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Title: TENDERS & PROCUREMENT REGULATIONS

Function: Finance

Department: Corporate Services

Document No: BOBS/EC/CS/PS/Policy No. 01

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Botswana Bureau of Standards



Approved By: _____
Ezekiel R. Thekiso
Standard Council Chairman

Date of Approval (YY/MM/DD)



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1. PURPOSE

These tender regulations outlines steps which are to be followed when purchasing any supplies or letting of any contracts for works or services, the cost of which is in excess of P25,000.

2. SCOPE

2.1 The purchase of any supplies or the letting of any contracts for works or services, the cost of which is in excess of P25, 000 would be subject to these Regulations and procedures. Quotations and/or tenders would be solicited, examined, evaluated and awarded in accordance with these Procurement Regulations and procedures by authorised Accounting Officer(s) the Internal Tenders & Procurement Committee (ITPC), or the Tenders and Procurement Committee (TPC) and or the Standards Council (SC).

3. DEFINITIONS AND ABBREVIATIONS

3.1 The following definitions shall be applicable in these regulations:

3.1.1 "Award" shall mean a decision of Standards Council, any of its committees or any other subsidiary body of a procuring entity to which the Standards Council may delegate powers of adjudication and award within specified financial ceilings to determine the successful bidder.

3.1.2 "Tender Procedures" are those as outlined in these Regulations and any other instruction issued from time to time.

3.1.3 "Public Tender/bid notice" means a formal tender that shall be advertised by public notice and/or other media as appropriate.

3.1.4 "Quotation" means a formal procurement procedure which need not be advertised publicly and which may be called for by an authorised official without reference to the Internal Tenders and Procurement Committee or the Tenders and Procurement Committee.

3.1.5 "**Selective Tender**" means a formal tender in which the invitation to tender is sent only to a firm or firms pre-selected and recommended by the Internal Tenders and Procurement Committee. This procurement procedure will not "normally" be advertised.

3.1.6 "**Running Contract**" means a contract which extends over a specified period of time for an estimated or variable quantity of supplies, or for a specified service.

3.1.7 "**Services**" means consultancy, professional, maintenance or any other services.

3.1.8 "**Expression of Interest (EOI)**" shall mean a prequalification of suppliers of goods and service.

3.1.9 "**Emergency Procurement**" shall mean a procurement under circumstances which are urgent, unforeseeable and not caused by any dilatory conduct of the procuring entity.



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3.1.10 “Conflict of Interest”, s31(1) Corruption and Economic Crime Act, CAP.08:05, “A member or an employee of a public body is guilty of corruption if he or an immediate member of his family has direct or indirect interest in any company or undertaking with which such a body proposes to deal, or he has personal interest in any decision which such body is to make, and he, knowingly, fails to disclose the nature of such interest, or votes, or participates in the proceedings of such body relating to such dealing or decision.”

s31 (2) “For the purposes of this section, “family” includes a paramour”.

3.1.11 “Direct Procurement” shall mean a sole source procurement for requirements where exceptional circumstances prevent the use of competition.

3.1.12 “Procuring Entity” shall mean a Department or Business Unit of BOBS that has raised a Purchase Order Requisition.

3.1.13 “Fixed Budget Selection” shall mean a selection of a bidder with the best technical bid who is within budget.

3.1.14 “INCOTERMS” shall mean international commercial terms issued by the International Chamber of Commerce.

3.1.15 “Local Provider” shall mean a company registered in the Republic of Botswana irrespective of whether or not it is wholly owned and controlled by citizens of Botswana.

3.1.16 “Procurement Process” shall mean the successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination of and evaluation of such offers, award of contract and contract management.

3.1.17 “Provider” shall mean a natural person or an incorporated body including a consultant, contractor or supplier, licensed by a competent authority to undertake business activities.

3.1.18 “Responsive bid” shall mean a bid which conforms to all terms, conditions and requirements of the solicitation document without any material deviation, reservation or omission therefrom.

3.1.19 “Standardization Policy” shall mean a policy of standardization approved by the Standards Council through a Standards Council resolution.



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3.2 ABBREVIATIONS

3.2.1 The following abbreviations shall be applicable in these regulations

BOBS	-	Botswana Bureau of Standards
DCEC	-	Directorate of Corruption and Economic Crime
DCE	-	Director Commercial Enterprises
DCS	-	Director Corporate Services
DMD	-	Deputy Managing Director
DoCDI	-	Declaration of Conflict of Duty and Interest
DRC	-	Director Regulatory Compliance
DS	-	Director Standards
EDD	-	Economic Diversification Drive
EOI	-	Expression of Interest
ITPC	-	Internal Tenders and Procurement Committee
ITT	-	Information to Tenderers
MD	-	Managing Director
MF	-	Manager Finance
PE	-	Procuring Entity
PO	-	Purchasing Officer
POR	-	Purchase Order Requisition
PPADB Act	-	Public Procurement and Asset Disposal Act
PPADB	-	Public Procurement and Asset Disposal Board
RFQ	-	Request for Quotation
SC	-	Standards Council
TOR	-	Terms of Reference
TPC	-	Tenders and Procurement Committee



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4. PROCUREMENT (PROCEDURES)

4.1 Procurement Thresholds

4.1.1 Procurement of supply items or letting or works or service contracts will be subject to one of the following procedures, depending on the contract value as follows:

<u>Limits (value)</u>	<u>Procedure Applicable</u>
i) P 1 to P 5, 000	Micro procurement <i>(Approved by Director without reference to the ITPC sole supplier)</i>
ii) P 5, 001 to P 50,000	Formal quotations <i>(Approved by Director without reference to the ITPC)</i>
iii) P50, 001 to P100, 000	Formal quotations <i>(Approved by Internal Tenders & Procurement Committee)</i>
iv) P 100,001 to P 1,000,000	Formal Tender: <i>(Approved by the Internal Tenders & Procurement Committee)</i>
v) P 1,000,001 to P 5,000,000	Formal Tender: <i>(Approved by the Tenders & Procurement Committee)</i>
vi) Above P 5,000,000	Formal Tender: <i>(Approved by the Standards Council)</i>

5. PROCUREMENT STRUCTURES

5.1 The Internal Tenders and Procurement Committee

5.1.1 The Internal Tenders and Procurement Committee of BOBS shall consist of the following members:-

- i) The Deputy Managing Director (DMD) as the Chairperson
- ii) All Directors and at least two Managers

5.1.2 The Committee may also call upon any specialist to give advice on the suitability of a purchase or contract, who will be non-voting.



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5.2 The Tenders and Procurement Committee

5.2.1 The Tenders and Procurement Committee shall consist of the following:-

- i) Any five members of the Standards Council appointed by the Standards Council, who shall in turn appoint a Chairperson from among themselves.
- ii) The Managing Director

5.3 Attendance at TPC Meetings

5.3.1 All Directors shall be “in attendance” at all TPC meetings.

5.3.2 The Committee may call upon any specialist to give advice on the suitability of a purchase or contract.

5.4 Quorum

5.4.1 A quorum of the Internal Tenders and Procurement and the Tenders and Procurement Committees shall be constituted by three (3) members, which members shall include the respective Chairpersons or an appointed Chairperson to guide the proceedings.

5.5 Conduct of Meetings

5.5.1 The decisions of the TPC and ITPC shall normally be in accordance with the criteria set out in the Information to Tenderers document (ITT).

5.6 Secretary

5.6.1 The Manager Finance shall be the Secretary to both the Internal Tenders and Procurement Committee and the Tenders and Procurement Committee.

6. DUTIES OF THE TENDERS AND PROCUREMENT COMMITTEES (ITPC & TPC)

6.1 Attendance

6.1.1 Members shall attend all meetings, unless incapacitated by illness or on vacation, or out on official duty.

6.2 Conflict of Duty and Interest

6.2.1 The disclosure of conflict of duty and interest that shall apply at all ITPC and TPC meeting shall be as contained in the PPAD Act section 88.

6.2.2 Section 88 of the PPAD Act, provides that “Every member, on receipt of the Agenda of the Meetings of the Tender and Procurement Committees (SC/TPC/ITPC), or on notification of a matter being brought to the attention of the SC/TPC/ITPC shall -



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- i) sign a standard declaration form of the of the SC/TPC/ITPC indicating whether he/she has, or intends to acquire, a direct or indirect personal interest in any specific agenda item or matter requiring the SC/TPC /ITPC's consideration and decision; and
- ii) In the event of such interest, the member in question shall not participate in the deliberation or decision making process of the SC/TPC/ITPC in relation to the agenda item or specific matter in question.
- iii) In the event that a Committee member or one of his/her relative(s) has submitted a tender, he/she shall notify the Chairperson who will circulate such notice to the Committee and he/she may be excluded from attending any meeting of the Committee at which such tenders are considered. If the member is in attendance of the meeting, they shall recuse themselves from the discussions and award of the relevant tender. Record of declaration of Conflict of Duty and Interest shall be kept for every meeting where tenders are evaluated and awarded.

6.3 Minutes

- 6.3.1 The Minutes of all meetings of the Committees shall be recorded, maintained in sequential order, and if required submitted to the Standards Council for information and review.

6.4 Duties

- 6.4.1 It shall be the duty of the Committees to:
- 6.4.2 ensure that the general policy laid down by the Standards Council from time to time on procurement of works, supplies and services for BOBS is adhered to
- 6.4.3 ensure that companies, firms and organisations considered offer the best benefit to BOBS

6.5 Authority and Powers of the Committees (ITPC & TPC)

The relevant adjudicating Committee shall approve the mode of procurement consistent with limits set out at 3.1 above;

- 6.5.1 approve the Terms of Reference for procuring products and services
- 6.5.2 approve mode of Tender Procedures for acquiring products and services (including the list of pre-qualified firms)
- 6.5.3 approve, in special cases, the waiver of tender procedures for amounts that are within the tender procedures threshold



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7 PROCUREMENT METHODS

- 7.1 Micro Procurement** – this refers to a procurement method where the threshold is up to five thousand Pula (P1,000 - P5,000) and the selection of a company is based on a sole supplier basis without competition and the requirements of tendering documents (ITT). Each Department shall report the monthly purchases to the ITPC.
- 7.2 Quotations Proposal Procurement** – this refers to a procurement method where the threshold is from five thousand and one Pula and ten thousand Pula only (P5,001 - P100,000). The Request for Quotation (RFQ) shall be sent to at least three suppliers where possible.
- 7.3 Open Domestic Tendering** – this shall be the default method of procuring, where only local companies are invited to tender.
- 7.4 Selective (Restricted) Domestic Tendering** – this would apply where companies to be invited had been pre-qualified or there is a limited supplier base, or where the procuring Department or Unit has justified the use of the method to relevant adjudicating Committee.
- 7.5 Open International Tendering** – this would be applied where international companies are invited. However nothing prevents local companies from participating in the tender.
- 7.6 Selective (Restricted) International Tendering** - this would apply where international companies to be invited had been pre-qualified or there is a limited supplier base or where the procuring Department or Unit has justified the use of the method to relevant adjudicating Committee.
- 7.7 Direct Purchase (Appointment)** – this refers to a situation where the selection of a company is based on a company being the sole supplier/agent or where it is justified under the circumstances. The procuring Department should seek prior approval for use of the method from the relevant adjudicating authority before the method is used.
- 7.8 Emergency Procurement** – this refers to a situation that could not be foreseen by the procuring entity and that was not the result of delays by or within the procuring entity. The procuring entity shall afterward make a request for Ratification to the relevant authority in writing stating the reasons for the emergency and justifying departure from established procedures.

8 PROCUREMENT PROCEDURES

8.1 Quotations

- 8.1.1** Preparation of all quotation documents shall be the responsibility of the Head of the Department concerned.
- 8.1.2** In all cases, a written request (purchase order requisition or POR) indicating products or services to be acquired, expected time of delivery, and the minimum requirements to be met, shall be made by the department requiring such products or services.



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8.1.2.1 Quotations shall be sourced for the purchases of supply items or letting of works or service contracts up to the value of P100, 000.00 only.

8.1.2.2 Quotations shall be called for by the Department concerned. Thereafter the evaluation committee comprising of at least three members shall be set up to evaluate the quotations received and produce a report with recommendation. The report containing the recommendation shall then be submitted to the relevant Director signed.

8.1.2.3 The word “Approved” shall be written/stamped on the form/report and quotation and signed by the Director of the Department clearly identifying the approved quotation.

8.1.2.4 The Director shall approve or reject the recommendation giving reasons for rejecting such recommendation.

8.2 Number of Quotations Required

8.2.1 At least three written quotations, either directly from suppliers or through an agent, should be obtained.

8.3 Period of Quotations

8.3.1 The period for submitting quotations shall be specified in the document calling for quotations. Notwithstanding, adequate time, according to the nature of supplies to be obtained, or the nature of the works or services to be provided shall be availed to enable bidders to formulate, price and submit their quotations to BOBS.

8.3.2 The Invitation to quotations shall clearly state the closing time, date and place for quotation delivery.

8.3.3 Quotations shall be accompanied by trade licences, PPADB registration certificates, tax clearance certificates and EDD registration certificates.

8.4 Extension of Quotation Period

8.4.1 No extensions of quotation period shall be permitted beyond the set time limit.

8.5 Receipt of Quotations

8.5.1 All quotations received shall be dated and kept secure.



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8.6 Assessment and Recommendation

8.6.1 The Director of the procuring Department shall constitute an evaluation committee comprising the Purchasing Officer and at least two other members to assess the quotes based on specifications using form CS/PS/PO1/F02 and must address the following in the report;

8.6.1.1 Quality (fitness for purpose)

8.6.1.2 Price

8.6.1.3 Lead time

8.7 Formal Tender

8.7.1 Preparation of all tender documents shall be the responsibility of the Director of the procuring Department.

8.7.2 Tender Documents shall contain;

8.7.2.1 The background

(Information that guides on what environment exists and what is intended to be achieved)

8.7.2.2 The statement of user requirements

(Information on what is required to be provided either as a service or product)

8.7.2.3 Assessment criteria

(Information that guides on the key requirement, in the delivery of service or product, the basis of which assessment will be made)

8.7.3 Basis for tender award

(Tender award shall be based on the terms and conditions as set out in the Tenderer document)

8.7.4 Location where tenders are required to be submitted.

8.7.5 The closing time and date of the tender

(adequate time, according to the nature of services or product to be obtained, or the nature of the works or services to be provided shall be availed to enable bidders to formulate, prices and submit their tenders to BOBS. Queries shall not be allowed two weeks prior to the closing date and time of the tender)

8.7.6 Format of Bid Submission – tender documents should state whether the bids should be submitted in a two envelope format or one envelope format.



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8.7.6.1 Two Envelope System – this is where the technical proposal is prepared and submitted in one envelope without any information on the financial proposal. The envelope is marked with the words “Technical Proposal”. The financial proposal is prepared and enclosed in an envelope labelled “Financial Proposal”. The two envelopes are then placed in a bigger separate outer envelope/container. The three envelopes/containers should all bear the tender number, the tender title and name of the bidder.

8.7.6.2 One Envelope System – Both the technical proposal and financial proposal are submitted in one envelope bearing the tender number, tender title and name of the bidder.

8.7.7 Tender Floating Periods

8.7.7.1 Tender period shall be as follows (minimum) unless otherwise approved by the relevant adjudicating authority:

8.7.7.1.1 Open domestic tender period – **4 calendar weeks**

8.7.7.1.2 Open international tender period – **6 calendar weeks**

8.7.7.1.3 Restricted domestic tender period – **2 calendar weeks**

8.7.7.1.4 Restricted International tender period – **8 calendar weeks**

8.7.7.1.5 Direct purchase - **2 calendar weeks**

8.8 Numbering and Description of Tenders

8.8.1 Tenders will be given a number, issued by the “Secretary” prior to the request for advertisement or invitation to tender which number shall be stated on all the documents associated with the tender.

8.8.2 The Secretary shall maintain a Register of all tender numbers issued, together with a brief description of the goods or services required.

8.9 Invitation to Tenderers

8.9.1 The invitation/advertisement for tenders must state details of the required supplies, services or works, the name and location of the officer from whom the documents are available, the tender conditions and, in particular, the following:-

8.9.1.1 Closing date and time

8.9.1.2 Period of validity of tender



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8.9.1.3 Conditions for considering tender documents

8.9.1.4 Processes to be followed in opening the tender

8.9.1.5 That the currency of tenders is denominated in Pula or any internationally convertible currency.
(Where a tenderer prefers to be paid in any other currency the closing date of tenders shall be the date on which the rate of exchange, as published by Bank of Botswana, be fixed.)

8.9.2 The invitation to tender shall state the Reservation Policies by Government where applicable, such as the Citizen Economic Empowerment Policy of 2012, the Economic Diversification Drive (EDD) Preferential scheme, the Local Procurement Scheme, and any other schemes of Government as may be applicable from time to time.

8.10 Advertisements

8.10.1 Invitations for tenders shall be advertised publicly except for selective tenders

8.11 Adequate Notice

8.11.1 Advertisement of public tenders must provide adequate time for the tenderers to formulate, price and return their bids or submissions refer to 7.7.1.2 above.

8.11.2 Tender period shall be as follows (minimum) unless as otherwise approved by the relevant adjudicating committee:

8.11.2.1 Open domestic tender period – **4 calendar weeks**

8.11.2.2 Open international tender period – **6 calendar weeks**

8.11.1.3 Restricted domestic tender period – **2 calendar weeks**

8.11.1.4 Restricted International tender period – **8 calendar weeks**

8.11.2.5 Direct purchase - **2 calendar weeks**

8.12 Extension of Time for Tendering

8.12.1 Any formal request for an extension of the tender period shall be made by the head of department concerned and the request submitted to the Secretary of the Tender Committee at least two weeks before the tender expiry date.

8.12.2 The Secretary of the Tender Committee shall consult with the Managing Director for approval prior to the extension being published or communicated with tenderers who have collected the tender documents.



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8.12.3 Tenderers who have submitted their bids shall be notified of the extensions at the same time that all other tenderers are notified.

8.12.4 No extensions of the tender period shall be allowed after the closing time for bids.

8.13 Receipt of Tenders

8.13.1 Tenders received shall be registered by the Secretary or delegatee before being deposited in a specific tender box for the purpose. The registration will reflect the name of the bidder, date and time of submission and the name of the individual submitting the tender.

8.13.2 Tender Boxes shall be sealed at the closing time for the tender by the Secretary or delegatee.

8.13.3 Each box shall have two locks requiring keys; one shall be kept by the Managing Director/delegatee and the other by the Director Corporate Services.

8.13.4 The box will be opened and cleared of tenders at the appointed time, in the presence of those wishing to attend the opening session.

8.13.5 The envelope/container containing the tenders shall be opened, the name of the bidder, the bid amount read out in case of a single envelope tender, the original and number of copies submitted and verified by the Internal Audit Officers. The value of any "option" proposed shall be read out (announced) separately.

8.13.6 In the case of two envelope method of bid submission, only the name of the bidder, the original and number of copies submitted shall be read out and recorded.

8.13.7 The form where the tender opening details are recorded shall be signed by at least three members of the tender opening team including the Internal Audit Officer referred to in 7.7.7.5 above.

8.13.8 The "original" tender documents shall be signed and dated by the Managing Director/delegatee and the Secretary and kept safe by the Director Corporate Services.

8.13.9 Copies of the tenders shall be submitted to the procuring Department Director requiring products and services to be passed on to the relevant tender evaluation committee.

8.13.10 Any tender received by BOBS after closing date and time shall be returned, unopened, to the tenderers with the date and time when it was received.



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9 EVALUATION OF TENDERS

9.1 Evaluation Team

9.1.1 The Secretary of the Tenders and Procurement Committee shall put together a three (3) member Evaluation Committee which shall assess and evaluate the tender and submit its “evaluation report” to the Secretary of the ITPC/TPC.

9.1.2 The evaluation team shall elect its Chairperson who shall preside over proceedings of its meetings.

9.1.3 The Committee may call upon any relevant specialist to give advice on the suitability of a purchase or contract. The specialist so co-opted shall not have any voting or decision making rights.

9.2 Evaluation

9.2.1 The following evaluation methods shall apply to specific tenders depending on requirements. These evaluation methods shall include:

- a) Least Cost Selection (PPADB Regulations) – supplies and works evaluation method shall be used to identify the lowest priced bid which meets all the commercial and technical requirements of the procuring entity. An award shall therefore be based on the lowest priced bid that meets all commercial and technical requirements.
- b) Least Cost Evaluation for Services shall be used to identify the lowest priced bid which meets all commercial and technical requirements of the procuring entity. An award shall therefore be based on the lowest priced bid that meets all commercial and technical requirements.
 - i) Two separate envelopes shall be used, one containing the technical proposal and the other containing the financial proposal.
 - ii) The procedure for evaluation shall be in three stages of Compliance, Technical and Financial evaluation.
- c) Quality and Cost Based Selections - both the quality and the cost of bids shall be taken into account in a process under which technical bids are evaluated without access to financial bids, and the relative weight to be given to the quality and cost components of the evaluation shall depend on the nature of the assignment and shall be stated in the invitation to tender (ITT). An award shall be based on highest combined technical and financial score.
- d) Quality based Selection – where a technical bid shall be evaluated against a set criteria on a merit point system to determine the best technical bid without access to financial proposal bids; the quality of a bid shall be the primary factor to be considered and cost shall apply only to the best technical bid. (See Part II of the Fourth schedule of the PPADB Act). An award shall be based on the highest technical score.



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- e) Fixed Budget Selection – the Procuring Entity shall indicate its available budget, the bidder shall be required to provide, within the stated budget, the best possible technical and financial bids, in separate envelopes. The bidder with the evaluated technical bid of the highest score, which is within the stated budget, shall be recommended to be awarded the tender.

9.2.2 Copies of the “received” Tender Documents shall be distributed to the members of the Evaluation Committee who shall, separately and independently, assess the tenders based on the criteria set in the tender documents.

9.2.3 The Chairperson of the Evaluation Committee shall coordinate the production of the evaluation report.

10 EXTENSION OF VALIDITY OF TENDERS

10.1 Extension of Validity of Tenders

10.1.1 In the event of the tender not being awarded within the validity period as stipulated in the submitted tenders, an extension of time, indicating the period required, may be requested from the tenderers.

10.1.2 except that such extension shall not be modified or negotiated with tenderers.

11 CLARIFICATION OF FORMAL TENDERS

11.1 Clarification

11.1.1 Where tenderers request for clarifications or enquire/query on tenders issued, responses, which shall include the request for clarifications or enquiry/query made, shall be communicated to all tenderers registered as having collected tender documents without disclosing the source of the query/request for clarification.

11.1.2 Tender documents (ITT) shall state the number of days to tender closing day by which bidders should submit requests for clarifications. This shall be two weeks prior to the closing date and time of the tender. Beyond this time, no requests for clarifications shall be permitted.

12 Tender Submission

12.1 No tenderer shall be permitted to alter their bid after their tender has been registered.

13 AWARD OF TENDER

13.1 Award of tenders shall be made by relevant Tenders and Procurement Committee as delegated by the Standards Council in line with the basis of award stated in the ITT.

13.2 It is the responsibility of the Internal Tenders and Procurement Committee to process and submit to relevant tender committees for consideration, all tenders falling outside its mandate.

13.3 All recommendations for consideration of award, accompanied by relevant tender documents,



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must be received by the members of the relevant adjudicating committee at least three working days before the meeting.

- 13.4 The Chairperson of the relevant tender Committee may request the presence of any other officer whose technical advice might be required. Officers who are not members of the Committee may be asked to withdraw before the final recommendations are discussed for the award of the contract. Tenders shall then be considered in the light of the information received.
- 13.5 In making an award, the relevant Tender Committee shall act in the best interest of BOBS, taking into account Government directives on procurement.
- 13.6 The relevant Tenders and Procurement Committee may reject any tender or part thereof; and it is not bound to accept the lowest tender if it is considered not to be in BOBS interest to do so. Details of the reasons for not accepting the lowest tender should be recorded in the minutes.
- 13.7 The award of a contract should, to the extent possible, be made within the period specified for the validity period of the tender.
- 13.8 The award of a tender shall be made on the basis of a predetermined evaluation criterion by members of the relevant tender and procurement committee. A decision of the Committee shall be reported to the Standards Council for information, except where approval is sought due to the nature of the contract being entered into.
- 13.9 Once the appropriate tenders and procurement committee has concluded its decision in respect of award of contract, the head of the department responsible for procuring works, services or products, shall draw a letter informing the contractor of BOBS intension to award the contract, conditional, on the draft contract being drawn and provisionally agreed to and submit the draft to the Director Corporate Services.
- 13.10 The Director Corporate Services, having satisfied himself/herself that the draft communiqué is proper shall seek the Managing Director's approval of the draft communiqué prior to it being communicated with the prospective contractor.
- 13.11 The Director Corporate Services shall cause for a draft contract to be drawn in line with the issued tender documents together with such other documents to which reference may properly be made, in order to establish the rights and obligations of the parties.
- 13.12 Should for any reason parties fail to agree on the conditions of contract, then, the award shall be cancelled at no cost or claim against BOBS.
- 13.13 The contract shall be allocated a serial number by the Director-Corporate Services and recorded in the Contract Register.
- 13.14 The Secretary shall effect the award of contracts by issuance of an appropriate document (formal letter, Purchase Order, etc.) incorporating the Contract/Tender Reference and the value of the award, and shall sign all contracts entered with contractors, and shall keep the signed documents.



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- 13.15 The Secretary shall cause for the publication of tender awards in the local newspapers and or BOBS Website.

14 CANCELLATION OF TENDERS

- 14.1 It is not BOBS policy to reject tenders solely for the purpose of obtaining lower prices. Except, in cases where the tender exceeds the cost estimate and there are insufficient funds in the budget to progress with the tender.

15 SELECTIVE TENDER PROCEDURE

- 15.1 Where a selective tender procedure is preferred, authority shall be obtained from the relevant tender adjudicating Committee. A formal justification shall be made for consideration and approval by the relevant Tenders and Procurement Committee that has jurisdiction to adjudicate the tender. The procuring Department should submit the list of companies shortlisted.
- 15.2 After approval of the method, tender documents detailing the scope of work, evaluation criteria and basis of award among others should be prepared and issued to the shortlisted suppliers.
- 15.3 The basis for assessment of prequalified tenders shall be the terms and conditions as contained in the terms of reference for the tender under consideration.

16 EXEMPTION FROM TENDER PROCEDURES

- 16.1 Any request for exemption from tender procedures should be made in writing to the relevant Tenders and Procurement Committee. Justification should include;
- 16.1.1 Full details to justify the exemption consistent with Public Procurement and Asset Disposal (PPAD) Act.

17 VARIATION OF CONTRACTS

- 17.1 Variations of a material nature to the conditions and/or specifications of approved contracts will not be made without reference to the relevant Tenders and Procurement Committee.
- 17.2 Contracts variation and extensions of more than 5% cumulative of total contract value shall not be permitted.

18 SUBMISSION OF RECORDS OF TENDERS AWARDED

- 18.1 The Director-Corporate Services shall submit a report to the Tenders and Procurement Committee of the activities of the Internal Tenders & Procurement Committee for consideration and for noting.
- 18.2 The Tenders and Procurement Committees' Chairpersons shall report to the Standards Council, quarterly, activities of the Tenders and Procurement Committee, for their appropriate action.



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19 CONFIRMATION OF AVAILABILITY OF FUNDS

19.1 No procurement shall be approved prior to confirmation of availability of funds by the Head of Department and or Managing Director.

20 RETRO-ACTIVE APPROVALS

20.1 Retro-active approvals shall not be allowed SAVE for emergency procurement. Where a procuring entity has made such a procurement without due process, the procuring entity shall afterward make a request for Ratification to the relevant authority in writing stating the reasons for the emergency and justifying departure from established procedures.

21 DISPUTE SETTLEMENT

21.1 Tenders adjudicated and awarded by the ITPC shall be subject to review by the TPC should dispute arise, with the SC being the final arbiter.

21.2 Tenders adjudicated and awarded by the TPC shall be subject to review by the SC should dispute arise, with the PPADB being the final arbiter.

22 DE-BRIEFING

22.1 Any bidder who wishes to ascertain the grounds, on which its bid was not selected, should request an explanation from BOBS in writing within 14 days of the award being made. BOBS shall promptly provide an explanation of why such a bid was not selected, either in writing and/or in a debriefing meeting, at the option of BOBS. The requesting bidder shall bear all the costs of attending such a debriefing.

23. RESERVATION

23.1 BOBS shall comply with all government policies and directives on procurement and disposal reservations and preference. These include but are not limited to Cabinet Directives, Economic Diversification Drive (EDD), Local Procurement Schemes (Cabinet Directive No. 19(b), 2013) and Citizen Economic Empowerment Policy.

24. PPADB REGISTERED CONTRACTORS

24.1 Suppliers shall be PPADB registered contractors for procurement and asset disposal in accordance with the PPAD Act.

25. TENDER INFORMATION TO BE CONFIDENTIAL

25.1 It is essential that information relating to the examination, clarification and evaluation of tenders and recommendations concerning awards are not communicated at any time to persons other than those officially concerned with these procedures.



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26. ASSET DISPOSAL PROCEDURES

- 26.1 Asset disposal shall be in accordance with BOBS' asset replacement policy, and shall follow procedure prescribed by the PPADB Act and Regulations, Accounting Standards and Government Directives.



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Appendix A

The following procedures are annexure to the Tenders & Procurement Regulations and prescribe procedure in dealing with complaints, offences and debriefing.

1.0 Complaints and Offences

1.1 Introduction

1.1.1 A complaint means a written objection, submitted by one or more of the suppliers (the complainant), regarding a solicitation, contract award or proposed contract award for goods, works or services and contractor registration.

1.1.2 If there is evidence of inappropriate behaviour and indiscretion actions by individuals or firms involving procurement and / or disposal activities, then an appeal can be made. Complaints may be lodged with the appropriate bodies (PPADB Act Sections 53 and 103).

1.1.3 It is important to note that there is a difference between types of complaints:

1.1.3.1 Complaints on the management or content of offers, tenders, bids, contracts (by either a Procuring Entity or a Contractor)

1.1.3.2 Complaints about the personal behaviour of Procuring Entity officials or staff of the Bidders /

1.2 Right to review

1.2.1 Any supplier, contractor or complainant that claims to have suffered, or that may incur loss or injury, due to a breach of a duty imposed on them by the Procuring Entity on the provisions of this manual, may seek review.

1.2.2 The following matters shall not be subject to review (PPADB Regulation 77 (2)):

- a) Selection of a method of procurement;
- b) Choice of selection of an evaluation procedure for the selected procurement method;
- c) Decision by the SC or its Committee to reject all bids.
- d) Refusal by the Procuring Entity to respond to an unsolicited offer of an interest to bid.

1.3 Report of the Complaint

1.3.1 The complaint must be received in a written form and should contain the following information:

- a) Company name, address, contact person name, telephone number, fax number, email address;
- b) The nature of the problem and if applicable, identifying the part of the regulation that are believed to have been broken;



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- c) Description of the background leading to the problem, statement of breach of Tender/Contract, relevant dates and times, Tender/Contract reference number;
 - d) If known, what part of the Procurement Act or Regulations has been broken;
 - e) The supporting and provable facts;
 - f) The Procuring Entity's representative, originally contacted to review the problem and the results of those discussions;
 - g) Listed in detail, the action that is requested.
- 2) Prior to formally presenting a written complaint, suppliers are strongly encouraged to contact the Procuring Entity to discuss its concerns. It has often been found that there are minor errors, omissions or other inadvertent actions that can be clarified and corrected, to the satisfaction of the complainant.

1.4 Suspension of Procurement Proceedings

- 1) Upon receipt of a complaint the procurement proceedings relating to that particular procurement activity shall be immediately suspended by the SC, through the concerned Procuring Entity (PPADB Regulations 78 (3) and 79).
- 2) The period of suspension shall not exceed 60 days (Regulation 79 (3)).

1.5 Initial Review by the Standards Council

- 1) A complaint shall be submitted in writing to the Secretary of the SC/TPC/ITPC who as soon as possible shall issue a written response to the complainant (PPADB Regulation 78 (1)).
- 2) No complaint shall be entertained unless it was submitted within 14 days after the Supplier, Contractor, or Consultant submitting it became aware of the circumstances from which the complaint arise, or when that supplier, contractor or consultant should have become aware of those circumstances, whichever is earlier (PPADB Regulation 78 (4)).
- 3) The decision of the SC shall be final unless the complainant requests for further redress at either PPADB or a Court of Higher Jurisdiction.
- 4) Where the complaint is not resolved by mutual agreement between the complainant and the SC, the Secretary of the SC shall, within 14 days after the submission of the complaint, issue a written decision of the SC to refer the matter to the PPADB. The decision shall:
 - a) State the reasons for the decision to refer the matter to the PPADB.
 - b) State the grounds upon which the SC denies liability if such liability is denied.
 - c) A Supplier, Contractor or Consultant is entitled to seek review and may submit the complaint to the PPADB within 7 days, if the complaint cannot be resolved with the SC.



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- 5) If the complaint is upheld, in whole or in part, indicate the corrective measures that are to be taken.

1.6 Investigation by the SC

- 1) The SC, if it believes there has been an alleged wrongdoing, breach, mismanagement, or received a report, or a complaint in writing shall consider if an investigation is necessary, or desirable, for the purpose of preventing, investigating or detecting a contravention of the PPAD Act 52, or Regulations, or this Operations Manual. As the case may be, the allegation may be against any entity of the Government, or any Contractor, or against any entity outside of Government which has been a beneficiary of a Government contribution for the procurement or disposal activity.
- 2) For the purposes of such an investigation, the SC shall appoint an investigator or a committee of enquiry to conduct an investigation into any matter related to the conduct of any procurement proceedings by a Procuring Entity, or a Contractor, or an alleged conclusion, or operation of any procurement contract.
- 3) The appointed investigator/committee may at any time during normal office hours, and with advance notice enter any premises of the Procuring Entity concerned, or of any Bidder, Supplier, Contractor, or Consultants in the procurement proceedings concerned.
- 4) The Standards Council may at its sole discretion refer the matter to other law enforcement agencies for investigation.

1.7 Procedures on Completion of Investigation

- 1) On completion of an investigation the Investigator/ Committee shall forward report to the SC for consideration.
- 2) If, after considering an investigator's report, the SC is satisfied that there has been a contravention of the PPAD Act, the PPAD Regulations, this Operations Manual, or any other written law, in relation to any procurement proceedings, or procurement contract, the SC may take such action as, in the Council's opinion, is necessary to rectify the contravention, including:
 - a) annulment of the procurement proceedings;
 - b) cancellation of the procurement contract;
 - c) Agree that the Procuring Entity, Bidder, Supplier, Contractor, or Consultants have proven their case;
 - d) Refer the case to the DCEC.

1.8 Arbitration

- 1) Parties to a procurement contract may agree to seek a remedy to arbitration under the existing arbitration system, whether or not arbitration was provided for under the tender document, or the resultant contract.



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- 2) A reference to mediation shall not be construed as taking away the accountability of the High Court to resolve expeditiously, any complaint brought up to it for resolution.

1.9 Offences Relating to Procurement

- 1) Any person, who contravenes the provisions of the PPADB Act, the Regulations and this Operations Manual, shall be liable of an offence. The list is not to be considered exhaustive and the following actions, amongst others, shall constitute an offence:
- a) Entering or attempting to enter into a collusive agreement, or agreements, whether enforceable or not, with any other supplier or contractor whereby the prices quoted in their respective tenders, proposals or quotations are, or would be, as the case may be, higher than would have been the case had there been no collusion between the candidate(s) concerned.
 - b) Possible complaints arise for a number of reasons. Some of the reasons may be as follows:
 - i) Specification or TOR that was too vague or incomplete
 - ii) Bid preparation time was too short to reply in time
 - iii) Clarifications were not responded to, or received too late
 - iv) The selection process was perceived to be unfair, pre-determined or arbitrary in nature
 - v) There was an inconsistent application of procurement procedures
 - vi) Instructions concerning the procurement process had not been properly explained
 - vii) Violation of part of the procurement law or procurement process
 - viii) Violation of a trade agreement or agreement with funds provided by a donor
 - ix) Attempting to bribe, or offer employment
 - x) Directly or indirectly influencing in any conduct or attempting to influence the procurement activity with the aim of obtaining an undue benefit in the award of a procurement contract.
 - xi) Providing false documentation or modifying any procurement document with the objective of influencing the outcome of a tender proceeding. Such a variation shall include, but not be limited to, forged arithmetical modification, incorporation of documents such as bid security, or tax clearance certificate, after same have been found not to have been submitted at bid opening, and / or request for clarification in a manner not allowed under this Operations Manual.
- 2) An offence committed under this Tender Regulations may be aptly sanctioned by the SC, or its committees, or prosecuted in a Court of competent jurisdiction.



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1.10 Dismissal of Complaint

- 1) A complaint may be dismissed without further consideration where:
 - a) It is frivolous in nature, or no evidence is produced, or it is invalid;
 - b) Is considered quite inappropriate for consideration (has no grounds);
 - c) The complainant did not participate in the competitive process;
 - d) Is lodged after the allowed time limit;
 - e) Is the result of a previously and properly applied ruling by the SC.

1.11 Complaints, Appeals, and Sanctions

- 1) To address the complaints of aggrieved bidders and other stakeholders, a means for lodging complaints/appeals on officials who do not follow the prescribed procedures have been provided for in section 54 of the PPADB Act of 2001. In the first instance, interested parties can formally bring complaints in writing, with supporting evidence, to the Head of the Procuring Entity. In the event that the Accounting Officer is unable to resolve the matter, the complaint may be referred to the PPADB.
- 2) Where a case of non-compliance with the provisions of the PPADB Act, appropriate sanctions shall recommended to the Accounting Officer and shall be applied accordingly.



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Debriefing the Bidders

- 1) In the interests of transparency and openness, it is normal practice to debrief each participating bidder of the results of their bid. Debriefing is a mandatory requirement for every PE. The bidder/contractor will have incurred costs in preparing and developing their bid and therefore, at the very least, it is only good practice to inform them of the outcome of the results and why they were not successful. It demonstrates the PE's commitment to good practice and transparency and also it shows an appreciation of the efforts that a bidder/contractor has exhibited, in preparing their bid.
- 2) The first element to consider in debriefing is the accuracy of the evaluation report, the range of the allocated points and how those points were awarded. The PE should be fully confident in the results of the evaluation report, how it was evaluated, the spread of the points, the strengths and weaknesses (for services) of each bidder and finally the conclusions to which the evaluators came to. Did the evaluators fully understand how the points were to be allocated and the standard of measurement? Could there be a challenge on the assessment of points? Did the points reflect the true ranking position? If there is a weakness in the evaluation report and its conclusion, it will be very difficult for the debriefing panel to support that conclusion.
- 3) After selection and award, a letter must be issued to all participants thanking them for their interest and indicating who was awarded the contract (a notice of award should be publicised). The letter should inform bidders that they are at liberty to request for a de-briefing meeting should they require it. .
- 4) Where a bidder has requested to be de-briefed, the PE should set out the scope and likely format of the meeting and should make it clear that the debriefing process will not be used to debate the merits of the award decision, or to change the selection decision, or to reopen the award procedure.
- 5) Debriefing of those bidders who submitted tenders takes place only after the contract is awarded, or the procurement is otherwise concluded, and after all parties have been informed of the results of the tender. After the award of contract, there is no reason to conceal comparative pricing information, as the bidders were probably present at the bid opening and already know the spread of prices. The meeting itself should take place at the earliest mutually convenient time
- 6) The Bidders should be informed that it is only their own submissions that will be discussed and that an opportunity will be given for them to air their views. It is wise to include a clause to say that there will be no discussion about any commercially sensitivity information during the meeting, nor to discuss how the individual points were allocated to each particular bidder.
- 7) The debriefing panel should be a mixture of the Procurement Unit staff, the originating department staff, members of the evaluators committee who are familiar with the evaluation, and an independent observer selected from within the organisation. The Procurement Unit representative will guide the proceedings so as to not to be derailed out of context.
- 8) The meeting should not be an over elaborate, but rather an opportunity to formally debrief the Bidders, the goal being to inform and assist the Bidders to prepare an improved bid next time. It helps Suppliers/Contractors to rethink their approach to the government style of tendering. It is also a good exercise in helping the Suppliers/ Contractors to obtain a better understanding of what



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differentiates the public sector procurement from the private/commercial sector. No formal record shall be kept of the meeting, but both parties may keep informal notes for their own records.

- a) The meeting should have the following basic structure:
 - i) Welcome
 - ii) The welcome and general introductory points of how the meeting will be conducted.
- b) State that as indicated in the debriefing letter, the merits of the award decision are not for debate.
 - i) The general details of the Tender Analysis summary
 - ii) Explaining the background to the selection stage, and the recommendation made, without going into specific details, and not divulging any confidential information.
 - iii) Explain the overall standard and quality of the winner, and where appropriate, any other values which influenced how the winner was selected.
 - iv) The recommendation made by the formal Evaluation Report
 - v) Outline the evaluation process and in broad terms, the methodology used, the criteria, and the role of adjudicators and evaluators,
- c) Describe evaluation strategy (compliance issues, weighting, scoring).
 - i) Outline the size of the field and give the relative ranking of the bidders, without discussing particular competitors' bids,
 - ii) The debriefing panel should indicate the general strength and/or weaknesses of all in the field, as indicated in the evaluation report.
 - iii) State the recommendation made in the evaluation report.
- d) Examination of the particular invitee's bid preparation
 - i) Discuss the invited bidder's relative ranked position.
 - ii) Explain how the invited bidder's bid submission compared to the winner. Show how the bidder scored against the main criteria (strengths as well as weaknesses). By highlighting their strengths and weaknesses and where the bidder failed to make the grade, it helps the bidders understand, in which areas they failed to win the contract. Offer constructive criticism, not negativity.
 - iii) At all stages the debriefing party must avoid revealing anything about other bids, where the information may be commercially sensitive, or has been supplied in confidence.



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- iv) Where a bid is price competitive, this should be openly acknowledged, but it must be explained that this was outweighed by other technical factors in the selection/award decision.
- v) DO NOT become drawn into a discussion on the assessment of bidder's points, or why they disagree with the points allocated to them, or why they should have been allocated higher points. Quote the original letter which said that the "... debriefing process will not be used to change the selection decision, or to reopen the award procedure". If you have to, agree to disagree, on this.
- vi) If there is still a disagreement with the invited bidder, advise them to follow the procedure for lodging complaints with the Standard Council. Where appropriate, for candidates not selected for the bid shortlist, then discuss with them the Pre-qualification summary details and explain why they were not selected.
- 9) General discussion
 - a) Seek their views about the procedure or process?
 - b) Were there any surprises in the feedback received?
 - c) How could the procurement experience be improved?
 - d) Was the feedback useful?
- 10) Closing statement from Bidder
 - a) Invite the bidder to make any closing remarks.
 - b) Closing statement from the Debriefing Panel
 - c) Thank the Bidder, both for attending the meeting and to show an appreciation of the effort they made in submitting the bid and hope that they are successful next time.
 - d) Close the meeting.