provider; or

(c) assignments that can be carried out in several different ways, where a bid is not therefore comparable and where the value of the services depends on their quality.

(3) Fixed budget selection may be used for consultancy services where an assignment is simple, can be precisely defined, and where the budget is fixed.

(4) Least cost selection may be used for consultancy services assignments of a standard or routine nature where well-established practices and standards exist.

(5) Technical compliance selection shall be used for non-consultancy services.

(6) Notwithstanding subregulations (1), (2), (3) and (4), a procuring and disposing entity shall use technical compliance selection under direct procurement in accordance with regulation 119(6).

(7) Consent shall be obtained from the Authority to use any other evaluation methodology other than the methodology in this regulation.

289. (1) A lump sum contract shall be used where the content, duration of the services, and the required output of a provider are clearly defined.

- (2) A lump sum contract shall be used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures and the preparation of data processing systems.
- (3) A time-based contract shall be used-
- (a) where it is difficult to define the scope and length of services, either because the services are related to activities performed by other providers for which the completion period may vary or the input of the consultants required to attain the objectives is difficult to assess; or
 - (b) for complex studies, designs, engineering and supervision services, advisory services, management services, and some training assignments.
- (4) A framework contract may be used-
- (a) where there is a need to have specialised services "on call" and the extent and timing of the requirement cannot be defined in advance; or
 - (b) for requirements which are needed repeatedly or continuously over a period of time and having the requirement available on a "call off" basis would reduce procurement costs or reduce lead times.
- (5) A framework contract is typically used for maintenance services and professional or technical advice, such as legal or procurement advice.
- (6) A percentage based contract may be used where it is appropriate to relate the fee paid directly to the estimated or actual cost of the subject of the contract, such as the project construction cost or cost of goods procured, auctioned or inspected.
- (7) A percentage based contract is used for architectural, third party procurement, auctions or inspection services.
- (8) A retainer contract may be used where a procuring and disposing entity intends to retain a specialised provider of services over a prescribed period of time, but where the level and amount of services required cannot be defined.
- (9) A retainer contract is typically used to retain advisers for the implementation of complex projects or for technical troubleshooting.
- (10) A contingency or success fee contract may be used where it is appropriate to link a provider's fee to an achieved objective, to provide an incentive to the successful completion of a particular task, event or action.
- (11) Consent shall be obtained from the Authority to use another type of contract for services other than those stated in this regulation.

290. (1) A procuring and disposing entity shall ensure that-

(a) all procurement requirements for services are adequately and appropriately indemnified against-

(i) damage, loss or injury to person or property arising from the services provided;

(ii) any actions, suits, claims, demands, costs and expenses occasioned by negligent or breach of statutory duty by a provider; and

(b) a provider maintains adequate professional liability and insurance coverage against negligent performance.

(2) A procuring and disposing entity shall state the insurance and indemnity required for procurement for services in the solicitation documents and shall require a bidder to include the costs of the insurance and indemnity in his or her bids.

(3) A procuring and disposing entity shall take out the insurance required by law and any other that may be deemed fit.

291. A service contract shall state-

(a) the ownership of all property purchased or used during implementation of the contract;

(b) the obligations of a provider in relation to the custody and care of property of the procuring and disposing entity, being occupied or used during implementation of a contract;

(c) arrangements for temporary handover and return of all property of a procuring and disposing entity occupied or used during implementation of a contract; and

(d) arrangements for the handover, if appropriate, of all property purchased during implementation of a contract.

Part VII-Disposal of Public Assets.

Division I-Preliminary.

292. (1) Disposal of public assets, including assets identified by a board of survey, shall be carried out in accordance with the Act, these Regulations and the guidelines.

(2) Subject to the provisions of the Act and these Regulations, the provisions of Parts IV and V of these Regulations, shall apply equally, to all activities of disposal of public assets.

293. (1) A procuring and disposing entity shall maintain a record of its disposal proceedings and contract management for a period of seven years from the date of a

decision to terminate a disposal activity or the date of completion of a disposal activity, whichever comes first.

(2) Where a contract is on going or is challenged, the records shall be kept for one additional year after the completion of the contract or the settlement of the dispute, whichever comes earlier.

(3) The records of a procuring and disposing entity specified in this regulation shall be open to inspection by the Authority during working hours -

(a) records of a disposal process;

(b) records relating to contracts management;

(c) records of the contracts committee; and

(d) records of an accounting officer which relate to disposal, contracts management, disagreements with the contracts committee, investigations of complaints or any other matter related to the Act or these Regulations.

(4) Records of disposal of a public asset shall contain the following documents, where appropriate-

(a) a request to initiate disposal proceedings, including a report of a board of survey;

(b) a copy of an invitation notice, if any;

(c) copies of solicitation documents, their amendments or clarifications and any additional information such as an auctioneer's catalogue or general descriptive literature;

(d) a report of inspection of the assets by potential bidders;

(e) a record of the bid openings;

(f) a copy of all bids evaluated, clarifications requested and responses received;

(g) the evaluation report, if any;

(h) minutes of meetings on the disposal, including negotiation proceedings;

(i) a copy of a letter of bid acceptance to a successful bidder, if any;

(j) the contract, if any;

(k) all documents related to contracts management, including records of receipts of payment and handing over certificates;

(l) a copy of the update to the procuring and disposing entity's asset register;

(m) all correspondence between a procuring and disposing entity and a bidder, an auctioneer or a third party disposal agent; and

(n) a copy of all submissions to the contracts committee and all decisions related to the disposal, including, the choice of disposal method, approval of solicitation documents, approval of an evaluation report, approval of negotiations, contract award decision, approval of contract documents and any decision to suspend or cancel disposal proceedings.

(5) A procuring and disposing entity shall submit a monthly report to the Authority on all disposal contracts awarded during the preceding month using PP Form 201 in the Ninth Schedule to these Regulations.

294. (1) The medium of communication shall be specified in the invitation documents.

(2) English shall be the language of communication.

(3) Notwithstanding subregulation (2), communications may also be in other appropriate languages, where these languages offer an efficient means of communicating with a potential bidder or increasing competition.

(4) Subject to the provisions of these Regulations, meetings and agreements between a procuring and disposing entity and a bidder or a provider shall be minuted and confirmed in writing.

295. (1) The accounting officer shall ensure that the assets of a procuring and disposing entity are reviewed on an annual basis, to identify those which are obsolete and should be subject to disposal.

(2) Assets to be disposed of shall be grouped in contracts or lots in a manner which attracts maximum possible competition.

(3) Where an asset is to be disposed of through a public auction, a procuring and disposing entity shall maximise the number of assets to be disposed of at a time in order to reduce the administration and transaction costs.

(4) A procuring and disposing entity may pool assets for purposes of common disposal.

(5) A procuring and disposing entity may use a board of survey to identify assets to be disposed of on a periodic basis.

296. (1) A user department or a procuring and disposing entity responsible for the management of materials shall initiate the disposal process for assets under its management.

(2) Initiation of disposal requirement may follow the recommendation of a board of survey.

(3) A disposal requirement shall use DPA Form 120 in the Ninth Schedule, and shall include a clear indication of the assets to be disposed of and the approval to commence disposal proceedings for the specified assets.

(4) Approval to commence disposal proceedings shall be approved by an accounting officer, or any authorised officer.

(5) A disposal requirement shall be allocated a specific reference number, using the referencing system in the guidelines.

(6) Documentation related to the disposal requirement shall state the appropriate reference number from the asset register.

Division II-Methods for disposal of public assets.

297. (1) A procuring and disposing entity shall select one of the following disposal methods in accordance with the provisions of this Division-

- (a) public auction;
- (b) public bidding;
- (c) sale to public officers;
- (d) direct negotiations;
- (e) trade-in;
- (f) transfer to another procuring and disposing entity;
- (g) conversion or classification of assets into another form; or
- (h) destruction of assets.

(2) A procuring and disposing entity shall take into account the following factors in selecting a disposal method-

- (a) the potential market value of the asset;
- (b) the volume of the asset, whether one-off or bulk;
- (c) the number and location of potential bidders;
- (d) the location of the asset;

- (e) restrictions on export or end-users;
- (f) national security and public interest issues;
- (g) health and safety issues;
- (h) legal or human rights issues;
- (i) environmental considerations;
- (j) the trade-in value of the asset; and
- (k) the possibility of transferring the asset to another procuring and disposing entity.

298. A public auction may be used where-

- (a) there are no conditions of end-user or export restrictions attached to the sale; or
- (b) there is a large number of potential bidders or assets to be disposed of in one location and where an on site auction is arranged to avoid transport costs.

299. Public bidding may be used-

- (a) for high-value or unusual assets;
- (b) for assets located in remote areas;
- (c) for assets that have a geographically dispersed potential market;
- (d) for assets with end-user or export restrictions attached to their sale;
- (e) where conditions need to be attached to the sale of the asset; or
- (f) where post-bid negotiations may be required.

300. (1) To promote probity, fairness and competition, a procuring and disposing entity shall not dispose of a public asset outside of a public process where an open and competitive process may be successful.

(2) Disposal may be by sale to a public officer-

- (a) where there is no likely benefit or financial advantage to a procuring and disposing entity, in using any other disposal method;
- (b) where the assets for disposal are a small number of low value items which are unlikely to attract public interest;
- (c) where the personal use of disposal assets would directly benefit the performance of a

public officer in the execution of his or her duties within a procuring and disposing entity; or

(d) in remote locations, where any other method of disposal would be difficult.

(3) Disposal by sale to public officials shall be contracted to an independent agent.

(4) Assets for sale to public officers shall be for personal use but not business or commercial use.

(5) An asset shall be considered as an asset for business or commercial use where-

(a) an excessive number of purchases of a similar asset is made within a limited time period;

(b) there is frequent resale of assets purchased within a limited time period following the disposal; or

(c) there is purchase of more than one similar asset during the same disposal process.

(6) A public officer shall not be permitted to participate in any disposal process as a bidder, except under the sale to public officers method.

301. (1) Direct negotiations may be used where-

(a) the market is limited and a single buyer who is willing to pay the reserve price has been identified;

(b) national security, public interest, legal or human rights issues or environmental considerations are served by selling to a particular company, group or individual;

(c) a potential buyer is a tenant, occupier or user of an asset at the time the decision to dispose of the asset is made, and it is reasonable to give that person first option to buy the asset at a market rate; or

(d) an asset is located on a potential buyer's premises on a hire or free-use basis and it is reasonable to give that person first option to buy the asset at a market rate.

(2) A contracts committee shall approve the use of direct negotiations disposal method prior to the commencement of disposal proceedings.

302. (1) Trade-in may be used where the trade-in of surplus assets to offset the purchase price of new items provides a convenient, economic and efficient way of upgrading equipment.

(2) Notwithstanding subregulation (1), trade-in shall not be used where it prevents the operation of open and fair competition or where it reduces the value for money in a procurement process.

(3) Trade-in shall not be used where factors other than price have to be taken into account in the disposal process.

303. (1) Transfer to any other procuring and disposing entity may be used where the other procuring and disposing entity shall make further use of the asset.

(2) The cost of the asset shall be agreed between the two procuring and disposing entities.

(3) Transfer may be at no cost, if it is uneconomic to charge for the asset.

304. Conversion or classification of an asset into any other form may be used-

(a) on grounds of national security or public interest, legal or human rights issues or environment considerations; or

(b) where the asset has no residual value in its current form, but where some sale value can be obtained through conversion or classification into any other form.

305. Destruction of an asset shall be the least favoured method of disposal, but may be used-

(a) on grounds of national security or public interest, health and safety, legal or human rights issues or environment considerations; or

(b) where the asset has no residual value and it cannot be transferred to any other procuring and disposing entity or converted or classified into another form with any value.

306. (1) The disposal process under public auction shall follow the disposal process in Divisions III and IV of this Part, as modified by this regulation.

(2) A submission to a contracts committee for a public auction shall be made using DPA Form 101 in the Ninth Schedule to these Regulations.

(3) A procuring and disposing entity shall appoint a registered auctioneer to conduct a public auction on its behalf in accordance with regulation 307.

(4) A bid for a public auction shall be solicited through the publication and display of a notification of public auction in accordance with regulation 319.

(5) The period between the publication of the notification of public auction and the date of the auction shall be at least ten working days to allow sufficient time for potential bidders to inspect the asset.

- (6) No formal solicitation document shall be issued for a public auction and any information, including an auctioneer's catalogue, shall be used for information purposes only.
- (7) Bids shall be oral and the procedure for bidding shall be specified by the auctioneer in accordance with auction practice.
- (8) There shall be no minimum bidding period.
- (9) A bid shall be presented orally and a bid shall be evaluated on the basis of price only.
- (10) Negotiations shall not be permitted.
- (11) A contract shall be awarded to the bidder offering the highest price as determined by the auctioneer and the successful bid shall be declared at the auction.
- (12) A contract shall be awarded orally to the successful bidder by the auctioneer and the successful bid shall be announced at the auction.
- (13) A successful bidder shall pay at least fifty percent of the contract price immediately after award of contract, and the balance shall be paid within five working days of award of contract.
- (14) Where a bidder fails to make payment, in accordance with subregulation (12) or (13), the contract may be terminated.

307. (1) A procuring and disposing entity shall appoint a registered and licensed auctioneer to conduct the disposal process on its behalf when undertaking a disposal by public auction.

- (2) An auctioneer shall be appointed using the appropriate procurement method for services and the procurement of auctioneer services shall take into account-
- (a) the auctioneer's commission rates;
 - (b) the location of an auctioneer and cost of transportation of the asset to be disposed of;
 - (c) an auctioneer's facilities;
 - (d) an auctioneer's ability to achieve optimum returns;
 - (e) past performance and integrity of an auctioneer;
 - (f) viability of the auctioneer's businesses; and
 - (g) the provision of a performance security in the format and form required by a procuring and disposing entity.

(3) The appointment of an auctioneer shall be confirmed by a written contract, which shall include-

- (a) the payment terms and commission rate and any other fees payable to an auctioneer;
 - (b) the method and timing for payment of proceeds to a procuring and disposing entity;
 - (c) responsibility for and payment of transport costs, and costs for any assets returned unsold;
 - (d) the period within which an auction shall be held;
 - (e) the information and conditions of sale to be included in the notification of public auction, an auctioneer's catalogue or any other similar document;
 - (f) the documentation required by a procuring and disposing entity for each individual sale, such as a copy of receipts for payment and handing over certificates; and
 - (g) the details of any performance security to be lodged with a procuring and disposing entity upon commencement of the contract.
- (4) A procuring and disposing entity shall be issued with a receipt by the auctioneer for any asset delivered to or collected by an auctioneer.

308. (1) The disposal process under public bidding shall follow the disposal process in Divisions III and IV of this Part, as modified by this regulation.

(2) A submission to a contracts committee for public bidding shall be made using DPA Form 102 in the Ninth Schedule to these Regulations.

(3) A bid shall be solicited by the publication and display of a public invitation notice, indicating that an interested bidder may obtain the solicitation document from a procuring and disposing entity.

(4) A public invitation notice shall be published and displayed in accordance with regulation 319.

(5) An advertisement for public bidding shall be for at least four working days.

(6) A solicitation document shall be drafted in accordance with regulation 318 and may be sold.

(7) The minimum bidding period shall be ten working days.

(8) A procuring and disposing entity shall request for a written sealed bid from a bidder.

(9) Evaluation based on a price only methodology shall be the preferred evaluation methodology for public bidding.

(10) Evaluation based on price and other factors methodology, may be used in accordance with regulation 327(3).

(11) Post-bid negotiations may be undertaken in accordance with regulations 332 and 333.

(12) Contract award shall be by a decision of a contracts committee, in response to a recommendation from a procurement and disposal unit.

(13) Contract placement shall be by issue of a contract to a successful bidder.

(14) A notice of award of contract shall be displayed in accordance with regulation 336(5).

309. (1) The disposal process under sale to public officers shall follow the disposal process in Divisions III and IV of this Part, as modified by this regulation.

(2) A submission to a contracts committee for sale to a public officer shall be made using DPA Form 103 in the Ninth Schedule to these Regulations.

(3) A public officer involved in initiating the disposal process, valuations or managing the disposal process shall not participate as a bidder.

(4) Assets shall not be grouped in lots, but sold as separate items, except where-

(a) a group of items is of a very low value;

(b) a group of items form a natural set; or

(c) the items would have no value or a lower value if sold separately.

(5) A public officer shall not be permitted to purchase more than one similar item under a single disposal process.

(6) A bid shall be solicited by the publication of a non-public invitation notice, indicating that a public officer interested in bidding may obtain the solicitation documents from a procurement and disposal unit.

(7) A non-public invitation notice shall be displayed in accordance with regulation 319(4).

(8) The advertising period for sale to public offices shall be at least four working days.

(9) Solicitation documents shall be drafted in accordance with regulation 318 and shall not be sold.

(10) The bidding period for sale to public officers shall be ten working days.

(11) A procuring and disposing entity shall request for written sealed bids from a public officer.

(12) Evaluation for sale to a public officer shall be based on price only.

(13) Notwithstanding subregulation (12), an evaluation committee shall consult the Authority's register of sales to public officers, prior to recommending award of contract, to verify that the best evaluated bidder is not purchasing the asset for business or commercial use.

(14) Where the best evaluated bidder is judged to be purchasing the asset for business or commercial use, the evaluation committee shall report this to the contracts committee and undertake the same check on the second best evaluated bidder.

(15) A post-bid negotiation shall not be permitted.

(16) Contract award shall be by a decision of a contracts committee in response to a recommendation from the procurement and disposal unit.

(17) Contract placement shall be by issue of a contract to the successful bidder.

(18) An accounting officer shall forward to the Authority, within seven working days of the contract award, a copy of-

(a) all bids received;

(b) the evaluation report; and

(c) the contract awarded.

(19) The Authority shall maintain a register of all sales to public officers, which shall include for each contract at least-

(a) the name of the public officer;

(b) the date of the disposal contract;

(c) the type of asset sold; and

(d) any other relevant information.

310. (1) The disposal process under direct negotiations shall follow the disposal process in Divisions III and IV of this Part, as modified by this regulation.

(2) A submission to the contracts committee for disposal by direct negotiation shall be made using DPA Form 104 in the Ninth Schedule to these Regulations.

(3) A valuation shall be obtained where an asset is to be disposed of through direct negotiations.

(4) Bids shall be solicited through the issue of written solicitation documents, using the format issued by the Authority, modified as necessary to suit the requirement.

(5) There shall be no minimum bidding period.

(6) A procuring and disposing entity shall require a bidder to submit a written sealed bid.

(7) Evaluation based on price only shall be the preferred evaluation methodology for direct negotiations.

(8) Evaluation based on price and other factors may be used in accordance with the conditions in regulation 327(3).

(9) Post-bid negotiations may be undertaken in accordance with regulations 332 and 333.

(10) Contract award shall be by a decision of the contracts committee, in response to a recommendation from a procurement and disposal unit.

(11) Contract placement shall be by issue of a contract.

(12) A notice of award of contract shall be displayed in accordance with regulation 336(5).

311. (1) A valuation shall always be obtained where an asset is to be disposed of using trade-in.

(2) Under trade-in, the disposal process shall be an integral part of the procurement process and shall follow the procurement rules in Parts IV and V.

(3) A disposal process shall use the appropriate disposal method in accordance with the provisions of Division III of Part IV.

(4) The estimated trade-in value shall not be deducted from the estimated value of the procurement in selecting the appropriate disposal method.

(5) Approval shall be obtained from a contracts committee to include a trade-in requirement as a procurement requirement prior to the commencement of the procurement proceedings, using DPA Form 105 in the Ninth Schedule to these Regulations.

(6) A solicitation document and a bid notice shall clearly state that the procurement involves a trade-in arrangement.

(7) A solicitation document shall be drafted using the appropriate procurement document issued by the Authority, and shall include the information in regulation 318.

(8) Advertisement of the trade-in, issue of solicitation documents, the bidding period and receipt and opening of bids shall be in accordance with the relevant procurement rules.

(9) Evaluation shall follow the appropriate methodology for a procurement requirement.

(10) The trade-in value offered for an asset shall be included in the financial comparison only in the manner stated in the solicitation documents.

(11) The way in which trade-in offers have been evaluated shall be clearly stated in the evaluation report.

(12) Negotiations may be permitted in accordance with the relevant rules on procurement.

(13) Award of contract shall be in accordance with the relevant rules on procurement.

(14) A contract shall use the appropriate procurement document issued by the Authority and shall include the information in regulation 336(4).

(15) Responsibility for management of procurement contract and a disposal element shall be clearly defined and where different public officers are responsible for each element, they shall work together as and when appropriate.

312. (1) A submission to a contracts committee for a transfer to another procuring and disposing entity shall be made using DPA Form 106 in the Ninth Schedule to these Regulations.

(2) Where disposal is by transfer to another procuring and disposing entity, the arrangements for the transfer shall be discussed and agreed between the two procuring and disposing entities.

(3) The agreement in subregulation (2) shall include-

(a) the cost to be paid by the recipient procuring and disposing entity, which cost may be omitted if it is uneconomic to charge for the asset;

(b) any subsidiary or linked assets to be included in or excluded from a transfer;

(c) the date for the transfer;

(d) responsibility for transporting an asset;

(e) the hand-over procedure and any documentation to be transferred;

(f) the mechanism and date for payment of any cost; and

(g) responsibility for any legal obligations linked to an asset.

(4) The arrangements for the transfer shall be confirmed in writing using DPA Form 161 in the Ninth Schedule, and shall be approved and signed by the accounting officers of both procuring and disposing entities.

(5) A recipient procuring and disposing entity shall issue an authorised receipt for the asset to the originating procuring and disposing entity.

313. (1) A submission to a contracts committee for conversion or classification of assets into another form shall be made using DPA Form 107 in the Ninth Schedule to these Regulations.

(2) Where conversion or classification into another form is used, a procuring and disposing entity shall identify a competent authority or an appropriate provider to undertake the conversion or classification.

(3) Approval shall be obtained from an accounting officer, prior to the commencement of the disposal proceedings using Part 1 of DPA Form 167 in the Ninth Schedule to these Regulations.

(4) Documentary evidence of the conversion or classification shall be obtained from a competent authority or provider using Part 2 of DPA Form 167 in the Ninth Schedule and shall be kept as part of the record of disposal proceedings.

314. (1) A submission to a contracts committee in respect of destruction of assets shall be made using DPA Form 108 in the Ninth Schedule to these Regulations.

(2) Where destruction of assets is used, a procuring and disposing entity shall either undertake the destruction itself or identify a competent authority or an appropriate provider to undertake the destruction.

(3) Approval shall be obtained from an accounting officer, prior to the destruction being undertaken using Part 1 of DPA Form 168 in the Ninth Schedule to these Regulations.

(4) The method of destruction shall be appropriate to-

(a) the asset being disposed of; and

(b) the circumstances giving rise to the destruction, including national security or public interest, health and safety and legal or human rights issues or environment considerations.

(5) A signed certificate of destruction shall be obtained from a procuring and disposing entity, competent authority or provider using Part 2 of DPA Form 168 in the Ninth Schedule and shall be kept as part of the record of disposal proceedings.

(6) Where a procuring and disposing entity needs to dispose of perishable items using the destruction of assets method on a regular basis, the contracts committee may give a running approval to conduct all such disposals without further submissions to it.
Division III-Disposal rules and processes.

315. (1) A procuring and disposing entity shall obtain two valuations of an asset prior to the commencement of any disposal proceedings as follows-

(a) if required by law, a first valuation shall be obtained from a competent authority and a second independent, market-based valuation shall be obtained from an appropriate authority or provider; or

(b) where there is no legal requirement, two independent valuations shall be obtained from appropriate authorities or providers.

(2) The two valuations shall be confidential and the identity and recommendations of each valuer shall not be revealed to the other.

(3) Notwithstanding subregulation (1), no valuation of an asset shall be required where the cost of the valuation is likely to be in excess of the money expected to be realised through the disposal process.

(4) Where the valuation is within a range specified in these Regulations, a procuring and disposing entity shall use an average of the two valuations to determine a reserve price for the asset, which shall be the minimum sale price of the asset subject to regulation 334.

(5) Where the valuations differ by more than the range specified in the guidelines, the valuers shall be informed of significant difference in their valuation, without specifying the values, and shall be asked to revise their valuation.

(6) Where a revised valuation is submitted which is within a range specified in the guidelines, a procuring and disposing entity shall proceed to set a reserve price, in accordance with subregulation (4).

(7) Where the valuer confirms the original valuation, or where the revised valuation still differs by more than the range specified in the guidelines, a third independent valuation shall be obtained.

(8) Where a third valuation is obtained, a procurement and disposal unit shall recommend a reserve price, using all three valuations and the range of variation between them.

316. (1) Solicitation documents or notices, and any additional information made available to a prospective bidder, shall specify that the asset is to be sold on an "as is, where is" basis and shall disclaim all liability after sale.

(2) Any additional information, such as an auctioneer's catalogue, shall be for information purposes only and shall not be considered as part of a solicitation document.

(3) Notwithstanding subregulation (1), a procuring and disposing entity shall give a full and accurate description of an asset to be disposed of.

(4) The description of an asset shall, where appropriate, address the risk and cost of dismantling and removing the asset upon completion of the disposal proceedings.

(5) A warranty shall not be offered on an asset to be disposed of, except where the increase in price received for the assets is likely to be greater than any costs associated with providing the warranty.

317. Bids shall be solicited through-

(a) a public invitation notice or notification of auction;

(b) solicitation documents;

(c) a non-public invitation notice;

(d) discussions with another procuring and disposing entity;

(e) inclusion in a solicitation document for a procurement requirement, as a trade-in;

(f) discussions with a third party responsible for conversion, reclassification or destruction; or

(g) a combination of the methods in paragraphs (a), (b), (c), (d), (e) and (f).

318. (1) Solicitation documents shall be drafted using the formats issued by the Authority and shall include-

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

(b) a statement that the asset is sold on an "as is, where is" basis or an alternative basis for sale;

(c) the location of the asset and arrangements for a potential bidder to inspect the asset;

(d) the requirement for a bid security;

(e) the deadline, location and method for submission of a bid;

- (f) the arrangements for a public bid opening;
- (g) qualification requirements to be met by a bidder;
- (h) the method for evaluating bids and awarding a contract;
- (i) conditions of sale;
- (j) the payment procedure and handing over arrangements;
- (k) a statement confirming that the risk and cost of dismantling and removing an asset shall be the responsibility of a successful bidder, or any other arrangements; and
- (l) details of any reservations scheme in operation.

(2) Solicitation documents may be sold at a price to cover the costs of copying and issuing the documents but shall not include any element of profit for a procuring and disposing entity.

(3) A procuring and disposing entity shall record the issue or sale of solicitation documents using-

- (a) DPA Form 130 in the Ninth Schedule, where a fee is payable for the document; or
- (b) DPA Form 131 in the Ninth Schedule, where no fee is payable for the document.

319. (1) A public invitation notice and a notification of a public auction shall use the format in the Seventh Schedule and shall be published in at least one publication of wide national circulation.

(2) A public invitation notice and notification of public auction shall be displayed on a procuring and disposing entity's notice board and on the Authority's website.

(3) A public invitation may also be communicated to the public using any other appropriate media, including the radio, where the media offers an efficient means of communicating with potential bidders or increases competition.

(4) A non-public invitation notice shall use the format in the Seventh Schedule and shall be displayed-

(a) on the Authority's website; and

(b) at locations, within a minimum of five procuring and disposing entities, which are freely and easily accessible to all public officers within a procuring and disposing entity.

320. (1) Advertising and bidding periods shall be based on-

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

(b) the time needed to obtain written solicitation documents;

(c) the level of detail required in a written bid; and

(d) the time required for preparation and submission of a written bid.

(2) The minimum advertising and bidding period shall be as specified in Division II of this Part.

321. (1) A procuring and disposing entity shall offer a reasonable opportunity to potential bidders, to inspect an asset before the date or deadline for bidding.

(2) Arrangements for the inspection of the assets shall be included in the invitation notice or solicitation documents, where appropriate.

322. (1) A bid may be oral, in case of auctions or written in all other cases.

(2) Where a bid is written, a procuring and disposing entity shall require a bidder to submit a written sealed bid.

(3) Solicitation documents shall contain instructions to a bidder on the following-

(a) format and documentation required for bidding;

(b) procedure for signing and authorising bids; and

(c) number of copies of bids to be submitted, which shall include one original bid, marked 'ORIGINAL', and a specified number of copies, of the bid marked 'COPY'.

323. (1) Where a bid is oral, the procedure for bidding shall be specified by the auctioneer.

(2) A written bid shall be submitted in plain outer envelopes which shall be securely sealed in such a manner that opening and resealing cannot be achieved undetected.

(3) A bidder shall use choose his or her preferred method of envelope sealing, but a procuring and disposing entity shall at the opening of bids, reject an envelope that is unsealed.

(4) Solicitation documents shall contain instructions on the details of labelling and references to be detailed on each envelope, which shall include-

(a) the disposal reference number;

(b) the name of a bidder;

(c) the words "WITHDRAWAL" or "REPLACEMENT" where a bid is withdrawn or replaced; and

(d) the words "NOT TO BE OPENED BEFORE THE DATE AND TIME OF BID OPENING".

324. (1) A bidder may withdraw a written bid at any time before the deadline for submission of bids by submission of a letter notifying a procuring and disposing entity of the withdrawal.

(2) A withdrawal letter shall be authorised and submitted in the same way as the bid and shall be opened, read out and recorded at the bid opening.

(3) A bidder withdrawing his or her bid may submit a new bid in accordance with the provisions of the solicitation documents.

(4) A submitted bid may be amended at any time before the deadline for submission of bids and the amendment shall be by withdrawal of the original bid and submission of a new bid.

(5) An oral bid shall not be withdrawn.

325. (1) Where a written bid is required, the receipt of the bid and the bid closing process shall be in accordance with the provisions of regulations 157, 158 and 159.

(2) The bid closing shall be recorded using DPA Form 134 in the Ninth Schedule to these Regulations.

326. (1) Where a written bid is required, public bid opening shall be held in accordance with regulations 160, 161, 162 and 163.

(2) The bid opening shall be recorded using DPA Form 135 in the Ninth Schedule to these Regulations.

(3) Except where otherwise provided for in these Regulations, a procuring and disposing entity shall not declare the best evaluated bid or award a contract at the bid opening or at any re-bidding process.

327. (1) Evaluation of a bid shall be based on price only, or based on price and other factors.

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

(3) Other factors may be taken into consideration in the evaluation of bids, where-

(a) there are end-user restrictions;

- (b) there are export restrictions; or
 - (c) there is a need to attach conditions to a sale.
- (4) The other factors referred to in subregulation (3) include-
- (a) nationality, under a reservation scheme;
 - (b) environmental impact;
 - (c) risks or conditions associated with health and safety, legal or human rights issues, national security or public interest;
 - (d) the need to maintain an asset within Uganda or within a given region;
 - (e) the need to maintain an asset in working order or to maintain accessibility for the public; or
 - (f) any other performance conditions and means of monitoring compliance with such conditions.
328. (1) Where the highest-priced bid has been submitted by more than one bidder, a procuring and disposing entity shall invite the bidders who submitted identically priced bids to submit a revised bid.
- (2) No bidder, other than those who submitted the identical highest priced bid, shall be permitted to submit a revised bid or participate in the re-bidding procedure in any way.
- (3) A revised bid shall only contain a revised price and a bidder shall not be permitted to change the terms and conditions, technical details, documentation or any other aspects of their original bid, in any way.
- (4) A revised bid shall be written and sealed and submitted in the same way as the original bid.
- (5) A bidder shall be given a reasonable period of time prior to the deadline for submission of their revised bid.
- (6) Where evaluation is based on price only in accordance with regulation 329 and it is reasonable to conduct and conclude the evaluation immediately in the presence of a bidder at a public bid opening, a procuring and disposing entity may, if the bidder agrees, conduct the re-bidding procedure immediately.
- (7) Where the re-bidding procedure is conducted immediately, a bidder shall be given access to a private location in which to discuss and prepare the revised bid and the bidder shall be provided with all reasonable assistance, such as writing and sealing materials, calculators and access to a telephone.

(8) The bid opening procedure for the revised bid shall be the same as that for the original bid.

(9) Evaluation shall be conducted in the same manner as the original evaluation, except that the price contained in the revised bid shall replace the original price.

(10) Where identical highest priced bids are received during a re-bidding process, further re-bidding shall be held in accordance with this regulation.

(11) Where it is subsequently discovered that an error was made in the original evaluation, including, an arithmetic error or application of an exchange rate, and that as a result bidders had not submitted identical highest priced bids, the re-bidding procedure shall be declared null and void and the revised bids shall not be considered.

(12) Where re-bidding fails, the whole process shall be cancelled and re-tendered.

329. (1) Where the evaluation is based on price only, a contract shall be awarded to the bidder with the highest price.

(2) Where written bids are received, the evaluation committee shall -

(a) correct any arithmetic errors in accordance with regulation 192;

(b) convert the bids to a common currency; and

(c) compare the bid price with the value of an asset or reserve price, where appropriate.

(3) Where it is reasonable to conduct and conclude an evaluation immediately in the presence of a bidder at a public bid opening, a procuring and disposing entity may do so for the purpose of establishing whether the highest priced bid was submitted by more than one bidder so that a re-bidding procedure is done in accordance with regulation 328.

(4) Notwithstanding subregulation (3), a procuring and disposing entity shall not declare the best evaluated bid or contract award at the bid opening or re-bidding process.

(5) Contract award shall be recommended to the best evaluated price, subject to any reservations in regard to the valuation or reserve price.

330. (1) Where the evaluation is based on price and other factors, the eligibility requirements, evaluation criteria and methodology shall be stated in the solicitation documents.

(2) Eligibility requirements shall be evaluated on a pass or fail basis.

(3) A procuring and disposing entity may include nationality as an eligibility requirement.

(4) Compliance with other factors shall be evaluated on a pass or fail basis wherever possible.

(5) Notwithstanding subregulation (4), evaluation of compliance with other factors may include an evaluation of the relative merits of each bid in exceptional circumstances.

(6) The other factors shall be stated and the reasons for evaluating them justified and approved by a contracts committee, prior to the issue of solicitation documents.

(7) An evaluation committee shall-

(a) use a preliminary examination to assess the eligibility of a bidder on a pass or fail basis and shall reject a bidder who fails to meet the eligibility criteria;

(b) evaluate other factors in the manner stated in the solicitation document; and

(c) use a price evaluation to-

(i) correct any arithmetic errors in accordance with regulation 192;

(ii) convert the bids to a common currency if necessary; and

(iii) compare the bid price with the valuation of the asset or reserve price where appropriate.

(8) A recommendation for contract award shall be in accordance with the methodology in the solicitation document.

(9) Contract award shall be recommended to a bidder with the best evaluated price, and who meets the eligibility requirements and passes the evaluation criteria, subject to any reservations in regard to the valuation or reserve price.

(10) Notwithstanding subregulation (9), where the evaluation criteria includes an evaluation of the relative merits of each bid in accordance with subregulation (5), a contract award shall be recommended to the bidder with the best evaluated price, in accordance with the methodology in the solicitation documents.

331. (1) Where a bid is oral under the public auction method, no evaluation committee or evaluation report shall be required.

(2) Notwithstanding subregulation (1), the name of the successful bidder and the contract price shall be reported to a contracts committee using DPA Form 160 in the Ninth Schedule to these Regulations.

(3) Where a written bid is required-

(a) the evaluation shall be conducted by an evaluation committee appointed in accordance with regulation 169;

(b) the evaluation shall be recorded using DPA Form 141 in the Ninth Schedule; and

(c) an evaluation report shall be submitted to the contracts committee for approval prior to contract award.

(4) Where evaluation is based on price only, the evaluation report shall be drafted using DPA Form 141 in the Ninth Schedule and shall include-

(a) the price of each bid;

(b) the correction of any arithmetic errors and the conversion to a common currency where necessary;

(c) a statement of the best evaluated bid;

(d) a comparison of the best evaluated bid with the valuation or reserve price, if any; and

(e) a recommendation, which may be-

(i) to award the contract to the best evaluated bidder;

(ii) to hold negotiations with the best evaluated bidder;

(iii) to cancel the disposal process;

(iv) to dispose of the asset using an alternative disposal method; or

(v) any other appropriate recommendation.

(5) Where evaluation includes factors other than price, the evaluation report shall be drafted using DPA Form 142 in the Ninth Schedule and shall indicate-

(a) whether a bidder is eligible;

(b) the results of the application of any other evaluation criteria relevant to public interest;

(c) the price of each bid;

(d) the correction of any arithmetic errors and the conversion to a common currency where necessary;

(e) a statement of the best evaluated bid;

(f) a comparison of the best evaluated bid with the valuation or reserve price, if any; and

(g) a recommendation, which may be-

(i) to award the contract to the best evaluated bidder;

(ii) to hold negotiations with the best evaluated bidder;

(iii) to cancel the disposal process;

(iv) to dispose of the asset using an alternative disposal method; or

(v) any other appropriate recommendation.

332. (1) Under public bidding, negotiations may relate to the conditions of sale, where evaluation is based on factors other than price, and shall not relate to the price of the bid.

(2) Under direct negotiations, negotiations may relate to the conditions of sale, where evaluation is based on factors other than price or the price of the bid.

333. (1) Negotiations shall be held after a contracts committee has approved the evaluation committee's recommendation of the best evaluated bidder and the need to hold negotiations in the case of a public bidder, or that the single bidder should be considered for contract award, subject to negotiations in the case of direct negotiations.

(2) Negotiations shall only be held with the best evaluated bidder.

(3) An evaluation committee shall prepare a negotiations plan, using DPA Form 150 in the Ninth Schedule to these Regulations.

(4) A negotiations plan shall specify the issues to be negotiated and the objectives to be achieved and where possible shall quantify the objectives and set maximum and minimum negotiating parameters for a negotiation team.

(5) A contracts committee shall approve the negotiations plan and the membership of the negotiation team, prior to any negotiations taking place.

(6) A negotiation team shall be appointed in accordance with regulation 221, and recorded using DPA Form 140 in the Ninth Schedule to these Regulations.

(7) A negotiation team shall not commit a procuring and disposing entity to any proposed arrangements or agreements, but shall seek the approval of the contracts committee prior to confirming any agreement reached.

(8) A negotiation team shall produce minutes of the meeting with a bidder using DPA Form 151 in the Ninth Schedule and shall obtain a bidder's written agreement that the minutes are a true and accurate record of the negotiations held.

(9) A negotiation team shall report to the contracts committee the results of the negotiations and state whether the objectives of the negotiations plan have been achieved and shall submit minutes of the meeting.

(10) A negotiation team shall submit a recommendation to a contracts committee to either proceed with contract award to the recommended bidder, incorporating the agreements reached during negotiations, revise the negotiation objectives and hold further negotiations or terminate the negotiations and reject a bidder.

(11) Where a negotiation team recommends rejection of the bidder, it may also, where appropriate, recommend the invitation of the next ranked bidder for negotiations in the case of public bidding or a new bidder to submit a bid in the case of direct negotiations.

(12) A contracts committee may-

- (a) approve the recommendations;
- (b) request further negotiations on a specific point;
- (c) reject the recommendations with reasons; or
- (d) cancel the negotiations, in their entirety.

(13) The results of approved negotiations shall be incorporated into the contract.

(14) Where negotiations are commenced with the next ranked bidder or where a new bid is invited, the procuring and disposing entity shall not reopen earlier negotiations and an original bidder shall be informed of the reasons for termination of the negotiations.

334. (1) Where the best evaluated bid is less than the reserve price, a contracts committee in consultation with an accounting officer may-

- (a) obtain a further valuation from an independent source;
- (b) negotiate the price with a bidder, under direct negotiations only;
- (c) arrange for new bids to be submitted;
- (d) use an alternative method of disposal, which is likely to obtain a higher price; or
- (e) sell the asset at the reduced price.

(2) In deciding on the appropriate action, a contracts committee and an accounting officer shall take into consideration the difference between the best evaluated bid and the valuation or reserve price, the likely costs of the possible action and the possibility of collusion between bidders.

Division IV-Contracts of Disposal.

335. Award of a contract shall be by either a declaration of the successful bidder at the time of bidding in the case of public auction or a decision of a contracts committee for any other method of disposal.

336. (1) Where contract award is by a decision of a contracts committee, contract placement shall be by the issue of a contract to the successful bidder.

(2) The contract shall be as specified in the solicitation document and in the format issued by the Authority.

(3) Communication by letter, fax, telex, email or any other form that would bind a procuring and disposing entity to a contract with a provider, shall not be permitted prior to approval of the award of contract by a contracts committee.

(4) The contract shall contain-

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

(b) any subsidiary or linked assets to be included in or excluded from the sale;

(c) the date for delivery or collection of the asset;

(d) responsibility for transporting the asset;

(e) the hand-over procedure and any documentation to be transferred;

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

(g) the person responsible for any legal obligations linked to the asset.

(5) A contract award, with the exception of that under public auction, shall be displayed, using the format in the Seventh Schedule, within one working day of the contract award, on the procuring and disposing entity's notice board and Authority's website.

337. (1) A contract manager shall-

(a) obtain payment from a successful bidder;

(b) issue a receipt for a payment using DPA Form 165 in the Ninth Schedule;

(c) credit a payment to the appropriate account;

(d) hand over an asset and all the appropriate documents to a successful bidder;

(e) obtain a receipt for the asset from a provider;
(f) complete and record all hand-over requirements using DPA Form 166 in the Ninth Schedule;

(g) manage any outstanding legal obligation of a procuring and disposing entity;

(h) update a procuring and disposing entity's asset register;

(i) ensure that the Act, these Regulations and the guidelines are complied with; and

(j) submit an appropriate report to the contracts committee or any other body.

(2) A third party disposal agent or auctioneer may be contracted to undertake any of the functions listed in subregulation (1).

(3) A contract with a third party disposal agent or auctioneer shall clearly state the functions to be undertaken by a third party disposal agent or auctioneer.

(4) Where a third party disposal agent or auctioneer is responsible for obtaining payment from a provider, a contract with a third party shall clearly state that the proceeds of the disposal shall be transferred to a procuring and disposing entity within a period of five working days from the date of receipt of the funds.

(5) Where a third party disposal agent or auctioneer is contracted to undertake any of the functions in subregulation (1), a contract manager shall-

(a) cross check all documents including receipts for assets delivered to a third party disposal agent or auctioneer, record of assets sold, record of payments made by a successful bidder and hand-over documents and follow up and resolve any discrepancies in the documents;

(b) ensure that the proceeds are received in the correct amount within five working days after the date of receipt by a third party disposal agent or auctioneer and are credited to the appropriate account; and

(c) ensure that payment for the services of a third party disposal agent or auctioneer is made on time or that the payment is deducted from the proceeds received.

338. Where a bidder fails to make payment in accordance with the terms and conditions of a contract, the contract may be terminated and formed with the next best bidder, where that bidder is known.

Part VIII-Deviations from Applicable Public Procurement and Disposal Methods and Documents.

339. A deviation from the use of a procurement or disposal method or documents under these Regulations may be permitted by the Authority-

(a) where exceptional requirements make it impossible, impractical or uneconomical to comply with these Regulations;

(b) where market conditions or behaviour do not allow effective application of these Regulations; or

(c) for specialised or particular requirements that are regulated or governed by harmonised international standards or practices.

340. (1) An application for a deviation from the use of a procurement or disposal method or document shall be submitted to the Authority in writing.

(2) An application for deviation shall include-

(a) a statement of the method, rule or documentation from which a deviation is required;

(b) the reasons for deviation from a procurement and disposal method, rule or documentation, including an explanation of the exceptional requirements or market conditions or the international standards or practices which regulate or govern the requirement;

(c) an explanation of the proposed alternative method or rule or a copy of the proposed alternative document, including a summary of how it differs from the standard method, rule or documentation;

(d) a statement of how a procuring and disposing entity shall ensure compliance with the intentions and standards of the public procurement and disposal principles, rules, methods or documentation as far as is practical;

(e) a statement of whether the deviation is required for a single requirement or for a number of requirements of the same class over a period of time; and

(f) any other relevant information.

(3) The Authority shall consider each application and issue its decision within ten working days after receipt of the application.

(4) The Authority may approve an application as submitted, approve an application with modifications or conditions or reject an application, stating the reasons for the rejection.

(5) An approval of an application to deviate from a public procurement or disposal method, rule or document shall state whether the approval is for a single requirement or for a number of requirements of the same class.

(6) Where the approval is for a number of requirements, the Authority shall state the duration, maximum value or other limitations, circumstances or conditions of use of the alternative.

(7) A deviation from a public procurement method or document for a specified period of time may be resubmitted to the Authority for renewal and any application for renewal shall include the information in subregulation (2).

(8) Where a deviation is requested from a standard document, the Authority may, where it considers it appropriate, adopt the proposed alternative document as an additional standard document.

341. (1) The Authority shall maintain a register of all deviations issued to a procuring and disposing entity.

(2) The register shall contain details necessary for the Authority to -

(a) monitor compliance with the terms of any deviation granted; and

(b) assess the effectiveness of any deviations granted; and

(c) analyse trends in the profile of deviations granted.

(3) Where a procuring and disposing entity does not comply with the terms of a deviation granted, the Authority may require an accounting officer to take steps to ensure compliance or revoke the deviation in writing, stating the reasons.

(4) The Authority shall assess the effectiveness of an individual deviation, to determine whether it provides an effective solution to the problem that led to the need for the deviation.

(5) The Authority shall analyse trends in the profile of a deviation granted on a periodic basis, to determine whether-

(a) any changes are required to these Regulations, the guidelines or standard documents;

(b) additional guidelines, providing further rules and guidance on a particular issue should be issued; or

(c) additional standard documents are required to meet a particular need.

342. (1) The Authority may accredit an alternative procurement and disposal system where a procuring and disposing entity -

(a) operates in a specialised field or discipline which requires alternative or additional regulations;

(b) has a status which requires alternative or additional regulations;

(c) is required to use an alternative system to comply with the provisions of international or any other agreements; or

(d) has other reasonable grounds for using an alternative system.

(2) An alternative accredited system shall be substantially compliant with the Act, these Regulations, guidelines and standard solicitation documents.

(3) An accounting officer shall submit an application for accreditation of an alternative system, supported by-

(a) full details of the alternative system;

(b) an analysis of the ways in which the alternative system differs from the Act, these Regulations, guidelines and standard solicitation documents; and

(c) a justification for using an alternative system, including a copy of any relevant agreement or legislation.

(4) The Authority shall issue its decision within twenty working days after the date of receipt of the application for an accreditation and all required information.

(5) The Authority may accept an application for accreditation, reject an application for accreditation or accept an application for accreditation subject to certain changes to the system.

(6) Where the Authority rejects an application or requires changes to a system, it shall give its reasons in writing.

(7) The Authority shall monitor the operation of an accredited procurement or disposal system and shall require changes to the system or withdraw the accreditation, where appropriate.

Part IX-Administrative Review and Suspension of Providers.

343. (1) A bidder may seek administrative review for any omission or breach of the Act, these Regulations, the guidelines, the provisions of bidding documents or best practices, by a procuring and disposing entity.

(2) Where a procurement requirement is subject to administrative review by either a procuring and disposing entity or the Authority, a contract document, purchase order, letter of bid acceptance or other communication in any form conveying acceptance of a bid, that binds a procuring and disposing entity, shall not be issued prior to completion of the administrative review process.

344. A bidder shall submit an application for administrative review within fifteen working days after the date he or she first became aware of the circumstances giving rise to the complaint.

345. (1) Any application for administrative review shall be submitted in writing to an accounting officer and a copy given to the Authority.

(2) The application for administrative review shall include-

- (a) details of the procurement or disposal requirement to which the complaint relates;
- (b) details of the rule or provision which has been breached or omitted;
- (c) an explanation of how the rule or provision has been breached or omitted, including the dates and name of the responsible public officer, where known;
- (d) documentary or other evidence supporting the complaint where available; and
- (e) any other information relevant to the complaint.

(3) The application for administrative review shall be accompanied by payment of a prescribed fee in accordance with the guidelines.

346. (1) Upon receipt of an application for administrative review, an accounting officer shall immediately suspend the procurement or disposal proceedings where a continuation of the proceedings might result in an incorrect contract award decision or a worsening of any damage already done.

(2) An accounting officer shall immediately on receipt, send a copy of the application for administrative review to a contracts committee.

(3) An accounting officer shall institute an investigation to consider-

- (a) the information and evidence contained in the application;
- (b) the information in the records kept by a procuring and disposing entity;
- (c) information provided by staff of a procuring and disposing entity;
- (d) information provided by other bidders; and
- (e) any other relevant information.

(4) An accounting officer shall issue his or her decision in writing within fifteen working days after receipt of the application and the decision shall indicate -

- (a) whether the application is upheld or rejected;
- (b) the reasons for the decision; and

(c) any corrective measures to be taken.

(5) An accounting officer shall submit a copy of his or her decision to the Authority.

347. (1) A bidder may submit an application for administrative review to the Authority where an accounting officer does not issue a decision within fifteen working days or the bidder is not satisfied with the decision of an accounting officer.

(2) An application to the Authority for administrative review shall be submitted within ten working days after the date of the decision by an accounting officer or the date by which an accounting officer should have issued a decision.

(3) The application to the Authority for administrative review shall include -

(a) a copy of the original application to an accounting officer and the supporting documents;

(b) a copy of relevant correspondence to and from an accounting officer;

(c) a statement by the bidder that an accounting officer failed to issue a decision and the relevant dates, where applicable; and

(d) an explanation of why the bidder is not satisfied with the decision of the accounting officer, where applicable.

(4) Upon receipt of an application, the Authority shall immediately -

(a) give notice of the application to a procuring and disposing entity;

(b) instruct a procuring and disposing entity to suspend any further action on the procurement or disposal requirement, where the Authority considers a suspension necessary;

(c) notify all bidders of the application and invite them to submit any relevant information prior to a given deadline; and

(d) institute an investigation.

(5) In investigating the application for administrative review, the Authority shall consider the following, where appropriate-

(a) the information and evidence contained in the application;

(b) the information in the records kept by a procuring and disposing entity;

(c) information provided by staff of a procuring and disposing entity;

(d) information provided by the other bidders; and

(e) any other relevant information.

(6) The Authority shall issue its decision in writing within twenty-one working days after receipt of the application.

(7) The decision of the Authority shall indicate-

(a) whether the application was upheld or rejected;

(b) the reasons for its decision; and

(c) any corrective measures to be taken.

348. A provider may be suspended from participating in public procurement or disposal of public assets proceedings for breaching the Code of Ethics for providers.

349. (1) A recommendation to suspend a provider shall be submitted to the Authority in writing by a contracts committee.

(2) A public officer of a procuring and disposing entity may make a submission to a contracts committee regarding a recommendation to suspend a provider.

(3) A contracts committee shall consider all submissions and decide whether to submit a recommendation to the Authority to suspend a provider.

(4) A recommendation to suspend a provider shall include-

(a) the name of the provider;

(b) the grounds for the recommendation to suspend the provider;

(c) details of the procurement or disposal proceedings or contract to which the recommendation relates;

(d) documentary or other evidence supporting the recommendation; and

(e) any other information relevant to the recommendation.

350. (1) Upon receipt of a recommendation to suspend a provider, the Authority shall immediately -

(a) notify the provider, giving full details of the recommendation and inviting him or her to submit information or evidence in his or her defence; and

(b) institute an investigation.

(2) In investigating the complaint, the Authority shall consider the following, where appropriate-

- (a) the information contained in the recommendation;
- (b) information provided by a public officer of a procuring and disposing entity;
- (c) any information submitted by a provider; and
- (d) any other relevant information.

(3) A provider who is subject to a suspension recommendation, shall be permitted to submit information or evidence in his defence either in person, through presentation of witnesses, in writing, or through a representative.

(4) The Authority shall issue its decision within twenty one working days after the date of receipt of the recommendation and the decision shall indicate whether the recommendation is upheld or rejected, the reasons for this decision and details of any suspension imposed.

351. (1) Where a recommendation to suspend a provider is upheld, the Authority shall suspend a provider from participating in public procurement or disposal proceedings.

(2) The period of suspension shall be at the discretion of the Authority but shall take into account the nature and severity of the offence, any mitigating circumstances, any previous suspensions and the period of suspension imposed in comparable cases.

(3) A suspension shall be communicated to a provider in writing and shall state -

- (a) that the provider is excluded from participating in any public procurement or disposal proceedings for the period of the suspension;
- (b) the reasons for the suspension and the period of the suspension;
- (c) that the suspension also applies to any "successor in interest", which shall include any entity that is substantially similar to a suspended entity or which employs, or is associated with any partner, member, officer, director, responsible managing officer, or responsible managing employee, of a suspended business entity; and

(d) that the suspension does not relieve the provider of responsibility for obligations under any existing contracts placed prior to the suspension.

(4) Where a provider is suspended, the Authority shall immediately-

- (a) place the provider on its list of suspended providers, including the titles of all "successors in interest" subject to the suspension;

(b) circulate the updated list to all procuring and disposing entities; and

(c) display the updated list on its notice board and website.

(5) Only the Authority shall be authorised to suspend a provider from participating in a public procurement or disposal.

(6) A procuring and disposing entity shall enforce the list of suspended providers, by ensuring it does not -

(a) award contracts to a suspended provider;

(b) sell or issue solicitation documents to a suspended provider or in any other way solicit bids from the provider; or

(c) enter into any other dealings or communications with a suspended provider, except in respect of existing contracts placed prior to a suspension from public procurement and disposal.

(7) After the expiry of the period of a suspension, a provider may apply to the Authority, in writing, to be removed from the list of suspended providers and the Authority shall remove the provider from the list of suspended providers within fifteen working days after the application.