

FIJBLIC PROCUREMENT A.D

H.B. 5, 2016]

Public Procurement and Disposal of Public Assets Bill, 2016

Memorandum

Public procurement is the procedure through which public bodies such as government ministries, parastatals and local authorities acquire goods and services and construct or acquire buildings and other infrastructure. It usually entails tendering, calling for bids from suppliers and accepting the most favourable bid. In Zimbabwe public procurement is governed by the Procurement Act [*Chapter 22:14*] under which a body called the State Procurement Board conducts procurement on behalf of government entities.

This Bill will repeal the Procurement Act and abolish the State Procurement Board. In place of the Board it will set up a new body to be called the Procurement Regulatory Authority of Zimbabwe which will not conduct procurement proceedings itself but instead will oversee and regulate procurement activities conducted by government Ministries, statutory bodies (parastatals) and local authorities. These bodies are called “procuring entities”. The Bill will also set out the procedures to be followed and the steps to be taken in procurement proceedings to ensure fairness, transparency and honesty.

In more detail the provisions of the Bill are as follows:

PART I

Preliminary

Clause 1 sets out the Bill’s short title and will give the President power to fix the date on which it comes into operation. This will allow time for regulations and administrative arrangements to be put in place so that the Bill becomes effective immediately it is brought into operation.

Clause 2 defines terms that are used throughout the Bill. The definitions are self-explanatory but it should be noted that the definition of “procuring entity” is a broad one which covers not only government ministries and departments but also statutory bodies (parastatals), government-controlled companies, provincial and metropolitan councils, local authorities (i.e. urban and rural district councils) and State partnerships and joint ventures.

Clause 3 indicates the transactions to which the Bill applies, namely the procurement of goods, services and construction works (i.e. buildings and infrastructure) by procuring entities, as well as the disposal of assets by those entities. The Bill will not override Zimbabwe’s obligations under international treaties that are binding on the country, nor will it apply to the specialist services listed in subclause (3) or to procurement by diplomatic missions outside Zimbabwe. Finally, the President will be given power to prevent the disclosure of sensitive security information that might otherwise have to be published under the Bill (subclause (6)), the Authority will be given power to exempt procuring entities from compliance with particular provisions of the Bill (subclause (7)) and the responsible Minister will be able to exempt public assets from the Bill’s ambit (subclause (8)). All these exemptions will have to be publicised.

Clause 4 will set out the objectives to be achieved by the Bill, most importantly to ensure that procurement is transparent, fair, honest, cost-effective and competitive as required by section 315 of the Constitution.

PART II

Procurement Regulatory Authority of Zimbabwe

This Part of the Bill establishes the new Procurement Regulatory Authority of Zimbabwe (called “the Authority” in the Bill).

Under *clause 5* the Authority will be a body corporate, i.e. a body that has legal personality.

Clause 6 sets out the Authority’s functions. Its main function will be to supervise public procurement proceedings to ensure transparency, fairness, honesty, cost-effectiveness and competition. Ancillary functions include advising and assisting procuring entities, issuing directives and guidelines, maintaining databases on procurement, and registering bidders and contractors. In exercising its functions the Authority will have to be impartial and transparent (*clause 6(2)*) and will have to observe the rules of natural justice (*clause 6(3)*).

Under *Clause 7* the Authority will have power to issue directives to procuring entities, to order them to provide information about their procurement proceedings and generally to do whatever is needed to ensure that they comply with the Bill. The Authority will also be able to exercise the ancillary powers set out in the Second Schedule.

Clause 8 establishes the Board of the Authority, which will consist of between seven and nine members appointed by the responsible Minister after consultation with the President. Members will be appointed for their skill and experience in fields relating to procurement, and the Board will have to have equal numbers of men and women and fair regional representation. Details regarding the membership, procedures, staff and finances of the Board are set out in the Bill’s First Schedule (*clause 9*).

Under *clause 10* the Board of the Authority will be able to authorise officers to sign contracts and documents on behalf of the Authority.

Clause 11 will oblige the Authority to report annually to both Houses of Parliament on its activities and the functioning of the public procurement system. Annual reports will be laid before Parliament by the responsible Minister. In addition, the Authority will be able to apprise the Minister on matters the Board wishes to bring to his or her attention, and will be obliged to provide the Minister with further reports on the country’s procurement system (*clause 11(3)*).

Under *clause 12* the Board of the Authority will be able to take decisions and hold meetings even if there are vacancies in its membership, so long as there are enough Board members to form a quorum.

Clause 13 will exempt the Authority and its Board and employees and agents from liability unless their conduct is negligent or malicious or in breach of a contract.

PART III

Responsibility for Procurement and Procuring Entities

Clause 14 states fundamental features of the Bill:

- Responsibility for procurement will be devolved to procurement entities.
- In order to procure items above a value fixed in regulations, a procuring entity will have to be authorised by the Authority.
- The Authority is responsible for supervising procuring entities.

Clause 15 will prohibit procuring entities from engaging in procurement above a value prescribed in regulations unless they have received written authorisation from the Authority. Authorisation will be valid for renewable two-year terms and will be subject

to conditions fixed by the Authority. The procedures for applying for authorisation, and its grant or refusal, are set out in the Third Schedule to the Bill.

Clause 16 is directed at trying to prevent accounting officers and other officials of procuring entities from complying with illegal instructions given to them by their superiors. If they think an instruction is illegal they will have to tell the person who gave them the instruction, in writing, why they think it is illegal; if despite this the person orders them to comply with it they will have to do so, but will report the matter to the Minister and the Auditor-General and, in certain cases, to the Chief Secretary to the President and Cabinet.

Under *clause 17* procuring entities will have to establish management units to manage all aspects of their procurement activities. If a procuring entity is too small to have its own management unit it will be able to call upon the unit of another procuring entity or appoint an independent procurement agent to carry out the functions of a unit. For each sizeable procurement, a procuring entity will be obliged under *clause 18* to appoint an evaluation committee to evaluate bids and recommend to the procurement management unit which bid to accept.

Under *clause 19* procuring entities will be able to combine their resources to conduct collective procurement, either through a central management unit or by conducting their procurement activities through one of their number or by sharing the items acquired through procurement.

PART IV

Procurement Preparation and Planning

Clause 20 will require procuring entities to standardise their procurement documents and ensure they will have enough funds to undertake procurement proceedings and fulfil their obligations under the resulting procurement contracts.

Clause 21 enjoins procuring entities to plan procurement so that they get value for money and obtain their requirements in the most cost-effective way.

Clause 22 will oblige procuring entities to prepare and publish annual plans of their procurement, and for very large procurements entities will have to prepare and publish individual plans under *clause 23*. Where entities have shared arrangements for their procurement the lead procuring entity (i.e. the entity with the greatest resources) will be responsible for preparing the plans (*clause 24*).

Clause 25 will prohibit procuring entities from dividing their procurements up to avoid the stringent requirements of the Bill that apply to large-scale procurements. For example, if a procuring entity needs to acquire five vehicles it will not be allowed to acquire them one at a time in order to take advantage of the simpler provisions of the Bill applying to small procurements.

Clause 26 will allow procuring entities to investigate the market and seek advice on technical issues before embarking on procurement proceedings.

PART V

Technical Requirements and Qualifications of Bidders

Clause 27 will require bidding documents published by a procuring entity to set out clearly and precisely what the entity wants to acquire so that bidders can compete in the procurement knowing what is wanted.

Under *clause 28* all bidders regardless of nationality must be allowed to compete in any procurement so long as they meet specified ethical and legal standards. Procuring entities will not be allowed to restrict the criteria for eligibility in order to avoid competition or to favour unduly one or more particular bidders. Under *clause*

29, however, procuring entities will be allowed to favour domestic (i.e. Zimbabwean) suppliers so long as the domestic preference is stated in the bidding documents and is permitted by regulations or by circulars issued by the Authority.

PART VI

Methods of Procurement

This Part sets out the various methods of procurement open to procuring entities.

Clause 30 states that the competitive bidding method of procurement is the normal method to be employed by procuring entities, unless circumstances demand that the other methods described in the Part should be employed. If one of those other methods is employed the procuring entity must record its reasons for employing it.

Clause 31 describes the competitive bidding method of procurement, which is the method that should normally be employed. It entails that all qualified bidders should be allowed to participate in the procurement, and all should be treated equally.

Clause 32 describes the restricted bidding method of procurement, which is the same as the competitive bidding method except that the right to bid is limited to bidders who are selected by the procuring entity. This method can be used where it is not cost-effective to open bidding to all potential bidders, or where time does not permit open bidding.

Clause 33 describes the direct procurement method, whereby a procuring entity obtains what it needs from only one supplier without receiving bids from other suppliers. This method can be used when opening the process to competitive bidders and has produced no suitable bids or where there is only one supplier who can provide the procurement requirement, or the situation is too urgent to allow the procuring entity to seek other bids, or where the one supplier can offer the requirement at unusually favourable terms.

Clause 34 describes the request for quotations method of procurement, which can be used for low-value procurements. In this method the procuring entity solicits quotations from only a few suppliers.

PART VII

Procedures for Competitive and Restricted Bidding

This Part sets out the procedures for competitive and restrictive bidding.

Clause 36 states that except in very limited circumstances all communications between a procuring entity and bidders must be in writing.

Clause 37 requires that procuring entities must solicit bidders from all eligible bidders; or from all pre-qualified bidders where a system for pre-qualifying them has been employed; or, in the case of restricted bidding, from a standing list of qualified bidders.

Under *clause 38* documents inviting bids must contain enough information for bidders to know precisely what the procuring entity wants to acquire, how they can obtain bidding documents, and where and when their bids must be submitted. These documents must be published in the *Gazette* and in at least one newspaper, as well as on the Authority's website. For large-scale procurements the documents will have to be published internationally as well.

Clause 39 will define the bidding period in procurement proceedings, i.e. the period starting from the publication of invitations to bid and ending on the closing date for submission of bids.

Clause 40 will require procuring entities to use standard bidding documents

prescribed in regulations as clarified by manuals and guidelines produced by the

Authority. Bidding documents will have to be made available to all bidders as soon as the procuring entity publishes its invitation to bid and will have to be provided at a cost that does not exceed the cost of printing and distributing them. Procuring entities will have to keep a record of all bidders to whom bidding documents are issued.

If bidding documents need to be clarified or modified, *clause 41* will require the procuring entity to provide the clarification or modification to all bidders equally and, in the case of a modification, to extend the bidding period to allow bidders to take it into account.

Clause 42 sets out the limited circumstances in which a procuring entity may cancel procurement proceedings. If an entity does so, it will have to record its reasons and will have to allow bidders to recover their bidding documents. A procuring entity will also be allowed to reject all bids received but will have to notify the bidders promptly and provide them with reasons for the rejection.

Clause 43 deals with the submission of bids or applications to pre-qualify. They will have to be submitted before the deadline stated in the procurement documents, by hand or by post or by courier or by some other method authorised by the procuring entity. Bids or applications submitted after the deadline will not be considered.

Under *clause 44* procuring entities may require all bidders to provide security for the proper fulfilment of the conditions of their bids, but any such requirement will have to be stated in the procurement documents.

Bidders will be allowed to amend or withdraw their bids under *clause 45*, so long as they comply with conditions laid down in the bidding documents or in regulations or by the Authority.

The opening of bids at the end of the bidding period is dealt with in *clause 46*. Bids will have to be opened in public at a time and place announced in the bidding documents, and when they are opened an official of the procuring entity will have to read out their salient particulars.

Under *clause 47*, procuring entities will examine the opened bids first to determine whether the bidders are qualified and then to determine whether the bids respond to the requirements set out in the procurement documents. To decide this latter point, a procuring entity will be allowed to seek clarification from a bidder under *clause 48* but must do so in writing.

Clause 49 will permit a procuring entity to reject a bid if the bidder has falsified information in the bid or if the information is inaccurate or incomplete so that the bid cannot be evaluated.

Clause 50 will require procuring entities to evaluate bids according to standard criteria applicable to all the bids received. For example, all bids will have to be converted to a single currency. Where it is not possible to evaluate bids according to standard criteria, they will have to be evaluated according to weighted criteria.

Clause 51 will allow procuring entities to correct errors and omissions in bids – for example, arithmetical errors – which are not material. No negotiation may take place, however, between the procuring entity and a bidder which would result in an altered bid (*clause 52*).

Clause 53 will require procuring entities to keep confidential all matters regarding bids.

Clause 54 provides for a high-level committee to test whether proposed procurement contracts that are especially sensitive or especially valuable (including exempted and joint venture contracts) have complied with all the statutory and prudential steps necessary to secure the soundness of the eventual contract. The committee, chaired

by the Attorney-General, will also comprise the Auditor-General, the Accountant-General and the Principal Director Public Works.

Under *clause 55* procuring entities will be obliged to award their contracts to the lowest responsive bid, and notify all the bidders accordingly. A procuring entity will not, however, be permitted to sign the procurement contract until 14 days later to allow aggrieved bidders time to challenge the award under Part X of the Bill.

Under *clause 56* procuring entities will be able to demand that a successful bidder provide performance security, i.e. security that the bidder will perform his or her obligations under the procurement contract.

PART VIII

Procurement of Consultancy Services

This Part sets out the procedure for procuring consultancy services.

Consultancy services will have to be procured through the request for proposals method set out in *clause 58*. Procuring entities that require the services of consultants will have to prepare a short-list of firms (i.e. persons or organisations capable of providing the necessary services), give the firms details of the services required and ask them to come up with proposals. Procuring entities will solicit bids from the short-listed firms in terms of *clause 59*. Bids may be solicited through:

- the quality and cost based method set out in *clause 60* (i.e. by receiving competitive bids from all the short-listed firms, evaluating the technical aspects of their bids and then considering the bid prices of the bidders that qualify technically); or
- the selection under fixed budget method set out in *clause 61* (i.e. by evaluating the technical aspects of the bids received, then considering the bid prices and rejecting all those that exceed the procuring entity's proposed budget, and selecting the best of the remaining bids); or
- the least-cost selection method set out in *clause 61* (i.e. by fixing minimum standards for the proposed service, rejecting all bids that offer services below those standards, and from the remaining bids choosing the lowest one); or
- the quality-based selection method in *clause 63*;
- the selection among community service organisations method set out in *clause 64* (i.e. by soliciting bids only from community service organisations with local knowledge); or
- in exceptional cases, by the single-source selection method set out in *clause 65* (i.e. by selecting only one firm which has the necessary experience and capacity to provide the services required); or
- also in exceptional circumstances, by the selection of individual consultant method set out in *clause 66*, which is the same as the single-source selection method but involves the selection of an individual consultant rather than a firm.

PART IX

Transparency and Integrity

The provisions of this Part are aimed at ensuring transparency and honesty in public procurement proceedings.

Under *clause 67* bidders whose bids have been rejected will have a right to be told the reasons for the rejection in sufficient time for them to challenge the rejection under Part X.

After awarding a procurement contract, a procuring entity will have to publish notice of the award in terms of *clause 68*.

Under *clause 69* procuring entities will be obliged to keep full and accurate records of all their procurement proceedings for at least six years, and will have to permit members of the public to inspect the records.

Clause 70 sets out standards of honesty and propriety to be followed by officers of procuring entities concerned with procurement; these standards will be enforced by disciplinary penalties if they are breached (subclause (4)).

Clause 71 requires regulations under clause 101 to provide for a code of conduct to be followed by officers and employees of procurement entities.

Clause 72 sets out standards of honesty and propriety for bidders in procurement proceedings and contractors under procurement contracts. If they are guilty of colluding with each other or have been guilty of other malpractices their bids will be rejected.

PART X Challenge

Proceedings

Under *clause 72* a bidder who considers he or she is likely to suffer loss from a breach of duty by a procuring entity will be entitled to challenge the procurement proceedings by lodging a notice with the procuring entity concerned setting out the grounds of the challenge. If the procuring entity accepts that it has breached its duty, the entity will have to notify the bidder and the Authority, and take whatever steps the Authority may direct to remedy the breach. If however the procuring entity does not accept that it breached a duty the bidder can apply to the Authority under *clause 73* for a review panel to be convened under *clause 75* to review the proceedings. Review panels will have 14 days within which to conduct their reviews and report their findings to the Authority (*clause 75*). An appeal will lie to the Administrative Court against a decision of a review panel under *clause 76*.

PART XI

Procurement Contracts

Clause 77 sets out the requirements for procurement contracts. Generally they will have to follow model contracts prescribed by the Authority, and will have to state comprehensively the rights and obligations of the parties.

Clause 78 will give procuring entities responsibility for managing their own procurement contracts.

Clause 79 sets out the different ways in which procurement contracts may state the price to be paid by the procuring entity for the goods, work or services to be provided by the contractor. No adjustment of the price will be permitted unless it is provided for in the contract.

Clause 80 will prohibit amendments to procurement contracts that materially alter the scope and nature of the original contracts.

Clause 81 sets out the ways in which procurement contracts may provide for payment to be made for the work, goods or services provided by contractors.

Clause 82 will allow contractors to subcontract some of their performance under procurement contracts, unless subcontracting is forbidden by the contracts.

Under *clause 83* procuring entities will have a right to inspect their contractors' goods or work before completion of the procurement contracts.

Clause 84 will make it clear that procurement contracts may provide for after-sale service to be provided by contractors.

If a procuring entity requires a contractor to obtain insurance in respect of his

or her performance under the procurement contract, that requirement will have to be stated in the bidding documents so that the bidders are aware of the requirement (*clause 85*).

Clause 86 sets out remedies that may be provided in a procurement contract for breach of contract by the contractor. If one of these remedies is liquidated damages for delay, *clause 88* lists the ways in which the damages may be calculated and other matters that must be specified in the contract.

Clause 88 sets out grounds justifying termination of a procurement contract by the procuring entity.

PART XII

Disposal of Public Assets

This Part deals with the ways in which procuring entities may dispose of their assets.

Clause 89 will make the accounting officers of procuring entities responsible for ensuring that their entities' assets are disposed of lawfully when they become unserviceable, obsolete or surplus to requirements.

every procuring entity will have to establish a disposal committee under *clause 90* for the purpose of recommending how assets should be disposed of. Where an asset has become unserviceable, obsolete or surplus, the person in charge of it will have to report to the disposal committee under *clause 92* and the committee will recommend to the accounting officer a suitable way of disposing of the asset. If the accounting officer does not accept the recommendation he or she will have to tell the disposal committee and the Authority, and the committee will have to give further consideration to the matter. The Authority will be entitled to give procuring entities written directions as to the disposal of their assets.

Clause 92 will limit the circumstances in which procuring entities can dispose of their assets to their own employees or board members.

Anyone aggrieved by a procuring entity's disposal or proposed disposal of an asset will be entitled to challenge it in the same way as bidders in procurement proceedings under Part X of the Bill (*clause 93*).

PART XIII

Investigations by Authority

Clause 95 will give the Authority power to appoint investigators to look into suspected contraventions of the law in relation to procurement. Investigators will have the same powers as commissioners under the Commissions of Inquiry Act and, in addition, will be able to enter the premises of procuring entities or contractors, question their employees, inspect records and take documents needed for the purpose of their investigations (*clause 96*).

On completion of an investigation, an investigator will report to the Authority and send a summary of the report to the procuring entity and contractor involved (*clause 97*). The Authority will have power to take whatever action it considers necessary arising out of the report, including cancellation of the procurement contract.

PART XIV

General

Under *clause 98* the Authority will be able to declare persons ineligible

to participate as bidders in procurement proceedings for up to three years, if the Authority is satisfied that they have been guilty of corruption or fraud.

Clause 99 will give the responsible Minister power to make regulations regarding all matters concerned with public procurement. Before doing so, the Minister will have to consult the Minister of Finance and the Authority, and will have to give public notice of any proposed regulations.

Clause 100 will oblige the Authority to keep up-to-date copies of the Bill and all regulations, directions and instructions made under the Bill, and to allow the public to inspect them at all reasonable times.

Clause 101 will repeal the existing Procurement Act [*Chapter 22:14*] and save in force some things done under the Procurement Act (“the repealed Act”); it will also provide for the transition from the current procurement system to the system under the Bill. In particular:

- Property belonging to the present State Procurement Board will be transferred to the Authority (subclause (2)).
- Procurement proceedings which have already commenced when the Bill becomes law will be continued as if the repealed Act had not been repealed, though the Authority will be able to apply specific provisions of the Bill to those proceedings (subclause (3)).
- Directions or orders given by the State Procurement Board under the repealed Act will continue in force as if they had been made by the Authority under the Bill (subclause (4)).
- Procuring entities will have to apply to the Authority for authorisation to conduct procurement proceedings under the Bill, and the Authority will have to deal with such applications as soon as possible (subclauses (5) and (6)).

First Schedule: This Schedule, which sets out provisions relating to the membership, procedures, staff and finances of the Authority, has been dealt with above in relation to *clause 9*. The Schedule is similar to equivalent schedules in other Acts setting up statutory bodies like the Authority.

Second Schedule: This Schedule sets out additional powers of the Authority, such as the power to acquire and deal with property, open bank accounts and employ staff.

Third Schedule: This Schedule sets out the procedure by which procuring entities are given authorisation to conduct procurement proceedings. The Schedule has been dealt with above in relation to *clause 15*.

Public Procurement and disposal of Public assets bill, 2016

ARRANGEMENT OF SECTIONS

PART I

Preliminary

Section

1. Short title and date of commencement.
2. Interpretation.
3. Application of Act.
4. Objectives of Act.

PART II

Procurement Regulatory Authority of Zimbabwe

5. establishment of Procurement Regulatory Authority of Zimbabwe.
6. Functions of Authority.
7. Powers of Authority.
8. Board of Authority.
9. Provisions relating to membership, procedure, staff and finances of Authority.
10. Execution of contracts and instruments by Authority.
11. Reports of Authority.
12. Validity of decisions and acts of Board and committees.
13. Exemption from liability of Authority and its employees and agents.

PART III

Responsibility for Procurement and Procuring Entities

14. Responsibility for procurement.
15. Authorisation to conduct procurement.
16. Duties of accounting officers and other persons to comply with Act.
17. Procurement management unit of procuring entity.
18. evaluation committees of procuring entity.
19. Shared procurement among procuring entities.

PART IV

Procurement Preparation and Planning

20. Procurement preparation.
21. Planning of procurement.
22. Annual procurement plan.
23. Individual procurement plan.
24. Planning for shared procurement.
25. Division of procurements.
26. Market consultations.

PART V

Technical Requirements and Qualifications of Bidders

27. Description of subject-matter of procurement.
28. Participation by bidders.
29. Domestic preference.

PART VI

Methods of Procurement

Section

30. Selection of procurement method.
31. Competitive bidding method.
32. Restricted bidding method.
33. Direct procurement method.
34. Request for quotations method.

PART VII

Procedures for Competitive and Restricted Bidding

35. Application of Part VII.
36. Form of communication.
37. Invitations to bid.
38. Contents and publication of procurement notices.
39. Bidding period.
40. Bidding documents.
41. Clarification and modification of bidding documents.
42. Cancellation of procurement proceedings or rejection of bids.
43. Submission of bids or applications to pre-qualify.
44. Bid security.
45. Amendment or withdrawal of bid.
46. Opening of bids.
47. Examination of opened bids.
48. Clarification of bids.
49. Rejection of bids.
50. evaluation of bids.
51. Correction of errors and omissions in bids.
52. Prohibition of negotiation regarding bids.
53. Confidentiality.
54. Special Procurement Oversight Committee for certain especially sensitive or especially valuable contracts.
55. Contract award.
56. Performance security.

PART VIII

Procurement of Consultancy Services

57. Interpretation in and application of Part VIII.
58. Request for proposals method.
59. Methods of soliciting, evaluating and selecting bids.
60. quality and cost based selection method.
61. Selection under fixed budget method.
62. Least-cost selection method.
63. Quality-based selection method.
64. Selection amongst community service organisations method.
65. Single-source selection method.
66. Selection of individual consultant method.

PART IX

Transparency and Integrity

Section

67. Information to be given to rejected bidders.
68. Notification of contract award.
69. Records of procurement proceedings.
70. Conduct of procurement officers.
71. Code of conduct for procurement officers.
72. Conduct of bidders and contractors.

PART X

Challenge Proceedings

73. Challenge to procurement proceedings.
74. Application for review of procurement proceedings by review panel.
75. Appointment of review panels.
76. Review by review panel.
77. Appeal to Administrative Court against decision of review panel.

PART XI Procurement

Contracts

78. Procurement contract.
79. Responsibility for contract management.
80. Approaches to pricing in procurement contract.
81. Variation of procurement contract.
82. Payment under procurement contract.
83. Subcontracting.
84. Inspection of goods and construction works.
85. After-sale service.
86. Insurance requirements.
87. Remedies for breach of contract.
88. Liquidated damages for delay.
89. Contract termination.

PART XII

Disposal of Public Assets

90. Responsibility for disposal of public assets.
91. Disposal committee.
92. Disposal procedure.
93. Restriction on disposal of assets to employees, etc.
94. Challenge to disposal of asset by procuring entity.

PART XIII

Investigations by Authority

95. Interpretation in Part XIII.
96. Appointment of investigator by Authority.
97. Powers of investigator.
98. Procedure on completion of investigation.

PART XIV

General

Section

- 99. Authority may declare person ineligible to be awarded procurement contract.
- 100. Application of Act to joint ventures.
- 101. Regulations.
- 102. Publication of legal documents.
- 103. Repeal of Cap. 22:14 and savings and transitional provisions.
- 104. Amendment of section 4 of Cap. 24:14.
- 105. Amendment of section 79 of Cap. 29:13.
- 106. Amendment of Cap. 29:15.

FIRST SCHEDULE: Provisions Applicable to Membership, Procedures, Staff and Finances of Authority.

SECOND SCHEDULE: Ancillary Powers of Authority.

THIRD SCHEDULE: Authorisation to Conduct Procurement Proceedings.

bill

To provide for the control and regulation of public procurement and the disposal of public assets so as to ensure that such procurement and disposal is effected in a manner that is transparent, fair, honest, cost-effective and competitive; to establish the Procurement Regulatory Authority of Zimbabwe and to provide for its functions; to amend the Infrastructure Development Bank of Zimbabwe Act [*Chapter 24:14*]; to repeal the Procurement Act [*Chapter 22:14*] (No. 2 of 1999); and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and President of Zimbabwe.

1 Short title and date of commencement

(1) This Act may be cited as the Public Procurement and Disposal of Public Assets Act [*Chapter 22:23*].

(2) This Act shall come into operation on a date to be fixed by the President by notice in a statutory instrument.

2 Interpretation

(1) In this Act—
“accounting officer”, in relation to—

- (a) a procuring entity that is a Ministry or other entity for which there is a separate expenditure vote in the annual estimates of expenditure, means the person who is prescribed to be its accounting officer in terms of section 10 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009);
- (b) a procuring entity other than an entity referred to in paragraph (a), means such officer of the entity as may be prescribed;

H.B. 5, 2016.]

- “Authority” means the Procurement Regulatory Authority of Zimbabwe established by section 5;
- “bid” means an offer, solicited by a procuring entity in accordance with this Act, which if accepted would bind the bidder to provide a procurement requirement in accordance with the procurement contract; 5
- “bid security” means a monetary assurance given by a bidder and guaranteed by a bank or other third party that—
- (a) if the bidder withdraws his or her bid before the end of the bidding period; or
 - (b) refuses to sign the procurement contract if selected; 10
- the bidder will forfeit the bid security amount to the procuring entity;
- “bidder” means a potential party to a procurement contract with a procuring entity for the supply of a procurement requirement;
- “bidding document” means a document provided by a procuring entity to bidders and indicating the form in which they are to submit their bids and the information they are to provide in their bids; 15
- “bidding period” means the period described in section 39(1), within which bids may be submitted;
- “Board” means the Board of the Authority;
- “building” includes any man-made structure whatsoever or any part thereof, whether above or below the ground; 20
- “challenge” means a challenge to procurement proceedings brought in terms of Part X;
- “Chief Executive Officer” means the Chief Executive Officer of the Authority, appointed in terms of paragraph 12 of the First Schedule; 25
- “conduct” includes an act or omission;
- “conflict of interest” means a situation in which a public officer’s personal or family interests may benefit, directly or indirectly, from any conduct on his or her part, or any decision he or she may make, as a public officer;
- “construction work” means all work associated with the construction, reconstruction, demolition, repair or renovation of any building or infrastructure, and includes— 30
- (a) site preparation, excavation work, the installation of equipment or materials, decoration and finishing; and
 - (b) incidental services such as drilling, mapping, photography and environmental and seismic investigation, where— 35
- (i) the services are provided pursuant to a procurement contract; and
 - (ii) the value of the services does not exceed that of the construction work itself; 40
- “consultancy service” means a service of an intellectual and advisory nature, and “consultant” shall be construed accordingly;
- “contractor” means a person that enters into a procurement contract with a procuring entity;
- “day” means a day of the week other than a Saturday, Sunday or public holiday; 45
- “e-procurement” means the procurement of goods, construction works or services through Internet-based information technology;
- “electronic communication” means the transfer or recording of information through an electronic or similar medium;

- “evaluation committee” means an evaluation committee appointed in terms of section 18;
- “framework agreement” means an agreement between a procuring entity and a bidder (or bidders consisting of two or more competing suppliers of the procurement requirement) to establish the terms and conditions governing procurement contracts to be awarded during a period, in particular with regard to price and, where appropriate, the quantities envisaged;
- “goods” means things of any kind or description, including—
- (a) raw materials, products and equipment; and
 - (b) things in solid, liquid or gaseous form; and
 - (c) electricity; and
 - (d) services incidental to the supply of the goods, where the value of the services does not exceed that of the goods themselves;
- “hard copy”, in relation to a document, means a document that is written on paper;
- “joint venture agreement” has the meaning given to it by section 2(2) of the Joint Ventures Act [Chapter 22:22] (No. 6 of 2015);
- “lead procuring entity” means a procuring entity that conducts procurement on behalf of other procuring entities under an arrangement referred to in section 19(1);
- “material deviation” has the meaning given to it in subsection (2); “member” means the chairperson or any other member of the Board; “Minister” means the Minister of Finance and economic Development or any Vice-President or other Minister to whom the President may, from time to time, assign the administration of this Act;
- “non-consultancy service” means a labouring or other service that is performed physically;
- “parent body”, in relation to—
- (a) a procuring entity that is a department, office or subdivision of a Ministry, means the Ministry;
 - (b) any other procuring entity, means—
 - (i) a person or authority that controls or is responsible for the activities, in particular the financial affairs, of the procuring entity; or
 - (ii) such other person or authority as may be prescribed;
- “performance security” means a monetary assurance given by a bidder or contractor and guaranteed by a bank or other third party that the bidder or contractor will satisfactorily perform his or her obligations under the procurement contract;
- “price”, in relation to a procurement requirement or procurement contract, means the price paid or to be paid by the procuring entity for the procurement requirement, or the cost of the procurement requirement to the procuring entity;
- “procurement” means the acquisition by any means of goods, construction works or services (and for the purposes of sections 3(5), 4(1)(a) and (d) and 6(1)(a), includes the disposal of any asset in terms of Part XII);
- “procurement activities” means any one or more of the totality of the specific activities or tasks required in any way to bring the procurement process to a successful conclusion or to ensure that the process has been conducted in accordance with this Act;

- “procurement contract” means a contract between a procuring entity and a contractor which results from procurement proceedings;
- “procurement management unit” means a procurement management unit established in terms of section 17;
- “procurement notice” means a notice published in terms of section 38(2); 5
- “procurement proceedings” or “procurement process” means all stages or any stage of the procurement of goods, construction works or services conducted by a procuring entity from the pre-bid stage up to and including the award of the contract;
- “procurement requirement” means the goods, construction work or service to be acquired by procurement; 10
- “procuring entity” means—
- (a) a Ministry, department or other division of the Government; or
 - (b) a corporate body established by or in terms of any Act for special purposes laid down in that Act; or 15
 - (c) any company in which the State has a controlling interest, whether by virtue of holding or controlling its shares or by virtue of a right of appointment of members to its controlling body or otherwise, and includes any company which is a subsidiary, as determined in accordance with section 143 of the Companies Act [*Chapter 24:03*], of such a company; or 20
 - (d) a provincial or metropolitan council or a local authority; or
 - (e) any partnership or joint venture between the State and any person, which is prescribed in terms of this Act or the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009); 25
- “public asset” means any asset of whatever nature, whether corporeal or incorporeal, belonging to or vested in the State or a procuring entity, but does not include any such asset exempted from the application of this Act by section 3(8);
- “responsive bid” means a bid that meets the requirements of the procuring entity; 30
- “service” means a procurement requirement that is performed through consultancy or non-consultancy service;
- “threshold” means a financial limit above or below which certain procurement proceedings may be applied under this Act; 35
- “writing” includes printing, photography, electronic communication and any other method of representing words, figures and information in visible form that is reproducible in tangible form by the device that generated the visible words, figures or information.
- (2) For the purposes of this Act, there shall be a material deviation between bidding documents or the terms and conditions of a procurement contract, on the one hand, and the performance of the procurement contract, on the other hand, if— 40
- (a) the deviation affects in a substantial way the scope, quality or performance of the construction works, goods or services provided under the contract; or 45
 - (b) the deviation limits in any substantial way the rights or obligations of the parties under the contract; or
 - (c) rectification of the deviation would unfairly affect the competitive position of other bidders who presented substantially responsive bids.

3 Application of Act

(1) Subject to this section, this Act shall apply to all stages of the process of—

- (a) the procurement of goods, construction works and services by procuring entities; and
- (b) the disposal of public assets by procuring entities.

(2) To the extent that this Act conflicts with an obligation of Zimbabwe under or arising out of any convention, treaty or agreement between Zimbabwe and—

- (a) one or more foreign states or governments; or
- (b) one or more international financial organisations;

the requirements of the convention, treaty or agreement shall prevail.

(3) This Act shall not apply to—

- (a) the procurement or acquisition of any of the following services—
 - (i) fiscal agency or depositary services; or
 - (ii) liquidation and management services for regulated financial institutions; or
 - (iii) services related to the sale, redemption and distribution of public debt, including loans and Government bonds, notes and other securities; or
 - (iv) arbitration or conciliation services;
- (b) public employment contracts.

(4) If any professional services are to be procured from any person who is bound by a statutory tariff in relation to that profession or service, this Act shall apply so as not to require that person to be so bound, and no adverse consequences shall be visited upon that person for not adhering to such tariff.

(5) Procurement by Zimbabwean diplomatic or consular missions outside Zimbabwe need not be conducted in accordance with this Act, but the officers in charge of such missions shall ensure that their procurement is conducted through a competitive process compliant with the general principles set out in this Act.

(6) The President, by notice in the *Gazette*, may declare that it would be contrary to the interests of defence, public security or the national interests of Zimbabwe for the procurement or disposal of any construction works or class of such works to be publicly disclosed, and thereupon this Act shall apply to the procurement or disposal of such works with whatever modifications may be necessary to ensure that information concerning such works, or their procurement or disposal, is not disclosed to the prejudice of the defence, security or national interests of Zimbabwe.

(7) The Authority, for good cause shown, may by written notice to the body concerned exempt any procuring entity from compliance with any provision of this Act, and thereupon the provision concerned shall not apply to that procuring entity:

Provided that the Authority shall ensure that a copy of any such exemption is kept at its offices and is open to inspection there by interested persons at all reasonable times.

(8) The Minister, with the approval of the Authority and by notice in the *Gazette*, may exempt any public asset from the application of Part XII of this Act.

4 Objectives of Act

(1) The objectives of this Act are—

- (a) to ensure that procurement is effected in a manner that is transparent, fair, honest, cost-effective and competitive; and
- (b) to promote competition among bidders; and
- (c) to provide for the fair and equitable treatment of all bidders, leading to procurement contracts that represent good value for money; and 5
- (d) to promote the integrity of, and fairness and public confidence in, procurement processes; and
- (e) to secure the implementation of any environmental, social, economic and other policy that is authorised or required by any law to be taken into account by a procuring entity in procurement proceedings. 10

(2) The Authority, all procuring entities, and all other persons concerned in the implementation of this Act shall exercise their functions so as to give full effect to the objectives set out in subsection (1).

PART II

Procurement Regulatory Authority of Zimbabwe 15

5 Establishment of Procurement Regulatory Authority of Zimbabwe

There is hereby established an authority to be known as the Procurement Regulatory Authority of Zimbabwe, which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies corporate may by law perform. 20

6 Functions of Authority

- (1) The functions of the Authority shall be—
- (a) to ensure that public procurement is effected in a manner that is transparent, fair, honest, cost-effective, competitive and in compliance with this Act; and 25
 - (b) to monitor and supervise procuring entities and the public procurement system in order to secure compliance with this Act, and to impalement electronic means of monitoring and supervising procuring entities and the public procurement system; and
 - (c) to issue technical guidelines and instructions regarding the interpretation and implementation of this Act; and 30
 - (d) to prepare standard documents and templates to be used in connection with public procurement and to enable procuring entities to maintain records and prepare reports; and
 - (e) to develop the use of electronic tools for procurement, including a public procurement website and statistical databases containing information on public procurement in Zimbabwe, and specify the conditions under which such databases will be availed to the public; and 35
 - (f) to enable the publication on the website referred to in paragraph (e) of documents that are required to be published by procuring entities; and 40
 - (g) on request, to give advice and assistance to procuring entities:

Provided that no such advice or assistance shall limit the responsibilities of a procuring entity for compliance with this Act; and

- (h) to promote the training and professional development of persons engaged in public procurement so as to ensure their adherence to high ethical standards; and 45
- (i) to develop and implement a transparent and equitable framework for the registration of bidders or contractors; and

- 5 (j) to develop and advise the Government on ways in which the environmental, social and economic policies of Zimbabwe, including those designed for economic empowerment and domestic preferences, may be implemented through public procurement; and
- (k) to refer contraventions of this Act to appropriate enforcement or disciplinary authorities; and
- (l) to establish and implement an independent review mechanism to deal with challenges brought by aggrieved bidders in accordance with Part X or by other persons in accordance with Part XII; and
- 10 (m) to consult regularly with persons in the public and private sectors who have an interest in the public procurement system, in order to assess their perception of the system; and
- (n) to recommend amendments to the law regarding public procurement, in the light of international practices and experience; and
- 15 (o) to exercise any other function conferred or imposed on the Authority by or under this Act or any other enactment.

(2) The Authority shall exercise its functions impartially and without fear, favour or prejudice and shall conduct all its activities in a clear and open manner so as to give the fullest effect to the objectives of this Act set out in section 4.

- 20 (3) Before reaching a decision that affects or is likely to affect the rights or interests of any person, the Authority shall, to the fullest extent practicable—
- (a) give the person due and clear notice of the nature of the decision the Authority is to make and of the factors the Authority is likely to take into consideration when making it; and
- 25 (b) allow the person reasonable access to the information available to the Authority in regard to the matter under consideration; and
- (c) give the person as full an opportunity as circumstances allow to make representations in the matter; and
- 30 (d) take into account any representations that the person may make in the matter;

and generally the Authority shall observe due process and the rules commonly known as the rules of natural justice.

- (4) Where the Authority has made a decision or taken action that adversely affects the rights or interests of any person, the Authority shall give that person, promptly on demand, written reasons for the decision or action.

7 Powers of Authority

Without limiting section 5 (“establishment of Procurement Regulatory Authority of Zimbabwe”), in the exercise of its functions the Authority shall have power, subject to this Act, to do any of the following things—

- 40 (a) to issue directions of a general nature to procuring entities regarding the manner in which they are to conduct procurement proceedings in order to ensure compliance with this Act:

Provided that the Authority shall not issue such directions so as to apply only to individual procurement proceedings;

- 45 (b) to require procuring entities to collect information regarding procurement and to provide the Authority with such information in such form, and at such intervals or within such periods, as the Authority may direct;

- (c) to require any procuring entity or bidder to produce or disclose to the Authority, or to an officer or agent of the Authority, any information, document, record or report regarding any aspect of the procurement, contract implementation or disposal process where a breach, wrongdoing or mismanagement has been alleged, reported or proven against any procuring entity; 5
- (d) to co-operate with other organisations, whether inside or outside Zimbabwe, in the exercise of its functions;
- (e) to exercise any of the ancillary powers set out in the Second Schedule;
- (f) generally, to take such measures as the Board reasonably considers are necessary or desirable to ensure compliance with this Act. 10

8 Board of Authority

(1) The operations of the Authority shall be managed and directed by a Board consisting of seven or nine members appointed, subject to this section, by the Minister after consultation with the President. 15

(2) Members of the Board shall be chosen for their knowledge of and experience in procurement, law, management, accountancy, auditing, engineering, human resource management, commerce or other relevant discipline, and in appointing them the Minister shall ensure that, so far as practicable—

- (a) the public and private sectors, as well as appropriate professional bodies, business associations and non-governmental organisations, are adequately represented on the Board; and 20
- (b) there is fair representation of Zimbabwe's regions on the Board; and
- (c) at least half the members are women.

9 Provisions relating to membership, procedure, staff and finances of Authority 25

(1) Part I of the First Schedule applies in regard to the appointment, tenure and conditions of service of members of the Board.

(2) Part II of the First Schedule applies in regard to the procedures to be followed by the Board in the conduct of the Authority's business. 30

(3) Part III of the First Schedule applies in regard to appointment and conditions of service of the Authority's staff.

(4) Part IV of the First Schedule applies in regard to the Authority's finances.

10 Execution of contracts and instruments by Authority

An agreement, contract or instrument approved by the Board may be entered into or executed on the Authority's behalf by the Chief Executive Officer or any other person generally or specially authorised by the Board for that purpose. 35

11 Reports of Authority

(1) Subject to this section, as soon as possible after the end of each financial year, the Authority shall provide Parliament, through the Minister, with a report setting out— 40

- (a) the Authority's activities during the year; and
- (b) the overall functioning of the public procurement and asset disposal system in Zimbabwe; and

- (c) any recommendations the Authority may wish to make on revising and improving procurement procedures; and
- (d) any other matters the Authority wishes to bring to the attention of the Government and Parliament.

5 (2) On receipt of an annual report, the Minister shall without delay lay it before Parliament.

(3) In addition to the annual report, the Authority—

- 10 (a) may submit to the Minister reports on such matters relating to the public procurement or asset disposal system of Zimbabwe as the Board wishes to bring to the Minister's attention; and
- (b) shall provide the Minister with such reports and information regarding the public procurement or asset disposal system of Zimbabwe as the Minister may reasonably require.

12 Validity of decisions and acts of Board and committees

15 No decision or act of the Board or a committee, and no act that is authorised by the Board or a committee, shall be invalid solely because there was a vacancy in the membership of the Board or the committee or because a disqualified person purported to act as a member of the Board or the committee, as the case may be, at the time the decision was taken or the act was done or authorised.

20 13 Exemption from liability of Authority and its employees and agents

No liability shall attach to—

- (a) the Authority; or
- (b) any member of the Board or of a committee of the Authority; or
- (c) any employee or agent of the Authority;

25 in respect of loss or damage sustained by any person as a result of the *bona fide* exercise of any function conferred or imposed on the person concerned by or under this Act:

Provided that this section shall not be construed as preventing anyone from recovering damages or compensation for loss or damage that was caused by deliberate wrong-doing, negligence or breach of contract.

30 PART III

Responsibility for Procurement and Procuring Entities

14 Responsibility for procurement

(1) Subject to this Act—

- 35 (a) each procuring entity shall be responsible for managing its procurement, where the value of the procurement requirement is below the prescribed threshold;
- (b) every procuring entity that has been authorised in terms of section 15 shall be responsible for managing its procurement, where the value of the procurement requirement is at or above the prescribed threshold.

40 (2) Within any procuring entity, responsibility for ensuring that its procurement activities are carried out in compliance with this Act and any directions of the Authority shall devolve upon—

- (a) the entity's accounting officer; and
- 45 (b) within their spheres of responsibility, the members of the entity's procurement management unit and the entity's, employees and agents who are involved in any way with procurement.

15 Authorisation to conduct procurement

(1) A procuring entity shall not initiate or conduct any procurement proceedings in which the value of the procurement requirement is at or above the prescribed threshold unless the procuring entity has been generally authorised by the Authority to conduct such proceedings. 5

(2) Authorisation in terms of subsection (1)—

- (a) shall be given in writing; and
- (b) may be subject to such terms and conditions as the Authority may specify in the authorisation; and
- (c) shall be valid for a period of two years from the date on which it was given, and may be renewed for further such periods. 10

(3) The Third Schedule shall apply to applications for authorisation, to the grant or refusal of such applications and to the renewal of such authorisation.

(4) The Authority shall in relation to a procuring entity that fails to obtain authorisation to initiate or conduct any procurement proceedings at or above the prescribed threshold appoint another procuring entity so authorised to conduct such procurement on behalf of the first mentioned entity. 15

16 Duties of accounting officers and other persons to comply with Act

(1) If an accounting officer is directed by—

- (a) a Minister or Deputy Minister; or 20
- (b) any other person with authority over the accounting officer;

to do or omit to do anything in respect of procurement which the accounting officer believes he or she is not authorised to do in terms of this Act, he or she shall not comply with the direction but instead shall forthwith submit in writing to the Minister, Deputy Minister or other person in authority, as the case may be, his or her objections and the reasons for the objection. 25

(2) If after receiving an accounting officer’s objections and reasons under subsection (1), the Minister, Deputy Minister or other person instructs the accounting officer, in writing, to comply with the direction concerned, the accounting officer shall comply with the instruction and shall immediately submit a written report thereon— 30

- (a) to the Minister responsible for administering this Act; and
- (b) to the Auditor-General; and
- (c) where he or she is the accounting officer of a Ministry or department of government, to the Accountant-General; and
- (d) where the instruction was given by a Minister or Deputy Minister, to the Secretary to the Cabinet: 35

Provided that, if the Minister, Deputy Minister or other person fails or refuses to put the instruction in writing, the accounting officer shall not comply with it and, notwithstanding any term or condition of his or her employment, shall not be liable to any penalty for such non-compliance. 40

(3) Subsections (1) and (2) shall apply, with any necessary changes, where an officer, employee or agent of a procuring entity, other than an accounting officer, is directed by a Minister or Deputy Minister or any other person with authority over him or her to do or not to do anything in respect of procurement or the disposal of a public asset which he or she believes he or she is not authorised to do in terms of this Act. 45

17 Procurement management unit of procuring entity

(1) Subject to this section, every procuring entity shall establish a procurement management unit headed by the accounting officer, which shall be responsible for managing all the entity's procurement activities in accordance with this Act.

5 (2) The accounting officer of a procuring entity shall determine the size, location and structure of the entity's procurement management unit, taking into account the entity's procurement requirements and the availability of trained and experienced persons to staff the unit.

(3) The functions of a procurement management unit shall be—

- 10 (a) planning the procurement activities of its procuring entity; and
- (b) securing the adoption of the appropriate method of procurement; and
- (c) preparing bidding documents in compliance with provisions in or under this Act for the design of contract specifications and the evaluation criteria; and
- 15 (d) preparing bid notices and short-lists; and
- (e) managing bidding processes, including pre-bid meetings, clarifications and the receipt and opening of bids; and
- (f) managing the evaluation of bids and any post-qualification negotiations required; and
- 20 (g) supervising its procuring entity's evaluation committee and—
 - (i) ensuring that the committee has carried out its duties in accordance with this Act; and
 - (ii) receiving evaluation reports from the committee and ensuring that they are correct and have been prepared in accordance with this Act;
- 25 (h) preparing evaluation reports, including contract award recommendations, where the value of the procurement is less than the prescribed threshold; and
- (i) submitting all evaluations to its procuring entity's accounting officer, with confirmation that the procedure followed has complied with this Act; and
- 30 (j) preparing contract documents and amendments; and
- (k) managing procurement contracts or overseeing their management; and
- (l) preparing such procurement reports as may be required by the procuring entity's accounting officer or the Authority; and
- 35 (m) exercising any other function conferred or imposed on the unit by or under this Act or by its accounting officer or procuring entity.

(4) Where the level of a procuring entity's procurement activity does not justify the entity creating its own procurement management unit—

- 40 (a) the entity's procurement activities shall be carried out by its parent body; or
- (b) if the entity's parent body is unable to carry out the entity's procurement activities, the entity's accounting officer may, subject to subsection (5) and any guidelines issued by the Authority—
 - 45 (i) with the consent of the other procuring entity concerned, appoint another procuring entity's procurement management unit to conduct those activities; or
 - (ii) appoint an independent procurement agent to conduct those activities.

(5) Before taking action in terms of subsection (4)(b), an accounting officer shall satisfy himself or herself that his or her procuring entity has funds available to

pay for the services provided by the other procuring entity or independent procurement agent concerned.

18 Evaluation committees of procuring entity

(1) For each procurement above the prescribed threshold, the accounting officer of a procuring entity shall appoint an evaluation committee in accordance with this section. 5

(2) An evaluation committee shall consist of—

- (a) one member of the procuring entity’s procurement management unit; and
- (b) at least three other members, including—
 - (i) the person responsible for preparing the requirements and additionally, or alternatively, the technical specifications for the procurement concerned, or a person with equivalent technical expertise; and 10
 - (ii) a financial officer of the procuring entity; and
 - (iii) one or more other members to provide technical, legal, financial or commercial expertise, as appropriate. 15

(3) The member referred to in subsection (2)(a) shall attend meetings of the evaluation committee as an adviser and shall not have a vote on any issue to be decided by the committee.

(4) The functions of an evaluation committee shall be— 20

- (a) receiving from the procurement unit the bid opening records and bids; and
- (b) evaluating bids and preparing the bid evaluation report and recommendations for award of a contract; and
- (c) submitting its evaluation reports to the procurement management unit; and 25
- (d) exercising any other functions conferred or imposed on the committee by or under this Act.

(5) In the exercise of its functions an evaluation committee shall be answerable to the procurement management unit or accounting officer of its procuring entity. 30

19 Shared procurement among procuring entities

(1) Notwithstanding section 14 (“Responsibility for procurement”), procuring entities may, and if directed by the Authority shall, conduct their procurement by way of shared procurement arrangements which may include arrangements for—

- (a) procuring all their requirements through a procurement management unit established by one of the procuring entities; 35
- (b) procuring particular categories of goods, construction works or services through one of the procuring entities with expertise in that type of procurement;
- (c) procuring goods, construction works or services for common use through one or more designated procuring entities. 40

(2) A procuring entity that conducts procurement on behalf of other entities under a shared procurement arrangement shall be primarily responsible for ensuring that the procurement is conducted in accordance with this Act.

(3) Where the Authority considers, on the basis of its review of the annual procurement plans submitted to it by procuring entities in terms of section 22, that— 45

- (a) it is proper to direct any group of two or more procuring entities to conduct their procurement by way of shared procurement arrangements; and
- (b) the shared procurement is of such a nature as to make the use of a framework agreement expedient, desirable or necessary in order to achieve economies of scale;

the Authority shall negotiate the framework agreement on behalf of the procuring entities concerned:

(4) A procuring entity that is a party to a shared procurement arrangement governed by a framework agreement referred to in subsection (3) must obtain its procurement requirements in accordance with that agreement unless it satisfies the Authority in writing that it is able to obtain such requirements at a better price or on better contract terms by means of a separate procurement.

(5) Nothing in this section inhibits—

- (a) a procuring entity from negotiating a framework agreement on its own for procurement requirements that are not subject to shared procurement arrangements; or
- (b) a group of procuring entities which are not governed by a framework agreement referred to in subsection (3) from negotiating a suitable framework agreement for their common procurement requirements with a view to achieving economies of scale.

PART IV

Procurement Preparation and Planning

20 Procurement preparation

(1) For the purposes of any procurement, a procurement management unit shall use only the standard bidding documents that are produced and issued by the Authority.

(2) A procuring entity shall ensure that, before initiating procurement proceedings, adequate funds have been budgeted and allocated to the procurement, including any funds required for the publication of notices:

Provided that the absence of budgeted or allocated funds shall not inhibit a procuring entity from concluding a framework agreement, as long as any orders made in pursuance of such agreement are, on the date of the order, financed by budgeted or allocated funds.

(3) Before initiating proceedings for a procurement contract that will commit the entity to make payments in subsequent financial years, a procuring entity shall—

- (a) obtain approval from—
 - (i) the Minister responsible for finance, where the procuring entity is a Ministry or department of government; or
 - (ii) such other person as may be prescribed, in any other case;and
- (b) ensure that funds for the current financial year are budgeted and allocated to the procurement; and
- (c) ensure that funds for the procurement are included in budgets for subsequent financial years:

Provided that this paragraph shall not preclude the procuring entity from including provision in the procurement contract for a right to cancel the contract in the event that sufficient funding is not included in a budget for a subsequent financial year.

21 Planning of procurement

(1) A procuring entity shall plan its procurement with a view to achieving maximum value for public expenditure, so that the procurement is carried out within available financial resources and other applicable limitations and at the most favourable time. 5

(2) So far as possible, a procuring entity shall aggregate its procurement requirements in order to achieve economies of scale and shall use framework agreements where appropriate.

- (3) Before commencing any procurement process, a procuring entity shall—
- (a) investigate whether or not its requirements can be met internally, for example by the transfer of goods from one department to another; and 10
 - (b) ensure that an accurate estimate has been prepared of the cost of the procurement process, including the price of the procurement requirement and the cost of contingencies that may reasonably be expected to arise under the procurement contract; and 15
 - (c) ensure that the amount of the estimate referred to in paragraph (b) has been properly covered in the entity's budget for the current financial year.

22 Annual procurement plan

(1) For each financial year and no later than one month after the end of such, a procuring entity shall prepare a procurement plan which shall— 20

- (a) be in accordance with a template prepared by the Authority; and
- (b) contain at least such information as may be prescribed;

and shall forward the plan without delay to the Authority.

(2) The Authority and the procuring entity shall publish, in summary form, the list of goods, construction works and services included in the entity's annual plan for procurement during the coming financial year. 25

23 Individual procurement plan

(1) In addition to its annual procurement plan prepared in terms of section 22, a procuring entity shall prepare an individual procurement plan for each individual procurement above the prescribed threshold value, which plan shall— 30

- (a) be in accordance with a template prepared by the Authority; and
- (b) contain at least such information as may be prescribed;

and shall forward the plan without delay to the Authority.

(2) The Authority shall publish on its website every plan forwarded to it in terms of subsection (1). 35

24 Planning for shared procurement

Where two or more procuring entities conduct their procurement by way of shared procurement arrangements in terms of section 19, the designated or lead procuring entity, on behalf of the others, may prepare the plans referred to in sections 21, 22 and 23, and for that purpose the other entities shall provide it with the necessary information to enable it to prepare those plans and carry out the shared procurement activities. 40

25 Division of procurements

(1) Subject to this section, a procuring entity may divide a procurement requirement, which could be procured in a single contract, into a package consisting of

several lots which are to be bid together, where it is anticipated that the award of several separate contracts may result in the best overall value for the procuring entity or meet any environmental, social and economic objectives referred to in section 4(2)(e).

(2) A procurement requirement shall not be divided—

- 5 (a) in order to avoid financial thresholds prescribed for the purposes of determining the appropriate procurement method, whether such division is by way of splitting a quantity of a single procurement requirement or splitting of a generic procurement requirement into several lots; or
- 10 (b) where the award of several separate contracts would create problems of compatibility or inter-changeability between goods, construction works or services procured as separate lots, or would unduly strain contract administration resources; or
- 15 (c) where the award of several separate contracts would invalidate or otherwise restrict any contractor's warranty or liability; or
- (d) where the award of several separate contracts would increase the costs of servicing, maintenance or similar requirements.

(3) Where a procurement requirement that could be procured through a single procurement contract is divided into lots, the procuring entity shall—

- 20 (a) permit bidders to bid for a single lot, any combination of lots or all lots; and
- (b) ensure, prior to awarding the contract, that the recommended contract award or combination of contract awards offers the best overall value for the procuring entity.

26 Market consultations

25 (1) Before initiating any procurement procedure, a procuring entity may conduct market consultations with a view to preparing the contract specifications and informing potential bidders of the entity's procurement plans and requirements.

(2) In the course of market consultations, a procuring entity may receive technical information and advice from independent experts or authorities and from potential bidders, and may use that information and advice in planning and conducting their procurement:

Provided that the procuring entity—

- 35 (a) shall ensure that its use of the information or advice does not distort competition and does not infringe the principles of non-discrimination and transparency; and
- (b) without limiting paragraph (a), where the information or advice was supplied by a bidder, shall communicate the information or advice to all other bidders.

PART V

40 Technical Requirements and Qualifications of Bidders

27 Description of subject-matter of procurement

(1) A procuring entity shall ensure that its bidding documents—

- 45 (a) set out clearly a full and appropriately detailed description of the procurement requirement, including—
 - (i) the quality and quantity required; and
 - (ii) its function and the purpose for which it is required; and
 - (iii) any requirements relating to its performance, safety features and its safe disposal; and

- (iv) requirements as to inspection and testing; and
 - (v) any applicable standards which, where possible, shall be international standards or Zimbabwean standards incorporating international standards;
- and 5
- (b) specify the methods by which performance under the procurement contract will be measured for conformity with those requirements.

(2) The requirements referred to in subsection (1) shall not refer to any particular trademark or brand name, or to any patent or design, or to any producer or service provider, unless there is no other practical way of describing the procurement requirement, in which event words such as “or equivalent” shall be included in the specifications. 10

28 Participation by bidders

(1) Except as prescribed under this Act or any other enactment, bidders shall be permitted to participate in procurement proceedings without regard to nationality. 15

(2) Subject to this section, a procuring entity may require bidders to meet such of the following criteria for eligibility as the procuring entity considers appropriate and relevant in the circumstances of the particular procurement—

- (a) that they meet specified ethical standards;
- (b) that they have the legal capacity to enter into the procurement contract; 20
- (c) that—
 - (i) they are not insolvent, in liquidation or under judicial management; or
 - (ii) their affairs are not being administered by a court or a judicial officer; 25
 - (iii) their business activities have not been suspended; and no legal proceedings are pending for any of the foregoing;
- (d) that they have paid all taxes, duties and rates for which they are liable in Zimbabwe, together with any contributions or payments due under the National Social Security Authority Act [*Chapter 17:04*]; 30
- (e) that neither they nor any of their officers have, in the five years immediately preceding the initiation of the procurement proceedings—
 - (i) been convicted in any country of an offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications; or 35
 - (ii) been censured or subjected to any penalty in any country following disciplinary proceedings arising out of any conduct involving the making of false statements or misrepresentations;
- (f) any other criteria that will demonstrate that the bidders possess the professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience, business reputation and personnel, needed to perform the procurement contract. 40

(3) Procuring entities shall not impose eligibility criteria that are unduly restrictive or designed to reduce competition, and shall prepare them for each procurement requirement, taking into account the size, complexity and technical requirements of the proposed procurement contract. 45

(4) Any requirement imposed pursuant to this section shall be set out in the pre-qualification documents, if any, and in the solicitation documents, and shall apply equally to all bidders.

29 Domestic preference

5 When evaluating bids, a procuring entity may give preference to bids from Zimbabwean or local suppliers and manufacturers, and, in relation to bids from foreign suppliers and manufacturers, shall take into account the extent to which Zimbabwean or local suppliers and manufacturers must participate in such bid, or be subcontracted to supply the bidden goods, construction works or services, in accordance with the provisions of the Indigenisation and economic empowerment Act [*Chapter 14:33*]
10 (No. 14 of 2007):

Provided that any such preference shall be—

- (a) stated clearly in the bidding documents; and
- (b) applied strictly in accordance with such procedures and criteria as may
15 be prescribed or as may be stated in circulars issued by the Authority.

PART VI

Methods of Procurement

30 Selection of procurement method

(1) Subject to this Act, a procuring entity shall employ the competitive bidding
20 method of procurement described in section 31, except where—

- (a) the restricted bidding method is to be employed in terms of section 32;
or
- (b) the direct procurement method is to be employed in terms of section 33;
or
- 25 (c) the request for quotations method is to be employed in terms of section 34; or
- (d) consultancy services are to be procured, in which event the request for proposals method shall be employed in accordance with Part VIII; or
- (e) procurement is effected under a joint venture agreement, in which event
30 the method shall be as prescribed under section 100.

(2) When a method of procurement other than competitive bidding is used, the procuring entity shall include in the record of the procurement proceedings a written justification of the decision to utilise the procurement method, including the grounds for taking that decision.

35 (3) Where a procuring entity enters into a framework agreement for any procurement—

- (a) all stages of the procurement up to the award of contract shall be effected in accordance with section 31 or 32; and
- (b) all contracts based on the framework agreement shall be awarded in
40 accordance with such procedures as may be prescribed.

31 Competitive bidding method

(1) The competitive bidding method of procurement entails a process in which—
45 (a) a bidding document is published in accordance with section 38; and
(b) all eligible and qualified bidders are permitted without discrimination to submit their bids; and

- (c) all bids from eligible and qualified bidders are assessed according to the same criteria; and
 - (d) subject to subsection (2), the bidding is held in one stage.
- (2) Competitive bidding may be held in two stages, in accordance with prescribed procedures, where— 5
- (a) it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; or
 - (b) because of the complex nature of the procurement requirement, the procuring entity wishes to consider various technical or contractual solutions and to discuss them with bidders before deciding on the final technical or contractual specifications. 10
- (3) Where the procurement requirement is of particularly high value or complexity, competitive bidding may be preceded by prescribed pre-qualification procedures, with a view to identifying qualified bidders prior to the submission of bids.

32 Restricted bidding method 15

- (1) The restricted bidding method of procurement entails a process in which the bidders are limited to those selected or invited by the procuring entity.
- (2) The restricted bidding method of procurement may be used—
- (a) when the time and cost of considering a large number of bids is disproportionate to the estimated value of the procurement requirement; 20
or
 - (b) where urgency renders impracticable the time-limit prescribed for the purpose of section 39 (“Bidding period”):
 - Provided that the urgency shall not be due to the procuring entity’s unjustifiable delay; or 25
 - (c) for procurement contracts with an estimated value that does not exceed the prescribed threshold.
- (3) Under the restricted bidding method of procurement—
- (a) the procuring entity shall invite bids from a standing list of qualified bidders established and maintained by the procuring entity in accordance with the prescribed procedure; and 30
 - (b) in all other respects, the procedures for the single stage competitive bidding method shall be employed.

33 Direct procurement method

- (1) The direct procurement method of procurement is one where a procuring entity procures its requirement from one bidder or supplier without having received bids from other bidders. 35
- (2) A procuring entity may use the direct procurement method—
- (a) where no responsive bids have been submitted in response to a competitive bidding procedure: 40
 - Provided that the procuring entity shall not substantially modify the requirements of the initial bid; or
 - (b) where, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract can be performed only by a particular supplier and no reasonable alternative or substitute exists; or 45

- (c) where, for reasons of extreme urgency not attributable to and unforeseen by the procuring entity, the procurement requirement cannot be obtained in time by means of competitive bidding procedures; or
- 5 (d) for additional supplies of goods or services by a supplier, where a change of supplier would cause problems of inter-changeability or incompatibility with existing equipment or discontinuity of services, which would cause significant inconvenience or substantial duplication of costs to the procuring entity; or
- 10 (e) where a procuring entity procures a prototype or a first product or service from a research institute which is then developed at its request for a particular procurement contract for research, experiment, study or original development; or
- 15 (f) where additional services which were not included in an initial procurement contract but which were within the objectives of the original bidding documents have, through unforeseen circumstances, become necessary to complete the services described in those documents:
- Provided that the total value of contracts awarded for the additional services shall not exceed fifty *per centum* of the amount of the original contract; or
- 20 (g) for new services that repeat similar services provided under a procurement contract awarded following the competitive bidding method of procurement, where the procuring entity indicated in the original procurement notice that a direct procurement method might be used in awarding contracts for such new services; or
- 25 (h) for acquisitions made under exceptionally advantageous conditions from unusual disposals such as legal forfeitures, liquidation, insolvency, judicial sale in execution or other forced sale or disposal; or
- (i) for the procurement of immovable property; or
- (j) for the procurement of spare parts of a proprietary nature.
- 30 (2) Direct procurement shall be conducted in accordance with such procedures as may be prescribed.

34 Request for quotations method

(1) The request for quotations method of procurement entails a process in which the procuring entity solicits at least three competitive quotations for its procurement requirement from reputable suppliers, and the procurement requirement is below the prescribed threshold.

(2) The request for quotations method of procurement shall be effected in accordance with such procedures as may be prescribed.

PART VII

40 Procedures for Competitive and Restricted Bidding

35 Application of Part VII

This Part shall apply to procurement by the competitive and restricted bidding methods.

36 Form of communication

45 All communications between bidders and the procuring entity shall be in writing, and a procuring entity shall not entertain or respond to a communication from a bidder that is not in writing:

Provided that a procuring entity may comply with an oral or telephonic request for the supply of a document that is generally available to bidders.

37 Invitations to bid

A procuring entity shall invite bids—

- (a) through the publication of a bidding document; or 5
- (b) from all bidders on the list of pre-qualified bidders, where pre-qualification is used; or
- (c) from all bidders on the standing list of qualified bidders established in accordance with section 32, in the case of restricted bidding.

38 Contents and publication of procurement notices 10

(1) A bidding document containing the procuring entity’s invitation to bid or, as the case may be, invitation to prequalify shall contain the following information—

- (a) the identity and address of the procuring entity and the contact details of the person from whom further information can be obtained; and
- (b) a description of the procurement, including the place of delivery of goods or services, the location of any construction works and the time within which the procurement requirement is to be provided; and 15
- (c) how the bidding documents or, if applicable, the prequalification documents may be obtained and the price, if any, payable for them; and
- (d) the place at which and the time within which bids or applications to prequalify must be submitted; and 20
- (e) such other matters as may be prescribed or as may be set out in standard forms issued by the Authority.

(2) A procuring entity shall cause the bidding document containing its notice of invitation to bid or to pre-qualify, as the case may be, to be published in the *Gazette* and— 25

- (a) in at least one national newspaper of wide enough circulation to reach sufficient bidders to ensure effective competition; or
- (b) to the extent it is feasible to do so, on the Internet and on any website established by the Authority; 30

and may cause the notice to be broadcast over radio or television, so as to reach as many potential bidders as possible.

(3) Where the estimated value of a procurement contract exceeds the prescribed financial threshold for international procurement, the procuring entity, in addition to complying with subsection (2), shall cause the bidding document containing its notice of invitation to bid or pre-qualify to be— 35

- (a) published in at least two publications widely used for international trade or in other printed media with adequate circulation to attract foreign competitive bidders; and
- (b) posted on widely-read internet websites; and 40
- (c) posted in Zimbabwe’s foreign diplomatic and consular missions;

and shall conform with such other requirements as may be prescribed.

(4) For the purpose of ensuring wide competition, a procuring entity may send its notice of invitation to bid or pre-qualify directly to potential bidders, to chambers of commerce and to trade or professional associations after the notice has been published in terms of subsection (2) or (3): 45

Provided that the procuring entity shall keep a record of any bidders to whom the notice is sent directly, and shall file the record with the procurement documents.

39 Bidding period

5 (1) The bidding period shall commence on the date on which the bidding document is published in the *Gazette* in terms of section 38(2), and shall end on the date specified in that document or in a subsequent notice as the closing date for the submission of bids.

(2) In determining the appropriate bidding period for any procurement, the procuring entity shall take into account—

- 10 (a) the time reasonably required for bidders to prepare their bids, taking into account the level of detail required and the complexity of the bids, including the time needed for any site visits and pre-bid meetings; and
- (b) any need for bidders to submit authenticated legal documents or similar documents as part of their bids and the time required to obtain such documents; and
- 15 (c) the time potential bidders need to obtain the bidding document and to deliver and submit their bids to the procuring entity; and
- (d) the time by which the procuring entity needs to be supplied with the procurement requirement:

20 Provided that the bidding period for any procurement shall not be shorter than the period prescribed for that procurement or class of procurement, as the case may be.

40 Bidding documents

(1) For the purposes of any procurement, a procuring entity shall use the prescribed standard bidding documents, including any manuals or guidelines pertaining thereto that may be issued by the Authority.

(2) A procuring entity shall ensure that its bidding documents are ready for distribution before the publication of the invitation to bid and shall provide them, promptly and without discrimination—

- 30 (a) to all potential bidders that respond to the invitation to bid; or
- (b) in the case of competitive bidding with pre-qualification, to all bidders that have been prequalified; or
- (c) in the case of restricted bidding, to all the bidders that have been selected or invited to participate in the procurement.

35 (3) A procuring entity shall not charge more for bidding documents than the cost of printing and distributing them, and where they are delivered by electronic means they shall be free of charge.

(4) Bidding documents shall provide bidders with all the information they need in order to submit responsive bids, and shall give them such particular information as may be prescribed.

40 (5) A procuring entity shall record the name, postal address, telephone number and e-mail address of every bidder to whom an invitation to bid is issued, together with details of the bidder's contact person, and shall file the record with the procurement documents.

45 (6) A procuring entity may establish an electronic system approved by the Authority for the purpose of this section.

41 Clarification and modification of bidding documents

(1) A procuring entity shall respond promptly and in writing to a written request from a bidder for clarification of any bidding document, and the response shall be communicated simultaneously to all the bidders without identifying the bidder that requested the clarification and in a manner that does not disclose the identities of the other bidders. 5

(2) For the purpose of clarifying bidding documents, a procuring entity may, before the close of the bidding period—

- (a) hold one or more meetings of bidders; and
- (b) conduct one or more site visits; 10

which all bidders shall be invited to attend.

(3) Any clarification of bidding documents in terms of subsection (1) or (2) shall be effected within such period as may be prescribed.

(4) A procuring entity may modify its bidding documents at any time before the end of the bidding period, but the modification shall be communicated simultaneously to all the bidders and, where necessary, the procuring entity shall extend the bidding period to allow bidders to alter their bids to take the modification into account. 15

(6) A procuring entity may establish an electronic system approved by the Authority for the purpose of this section.

42 Cancellation of procurement proceedings or rejection of bids 20

(1) If possible a procuring entity shall avoid cancelling procurement proceedings, but may do so where—

- (a) the need for the procurement has ceased to exist or changed significantly; or
- (b) insufficient funding is available for the procurement; or 25
- (c) there is a significant change in the technical details of the procurement requirement, or in the bidding conditions, contractual terms or other particulars, so that the procurement proceedings need to be recommenced; or
- (d) subject to subsection (5), insufficient, or no responsive bids are received; 30 or
- (e) there is evidence of collusion among bidders; or
- (f) it is otherwise in the public interest.

(2) Whenever a procuring entity cancels procurement proceedings it shall promptly notify bidders accordingly, and cause a written statement detailing the reasons for the cancellation to be filed with the record of the proceedings. 35

(3) Where a procuring entity cancels procurement proceedings before the end of the bidding period, it shall—

- (a) ensure that all hard-copy bids received are available for the bidders to collect for a period of thirty days following the announcement of the cancellation; and 40
- (b) destroy all bids after the thirty-day period referred to in paragraph (a).

(4) If so specified in the bidding documents, a procuring entity may reject all bids at any time prior to their acceptance, where the bids are not substantially responsive, or where there is evidence of lack of competition: 45

Provided that the procuring entity shall notify all the bidders promptly of the rejection of their bids and, upon request by any such bidder, shall inform the bidder of the reasons for the rejection.

5 (5) Where no responsive bids are received or procurement proceedings are otherwise unsuccessful, the procuring entity shall conduct a reasonably adequate investigation into the failure and record—

- (a) the reasons for the failure; and
- (b) the course of action taken by the procuring entity;

and shall file the record with the procurement documents.

10 (6) A procuring entity shall incur no liability towards bidders for action taken by it in terms of this section:

Provided that this subsection shall not relieve the procuring entity, or any of its officers, employee or agents, from liability for negligence or for anything done in bad faith.

15 **43 Submission of bids or applications to pre-qualify**

(1) Bids and applications to pre-qualify shall be submitted in writing, duly signed, before the end of the bidding period or, as the case may be, before the date stated in the invitation to pre-qualify as the date by which applications to pre-qualify must be submitted.

20 (2) Bids and applications to pre-qualify may be submitted to the procuring entity by hand or by post or by courier, at the option of the bidder:

Provided that, subject to any e-procurement policy laid down by the Authority, a procuring entity in its bidding documents may authorise other methods of submission of bids, such as by electronic mail, as long as the confidentiality and security of bids are assured.

25 (3) Where a bid or application to pre-qualify is received by the procuring entity after the deadline specified in subsection (1)—

- (a) if the bid or application is received in electronic form, the procuring entity shall not consider it;
- 30 (b) if the bid or application is received in hard copy, the procuring entity shall not open it but instead shall permit the bidder to collect it within thirty days after the deadline, following which the procuring entity may return it or destroy it unopened.

35 (4) Bids shall remain valid for the period indicated in the bidding documents, and if a bidder modifies or withdraws a bid while it is valid the bidder shall forfeit any bid security he or she may have provided in respect of the bid.

40 (5) The period of validity of a bid may be extended only during that period and with the agreement of the bidder concerned, and a bidder that agrees to extend the period shall be entitled to a corresponding extension of any bid security he or she may have provided.

44 Bid security

(1) Subject to subsection (2) and to any prescribed requirements or conditions, a procuring entity may require bidders to provide bid security in order to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids.

45 (2) A requirement for the provision of bid security—

- (a) shall be stated in the procurement documents; and
- (b) shall be imposed equally on all bidders.

45 Amendment or withdrawal of bid

- (1) A bidder may amend or withdraw his or her bid by submitting a notice of amendment or withdrawal to the procuring entity not later than the end of the bidding period.
- (2) A notice of amendment or withdrawal of a bid— 5
 - (a) shall comply with any directions that may be specified in the invitation to bid; and
 - (b) in the case of—
 - (i) a hard-copy bid, shall be submitted in an envelope identifying the invitation to bid and clearly labelled “Amendment of Bid or Proposal” or “Withdrawal of Bid or Proposal”, as the case may be; 10
 - (ii) a bid submitted as an electronic communication, shall comply with such requirements as may be prescribed or as the Authority may specify.

46 Opening of bids 15

- (1) At the end of the bidding period, or as soon as possible thereafter, a procuring entity shall, at the time and place specified in the bidding documents, open all the bids it has received.
- (2) The opening of bids shall be conducted in public and the procuring entity shall invite bidders or their representatives to witness it. 20
- (3) At the opening of bids, an employee or agent of the procuring entity shall read aloud and record the following particulars of each opened bid—
 - (a) the name of the bidder; and
 - (b) the total amount of the bid; and
 - (c) any discounts or alternatives offered by the bidder; and 25
 - (d) whether or not bid security has been given, where that is required; and
 - (e) any essential supporting documents.
- (4) Where bids have been received by electronic communication, the procedure to be followed at the opening of bids shall be as prescribed or as specified by the Authority. 30
- (5) A procuring entity shall ensure that a copy of the record is made available to any bidder that requests it.
- (6) No decision regarding the disqualification or rejection of any bid shall be taken or announced in the opening of bids.
- (7) Following opening of bids, and until a preliminary decision on awarding the procurement contract has been notified to the successful bidder, no bidder shall make any unsolicited communication to the procuring entity’s procurement management unit or try in any way to influence the procuring entity’s examination or evaluation of the bids. 35
- (8) Where a bidder contravenes subsection (7), his or her bid shall be rejected 40 by the procuring entity.

47 Examination of opened bids

Following the opening of bids, the procuring entity shall first determine whether the bidders meet the qualification criteria, if any, contained in the bidding documents and reject those that do not, and then shall examine the bids in order to determine whether the bids are complete and responsive: 45

Provided that bidders shall be deemed to have met the qualification criteria if any default of compliance therewith relates simply to the failure to submit company registration or incorporation documents, credentials or other historic documents that can be readily availed or accessed.

5 **48 Clarification of bids**

(1) Subject to this section, a procuring entity may seek clarification from a bidder of its bid, but the request and any response to it shall be made in writing.

(2) A request for clarification in terms of subsection (1) shall not seek, and the bidder shall not be permitted to—

- 10 (a) amend the bid price, except to correct arithmetical errors; or
(b) change the substance of the bid; or
(c) alter substantially anything that is a deciding factor in the evaluation of the bid.

15 (3) Any clarification received from a bidder which is not in response to a request in terms of subsection (1) shall not be taken into account in the evaluation of the bid.

(4) If a bidder fails to reply to a request for clarification in terms of subsection (1), the procuring entity may reject his or her bid.

49 Rejection of bids

(1) A procuring entity shall reject a bid if it finds that information submitted in the bid—

- 20 (a) is materially false or misleading; or
(b) is inaccurate or incomplete to an extent that makes it impossible to evaluate the bid.

(2) This section shall not be construed as limiting any other provision of this Act that requires or permits a procuring entity to reject a bid.

25 **50 Evaluation of bids**

(1) Having examined the opened bids in terms of section 47 and obtained any necessary clarification in terms of section 48, the procuring entity shall proceed to evaluate those that have not been rejected, in order to provide an equal basis for comparing them.

30 (2) The evaluated price for bids shall be determined by—

- (a) taking the bid prices, as read out when the bids were opened; and
(b) correcting any arithmetic errors, in accordance with section 51 and the methodology, if any, stated in the bidding documents; and
(c) making adjustments for any non-material non-conformity, error or
35 omission in accordance with section 51; and
(d) converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding documents; and
(e) applying any domestic preference in accordance with section 29 and any prescribed criteria or weighting.

40 (3) In addition to price, a procuring entity may, subject to subsection (4), evaluate bids according to such of the following criteria as are relevant—

- (a) costs of inland transport and insurance to the specified site;
(b) any payment schedule offered by the bidder;

- (c) the delivery time;
 - (d) operating costs, efficiency and compatibility of equipment that constitutes or forms part of the procurement requirement;
 - (e) availability of service and spare parts and related training;
 - (f) safety, environmental and social benefits; 5
 - (g) cost-effectiveness based on life-cycle;
 - (h) costing, including costs relating to acquisition, costs of use such as consumption of energy and other resources, maintenance costs, and end of life costs such as environmental rehabilitation, collection and recycling costs; 10
 - (i) any other criteria that may be prescribed.
- (4) Criteria referred to in subsection (3) that are to be used in the evaluation of bids shall whenever possible—
- (a) be quantified in monetary terms; or
 - (b) be expressed in the form of pass or fail requirements; 15
- and shall be set out in full in the procurement notice or in the bidding documents:
- Provided that, where it is not possible so to quantify or express those criteria, the procurement notice or the bidding documents shall either—
- (a) specify the relative weighting to be given to each of the criteria, expressed by providing for a range with an appropriate maximum spread; or 20
 - (b) specify the criteria in descending order of importance.

51 Correction of errors and omissions in bids

(1) Where a bid is substantially responsive, the procuring entity may waive, clarify or correct any non-conformity, error or omission in it which does not constitute a material deviation: 25

Provided that the procuring entity shall quantify the non-conformity, error or omission in monetary terms to the extent that this can be done in the bidding document.

(2) A procuring entity may correct purely arithmetical errors in bids in accordance with the procedure stated in the bidding document:

Provided that the procuring entity shall forthwith notify the bidder concerned of any such correction and request the bidder to agree to it in writing, and if the bidder does not do so without delay— 30

- (a) the procuring entity shall reject the bid; and
- (b) any bid security provided by the bidder may be forfeited.

52 Prohibition of negotiation regarding bids 35

(1) Subject to subsection (2), except in the case of direct procurement there shall be no negotiation between a procuring entity and a bidder with respect to a bid submitted by the bidder.

(2) If the price of the lowest evaluated responsive bid exceeds the budget for the procurement contract by an amount which cannot be met through an increase in the budget, the procuring entity may— 40

- (a) request new bids; or
- (b) negotiate with the lowest evaluated bidder to try to obtain a reduction of the contract price through reducing the scope of the procurement requirement: 45

Provided that in no case shall the reduction in scope affect the technical specifications required by the bidding documents.

53 Confidentiality

5 A procuring entity shall take all necessary steps to ensure that information relating
to—
 (a) the content of pre-qualification applications and bids; or
 (b) the examination, clarification, evaluation and comparison of bids;
is not disclosed to suppliers, contractors, service providers or consultants or to any
other person not officially involved in the examination, evaluation, comparison or
10 acceptance of bids.

54 Special Procurement Oversight Committee for certain especially sensitive or especially valuable contracts

(1) In this section—

15 “Accountant-General” means the person appointed as such in terms of section
9 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of
1999);

“especially sensitive”, in relation to a procurement contract or exempted
contract, means a contract of such a nature or description as may be
prescribed or as the Minister may indicate in writing to the Committee,
20 being one that has or may have a significant impact—

- (a) upon the national economy or the economic interests of the State;
or
- (b) in the sphere of—
 - (i) the State’s foreign or international relations, or
 - 25 (ii) the public interest, national defence or national security;

“especially valuable”, in relation to a procurement contract or exempted
contract, means a procurement contract whose threshold exceeds by a
prescribed margin any established prescribed threshold above which
certain procurement proceedings may be applied under this Act;

30 “exempted contract” means a contract in the nature of a procurement contract
involving the expenditure of public funds or the use of State resources
that is exempted from the scope of this Act by virtue of section 3(2), (3),
(6) or (7);

35 “Principal Director Public Works” means the person employed as such in the
Ministry responsible for public works;

“procurement contract by a joint venture” means a contract referred to in section
100 (5) (c);

“procurement record” means the record of procurement proceedings kept in
terms section 69;

40 “responsible officer”, in relation to the State party to an exempted contract,
means the accounting officer of the Ministry or entity as defined in Public
Finance Management Act [*Chapter 22:19*] (No. 11 of 1999) or other
person who is empowered to sign the contract on behalf of the State;

45 “Special Procurement Oversight Committee” or “Committee” means the
committee constituted in terms of subsection (2);

“scrutinise”, in relation to the scrutinising by the Committee of the proposed
award of—

- (a) a procurement contract, means to ensure—

- (i) that that all the processes, procedures and formalities required to be undertaken in terms of this Act in order to bring the procurement contract into being before its award have been substantially complied with and have not been omitted; and
 - (ii) conformity otherwise with the applicable provisions of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009) and any other enactment securing public and financial accountability; and 5
 - (iii) generally that the objectives of the Act in relation to public procurement as outlined in section 4(1) have, to the fullest possible extent, been given effect to with reference to the proposed award; 10
 - (b) an exempted contract, means to ensure—
 - (i) that the objectives of the Act in relation to public procurement as outlined in section 4(1) have, to such extent as may be applicable to the exempted contract in question, been given effect to with reference to the proposed award; and 15
 - (ii) conformity otherwise with the applicable provisions of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009) and any other enactment securing public and financial accountability; 20
 - (c) a procurement contract by a joint venture, means to ensure—
 - (i) that the proposed award complies with the criteria set forth in section 100 (5)(c); and
 - (ii) conformity otherwise with the applicable provisions of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009) and any other enactment securing public and financial accountability. 25
- (2) For the purposes of scrutinising especially sensitive or especially valuable procurement contracts and exempted contracts, there is hereby constituted an Special Procurement Oversight Committee, which shall report to the Minister and the Authority, and which shall consist of— 30
- (a) the Attorney-General (who shall be the Chairperson of the Committee), or his or her authorised delegate employed in the Attorney-General’s Office whose seniority shall be that of a Director or above in the Civil Service’s ranking of grades; and 35
 - (b) the Auditor-General, or his or her authorised delegate employed in the Audit Office whose seniority shall be that of a Director or above in the Civil Service’s ranking of grades; and
 - (c) the Accountant-General, General (who shall be the deputy chairperson of the Committee and shall act as chairperson whenever the Attorney-General is represented in the committee by his or her delegate), or his or her authorised delegate employed in his her department whose seniority shall be that of a Director or above in the Civil Service’s ranking of grades; and 40
 - (d) the Principal Director Public Works, or his or her authorised delegate employed in his her department whose seniority shall be that of a Director or above in the Civil Service’s ranking of grades. 45
- (3) The Chief Executive Officer shall provide secretarial services to the Committee and, at the invitation of the Chairperson of the Committee, the Chief Executive Officer shall attend any meeting of the Committee. 50

(4) Within the time referred to in subsection (5)—

(a) the Minister may—

- (i) on his or her own initiative or on the advice of the Accountant-General, in relation to any procurement contract or procurement contract by a joint venture that the Minister or the Accountant-General deems to be especially sensitive or especially valuable despite no prescription being made to that effect governing the contract in question;
- (ii) in relation to any exempted contract that the Minister deems to be especially sensitive or especially valuable;

(b) the Accountant-General shall, in relation to any procurement contract or procurement contract by a joint venture whose value or subject-matter falls within the meaning of “especially sensitive” or “especially valuable” as prescribed;

convene on not less than forty-eight hours’ written notice to the members of the Committee a meeting of the Committee to scrutinise the proposed contract award at a time and place specified by the Minister or the Accountant-General in his or her notice.

(5) A meeting of the Committee must be convened, in the case of—

- (a) an especially sensitive or especially valuable procurement contract, as soon as possible after the evaluation of the bids in terms of section 54(1) or 59(12), and in any event before the notification of the successful bidder; or
- (b) an exempted contract or procurement contract by a joint venture that is deemed to be especially sensitive or especially valuable, at any time before the acceptance of the contract terms is communicated to contractor.

(6) For the purpose of scrutinising—

- (a) procurement proceedings for a contract that is or is deemed to be especially sensitive or especially valuable, the Chief Executive Officer shall avail to the Committee in advance—
 - (i) the procurement record relating to those proceedings; and
 - (ii) such other documents or information as the Chairperson may reasonably require for the purposes of the scrutiny;
- (b) an exempted contract or procurement contract by a joint venture that is or is deemed to be especially sensitive or especially valuable, the responsible officer shall avail to the Committee in advance such documents or information as the Chairperson may reasonably require for the purposes of the scrutiny.

(7) Any refusal on the part of any person to co-operate, to the best of his or her ability, with the Committee’s request in terms of subsection (6)(a)(ii) or (b), whether communicated directly by the Chairperson of the Committee or through the Chief Executive Officer, is deemed to be an offence referred to in section 96(4) as if for the word “investigator” the word “Committee” is substituted therefor.

(8) Subject to subsection (9), all questions or matters which are required to be decided by the Committee shall be decided by a majority of the members thereof:

Provided that, where the opinions of the members are equally divided on any question or matter, the decision of the Chairperson or member acting as the Chairperson shall be the decision of the Committee.

(9) Any matter of law arising for decision by the Committee and any question as to whether a matter for decision is a matter of fact or a matter of law shall be decided by the Attorney-General or his or her delegate.

- (10) The Committee has the following powers—
- (a) to adjourn and reconvene its meetings to enable it to complete the scrutiny of any proposed award of a procurement contract:
 - Provided that the Committee must endeavour to complete its review in a single sitting, failing which it must complete its review by the third sitting; 5
 - (b) to invite any person to attend a meeting of the Committee, where the Committee considers that the person has special knowledge or experience in any matter being considered by the Committee;
 - (c) in relation to the award of a proposed procurement contract that is or is deemed to be especially sensitive or especially valuable— 10
 - (i) to certify to the best of its knowledge and ability that the proposed award withstands scrutiny, and to recommend that the procurement contract be awarded; or
 - (ii) with respect to defective procurement proceedings— 15
 - A. to refer any matter back to the procuring entity for corrective action to be taken; or
 - B. to cancel the procurement proceedings and order that they be recommenced;
 or 20
 - (iii) to order the Authority to initiate an investigation in terms of Part XIII, whether or not concurrently with any other action the Committee may order under subparagraph (ii); or
 - (d) to recommend to the Minister the acceptance (unconditionally or subject to such conditions as the Committee may specify) of any proposed exempted contract or procurement contract by a joint venture that withstands scrutiny, or the rejection of any proposed exempted contract or procurement contract by a joint venture for failure to withstand scrutiny; 25
 - (e) to deem any proposed contract to be rejected because not enough information or documentation in relation to the proposal was availed to the Committee to enable it to properly scrutinise it (in which event the Minister or the Accountant-General, as the case may be, may resubmit the proposal to the Committee within the period of validity of the bid concerned). 30
- (11) The Committee shall incur no liability towards bidders or other persons for action taken by it in good faith in terms of this section. 35

55 Contract award

- (1) Having evaluated the bids, a procuring entity shall award the procurement contract to the bidder that—
- (a) submitted the lowest bid which meets the price and non-price criteria specified in the bidding documents; or 40
 - (b) offers the most economically advantageous tender.
- (2) Before the expiry of the period of bid validity, the procuring entity shall notify—
- (a) the successful bidder of the proposed award and of the time within which the contract must be signed, subject to any intervening challenge filed in accordance with Part X; and 45
 - (b) the other bidders of the name and address of the proposed successful bidder and the price of the contract;
- and the contract shall not be signed until at least fourteen days have passed following the giving of that notice. 50

(3) If the successful bidder fails to sign a written contract when required to do so or fails to provide, when required, any performance security before the time stated in the bidding documents for the signing of the contract, the procuring entity shall accept the next ranked bidder from among the remaining bids that have not been rejected, and shall thereupon comply with subsection (2) in relation to that bid:

Provided that the procedure set out in this subsection may be applied only to the next two ranked bidders after the original successful bidder, and only to the extent that the bids can be economically justified.

(4) Procurement contracts shall be signed by the procuring entity's accounting officer or a person delegated by him or her.

56 Performance security

In such cases as may be prescribed, a procuring entity may require the successful bidder, before signing the procurement contract, to provide a performance security:

Provided that any such requirement shall be stated in the bidding documents and the procurement contract.

PART VIII

Procurement of Consultancy Services

57 Interpretation in and application of Part VIII

(1) In this Part—
“community service organisation” means a non-profit non-governmental organisation concerned with local issues and community needs;
“financial bid” means a bid, or that part of a bid, which sets out the price to be charged by a firm for the service to be provided under the bid;
“firm” means a person or association of persons providing consultancy services;
“technical bid” means a bid, or that part of a bid, which sets out the nature of the service to be provided under the bid and the manner in which it is to be provided.

(2) This Part shall apply to the procurement of consultancy services.

58 Request for proposals method

(1) For the procurement of consultancy services, procuring entities shall employ the request for proposals method described in this section.

(2) Subject to subsection (3), a procuring entity shall, as part of its pre-qualification procedures, prepare a short-list of not fewer than three and not more than six firms which, so far as the procuring entity can ascertain—

(a) are of the same category and similar capacity and business objectives;
and

(b) have the capacity to perform the required services;
and shall provide those firms with the request for proposals for services.

(3) For the purpose of preparing the short-list referred to in subsection (2)—

(a) where the estimated value of the procurement exceeds the prescribed threshold, the procuring entity shall seek expressions of interest by publishing a notice in an appropriate publication such as a local or international newspaper of wide circulation or on the Internet, or in a relevant trade publication or technical or professional journal;

- (b) where the estimated value of the procurement is less than the prescribed threshold, the procuring entity may prepare the short-list from market knowledge or other sources of information:

Provided that in such cases as may be prescribed or when so directed by the Authority, the procuring entity shall also advertise the procurement in the prescribed manner. 5

(4) The request for proposals for services shall provide short-listed bidders with all the information they need to enable them to participate in the procurement proceedings and submit responsive bids, and in particular shall contain the following information— 10

- (a) the name and address of the procuring entity; and
- (b) the nature, time-frame and location of the services to be provided; and
- (c) the consultant’s terms of reference, that is to say his or her duties and the manner in which he or she is to provide the services; and
- (d) criteria to be used in evaluating and comparing bids, and their relative weights as compared to price; and 15
- (e) the terms of the procurement contract, and the manner in which it will enter into force; and
- (f) instructions for the preparation and submission of bids, and the deadline for their submission; and 20
- (g) the procedure for the final selection of bids; and
- (h) notice of any rules, restrictions or precautions against conflicts of interest, fraud or corruption, including potential debarring of persons who contravene those rules, restrictions or precautions from participating in future procurements; and 25
- (i) any other information that may be prescribed or stated in standard bidding documents issued by the Authority.

59 Methods of soliciting, evaluating and selecting bids

Under the request for proposals method of procurement, the procuring entity shall solicit and evaluate bids and select the successful bid in the following ways— 30

- (a) whenever practicable and appropriate, by the quality and cost based selection method, set out in section 60; or
- (b) where the service sought is simple and precisely defined and the budget is fixed, by the selection under fixed budget method set out in section 61; or 35
- (c) where the service sought is of a standard or routine nature and well-established practices and standards exist, and in which the cost is small, by the least-cost selection method set out in section 62; or
- (d) where the service sought is of a highly technical nature, by the quality-based selection method set out in section 63; or 40
- (e) where involvement and knowledge of community needs, local issues and community participation are important in the preparation, implementation and operation of a community development project, by the selection amongst community service organisations method set out in section 64; or 45
- (f) in exceptional cases, such as—
 - (i) for services that continue a previous completed assignment; or
 - (ii) for very small assignments; or

- (iii) when only one consultant is qualified or has experience of exceptional worth for the assignment; or
- (iv) where, owing to a catastrophic event, there is an urgent need for the service sought;
- 5 by the single-source selection method set out in section 65; or
- (g) where—
 - (i) the qualification and experience of the consultant are the paramount requirement; and
 - (ii) teams of personnel are not required; and
 - 10 (iii) no outside professional support is required;by the selection of individual consultant method set out in section 66.

60 Quality and cost based selection method

(1) The quality and cost based selection method entails a competitive process among short-listed firms that takes into account the quality of their bids and the price of the services they offer, the relative weight given to quality and price being determined for each case according to the nature of the service sought by the procuring entity.

- (2) In the quality and cost based selection method—
- (a) bidders shall submit their technical bids and their financial bids in separate sealed envelopes; and
 - 20 (b) the technical bids shall be evaluated first as to the quality of the services offered, and then the financial bids as to the price of the services, the persons who evaluate the technical bids not being permitted to see the financial bids until the qualitative evaluation is completed.

- (3) In evaluating the technical bids for the purposes of subsection (2), the procuring entity shall take into account, in relation to each bid—
- 25 (a) the consultant's relevant experience for the assignment; and
 - (b) the manner in which the service is proposed to be provided, including any transfer of knowledge if that is specified in the terms of reference in the request for proposals; and
 - 30 (c) the qualifications of the key personnel who will provide the services; and
 - (d) such other criteria as may be prescribed;

the bid being marked according to each criterion on a scale of one to one hundred and the marks being weighted to become quality scores.

(4) The criteria to be used in evaluating technical bids, and the weight to be given to each criterion shall be set out in the request for proposals.

(5) Where upon evaluation in terms of subsection (3) a technical bid is found not to meet important aspects of the terms of reference set out in the request for proposals, or fails to achieve a minimum quality score specified in the request for proposals, the bid shall be rejected, whereupon the procuring entity shall notify the firm that submitted the bid that it has been rejected and invite the firm to collect the financial bid within thirty days, after which the procuring entity may destroy it.

(6) Immediately after evaluating the technical bids in terms of subsection (3), the procuring entity shall notify the firms that have achieved the minimum qualifying score of the date, time and place set for opening their financial bids, which date shall be fixed to allow sufficient time for the firms to attend.

(7) The financial bids shall be opened publicly in the presence of representatives of the firms that choose to attend, and when each financial bid is opened the name of the firm, the quality score achieved by the bid, and the proposed price of the service, as stated in the financial bid, shall be read aloud and recorded.

- (8) In considering financial bids, the procuring entity shall—
- (a) correct any arithmetical errors in them; and
 - (b) convert the prices to a single currency as stated in the request for proposals.
- (9) In the evaluation of financial bids—
- (a) the bid with the lowest price may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices; or 5
 - (b) a directly proportional or other method may be used in allocating the marks for the price:
- Provided that, whichever method is used it shall be described in the request for proposals. 10
- (10) The total score to be awarded to a bid under this section shall be obtained by weighting the quality and financial scores achieved by the technical bid and the financial bid respectively and adding those scores.
- (11) The relative weights to be given to the technical and financial scores under subsection (10) shall be specified in the request for proposals and may vary according to the complexity of the service to be provided and the relative importance of quality, but the financial score shall normally account for twenty *per centum* of the total score. 15
- (12) After ascertaining the total scores to be awarded to bids under this section, the procuring entity shall without delay invite the bidder obtaining the highest total score to enter into negotiations regarding— 20
- (a) the terms of reference of the consultant; and
 - (b) the manner in which the consultant is to provide the service; and
 - (c) personnel needed to provide the service; and
 - (d) any service or facility to be provided by the procuring entity; and 25
 - (e) special terms and conditions of the procurement contract; and
 - (f) any other matters that may be prescribed or that the procuring entity and the bidder may consider necessary to discuss:
- Provided that the negotiations shall not result in any substantial alteration in the terms of reference or the terms of the procurement contract, and the price of the service shall not be negotiated. 30
- (13) If negotiations under subsection (12) fail to result in an acceptable procurement contract, the procuring entity shall—
- (a) terminate the negotiations, informing the firm concerned in writing of the reasons for termination; and 35
 - (b) invite the next ranked firm for negotiations in accordance with that subsection, and after such invitation the procuring entity shall not reopen the earlier negotiations.
- (14) After negotiations in terms of subsection (12) or, as the case may be, subsection (13) have been successfully completed, the procuring entity shall promptly notify other firms on the short-list that they were unsuccessful, and shall not sign a procurement contract with the successful firm until at least fourteen days have elapsed following the giving of that notice. 40
- 61 Selection under fixed budget method**
- (1) The selection under fixed budget method entails a process whereby the procuring entity evaluates the bids submitted by short-listed bidders— 45

- (a) first according to the quality of the services they offer, disregarding the price at which they offer them; and
- (b) then according to the price at which the bidders offer their services, rejecting all the bids that exceed the proposed budget; and
- 5 (c) then selecting from the remaining bids the one whose quality of service ranks highest.

(2) When employing the selection under fixed budget method, the procuring entity shall indicate in its request for proposals the available budget and request the firms to provide their technical and financial proposals in separate envelopes, within
10 the budget.

(3) evaluation of the quality of all technical bids submitted shall be carried out in accordance with the quality and cost based selection method set out in section 60, then the financial bids shall be opened in public and read out as provided in that section, and the procuring entity shall reject any bids that exceed the budget stated in
15 its request for proposals.

(4) The procuring entity shall select from the remaining bidders the technical bid that achieved the highest quality score and shall invite the bidder to negotiate a procurement contract.

(5) Subject to subsections (1) to (4), section 60 (“quality and cost based selection method”) shall apply, with any necessary modifications, to the evaluation and selection of bids under the fixed budget method.
20

62 Least-cost selection method

(1) The least-cost selection method entails a process whereby the procuring entity establishes minimum standards for the quality of service required, and—
25

- (a) the bids which offer less than those minimum standards are rejected; and
- (b) of the remaining bids the one offering to provide the service at the lowest price is accepted, so the bidders compete only on price.

(2) When employing the least-cost selection method, the procuring entity shall specify the minimum qualifying standards in its request for proposals and request
30 bidders to provide their technical bids and their financial bids in separate envelopes.

(3) Opening and evaluation of the quality of all technical bids submitted shall be carried out first, and those that fail to meet the minimum qualifying standards shall be rejected.

(4) Following evaluation of the technical bids in terms of subsection (3), the financial bids of the remaining bidders shall be opened and the procuring entity shall
35 select the bidder offering to provide the service sought at the lowest price, and shall invite the bidder to negotiate a procurement contract.

(5) Subject to subsections (1) to (4), section 60 (“quality and cost based selection method”) shall apply, with any necessary modifications, to the evaluation and selection of bids under the least-cost selection method.
40

63 Quality-based selection method

The quality-based selection method entails a process whereby the procuring entity establishes the best technical offer regardless of cost, subject however to the procuring entity engaging in negotiations around the issue of cost to achieve value for money.

64 Selection amongst community service organisations method

(1) The selection amongst community service organisations method entails a process whereby all or most of the firms on the procuring entity’s short-list consists of community service organisations because the service sought requires local participation and knowledge of local issues and community needs. 5

(2) Under the selection amongst community service organisations method, technical bids submitted shall be evaluated using criteria reflecting the unique qualifications of community service organisations, such as voluntarism, non-profit status, local knowledge, scale of operation, and reputation.

(3) Subject to subsections (1) and (2), section 60 (“quality and cost based selection method”) shall apply, with any necessary modifications, to the evaluation and selection of bids under the selection amongst community service organisations method. 10

65 Single-source selection method

(1) The single-source selection method entails a process whereby the procuring entity, without inviting competitive bids, selects a firm to provide a service even though other firms are available to provide the service. 15

(2) Under the single-source selection method, the procuring entity shall—

(a) prepare written terms of reference, and request from prospective firms information regarding their qualifications, experience and competence; and 20

(b) draw up a short-list of prospective firms; and

(c) from the short-list, select the firm that the procuring entity considers has the most appropriate qualifications, experience and competence; and

(d) invite the selected firm to submit a combined technical and financial bid; and 25

(e) if the bid submitted by the selected firm is responsive and otherwise satisfactory, negotiate a procurement contract with that firm.

66 Selection of individual consultant method

(1) The selection of individual consultant method entails a process whereby the procuring entity, without inviting competitive bids, selects an individual person, rather than a firm that is an organisation or association, to provide a service even though other persons are available to provide the service. 30

(2) The procedure to be followed by a procuring entity when employing the selection of individual consultant method shall be the same as that for the single-source selection method set out in section 64. 35

PART IX

Transparency and Integrity

67 Information to be given to rejected bidders

(1) A procuring entity shall upon request, inform a bidder, promptly and in writing, of the reason for the rejection of the bidder’s application to pre-qualify, or of the bidder’s bid or quotation. 40

(2) Where a rejected bidder requests information during the fourteen-day period referred to in section 55(2) or 60(14), that period shall be extended until the information has been provided. 45

(3) In responding to a request for information by a rejected bidder, the procuring entity shall—

- (a) inform the bidder of the stage at which the bidder's application, bid or quotation was rejected; and
 - 5 (b) provide brief details of any material deviation, reservation or omission leading to the rejection; and
 - (c) where appropriate, state that although the bid or quotation was substantially responsive, it failed to offer the best value for money or lowest price or failed to achieve the highest score;
- 10 but the procuring entity shall not provide details of any other bids, proposals or quotations other than information that is publicly available from bid openings or published notices.

68 Notification of contract award

15 Within one month after awarding a procurement contract, a procuring entity shall—

- (a) publish a notice of the award in the same manner as it published the procurement notice; and
- (b) send a copy of the notice to the Authority for publication on the Authority's website.

69 Records of procurement proceedings

(1) A procuring entity shall keep a separate record for each procurement, (the "procurement record") which shall be marked with a reference number for easy identification.

25 (2) The procurement record shall contain accurate copies of all documents and communications related to the procurement concerned and shall include at least the following—

- (a) a description of the procurement requirement; and
- (b) a list of the participating bidders and their qualifications; and
- (c) any requests for clarifications and any responses thereto; and
- 30 (d) where applicable, a statement of the reason for choosing a procurement method other than competitive bidding or request for proposals; and
- (e) the bid prices; and
- (f) a summary of the evaluation of bids; and
- (g) a summary of any review proceedings, and the resulting decisions; and
- 35 (h) such other information as may be prescribed.

(3) The procuring entity shall, on request made at any time after a bid has been accepted in the procurement proceedings concerned, permit any person to inspect the procurement record and to make copies of any documents in the record:

Provided that—

- 40 (i) this subsection shall not preclude earlier disclosure of the record, where such disclosure is required by law or by order of a court or an arbitrator;
- (ii) such disclosure shall be made in such a way as to preserve the confidentiality of proprietary commercial information.

45 (4) A procuring entity shall preserve the procurement record for at least six years following completion or termination of the procurement contract or cancellation of the procurement proceedings.

(5) Procuring entities shall provide the Authority with summaries of their procurement proceedings at such times and in such form as the Authority may require.

(6) The Authority establish an electronic system for the purpose of this section. and specify the conditions under which access to electronic data in the system is open.

70 Conduct of procurement officers 5

(1) In this section—

“procurement officer” means an officer, employee or agent of a procuring entity who is responsible for any aspect of the entity’s procurement, including the implementation of procurement contracts.

(2) Every procurement officer shall, in the exercise of his or her responsibilities as such— 10

(a) ensure that each decision is based on adequate information to the extent that it is available, and is made in good faith, for a proper purpose in accordance with this Act, and in the best interest of the procuring entity; and 15

(b) ensure fair competitive access by bidders to procurement proceedings, including the award of procurement contracts; and

(c) avoid any conflict of interest; and

(d) act with the utmost propriety and honesty; and

(e) not reveal confidential information, including bidders’ proprietary information; and 20

(f) abide by the code of conduct referred to in section 71; and

(g) comply with any other provision of this Act that is applicable to him or her as a procurement officer.

(3) Before a procurement officer enters upon his or her office as such, he or she shall, in writing, undertake to— 25

(a) faithfully exercise the functions assigned to him or her as a procurement officer; and

(b) abide by rules of conduct provided for by or under this Act, including the code of conduct referred to in section 71. 30

(4) A procurement officer who—

(a) contravenes subsection (2) or, within forty-eight hours of being requested to do so in writing by his or her superior, fails to comply with subsection (3); or

(b) breaches an undertaking given in terms of subsection (3); 35

shall be guilty of—

(i) misconduct under Part V of the Public Service Act [*Chapter 16:04*], where he or she is a civil servant; or

(ii) a military offence for the purposes of the Defence Act [*Chapter 11:02*], where he or she is a member of the Defence Forces; or 40

(iii) omitting or neglecting to perform a duty, or performing a duty in an improper manner, as provided in paragraph 34 of the First Schedule to the Police Act [*Chapter 11:10*], where he or she is a police officer; or

(iv) a breach of discipline for the purposes of the Prisons Act [*Chapter 7:11*], where he or she is a prison officer; or 45

(v) a breach of his or her terms and conditions of employment for the purpose of the Labour Act [*Chapter 28:01*], in any other case;

and the procurement officer shall be liable to disciplinary action and any other sanction or punishment accordingly.

(5) Where a contravention or breach referred to in subsection (4) amounts to an offence under any law, the procuring entity shall report it to the police for prosecution.

5 **71 Code of conduct for procurement officers**

(1) Regulations in terms of section 101 shall provide for a code of conduct for officers and employees of procuring entities, in so far as they are responsible for any aspect of the entities' procurement, including the implementation of procurement contracts.

10 (2) The code of conduct shall provide for all matters relating to the conduct of the officers and employees concerned, in so far as they are engaged in procurement, including—

- (a) the qualifications and training of such officers and employees; and
- (b) the prevention of conflicts of interest in procurement; and
- 15 (c) the prohibition of collusion with any bidder involved in a competitive bidding process; and
- (d) declarations of interest in particular procurements.

(3) The Authority shall ensure that the code of conduct is promptly made readily accessible to the public and is systematically up-dated to conform with evolving best practices in procurement.

20

72 Conduct of bidders and contractors

(1) Bidders and contractors shall at all times abide by their obligations under this Act and, where applicable, their procurement contracts.

25 (2) Bidders shall not collude with each other, before or after they submit their bids, in order to—

- (a) allocate procuring entities among bidders; or
- (b) establish bid prices at artificial non-competitive levels; or
- (c) in any other way, deprive a procuring entity of the benefits of free and open competition.

30 (3) Where a procuring entity ascertains that a bidder or potential bidder—

- (a) has contravened subsection (1) or (2); or
- (b) has been convicted of an offence involving—
 - (i) dishonesty, corruption, obstruction of justice or a lack of honesty or business integrity; or
 - 35 (ii) anti-competitive practices, whether or not involving collusion;or
- (c) has neglected or failed without good cause to carry out a material provision of a contract, with the result that the other contracting party terminated the contract and additionally, or alternatively, became entitled to liquidated damages or some other contractual remedy; or
- 40 (d) has been guilty of unethical conduct in relation to any procurement, including—
 - (i) offering or making a payment or offer of employment, or offering or giving a gratuity or other reward, in order to influence a decision;
 - 45 or

- (ii) offering to pay or paying a bribe, whether in the form of a payment, gratuity, offer of employment or otherwise; or
 - (iii) knowingly soliciting or obtaining confidential information, or attempting to obtain confidential information, for the purpose of obtaining an advantage over other bidders or potential bidders; 5
- the procuring entity may reject the bidder’s bid or refuse to consider any bid he or she may submit.
- (4) Whenever a procuring entity proposes to reject or refuse to consider a bid in terms of subsection (3), the procuring entity shall inform the bidder of the reasons for the proposed rejection or refusal and afford the bidder a reasonable opportunity to make representations in the matter. 10
- (5) Where the conduct of a bidder or potential bidder referred to in subsection (3) amounts to an offence under any law, the procuring entity shall report it to the police for prosecution. 15
- (6) Regulations in terms of section 101 may provide for debarring persons from participating in future procurements where they have been guilty of conduct referred to in subsection (3). 15

PART X Challenge

Proceedings

73 Challenge to procurement proceedings 20

(1) A potential or actual bidder in procurement proceedings who claims to have suffered, or to be likely to suffer, loss or injury due to a breach of a duty imposed on a procuring entity by or under this Act, may challenge the procurement proceedings by lodging a written notice with the procuring entity in accordance with this section.

(2) Where notice of the award of a contract has not yet been issued, a challenge may be lodged at any stage of the procurement proceedings up to the date on which such notice is issued: 25

Provided that, where the grounds of a challenge concern alleged improprieties in the invitations to bid or to pre-qualify which have become apparent before bids were opened, the challenge shall be lodged prior to bid opening. 30

(3) Where notice of the award of a contract has been issued, a challenge may be lodged only within the fourteen-day period referred to in section 55(2) or 60(14).

(4) A challenge shall not be entertained unless—

- (a) in the written notice the bidder has identified the specific act or omission alleged to constitute a breach of duty on the part of the procuring entity; and 35
- (b) when lodging the written notice, the bidder deposits with the procuring entity a sum of money in the prescribed amount by way of security for costs.

(5) If the procuring entity concedes that it breached a duty as alleged in the challenge, it shall within five days— 40

- (a) notify the bidder concerned and the Authority of its concession; and
- (b) take whatever steps it considers necessary, or as the Authority may direct, to rectify the breach.

74 Application for review of procurement proceedings by review panel 45

(1) Where—

- (a) a procuring entity has not conceded that it breached a duty as alleged in a challenge; or
- (b) the bidder that lodged the challenge is dissatisfied with any steps taken or to be taken in terms of section 73(5)(b) to rectify the breach alleged in a challenge;
- 5 the bidder may within five days after lodging the challenge apply in writing to the Authority for the procurement proceedings concerned to be reviewed by a review panel.
- (2) An application shall be made in writing, setting out—
- (a) the grounds of the challenge, as stated in the written notice lodged with the procuring entity in terms of section 73(1); and
- 10 (b) whether the procuring entity has notified the bidder of any steps it has or proposes to take to rectify the breach alleged in the challenge, and if it has done so, the reasons why the bidder is dissatisfied with them.
- (3) Within seven days after receiving an application under subsection (1), the Authority shall appoint a review panel to hear the challenge and shall fix a date for the hearing.
- 15 (4) The making of an application to the Authority within the five-day period specified in subsection (1), shall suspend the challenged procurement proceedings until—
- 20 (a) the review panel determines the challenge; or
- (b) the review panel cancels the suspension in terms of section 76(7).

75 Appointment of review panels

- (1) Review panels shall be appointed from one or more lists of panellists prepared by the Authority in terms of this section.
- 25 (2) The Authority shall select persons for inclusion on a list of panellists by—
- (a) requesting—
- (i) the Law Society of Zimbabwe; and
- (ii) the Civil Service Commission; and
- 30 (iii) organisations representing professional associations or bodies or commercial and industrial entities; and
- (iv) other organisations which, in the opinion of the Board, have or represent persons who have expertise in fields relating to procurement;
- to nominate persons for inclusion on the list; and
- 35 (b) publishing advertisements in newspapers circulating in Zimbabwe, calling on persons to apply for inclusion on the list;
- and selecting from the nominees and the persons who respond to the advertisements panellists who—
- (i) are or have been registered legal practitioners; or
- 40 (ii) have been senior officers in the Civil Service with experience in procurement; or
- (iii) have qualifications or experience in fields relating to procurement.
- (3) The Authority shall keep the lists of panellists at its offices available for inspection by members of the public, free of charge, during normal office hours.
- 45 (4) A review panel for any challenge shall consist of at least three members appointed by the Authority from a list of panellists, of whom—

- (a) one shall be a registered legal practitioner or former legal practitioner or a member or former member of the judiciary; and
- (b) one shall be a former member of the Civil Service with experience in procurement; and
- (c) one shall be a person nominated by an organisation referred to in subsection (2)(a). 5

(5) The terms and conditions of service for members of a review panel shall be as prescribed.

76 Review by review panel

(1) A review panel appointed to hear a challenge shall conduct such investigation and hearing as it considers appropriate and deliver its written decision in the matter, setting out its reasons for the decision, within fourteen days after the application for review of the procurement proceedings concerned was received by the Authority. 10

(2) The procedure to be adopted by a review panel shall be as prescribed or, in relation to any matter that is not prescribed, as may be fixed by the panel: 15

Provided that the panel shall afford the parties to the challenge an adequate opportunity to make representations in the matter and, generally, shall observe the rules commonly known as the rules of natural justice.

(3) The decision of a review panel shall be binding on the bidder that lodged the challenge and the procuring entity whose proceedings are the subject of the challenge. 20

(4) A review panel shall dismiss a challenge where—

- (a) the bidder that lodged the challenge has failed to comply with section 73(4); or
- (b) the statement of the grounds of the challenge is vague or embarrassing; or 25
- (c) the grounds of the challenge do not constitute a valid basis for a challenge; or
- (d) the bidder that lodged the challenge has failed to establish the grounds of the challenge;

and may order the bidder to compensate the procuring entity for any expense or loss it incurred as a result of the challenge. 30

(5) Where a review panel finds that a bidder that lodged a challenge has established valid grounds for the challenge, the panel may, as appropriate—

- (a) prohibit the procuring entity from reaching any decision or doing any thing in an unauthorised manner or from following incorrect procedure; or 35
- (b) annul in whole or in part any unauthorised act or decision of the procuring entity, other than an act or decision bringing the procurement contract into force; or
- (c) order the procuring entity to begin the procurement proceedings afresh; or 40
- (d) award damages to the bidder to compensate for any loss he or she has suffered.

(6) Where a review panel orders compensation to be paid to a procuring entity in terms of subsection (4) or damages to be paid to a bidder in terms of subsection (5), the procuring entity or the bidder, as the case may be, may register a copy of the panel's award, certified by the chairperson of the panel, with the clerk of the magistrates court for the province in which the panel conducted its hearing, whereupon the award may be enforced as if it were a judgment of a magistrate of that court. 45

(7) At any stage after a review panel has been appointed and before it delivers its decision, the panel may, upon the application of the procuring entity, cancel the automatic suspension of the procurement proceedings imposed by section 74(4), if the procuring entity satisfies the panel that continuation of the suspension would cause disproportionate harm to the public interest, to the procuring entity or to other suppliers and contractors.

77 Appeal to Administrative Court against decision of review panel

(1) A bidder or a procuring entity aggrieved by a decision of a review panel may appeal against the decision to the Administrative Court within twenty days after the panel's decision was notified to the party concerned.

(2) In an appeal the Administrative Court shall not set aside the decision of the review panel but may award fair and adequate compensation to the appellant for any patrimonial loss or damage the appellant may have suffered.

PART XI

Procurement Contracts

78 Procurement contract

(1) Where possible, a procurement contract shall be based on the appropriate model contract set out or referred to in standard bidding documents developed by the Authority.

(2) Subject to this Part, a procuring entity shall ensure that every procurement contract it enters into—

- (a) sets out the complete names and addresses of the parties to the contract; and
- (b) lists the contract documents by order of priority; and
- (c) states the specifications of the procurement requirement; and
- (d) states the quantity of the procurement requirement; and
- (e) states the price of the procurement requirement or how the price will be determined; and
- (f) states when the price will be paid and the method of payment; and
- (g) provides for the procuring entity's right to inspect the procurement requirement in order to ensure proper performance of the contract by the contractor; and
- (h) specifies the place and time of delivery or completion of the procurement requirement and any conditions relating to its delivery or completion; and
- (i) provides for delivery of the procurement requirement, including, where appropriate, transfer of title, risk of loss, insurance and the completion of import and export formalities, which provisions shall conform to international commercial terms published by bodies such as the International Chamber of Commerce; and
- (j) where applicable, provides for the nature and amount of securities to be provided by the parties; and
- (k) provides for the remedies of either of the parties in the event of breach by the other; and
- (l) provides for the responsibilities of the parties in the event of delay in performance, supervening impossibility of performance or other event affecting performance; and
- (m) provides for termination of the contract; and
- (n) contains provisions for dispute settlement; and
- (o) covers other necessary issues concerning the obligations of the parties and

clarifying the transaction, including price revision, warranties, contract modification, subcontracting, insurance obligations, and remedies for delay and non-performance.

79 Responsibility for contract management

A procuring entity shall be responsible for administering its procurement contracts and shall establish procedures for doing so and provide the necessary resources, human and material, for effective contract administration. 5

80 Approaches to pricing in procurement contract

(1) The price of the procurement requirement in a procurement contract shall be set— 10

- (a) on the basis of a unit price applied to the quantities actually delivered; or
- (b) on a lump-sum basis, applied to the whole or a part of the contract, irrespective of the actual quantity needed to be delivered; or
- (c) in any other way that may be prescribed or authorised in standard bidding documents, general conditions of contract, or other instruments issued by the Authority. 15

(2) No adjustment of the price of the procurement requirement shall be permitted unless it is provided for in the procurement contract: 20

Provided that in permitting such adjustment there must be no material deviation from the procurement requirements and the evaluation of the bid on the basis of which the contract was awarded. 20

(3) A procurement contract may include an incentive clause whereby an increased price is payable for improved delivery periods, improved quality, or cost reduction. 25

(4) Where the time for performance under a procurement contract extends beyond a prescribed period, the contract may provide for an adjustment in the price to take into account changes in economic circumstances.

(5) Where a procurement contract provides for an adjustment in the price, the contract shall stipulate clearly— 30

- (a) the conditions under which price adjustment will be permitted, which conditions may include increases or decreases in the cost of materials, labour, and energy; and
- (b) the formulae and indices to be referred to in order to determine whether a price adjustment is permissible and to identify the amount of the adjustment; and 35
- (c) the frequency with which price adjustments may be implemented; and
- (d) the procedures to be followed in order to effect a price adjustment.

(6) A procurement contract may provide that, when the application of price adjustment would modify the initial price by more than twenty *per centum* or would modify the balance owing under the contract by more than twenty *per centum*, the procuring entity may terminate the contract. 40

81 Variation of procurement contract

(1) Any variation of a procurement contract that exceeds the maximum variations allowed in the contract documents or necessitated by any law enacted after the award shall be effected by a modification of the contract signed by both parties. 45

(2) The parties to a procurement contract shall not agree to vary the contract if

the variation would result in a contract materially different from the original contract or would significantly alter the nature or scope of the contract.

(3) Where a procuring entity wishes to vary a procurement contract—

(a) in a manner referred to in subsection (2); or

5 (b) so as to increase the contract price to a greater extent than is prescribed or permitted by section 80 (“Approaches to pricing in procurement contract”);

the procuring entity shall either initiate fresh procurement proceedings or, where appropriate, embark on direct procurement in terms of section 33.

10 **82 Payment under procurement contract**

(1) Payments under a procurement contract shall be made within the time-limits set out in the contract, and the contract may provide for the payment of compensation for a failure to make the payments within those time-limits.

15 (2) A procurement contract may provide for the procuring entity to make progress payments based on progress in the fulfilment of the contract, and such payments may be—

(a) calculated as a percentage of the total performance due under the contract; or

20 (b) paid according to the achievement of performance milestones identified in the contract; or

(c) based on actual quantities delivered or completed; or

(d) paid or calculated on any other basis that may be prescribed.

25 (3) Progress payments shall not be made except upon presentation and acceptance of such documentation as is required under the procurement contract as evidence of the progress in performance.

(4) Where a procurement contract provides for the making of progress payments, the contract may provide that the procuring entity may withhold a percentage of the amounts due as retention money until performance of the procurement contract is completed.

30 (5) When necessary to enable effective implementation of the contract, a procurement contract may provide for the procuring entity to make advance payments of the price:

Provided that—

35 (i) the total amount of advance payment made under the procurement contract shall not exceed the prescribed percentage of the total contract price;

(ii) unless otherwise stipulated in the contract, an advance payment shall not be made unless the contractor furnishes an advance payment guarantee covering the amount of the advance payment and satisfies any other terms set out in the bidding documents.

40 (6) Where a procuring entity has made an advance payment under a procurement contract—

(a) the contractor, and any of its subcontractors, shall utilise materials, equipment and personnel that are the subject of the advance payment only for the work or services for which the advance payment was made;

45 (b) in the case of a contract for the construction of works, the contractor and any subcontractors shall commit the materials, equipment and personnel that are the subject of the advance payment exclusively to sites related to the works covered by the contract and for which the advance payment was made.

83 Subcontracting

(1) Unless the procurement contract provides otherwise, a contractor may subcontract part of its performance under the procurement contract, subject to the written approval of the procuring entity for each subcontract:

Provided that the contractor shall not subcontract the performance of all its obligations under the contract, nor shall the contractor assign the entire contract to a subcontractor. 5

(2) Any subcontracting shall not diminish or affect the contractor’s responsibility for fulfilling its obligations under a procurement contract.

84 Inspection of goods and construction works 10

(1) Where the procurement requirement consists of goods or construction works, a procurement contract shall give the procuring entity the right—

- (a) to inspect the procurement requirement before accepting it; and
- (b) at all reasonable times, to observe and inspect the manufacture of the goods or the progress of the construction work; 15

and the contract shall provide that any defects or omissions detected at such an inspection or observation shall be remedied at the contractor’s expense.

(2) A contractor shall, at its own expense, place at the procuring entity’s disposal any premises, facilities and personnel needed for inspections referred to in subsection (1). 20

(3) The contractor and the procuring entity shall each bear the expenses for the attendance of their respective representatives at inspections referred to in subsection (1).

(4) If a contractor has been permitted to employ the services of a subcontractor, it shall in its contract with the subcontractor reserve to the procuring entity the rights of inspection and observation referred to in this section. 25

- (5) A procuring entity may appoint—
 - (a) an inspection committee and additionally, or alternatively, an inspection agent to carry out inspections referred to in subsection (1); and
 - (b) a technical committee to inspect the procurement requirement and accept the performance under the contract. 30

85 After-sale service

Bidding documents and a procurement contract may oblige a contractor to provide workshops and spare parts for goods that require after-sale service, the duration of such obligation corresponding to the average operating life of the goods. 35

86 Insurance requirements

(1) Where in any procurement a successful bidder is required to obtain insurance, the requirement shall be stated in the bidding documents or the request for proposals, as the case may be, and in the procurement contract, indicating the amount and essential terms of the insurance cover that the successful bidder is required to obtain. 40

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

(3) Where a procurement contract contains a requirement referred to in

subsection (1) or (2), it shall reserve to the procuring entity the right to reject insurance coverage that does not comply with the requirements stated in the contract.

87 Remedies for breach of contract

5 A procurement contract shall provide the procuring entity with one or more lawful remedies in the event of breach of contract by the contractor, which remedies may include—

- (a) rejection of defective performance; and
- (b) prompt removal and replacement of defective goods, or repair or replacement of defective performance; and
- 10 (c) liquidated damages; and
- (d) termination of the contract and procurement of replacement performance, at the expense of the defaulting party.

88 Liquidated damages for delay

15 Where a procurement contract provides that the contractor is liable to pay an agreed percentage of the contract value for delay in the performance due under the contract, the provision shall specify—

- (a) the amount to be paid for each day, week or month of the delay; and
- (b) the maximum period of delay allowed before a contract can be terminated; and
- 20 (c) that the contractor is not relieved of its liability for performance under the contract by virtue of payment under the provision; and
- (d) that if the procuring entity terminates the contract for delay, the contractor will be liable for liquidated damages accruing until the procuring entity reasonably obtains delivery or performance of a similar procurement requirement from another contractor, and that those liquidated damages are in addition to liability for any extra costs of entering into a further procurement contract with that other contractor; and
- 25 (e) that the contractor will not be charged liquidated damages when the delay in delivery or performance is beyond the contractor's control and is not caused by fault or negligence on the part of the contractor.
- 30

89 Contract termination

The grounds stated in a procurement contract as justifying termination of the contract by the procuring entity may include—

- 35 (a) default on the part of the contractor in performance under the contract; and
- (b) the public interest; and
- (c) supervening impossibility of performance.

PART XII Disposal of
Public Assets

40 **90 Responsibility for disposal of public assets**

The accounting officer of a procuring entity shall be responsible for ensuring that the entity, in accordance with this Part, disposes of its public assets that are unserviceable, obsolete or surplus.

91 Disposal committee

- (1) A procuring entity shall establish a disposal committee for the purpose of recommending the best method of disposing of unserviceable, obsolete or surplus public assets.
- (2) The composition of a disposal committee, and its powers and procedures, shall be as prescribed. 5

92 Disposal procedure

- (1) An employee of a procuring entity who is in charge of any of the entity's public assets shall without delay report to the entity's disposal committee whenever such an asset under his or her charge becomes unserviceable, obsolete or surplus. 10
- (2) A disposal committee shall without delay consider any report in terms of subsection (1) and recommend to the procuring entity's accounting officer a method of disposing of the asset concerned, which method may include—
 - (a) transferring the asset to another procuring entity, with or without financial adjustment; and 15
 - (b) selling the asset by public tender or by public auction; and
 - (c) destroying, dumping or burying the asset; and
 - (d) trading in the asset for another one; and
 - (e) any other suitable method that may be prescribed or that the Authority may direct or recommend. 20
- (3) Within such period as may be prescribed after receiving recommendations of the disposal committee in terms of subsection (2), the accounting officer of the procuring entity shall notify the committee whether or not he or she accepts the recommendations, and if he or she—
 - (a) accepts them, the asset shall be disposed of in accordance with those recommendations; 25
 - (b) rejects them, he or she shall, when notifying the disposal committee of the rejection or as soon as possible thereafter—
 - (i) provide the committee with written reasons for the rejection; and
 - (ii) send the Authority a copy of the notice of rejection and the reasons for it; and 30
 - (iii) refer the matter back to the disposal committee for further consideration.
- (3) The Authority may issue written directions to procuring entities regarding the disposal of public assets that are unserviceable, obsolete or surplus. 35

93 Restriction on disposal of assets to employees, etc.

Except in such circumstances and subject to such conditions as may be prescribed, a procuring entity shall not dispose of an unserviceable, obsolete or surplus asset to any of its employees or to a member of its board or any of its committees.

94 Challenge to disposal of asset by procuring entity

Any person who is aggrieved by the disposal or proposed disposal of a public asset by a procuring entity may challenge the disposal or proposed disposal as if he or she were a bidder in procurement proceedings to acquire the asset concerned, and Part X, with any necessary changes, shall apply to the challenge accordingly. 40

PART XIII

Investigations by Authority

95 Interpretation in Part XIII

In this Part—

- 5 “investigator” means a person appointed in terms of section 96 to conduct an investigation under this Part.

96 Appointment of investigator by Authority

10 If the Authority considers that an investigation is necessary or desirable for the purpose of preventing, investigating or detecting a contravention of this Act or any other law, the Authority may appoint a person to investigate any matter related to the conduct of any procurement proceedings by a procuring entity or the conclusion or operation of any procurement contract.

97 Powers of investigator

15 (1) For the purpose of an investigation, an investigator shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, with any necessary changes, in relation to the investigation and to any person summoned to give or giving evidence at that investigation.

20 (2) In addition, an investigator may, for the purposes of an investigation—

- (a) at any time during normal office hours, without previous notice, enter any premises of the procuring entity concerned or of any bidder or contractor in the procurement proceedings concerned;
- (b) require any officer, employee or agent of the procuring entity, bidder or contractor referred to in paragraph (a) to produce any books, records, accounts or documents;
- 25 (c) search any premises referred to in paragraph (a) for any books, records, accounts or documents;
- (d) examine and make extracts from and copies of any books, records, accounts or documents of the procuring entity, bidder or contractor referred to in paragraph (a);
- 30 (e) remove any books, records, accounts or documents of the procuring entity, bidder or contractor referred to in paragraph (a), for so long as may be necessary for the purpose of examining them or making extracts from or copies of them;
- 35

Provided that the investigator shall give a full receipt for any such books, records, accounts or document so removed;

- (f) require any officer, employee or agent of the procuring entity, bidder or contractor referred to in paragraph (a)—
- 40 (i) to explain any entry in any books, records, accounts or documents;
- (ii) to provide the investigator with such information concerning the management or activities of the procuring entity, bidder or contractor as the investigator may reasonably require.

45 (3) The powers of entry and search conferred by subsection (2) shall not be exercised except with the consent of the procuring entity or supplier concerned or of the person in charge of the premises concerned, unless there are reasonable grounds for

believing that it is necessary to exercise those powers for the prevention, investigation or detection of an offence or for the obtaining of evidence relating to an offence.

(4) Any person who, without just cause, hinders or obstructs an investigator in the exercise of his or her functions under this Part shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment. 5

98 Procedure on completion of investigation

(1) On completion of an investigation in terms of this Part, an investigator shall—

- (a) forward a copy of his or her report thereon to the Authority; and 10
- (b) send a summary of his or her findings and recommendations to the procuring entity and to any contractor whose conduct was the subject of the investigation.

(2) If, after considering an investigator’s report the Authority is satisfied that there has been a contravention of this Act or any other law in relation to any procurement proceedings or procurement contract, the Authority may take such action as in its opinion is necessary to rectify the contravention, including— 15

- (a) annulment of the procurement proceedings;
- (b) cancellation of the procurement contract;
- (c) activation of any penalty clause in the procurement contract; 20
- (d) condonation of the contravention;
- (e) ratification of anything done in relation to the proceedings;
- (f) a declaration in terms of section 99 debarring the contractor from participating in any procurement proceedings;

and, notwithstanding any other law, the proceedings or contract concerned shall be annulled, cancelled or have effect, as the case may be, accordingly. 25

(3) Before taking any action in terms of subsection (2) which may adversely affect the rights or property of any person, the Authority shall afford that person an adequate opportunity to make representations in the matter.

PART XIV 30

General

99 Authority may declare person ineligible to be awarded procurement contract

- (1) Subject to this section, if the Authority is satisfied that—
- (a) a person who is or was a bidder has been convicted of an offence under this Act or the Prevention of Corruption Act [*Chapter 9:16*] in respect of any procurement proceedings; or 35
- (b) any procurement contract between a contractor and a procuring entity has been cancelled or otherwise terminated on account of fraud or persistent underperformance or non-performance of the contract on the part of the contractor; 40

the Authority may declare the bidder, former bidder or contractor, as the case may be, to be ineligible to participate in procurement proceedings with any procuring entity for such period as the Authority may specify, which period shall not exceed three years.

(2) Before making a declaration, the Authority shall notify the contractor or former contractor concerned that it is contemplating making the declaration and shall ensure that it is given an adequate opportunity to make representations in the matter. 45

(3) The Authority shall ensure that all procuring entities and the bidder, former bidder or contractor concerned are notified without delay of the terms of any declaration by the Authority.

5 (4) The Authority, on good cause shown, may at any time amend or revoke a declaration.

(5) During the period that a declaration is in effect, no tender or bid submitted by the bidder, former bidder or contractor concerned in any procurement proceedings shall be considered, and any procurement contract concluded between the bidder, former bidder or contractor and a procuring entity shall be void.

10 (6) This section shall not be construed as limiting any other provision of this Act or any other enactment under which a person may be declared ineligible to participate in procurement proceedings or to be awarded a procurement contract.

100 Application of Act to joint ventures

(1) In this section—
15 “contracting authority” and “counterparty” are as defined in the Joint Ventures Act;

“joint venture” means the entity resulting from a joint venture agreement (and if no such entity is formed, the parties to the agreement are deemed for the purposes of this section to constitute such an entity);

20 “Joint Ventures Act” means the Joint Ventures Act [*Chapter 22:22*] (No. 6 of 2015).

(2) This Act does not apply to procurement of or by joint ventures except to the extent herein specified.

25 (3) If the Cabinet, in terms of the Joint Ventures Act, directs a contracting authority to receive tenders for a joint venture project from one of two or more identified counterparties in accordance with the law relating to public procurement, then the contracting authority must adopt the restricted bidding method outlined in section 32 in relation to those counterparties as if they constituted the list of qualified bidders there referred to.

30 (4) If the Cabinet, in terms of the Joint Ventures Act, directs a contracting authority to receive tenders for a joint venture project from proposed counterparties in accordance with the law relating to public procurement, then the contracting authority must—

35 (a) treat the joint venture project as a procurement requirement of particularly high value or complexity as contemplated in section 31(3), and accordingly follow the pre-qualifying procedures prescribed in paragraph (b), (c) and (d) below;

(b) cause a notice inviting expressions of interest in the project from potential counterparties to be published in the *Gazette* and—

40 (i) in at least one national newspaper of wide enough circulation to reach sufficient bidders to ensure effective competition; or
(ii) to the extent it is feasible to do so, on the internet and on any website established by the Authority;

45 and may cause the notice to be broadcast over radio or television, so as to reach as many potential bidders as possible;

(c) shortlist three to five expressions of interest where the contracting authority receives more than three responses, in descending order of eligibility

according to the criteria set out in section 3(2)(a) of the Joint Ventures Act, namely—

- (i) affordability to the contracting authority; and
- (ii) value for money; and
- (iii) provision for the optimum transfer of technical, operational and financial risks to the counterparty; and 5
- (iv) competitiveness;
- (d) determine whether, in accordance with section 31, the bidding is to be held in one stage or two stages.

(5) If a joint venture comes into being after a counterparty has been chosen in accordance with subsection (3) or (4), that joint venture becomes the procuring entity in relation to any of its procurement requirements and, despite anything to the contrary in this Act, is empowered to obtain its procurement requirements on the following basis— 10

- (a) the joint venture shall select or invite potential contractors with which it may wish to enter into any procurement contract, in accordance with such guidelines as it may agree; and 15
- (b) the joint venture shall determine and set guidelines for obtaining the most competitive bids from the potential contractors it has selected, including negotiating with each contractor individually; and 20
- (c) subject to paragraph (d), in awarding a procurement contract the joint venture must, where the procurement contract involves the expenditure of public funds or the use of State resources, favour the contract that offers either or both of the following—
 - (i) the lowest tariff to State; 25
 - (ii) the largest payment to State;
 and
- (d) the joint venture as a procuring entity may contract directly with any potential contractor, or with any of the potential contractors it has selected— 30
 - (i) in the circumstances referred to in section 16 (“Savings”) of the Joint Venture Act, where the contractors have already been identified in the joint venture agreement; or
 - (ii) where the procurement requirement is a small project and the cost of competitive process would be prohibitively high given the level of expected returns; or 35
 - (iii) in any of the cases referred to in section 8(4) of the Joint Venture Act; or
 - (iv) where an urgent procurement requirement must be met in situations of emergency where speed of supply outweighs value for money. 40

(6) Section 54 applies to the proposed award of a procurement contract by a joint venture in terms of subsection (5)(c) that is or is deemed to be especially sensitive or especially valuable.

101 Regulations

(1) Subject to this section, the Minister, after consultation with the Minister responsible for finance and the Authority, may make regulations providing for all matters which by this Act are required or are permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed in order to carry out or give effect to this Act. 45

(2) Before enacting regulations the Minister shall cause a notice to be published in the *Gazette* and one or more newspapers circulating throughout Zimbabwe—

- (a) stating that it is intended to enact the regulations and setting out briefly the effect of them; and
- 5 (b) specifying places in Zimbabwe where copies of the proposed regulations may be inspected by the public at all reasonable times during ordinary business hours; and
- (c) inviting members of the public to submit representations regarding the proposed regulations to his or her Ministry within such period, being not
10 less than one month, as may be specified in the notice;

and the Minister shall ensure that copies of the proposed regulations are available for inspection at those places for at least one month.

- (3) The Minister shall pay due regard to any representations submitted by members of the public in response to a notice in terms of subsection (2) before he or
15 she enacts the regulations concerned.

102 Publication of legal documents

The Authority shall ensure that copies of—

- (a) this Act and any regulations made thereunder; and
- 20 (b) all directions and instructions that are issued by the Authority and have general application; and
- (c) all judicial decisions and administrative rulings that affect persons other than the immediate parties to the decisions or rulings, or that provide guidance to persons other than the immediate parties;

are kept available for public inspection at the offices of the Authority and are published
25 in such form as the Board considers will make them readily accessible to procuring entities and potential bidders.

103 Repeal of Cap. 22:14 and savings and transitional provisions

(1) In this section—

“fixed date” means the date fixed in terms of section 1(1) as the date of
30 commencement of this Act;

“repealed Act” means the Procurement Act [*Chapter 22:14*] (No. 2 of 1999);

“transitional period” means the period of two years immediately following the fixed date.

(2) Subject to this section, the Procurement Act [*Chapter 22:14*] (No. 2 of
35 1999) is repealed.

(3) Any property or asset and any obligation which, immediately before the fixed date, vested in or, as the case may be, had been incurred by the State Procurement Board established under the repealed Act shall on and after that date be property or an asset or obligation of the Authority.

40 (4) Any procurement proceedings commenced before the fixed date shall be completed in accordance with the repealed Act, any reference to the State Procurement Board being construed as a reference to the Authority:

Provided that the Authority may, by written notice to the procuring entity concerned, direct that any provision of this Act that is specified in the notice shall apply
45 to the proceedings, and that provision shall thereupon apply accordingly, subject to any modification stated in the notice.

(5) Any direction or order which was given by the State Procurement Board

under the repealed Act and which, immediately before the fixed date, had or was capable of acquiring legal effect shall continue to have or to be capable of acquiring, as the case may be, the same effect as if it had been given by the Authority.

(6) every procuring entity that wishes to conduct procurement proceedings for which authorisation is required in terms of section 15 shall, as soon as possible after the fixed date, apply for authorisation in accordance with the Third Schedule. 5

(7) Where an application for authorisation has been made in terms of subsection (5), the Authority—

- (a) shall assess the capacity of the procuring entity concerned as soon as possible in accordance with the Third Schedule; and 10
- (b) pending completion of the assessment, may grant the procuring entity concerned temporary authorisation to conduct procurement proceedings subject to such terms and conditions as the Authority may notify in writing to the entity.

104 Amendment of section 4 of Cap. 24:14 15

Section 4 (“Board of Directors”) of the Infrastructure Development Bank of Zimbabwe Act [*Chapter 24:14*] is amended—

- (a) in subsection (2) by the deletion of “not fewer than twelve and not more than fifteen directors” and the substitution of “not fewer than seven and not more than nine directors”; 20
- (b) in subsection (3) by the repeal of paragraphs (a), (b), (c) and (b) and the substitution of—
 - “(a) one seventh of the Bank’s issued share capital, where the Board consists of seven directors; or”;
 - (b) one eighth of the Bank’s issued share capital, where the Board consists of eight directors; or”;
 - (c) one ninth of the Bank’s issued share capital, where the Board consists of nine directors; or”.

105 Amendment of section 79 of Cap. 29:13

Section 79 (“Contracts and tenders of councils”) of the Rural District Councils Act [*Chapter 29:13*] is amended by the insertion of the following subsections after subsection (8)— 30

“(9) A council or any committee of the council appointed by it shall be the “procuring entity” for the purposes of the Public Procurement and Disposal of Public Assets Act [*Chapter 22:23*] (“the procurement law”). 35

(10) In the event of inconsistency between this section and any provision of the procurement law, then—

- (a) the procurement law shall prevail over this section to the extent of the inconsistency; and
- (b) this section shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with the procurement law. 40

(11) For the purpose of subsection (10)(b) and for the purpose generally of assisting councils to adapt their procurement procedures to the procurement law, every council shall comply with any directions issued by the Procurement Regulatory Authority of Zimbabwe in terms of section 7(a) of the procurement law.”. 45

106 Amendment of Cap. 29:15

The Urban Councils Act [*Chapter 29:15*] is amended—

- (a) in section 210 (“Municipal procurement board”)(1) by the deletion of “every municipal council” and the substitution of “Subject to section 211, every”;
- (c) in section 211 (“Tenders”), by the insertion of the following subsections after subsection (10)—

“(11) every municipal procurement board shall be the “procuring entity” for the purposes of the Public Procurement and Disposal of Public Assets Act [*Chapter 22:23*] (“the procurement law”).

(12) In the event of inconsistency between this section and section 210 and any provision of the procurement law, then—

- (a) the procurement law shall prevail over this section and section 210 to the extent of the inconsistency; and
- (b) this section and section 210 shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring them into conformity with the procurement law.

(13) For the purpose of subsection (11)(b) and for the purpose generally of assisting councils to adapt their procurement procedures to the procurement law, every council shall comply with any directions issued by the Procurement Regulatory Authority of Zimbabwe in terms of section 7(a) of the procurement law.”.

first schedule (sections 2 and 9)

Provisions Applicable to Membership, Procedures, Staff and Finances of Authority

ARRANGEMENT OF PARAGRAPHS

PART I Membership of Board

Paragraph

1. Disqualifications for appointment as member.
2. Terms and conditions of office of members.
3. Vacation of office by member.
4. Suspension of member.
5. Dismissal of Board.
6. Filling of vacancies on Board.
7. Chairperson and vice-chairperson of Board.

PART II

Meetings and Procedure of Board and Committees

8. Meetings and procedure of Board.
9. Committees of Board.
10. Members of Board and committees to disclose certain connections and interests.
11. Minutes of proceedings of Board and Committees.

PART III

Staff of Authority

12. Appointment and functions of Chief Executive Officer.

- 13. Other staff of Authority.
- 14. engaging of consultants.
- 15. employees and consultants to disclose certain connections and interests.

PART IV

Financial Provisions 5

- 16. Funds of Authority.
- 17. Financial year of Authority.
- 18. Accounts of Authority.
- 19. Audit of accounts of Authority.

Disqualifications for appointment as member 10

1. (1) The Minister shall not appoint a person as a member, and no person shall be qualified to hold office as a member, if he or she—

- (a) is neither a citizen of Zimbabwe nor permanently resident in Zimbabwe; or
- (b) has, in terms of a law in force in any country— 15
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside;
- or 20
- (c) has, within the period of five years immediately preceding the date of his or her proposed appointment, been convicted—
 - (i) in Zimbabwe, of an offence; or
 - (ii) outside Zimbabwe, in respect of conduct which if committed in Zimbabwe would constitute an offence; 25

and sentenced to a term of imprisonment imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

(2) A person shall not be qualified for appointment as a member if he or she is—

- (a) a member of Parliament; or 30
- (b) a member of a provincial or metropolitan council; or
- (c) a member of the council of a local authority; or
- (d) a member of two or more other statutory or corporate bodies.

(3) A person who has twice been appointed as a member, whether or not he or she has served the terms for which he or she was appointed, shall not be eligible for further appointment to the Board. 35

(4) For the purposes of subparagraph (2)(d)—

- (a) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body; 40
- (b) “statutory body” means—
 - (i) any commission established by the Constitution; or
 - (ii) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any other statutory body or by a Commission established by the Constitution. 45

Terms and conditions of office of members

2. (1) Subject to this Part, a member shall hold office for such period, not exceeding four years, as the Minister may fix on his or her appointment.

5 (2) On the expiry of the period for which a member has been appointed, he or she shall continue to hold office until he or she has been re-appointed or his or her successor has been appointed:

Provided that a person shall not continue to hold office in terms of this subparagraph for more than six months.

10 (3) A retiring member shall be eligible for re-appointment as a member for one further term.

(4) A member shall be paid such remuneration and allowances, and hold office on such terms and conditions, as the Minister may fix for members generally.

Vacation of office by member

15 3. (1) A member shall vacate his or her office and the member's office shall become vacant—

- (a) one month after he or she gives notice in writing to the Minister of his or her intention to resign or on the expiry of such other period of notice as the member and the Minister may agree; or
- 20 (b) on the date he or she begins to serve a sentence of imprisonment imposed without the option of a fine—
 - (i) in Zimbabwe, in respect of an offence; or
 - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;
- or
- 25 (c) if he or she becomes disqualified in terms of paragraph 1(1) or (2) to hold office as a member; or
- (d) if he or she is required in terms of subparagraph (2) or (3) to vacate his or her office.

- (2) The Minister may require a member to vacate his or her office if—
 - 30 (a) the member has been guilty of conduct which renders him or her unsuitable to continue to hold office as a member; or
 - (b) the member has failed to comply with any condition of his or her office fixed in terms of paragraph 2; or
 - (c) the member has ceased to possess any qualification by reason of which he or she was appointed; or
 - 35 (d) the member is mentally or physically incapable of efficiently performing his or her duties as a member; or
 - (e) the member contravenes paragraph 10; or
 - (f) the member or his or her spouse engages in any occupation, service or employment, or holds any asset, which in the Minister's opinion is
40 inconsistent with his or her duties as a member.

(3) The Minister, on the recommendation of the Board, may require a member to vacate his or her office if the Minister is satisfied that the member has been absent without the consent of the chairperson of the Board from three consecutive meetings of the Board, of which he or she has been given at least seven days' notice, and that
45 there was no just cause for the member's absence.

Suspension of member

4. The Minister—

- (a) may suspend from office a member against whom criminal proceedings are instituted for an offence involving dishonesty; and
- (b) shall suspend from office a member who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended, pending determination of the question whether the member is to vacate his or her office;

and, whilst that member is suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member.

Dismissal of Board

5. (1) Subject to subparagraph (2), if the Minister considers that—

- (a) the Board has contravened this Act or any other law and has failed to rectify the contravention within a reasonable time after being required to do so by the Minister; or
- (b) whether through disagreements amongst its members or otherwise, the Board is unable to carry out any of its functions in terms of this Act; and that it is in the national interest to do so;

the Minister, with the approval of the President, may send a written notice to the chairperson and the Chief Executive Officer dismissing all the members, and their offices shall become vacant as soon as the Chief Executive Officer receives the notice.

(2) Before dismissing all the members, the Minister shall inform the President of the intended dismissal.

Filling of vacancies on Board

6. (1) Within three months after a member's death or vacation of office, the Minister shall appoint a person in terms of this Act to fill the vacancy.

(2) Within one month after dismissing all the members in terms of paragraph 5, the Minister shall appoint persons in terms of this Act to fill the vacancies.

Chairperson and vice-chairperson of Board

7. (1) The Minister shall designate two of the members to be chairperson and vice-chairperson of the Board.

(2) The chairperson and vice-chairperson of the Board may at any time, by written notice to—

- (a) the Minister, in the case of the chairperson or vice-chairperson;
- (b) the Chief Executive Officer, in the case of the vice-chairperson;

(3) The vice-chairperson of the Board shall perform the functions of the chairperson whenever the chairperson is unable to perform them or the office of chairperson is vacant.

PART II

Meetings and Procedure of Board and Committees

Meetings and procedure of Board

8. (1) The Board shall hold its first meeting on a date and place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Board shall meet at least four times in each financial year.

(2) The chairperson of the Board—

- (a) may convene a special meeting of the Board at any time; and
(b) shall convene a special meeting of the Board on the written request of the Minister or not fewer than two members, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairperson's receipt of the request.

5

(3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

- (a) such business as may be determined by the chairperson of the Board, where he or she convened the meeting in terms of subparagraph (2)(a); or
(b) the business specified in the request for the meeting, where the chairperson of the Board convened the meeting in terms of subparagraph (2)(b).

15

(5) The chairperson of the Board or, in his or her absence, the vice-chairperson shall preside at all meetings of the Board:

Provided that, if the chairperson and vice-chairperson are both absent from any meeting of the Board, the members present may elect one of their number to preside at that meeting as chairperson.

20

(6) Six members shall form a quorum at any meeting of the Board.

(7) Subject to subparagraph (12), anything authorised or required to be done by the Board may be decided by a majority vote at any meeting of the Board at which a quorum is present.

25

(8) With the Board's approval, the chairperson of the Board may invite any person to attend a meeting of the Board or of a committee, where the chairperson considers that the person has special knowledge or experience in any matter to be considered by the Board or the committee, as the case may be, at that meeting.

30

(9) A person invited to attend a meeting of the Board or of a committee may take part in the proceedings of the Board or the committee as if he or she were a member thereof, but shall not have a vote on any question before the Board or committee, as the case may be.

35

(10) The Chief Executive Officer may take part in meetings of the Board as if he or she were a member, but shall have no vote on any matter to be decided by the Board:

Provided that—

- (i) the Board may, for good cause, request the Chief Executive Officer to withdraw from any meeting of the Board, but if it does so it shall cause such withdrawal to be noted in the minutes of the meeting;
(ii) the Chief Executive Officer shall not take part in the discussion of any question before the Board which involves his or her tenure of office or conditions of service.

40

(11) Subject to paragraph 10, at all meetings of the Board each member present shall have one vote on any question before the Board and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote.

45

(12) Any proposal circulated among all members and agreed to in writing by a majority of them shall have the same effect as a resolution passed by a duly constituted

meeting of the Board and shall be incorporated into the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such a proposal be placed before a meeting of the Board, this subparagraph shall not apply to the proposal.

Committees of Board 5

9. (1) For the better exercise of its functions, the Board may establish one or more committees in which the Board may vest such of its functions as it considers appropriate:

Provided that the vesting of a function in a committee shall not divest the Board of that function, and the Board may amend or rescind any decision of the committee in the exercise of that function. 10

(2) On the establishment of a committee in terms of subparagraph (1), the Board—

(a) shall appoint at least two of its members to the committee and that member or one of those members, as the case may be, shall be chairperson of the committee; and 15

(b) may appoint persons who are not members of the Board to be members of the committee.

(3) Members of committees may be paid—

(a) such remuneration; and 20

(b) such allowances to meet reasonable expenses incurred by them in connection with the business of the committee concerned;

as the Board may fix with the approval of the Minister.

(4) Meetings of a committee may be convened at any time and at any place by the chairperson of the Board or the chairperson of the committee. 25

(5) Subject to subparagraph (4) and to paragraphs 11 and 12, the procedure to be followed at any meeting of a committee and the quorum at any such meeting shall be as fixed by the Board.

Members of Board and committees to disclose certain connections and interests

10. (1) In this paragraph— 30

“relative”, in relation to a member of the Board or a committee, means the member’s spouse, child, parent, brother or sister.

(2) Subject to subparagraph (4)—

(a) if a member of the Board or of a committee—

(i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or committee; or 35

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his or her functions as a member; or 40

(iii) knows or has reason to believe that any of his or her relatives—

A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or the committee; or 45

B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of

persons which results in the member's private interests coming or appearing to come into conflict with his or her functions as a member;

or

- 5 (b) if for any reason the private interests of a member of the Board or a committee come into conflict with his or her functions as a member;

the member shall forthwith disclose the fact to the Board or the committee, as the case may be.

- 10 (3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Board or the committee, as the case may be, which relates to any property, right or interest referred to in that subparagraph.

- 15 (4) Nothing in this paragraph shall be taken to prevent members of the Board or of a committee of the Board from taking part in the consideration of, or voting on, any matter that affects members generally in their capacity as persons liable to pay revenue.

- 20 (5) Any person who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Minutes of proceedings of Board and committees

- 25 11. (1) The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board and of every committee to be entered in books kept for the purpose.

- 30 (2) Any minutes which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings and decisions taken at the meeting concerned.

PART III

Staff of Authority

Appointment and functions of Chief Executive Officer

- 35 12. (1) The Board, with the approval of the Minister, shall appoint a Chief Executive Officer of the Authority who shall be responsible, subject to the Board's control, for administering the Authority's affairs, staff and property and for performing any other functions that may be conferred or imposed upon him or her by or under this Act or that the Board may assign to him or her.

- 40 (2) An assignment of functions in terms of subparagraph (1)—
45 (a) may be made generally or specially and subject to such conditions, restrictions, reservations and exceptions as the Board may determine;
(b) may be revoked by the Board at any time;
(c) shall not preclude the Board itself from exercising the functions.

- (3) A person shall be qualified for appointment as Chief Executive Officer if he or she is of good moral character and proved integrity and

has such qualifications (at the minimum level of a Master's Degree) and experience in a field relevant to the Authority's functions as may be prescribed or as may be acceptable to the Board.

(4) The Chief Executive Officer shall be appointed for a term of not more than six years on such terms and conditions as may be fixed by the Board with the approval of the Minister, and on the expiry of his or her term of office he or she shall be eligible for appointment for a further term: 5

Provided that—

- (i) the terms and conditions of his or her employment, and the renewal of his or her appointment, shall be in accordance with any enactment regulating corporate governance in public bodies; 10
- (ii) the employment of the Chief Executive Officer shall terminate if he or she would be required in terms of paragraph 3(1)(b) were he or she a member of the Board. 15

(5) The Chief Executive Officer shall serve as secretary of the Board and shall be responsible for keeping the Board's minutes referred to in paragraph 11.

Other staff of Authority

13. (1) Subject to any other law, the Authority may employ such persons in addition to the Chief Executive Officer as the Board considers necessary for the proper exercise of the Authority's functions, and may promote, suspend or discharge any such employee. 20

(2) employees of the Authority referred to subparagraph (1) shall carry out their functions under the direction and control of the Chief Executive Officer, who shall be responsible to the Board for their proper conduct. 25

Engaging of consultants

14. The Board may engage persons otherwise than as employees, on such terms and conditions as the Board thinks appropriate, to perform services of a specialised, technical or professional nature for the Authority. 30

Employees and consultants to disclose certain connections and interests

15. Paragraph 10 shall apply, with any necessary changes, to persons employed or engaged by the Authority in terms of paragraphs 12, 13 and 14. 35

PART IV Financial

Provisions *Funds of*

Authority

16. The funds of the Authority shall consist of—
- (a) any moneys that may be appropriated for the purpose by Parliament; and 40
 - (b) any loans, donations and grants which the Authority receives, with the approval of the Minister, from any person or authority or from the government of any country; and
 - (c) any other moneys that may accrue to the Authority, whether in the course of its operations or otherwise. 45

Financial year of Authority

17. The financial year of the Authority shall be the period of twelve months ending on the 31st December in each year or on such other date as may be prescribed.

5

Accounts of Authority

18. (1) The Authority shall ensure that proper accounts and other records relating to such accounts are kept in respect of all its activities, funds and property, including such particular accounts and records as the Minister may direct.

10

(2) As soon as possible after the end of each financial year, the Authority shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as the Minister may direct.

Audit of accounts of Authority

15

19. (1) The accounts of the Authority shall be audited by the Auditor-General, who for the purpose shall have all the functions conferred on him or her by sections 8 and 9 of the Audit Office Act [Chapter 22:18] as though the assets of the Authority were public moneys and the members, employees and agents of the Authority were officers as defined in that Act.

20

second schedule (section 7(e))

**ancillary Powers of
Authority**

1. To acquire by lease, purchase, or otherwise, immovable property, and to construct buildings thereon.
2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.
3. To maintain, alter and improve property acquired by it.
4. To mortgage or pledge any assets or part of any assets and to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of assets which are not required for the exercise of its functions for such consideration as the Board, with the approval of the Minister, may determine.
5. To open bank and building society and post office accounts in the name of the Authority and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions promissory notes, bills of exchange, bills of lading, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To sell, rent, grant leases, subleases or other interests or concessions in respect of land, buildings or any other facility or structure owned by it, or under its control.
8. To enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind such suretyships or guarantees.
9. With the approval of the Minister, to enter into, review, cancel or abandon arrangements with any government or authority, whether

- inside or outside Zimbabwe, that may seem conducive to the exercise of any of its functions and to obtain from such government or authority rights, privileges and concessions which the Board thinks desirable, and to carry out, exercise and comply with such arrangements, rights, privileges and concessions. 5
10. To raise loans or borrow money in such amounts and for such purposes and under conditions as may be approved by the Minister.
11. To establish and administer such funds and reserves as the Board considers appropriate or necessary for the proper exercise of the Authority's functions. 10
12. To provide terminal benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury.

Third Schedule (section 15(3))

Authorisation to Conduct Procurement Proceedings 15

Interpretation in Third Schedule

1. In this Schedule—
 “authorisation” means authorisation to conduct procurement proceedings granted by the Authority in terms of section 15(1);
 “remedial plan” means a plan prepared in terms of paragraph 5; 20

Application for authorisation

2. (1) An application for authorisation shall be made by a procuring entity in such form as may be prescribed or as may be provided by the Authority.
- (2) In its application for authorisation, a procuring entity shall provide the Authority with information concerning— 25
- (a) the nature of procurement proceedings to be conducted by the procuring entity; and
 - (b) the assignment of responsibilities for procurement within the procuring entity's organisation; and 30
 - (c) the identity of the procuring entity's accounting officer; and
 - (d) the structure of the procuring entity's procurement management unit and any evaluation committees; and
 - (e) the procuring entity's facilities for conducting procurement proceedings; and 35
 - (f) particulars of procurement proceedings conducted by the procuring entity during the preceding two years; and
 - (g) such other information as may be required in the application form or as the Authority may reasonably require. 40

Assessment by authority of procuring entity's capacity 40

3. (1) On receipt of an application in terms of paragraph 2, the Authority shall assess the capacity of the applicant to conduct procurement proceedings, and for the purpose of such assessment may inspect the applicant's facilities and premises.
- (2) In determining whether to grant an applicant authorisation, the Authority shall have regard to the applicant's capacity to engage in procurement proceedings of the nature and extent envisaged in the application, taking into account— 45

- 5
- (a) the assignment of responsibilities for procurement within the applicant's organisational structure; and
 - (b) the qualifications and experience of the applicant's officers who will be responsible for procurement, and their numbers; and
 - (c) the applicant's use of information technology and other facilities for communication; and
 - (d) the performance of the applicant in previous procurement proceedings.

10 (3) The Authority shall carry out its assessment of an applicant's capacity with all reasonable dispatch so that its decision on the application can be made and communicated to the applicant without undue delay.

Grant or refusal of authorisation

15 4. (1) If, after assessing an applicant's capacity as provided in paragraph 3, the Authority is—

- 20
- (a) satisfied that the applicant has the capacity to conduct procurement proceedings of the nature and extent envisaged in the application, the Authority shall grant the application and, subject to subparagraph (2), issue the applicant with the authorisation sought;
 - (b) not satisfied as provided in subparagraph (a), the Authority shall refuse the application and notify the applicant accordingly, providing the applicant with reasons for the refusal.

25 (2) Authorisation to conduct procurement proceedings shall be in writing and—

- 30
- (a) shall state—
 - (i) the name of the procuring entity to which it has been granted; and
 - (ii) the nature of the procurement proceedings that are authorised; and
 - (iii) the period for which the authorisation is granted; and
 - (b) may specify terms and conditions subject to which the authorisation is granted.

35 *Remedial plan following refusal of authorisation*

5. (1) Where the Authority refuses a procuring entity's application for authorisation, the Authority shall prepare a remedial plan, in consultation with the entity, whereby—

- 40
- (a) the procuring entity takes such measures as are stated in the plan to improve its procurement capacity; and
 - (b) pending completion, to the Authority's satisfaction, of the measures referred to in subparagraph (a)—
 - (i) the procuring entity may conduct such procurement proceedings as are specified in the plan; or
 - (ii) some other procuring entity conducts procurement proceedings on behalf of the entity, whether through shared procurement arrangements in accordance with section 19 or otherwise, as may be specified in the plan.
- 45

(2) Notwithstanding any other provision of this Act, while a remedial plan remains operative, the procuring entity shall conduct its procurement proceedings in accordance with the plan.

Termination of remedial plan

6. (1) At any time while a remedial plan for a procuring entity remains operative, the Authority may conduct an assessment of the entity's capacity to conduct procurement proceedings, and if the Authority is— 5

- (a) satisfied that the entity has the capacity to conduct procurement proceedings of the nature and extent envisaged in its original application or any other procurement proceedings the entity wishes to conduct, the Authority shall issue the applicant with authorisation to conduct those proceedings; and 10
- (b) not satisfied as provided in subparagraph (a), the Authority may do any one or more of the following—
 - (i) extend the remedial plan; 15
 - (ii) require the entity to continue to take additional measures to improve its procurement capacity;
 - (iii) appoint another procuring entity to conduct procurement proceedings on behalf of the entity, whether through shared procurement arrangements in accordance with section 19 or otherwise; 20
 - (iv) take any other measures which, in the Board's opinion, will enable the entity to conduct procurement proceedings in accordance with this Act. 25

Renewal of authorisation

7. (1) Before the expiry of its authorisation, a procuring entity shall apply to the Authority for renewal of the authorisation, and paragraphs 2 to 6 shall apply, with any necessary changes, to the application. 25

(2) The Authority may grant a procuring entity temporary authorisation to conduct procurement proceedings pending a decision by the Authority on an application for renewal of the entity's authorisation. 30

Continuous assessment of procurement capacity

8. (1) The Authority shall continuously assess—

- (a) the continued capacity of authorised procuring entities to conduct procurement proceedings; and 35
- (b) the compliance of authorised procuring entities with the terms and conditions of their authorisation;

and if the Authority considers that the entity no longer has the capacity to conduct procurement proceedings, or is contravening or failing to comply with any material term or condition of its authorisation, the Authority may cancel the authorisation or direct the entity to rectify the non-compliance, or may take such other measures to remedy the situation as the Authority considers necessary or desirable. 40

(2) Before cancelling a procuring entity's authorisation in terms of subparagraph (1), the Authority shall notify the entity concerned of the proposed cancellation and the reasons for it, and shall give the entity a reasonable opportunity to make representations in the matter. 45