

**GAMBIA PUBLIC PROCUREMENT AUTHORITY
REGULATIONS, 2019**

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PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Gambia Public Procurement Regulations, 2019 and shall come in to force first day of January, 2019.

2. Interpretation

In these Regulations, unless the context otherwise requires-

“Act” means the Gambia Public Procurement Authority (Amendment) Act 20....;

“Authority” means the Gambia Public Procurement Authority;

“medium enterprise” means a business undertaking with an initial-

- (a) staff establishment of not less than fifty and not more than ninety-nine employees,
- (b) paid in capital of not less than one million dalasi and not exceeding five million dalasi, and
- (c) annual turnover not less than one million dalasi and not exceeding ten million dalasi;

“micro enterprise” means a business undertaking with an initial-

- (a) staff establishment of not more than four employees,
- (b) paid in capital not exceeding twenty-five thousand dalasi, and
- (c) annual turnover not exceeding one hundred thousand dalasi;

“Minister” means the Minister responsible for Finance and “Ministry” shall be construed accordingly;

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REPUBLIC OF THE GAMBIA

**GAMBIA PUBLIC PROCUREMENT AUTHORITY
REGULATIONS, 2019**

IN EXERCISE of the powers conferred on the Minister by Section 65 of the Gambia Public Procurement Authority (Amendment) Act 20..., these Regulations are made.

"preference" means the right or opportunity to select a person from an identified target group which is considered more desirable than another;

"region" means a location designated by the Minister within which defined tenderers enjoy certain preferences and reservations;

"Regulations" mean the Gambia Public Procurement Regulations, 2019;

"reservations" means exclusive preference to procure goods, works and services set aside to a defined target group within a specified threshold or region;

"SMEs" means Small and Medium Enterprises; and

"small enterprise" means a business undertaking with an initial-

- (a) staff establishment of not less than five and not more than forty-nine employees,
- (b) paid in capital of not less than twenty-five thousand dalasi and not exceeding one million dalasi, and
- (c) annual turnover not less than one hundred thousand dalasi and not exceeding one million dalasi; and

"target group" means designated bidders identified by the Minister to benefit from the preference and reservations schemes.

3. Supplemental Instructions on Public Procurement

(1) The Authority may issue Instructions to supplement these Regulations and provide administrative guidance on operational aspects of public procurement in The Gambia.

(2) Notifications concerning the issuance of Instructions and other administrative decisions of general character shall be published in the gazette and in the local media.

(3) The Authority shall periodically issue an updated compilation of the main operating Instructions and decisions governing public procurement.

4. Language

All pre-qualification documents, bidding documents, contract agreements and contract conditions, specifications, layouts, technical reports and correspondence shall be in English.

PART II - OVERSIGHT OF PUBLIC PROCUREMENT BY THE AUTHORITY

5. Structure of the Authority

In addition to the offices of the Director General and the Deputy Director General, the Authority shall have the following Departments, each headed by a Director -

- (a) Procurement Policy and Operation;
- (b) Procurement Compliance and Procurement Practices;
- (c) Career Development and Training;
- (d) Finance; and
- (e) Administration and Human Resources.

6. Compliance Review

(1) Pursuant to section 57 of the Act, the Authority may from time to time review transactions completed by procuring organisations with a view to verifying compliance with procurement procedures and instructions.

(2) In the exercise of the functions mentioned in sub-regulation (1), staff of the Authority may conduct interviews, site visits, and physical verification or employ any other appropriate strategy.

(3) The entities within the scope of the compliance audit shall include; Ministries, Department, Agencies (MDAs) and Projects.

(4) The Authority shall be independent and objective in the performance of its work.

7. Observers status of the Contracts Committee meetings

At the request of the contracts committee or where the Authority deems fit, the Authority may delegate a representative to attend a meeting of any Contracts Committee as non-voting observers and report their opinion to the Accounting officer or relevant authority.

8. Reporting of violations by Procuring Organisations

(1) Where there is a violation of the Act or these Regulations, including the failure to provide requested information to the Authority relating to procurement operations, the Authority may inform the Auditor-General and submit a report to the Minister.

(2) The Minister may, in accordance with the powers provided by the Public Finance and National Audit laws, supervise and reduce the amount or temporarily stop part of the payment to a procurement organisation that does not conform to the procurement procedures.

(3) Where a procurement organisation is guilty of misconduct or breach of any procurement law, the Authority may recommend disciplinary action to the relevant statutory bodies.

(4) Where the misconduct involves a criminal act, the Authority shall notify the Attorney General or any other relevant statutory body.

(5) The Authority shall inform Procuring Organisations, end-users and other public bodies on the types of statistical and reporting information related to public procurement that are required to be collected and the periodicity of the collection of such statistical data and reports.

(6) Procuring Organisations shall collect the necessary information pursuant to sub-regulation (1), and report to the Authority on implementation of procurement activity every quarterly or at such intervals required by the Authority.

9. Registration of bidders

(1) A Bidders who wishes to be registered in any database or list of qualified bidders established by the Authority shall provide the following -

- (a) complete registration application;
- (b) copy of valid licence and business registration for activity practiced;
- (c) copy of valid registration certificate from bidder's chamber of trade or commerce or equivalent body;
- (d) copy of contract relating to agency, brokering and distribution arrangements; and

(e) copy of last approved annual statement of accounts.

(2) The existence of the database or list, the conditions to be satisfied by bidders for registration, the period of validity of a registration and the procedures for entry and for renewal of registration, shall be published in the gazette and at least two newspapers of wide circulation.

(4) Subject to Section 24(2) of the Act, the absence of an application for entry into the registry shall not be a ground for exclusion of a bidder from participation in procurement proceedings, though registration may be required as a condition for award of a contract.

(5) A fee may be charged for registration and re-registration.

(6) Inscription in the database or list shall be available at any time and shall be subject to annual renewal, and prompt notice shall be given to the bidder of his inscription on or removal from the database.

(7) Bidders shall update their information every year before the Authority may renew their registration.

(8) A procuring organisation shall seek approval from the Authority before it awards any contract, including delegated management contracts to any responsive bidder or agency.

10. Analysis and annual report

(1) The Authority shall analyse the information collected from and make recommendations to, Procuring Organisations relating to the implementation of procurement procedures.

(2) The Authority shall submit an annual report to the Minister on the implementation of the Act, the Regulations and Instructions, and related institutional arrangements, in relation to the implementation of the State budget, and the requirements of the legal and regulatory framework for public procurement.

11. Standard bidding documents and provisions

(1) A Procuring Organisation shall utilise the standard bidding documents issued by the Authority pursuant to the Act and the Regulations.

(2) Subject to Section.20 (4) of the Act, any departure from the provisions of standard forms shall be authorised by the Authority.

12. Thresholds for procurement transactions

(1) A Procuring Organisation shall undertake its procurement in accordance with the thresholds set out in the Schedule to these Regulations.

(2) The Authority may adjust or waive the thresholds across the board or in respect of individual entities, taking into account increases in the capacity of Ministries and other entities to absorb higher levels of procurement authority.

13. Review of procurement transactions

(1) Subject to Section.12 (2) of the Act, any proposed contract for procurement with a value of one million dalasi and above shall be submitted to the Authority for its approval, along with the complete contract file and a recommended course of action in the format prescribed by the Authority.

(2) The application for approval shall be accompanied with -

(a) procurement and contract files, including requisition, specification, bidding documents, records of pre-bid meetings, records of site visits, records of bid opening, qualification assessment reports, originals of bids, evaluation reports, draft contracts and the record of the procurement proceedings as may be appropriate for the requested approval; and

(b) Committee approvals.

(3) The approval procedure in sub- regulation (1) also applies to contract variations that increase the value of a contract by one million dalasi or more, or that increase the value of a contract above the threshold referred to in regulation 26.

(4) In conducting the approval procedure referred to in this regulation and confirmation of bidders responsiveness, the Authority shall only approve an award decision in accordance with set requirements.

(5) During contract execution, the Authority may restrict any contract extensions or additions.

(6) In the exercise of its functions under sub-regulation (1), the Authority may conduct interviews, site visits, physical verifications, or employ any other appropriate strategy.

(7) In the exercise of its functions under sub-regulation (1), the Authority shall not grant retroactive approval.

(8) In the exercise of its function under sub-regulation (1), the Authority shall be independent and objective in the performance of its work.

PART III - PROCUREMENT OPERATIONS

14. Procurement of common-use goods and services

(1) Pursuant to section 13(3) of the Act, Procuring Organisations shall provide, and Authority shall collect and analyse annual data on the items purchased and the suppliers providing the items in order to take appropriate measures for co-ordination of procurement of common-use goods and services.

(2) Pursuant to section 13(3) of the Act, the Authority may designate a Procuring Organisation to enter into framework agreements up to two years subject to renewal, with one or more suppliers on a competitive basis in accordance with the Act and these Regulations.

(3) To maintain ongoing competition, such framework arrangements shall where feasible, be concluded with more than one supplier per item being procured.

(4) Every framework agreement shall be subject to approval by the Authority.

15. Assistance to State bodies in carrying out procurement

The Authority shall devise and implement programmes aimed at assisting Procuring Organisations as well as bidders, in conducting and participating in public procurement proceedings by-

- (a) organising and conducting educational programmes and professional training;
- (b) assisting in the development of specialised procurement units and expert officers for entities at various levels of administration and regions in The Gambia;
- (c) developing proposals and plans for the phased introduction of professional procurement staff of Procuring Organisations;

- (d) setting the minimum entry-level requirements, procedures for professional certification, descriptions of authority and responsibilities of procurement officers, and grounds for termination;
- (e) assisting in the dissemination of information to bidders about the rules and procedures governing public procurement and about procurement opportunities in The Gambia;
- (f) issuing opinions, providing advice, and proposing solutions to facilitate the work of procuring organisations with a view to fulfilling the objectives of the Act;
- (g) establishing a central data bank for the purpose of categorising suppliers by area of specialisation and to record information on their performance record with respect to implementation of procurement contracts with procuring organisations in The Gambia so as to evaluate their past performance;
- (h) developing proposals for methods of disseminating procurement-related information through the use of a procurement bulletin or other medium;
- (i) examining use of information technology and other technical innovations in procurement with a view to more cost effective and higher quality performance of public administration and delivery of public services;
- (j) more effective management of operations of procuring organisations; and increased competition and participation by bidders; and
- (k) investigating the experiences and practices of other countries with a view to introducing innovations in The Gambia.

16. Use of third-party procurement agents

(1) A Procuring Organisation may only engage the services of third-party procurement agents in consultation with and subject to the approval of the Authority.

(2) The Procuring Organisation shall -

- (a) meet the cost of the services offered by the procuring agents;
- (b) prepare the terms of reference for the procuring agent assignment in accordance with the provisions of the Act and these Regulations; and
- (c) be responsible for the actions and performance of the procuring agents;

(3) Where the procuring agent is engaged, the contracts committee or the Authority shall adjudicate the awarding of the procurement agent's contract.

17. Scope of activity of Contracts Committees

(1) A contract Committee's decisions regarding the conduct of any proceeding for a procurement, the value of which exceeds the threshold set in regulation 26, are subject to approval by the Authority.

(2) The Authority shall periodically review the functioning of Contracts Committees, and may recommend to the Minister, adjustments to any limitations on their procurement Authority, taking into account increases in the capacity of ministries and other entities to conduct procurement proceedings and with a view to implementing a policy of decentralisation of procurement.

(3) Pursuant to section 47 of the Act, the Contracts Committee shall-

- (a) review, verify and ascertain that all procurement and disposal have been undertaken in accordance with the Act, these Regulations and the terms set out in the tender documents;
- (b) approve the selection of the successful tender or proposal;
- (c) ensure that the Procuring Organization does not pay in excess of prevailing market prices;
- (d) review and approve aggregation of procurements, where proposed;
- (e) review and approve the use of lots, where packaging into lots has been proposed;

- (f) approve the list of tenderers, in cases of restricted tendering;
- (g) approve the list of persons qualified to submit proposals;
- (h) approve the list of persons to be given requests for quotations;
- (i) review the quarterly reports on quotations that have been awarded by the specialized procurement unit (in case of delegation); and
- (j) undertake any other function and duty as are provided under the Act, these Regulations or as may be stipulated by the Authority.

18. Appointment of Contracts Committee

A Procuring Organisation shall establish and appoint members of its Contracts Committee in accordance with the Instructions of the Authority.

19. Procedures of Contracts Committees

(1) The quorum for a Contracts Committee meeting is a simple majority of the members.

(2) A Contracts Committees shall take its decisions by simple majority of members present.

(3) In accordance with section 47(6) of the Act, a Contracts Committee may delegate its authority below a threshold it establishes, to one or more officials within the specialised procurement unit of the procuring organisation, and promptly report to the Director General of the Authority.

20. Staffing of specialised procurement units

(1) In accordance with section 51 of the Act, the head of a Procuring Organisation shall support the development of a pool of personnel for the specialised procurement unit with relevant qualifications to undertake procurement.

(2) The specialized procurement unit shall be under the office of the head of the Procuring Organisation.

21. Role of specialized procurement units

Pursuant to section 50 of the Act, a Procuring Organisation shall establish a specialised procurement unit in accordance with these Regulations and stipulate the level of qualification and experience required of procurement professionals under section 51 of the Act.

22. Functions of specialised procurement unit

A specialised procurement unit shall-

- (a) maintain and update annually, standing lists of registered contractors or bidders required by the Procuring Organization and liaise with the Authority in respect of the Authority's register of suppliers;
- (b) prepare, publish and distribute procurement and disposal opportunities including invitations to tender, pre-qualification documents and invitations for expressions of interest;
- (c) co-ordinate the receiving and opening of bid documents;
- (d) maintain and safeguard procurement and disposal documents and records in accordance with these Regulations;
- (e) submit shortlists and lists of pre-qualified bidders to the contracts committee or the Authority for approval, depending on the threshold;
- (f) issue procurement and disposal documents to bidders in accordance with the Act and these Regulations;
- (g) propose the membership of the evaluation committee to the contracts committee or Accounting Officer for approval;
- (h) co-ordinate the evaluation of bids, quotations and proposals;
- (i) prepare and publish notices of award and notices of bid acceptance;
- (j) prepare contract documents, in line with award decisions;

- (k) prepare and issue rejection and debriefing letters;
- (l) prepare contract variations and modifications to documents;
- (m) maintain and archive documents and records of the procurement and disposal activities for the required period;
- (n) provide information, as required, for any petition or investigation to debar a bidder or contractor or any investigation under review procedures;
- (o) implement the decisions of the Authority, contracts, and disposal committees, including coordinating all activities of these committees;
- (p) prepare and submit to the Authority reports required under the Act, these Regulations and guidelines of the Authority;
- (q) monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts;
- (r) report any significant departures from the terms and conditions of the contract to the head of the Procuring Organization;
- (s) recommend the consolidation of a procurement or disposal function with another procuring organization by the head of the procuring organization whenever a need arises;
- (t) prepare consolidated and joint procurement and disposal plans;
- (u) advise the procuring organization on aggregation of procurement to promote economies of scale;
- (v) co-ordinate internal monitoring and evaluation of the Procurement function;
- (w) carry out periodic market surveys to inform the placing of orders or adjudication by the relevant award committee;

- (x) conduct periodic and annual stock taking;
- (y) certify the invoices and payment vouchers to suppliers;
- (z) request for approval from the Contracts Committee for the extension of the tender period and bid security validity period;
- (aa) verify that the available stock levels warrant initiating a procurement process; and
- (bb) carry out any other functions or duties as may be provided under the Act or these Regulations and any other functions that might be stipulated by the Authority.

23. Career Development

The Personnel Management Office shall in consultation with the Authority, develop staff on a permanent basis for the procurement cadre.

24. Use of information and communication technology in public procurement

(1) Pursuant to the mandate set forth in section 12(7) (j) of the Act, the Authority shall examine and recommend ways of introducing in public procurement, the use of information and communications technology, and other technical innovations.

(2) The guiding principles for identifying and developing applications of information and communications technology to public procurement shall include -

- (a) standardisation of key aspects of information and communications systems for public procurement throughout public administration, so as to facilitate internal sharing of information, and participation by bidders throughout the procurement market;
- (b) technological neutrality, so as to create a system that takes advantage of existing developments in information and communications technology, while remaining open to future technological developments;
- (c) avoiding to the greatest extent possible, separate requirements not used in paper-based procurement procedures; unless establishing a functional electronic

equivalent requires doing so;

- (d) maximising the utilisation of commercially developed and utilised software applications and structural elements and avoiding where feasible, the devising of applications and structures uniquely for the public purchaser, with a view to limiting costs and facilitating the widest possible participation by bidders;
- (e) identifying ways in which the applicable legal framework should be modified and modernised to provide the requisite legal certainty in applying information and communications technology to public procurement; and
- (f) Identifying ways in which traditional procurement processes should be revised in order to obtain the greatest possible benefit from the application of information and communications technology.

(3) The principal elements in the application of information and communications technology to public procurement shall include -

- (a) easy access to standard bidding documents and use of standard formats;
- (b) automated linkages between acquisition systems and other relevant systems, in particular supply and materials management systems and payment systems;
- (c) bidder (supplier) registration systems;
- (d) where appropriate, the development of special electronic procurement methods for conducting purchasing activity electronically (e.g., use of purchase cards for small purchases, catalogue shopping for standard goods);
- (e) electronic payment, involving, for example, electronic issuance of invoices, if invoices are necessary, or the automatic generation of payment upon report of the receipt of the procured object;
- (f) appropriate security to prevent unauthorised access to the bidding, approval, and award processes; and
- (g) Accurate retrieval or conversion of electronic forms of

information into a medium which permits inspection and copying.

25. Electronic procurement market place

(1) The Authority shall establish and manage an electronic procurement market place.

(2) The Authority may enter into contracts with private or public entities to establish or maintain all or part of the database comprising the market place, to the extent feasible.

(3) The Authority shall, in consultation with the Ministry and the Ministry responsible for Trade, define standards, including keyword and product code standards, for the electronic procurement marketplace.

(4) The market place may contain -

- (a) information relevant to the standard procurement specifications for goods, works and services;
- (b) information about vendors, including information from a centralised master bidders list and vendor performance information;
- (c) information about products, including product testing results;
- (d) historical purchasing information, qualified purchase lists, and trends; and
- (e) information about the availability of surplus property.

(5) The Authority may adopt rules relating to the design and use of the electronic procurement marketplace, including rules that require state agencies to provide information for or receive information from the marketplace.

(6) The Authority may make public procurement information available through the electronic procurement marketplace on a reasonable fee-for-service basis.

(7) Before developing a contract for the procurement of a good or service, a Procuring Organisation may use the electronic procurement marketplace to determine the most appropriate method for acquiring the good or service.

PART IV- PARTICIPATION OF SMALL AND MEDIUM ENTERPRISES IN PROCUREMENT

26. Participation of small and medium enterprises

The Authority shall facilitate and encourage the participation of small and medium enterprises (SME's) in public procurement contracts through the application of preferences and reservation schemes as set out in these Regulations and Instructions.

27. Eligibility for preference schemes

A person or bidder is qualified to benefit from a preference scheme if that person or bidder meets the criteria specified and -

- (a) has the necessary qualifications, capability, experience and, where appropriate, resources, equipment and facilities to provide the goods or services intended to be procured;
- (b) has the legal capacity to enter into procurement contract;
- (c) is not insolvent, in receivership, bankrupt or in the process of being wound up, and is not the subject of legal proceedings relating to any subject matter under this paragraph;
- (d) is not barred from participating in procurement; and
- (e) is registered by the Authority.

28. Registration for purposes of preference schemes

(1) A bidder who wishes to be granted a preference according to these Regulations shall apply for registration with the Authority or where particular bidders or group of bidders are registered by a statutory body, the Authority shall liaise with such statutory body to obtain the necessary information required to establish eligibility for the preference scheme.

(2) A Procuring Organisation shall, in granting a margin of preference or applying exclusive preference, use the Authority's register of bidders to determine whether or not bidders are qualified for margin of preference or exclusive preference.

(3) A Procuring Organisation shall, when procuring goods, works or services by means of competitive bidding or selection, grant a

margin of preference for the benefit of local firms or partnerships of local and foreign firms bidding for goods, works or services.

(4) Bidders who are citizens of The Gambia or a partnership between local and foreign firms registered by the Authority or any other statutory body acceptable to the Authority shall be eligible to be granted a margin of preference or exclusive reservations as provided for in these Regulations.

29. Exclusive preference scheme to local persons or firms

The procurement of works, goods, consultancy or non-consultancy services with a value not exceeding the amount prescribed, shall be reserved exclusively for local persons or firms who meet the following requirements -

- (a) a joint venture or an association between a foreign and local firm in which the contribution of the local firm is greater than fifty per cent, shall also be eligible to participate in the exclusive preference scheme;
- (b) in applying exclusive preference to local contractors, consultants or service providers, a Procuring Organisation shall ensure that the selected person or firm is capable of providing quality works or services;
- (c) the Minister may, on the advice of the Authority, grant special consideration for procurement of goods, services or works for the purpose of promoting the growth of local companies or public owned local companies in which the Government has shares; and
- (d) a Procuring Organisation may reserve works, goods, and consultancy or non-consultancy services with a value not exceeding the amount prescribed by the Minister to local firms who are based and operate in local government authorities or regions, except where it is established that local capacity is not available.

30. Bid securing declaration for SME's

- (1) Bid securities shall not be required from bidders participating in the exclusive preference scheme for SME'S.
- (2) Bidders shall be required to complete and sign the Bid Securing Declaration Form.
- (3) A bidder who fails to comply with the terms set in the Bid

Securing Declaration Form may be barred from procurement.

31. Application of the margin of preference

(1) A margin of preference shall be applied in the cost comparison of the submitted bidders and the calculation of the margin of preference in the course of evaluating tenders, and shall in addition, be in accordance with the conditions and methods prescribed.

(2) A procuring organisation shall grant a margin of preference of up to 7.5 percent to local firms or associations between local and foreign firms as prescribed in these Regulations where the contracts for works, consultancy or non-consultancy services are to be awarded on the basis of -

- (a) international bidding or selection;
- (b) national competitive bidding or selection in which foreign firms are participating;
- (c) restrictive tendering;
- (d) request for proposals; or
- (e) request for quotation.

(3) In the case of consultancy assignments carried out by foreign firms, Procuring Organisations shall ensure that inclusion of local experts and local firms in the assignments is achieved through apportioning proper weight in the criteria for evaluation to encourage partnering of foreign and local firms.

(4) A procuring Organisation shall for the purpose of regulation, assign the following weights -

- (a) in the criteria for participation of local firms in the assignment, a maximum weight of 7.5 per cent shall be included in the request for proposal, and firms that demonstrate inclusion of local firms up to 80 percent shall be granted a full score; and
- (b) in the criteria for participation of national experts in the assignment, a maximum weight of 7.5 percent shall be included in the request for proposal and firms that demonstrate that more than 80 percent of their staff are Gambians shall be granted a full score.

32. Lotting of bids

- (1) A Procuring Organisation may for the purpose of ensuring maximum participation of local firms in public procurement, divide bids in lots of practicable size and quantities.
- (2) A Procuring Organisation shall divide a bid into several lots of the same size, and invite firms to bid for a single or several lots, but shall limit the award of contract to a number of lots that will allow many firms to participate.
- (3) The size of the packages shall depend on the capability of local firms targeted to benefit from the exercise.
- (4) A Procuring Organisation shall submit to the Authority, details of the bid that is targeted for lotting, and the Authority may within seven days, give its approval to the procuring entity to proceed with the Bid process.

33. Capacity building of local firms

- (1) A Procuring Organisation may, after consultation with relevant statutory bodies, set aside contracts to be used for the purpose of capacity building of local firms.
- (2) Reserved contracts for capacity building shall not be subjected to competitive bidding and in such case, the Procuring Organization shall use procurement methods to be advised by the Authority.
- (3) The relevant statutory bodies shall ensure that necessary support is provided to the local firms involved in the capacity building scheme to enable them perform in accordance with the terms of contract.
- (4) A Procuring Organisation may, after consultation with relevant statutory bodies, set aside contracts to be used for the purpose of capacity building of local firms.
- (5) Where individual firms lack the capacity to execute the contract, the firms may form joint ventures with a view to enhancing their capacity.

34. Timely payment of certificates or invoices

- (1) For purposes of supporting the growth of local firms and enabling such firms to meet their contractual obligations, Procuring Organisations shall ensure that timely payments are made to the bidders within thirty days after delivery or exclusion.

(2) A Procuring Organisation shall, before signing a contract under the preference or reservation scheme, ensure that funds have been committed for purposes of paying the contract.

35. Monitoring of compliance

(1) The Authority shall monitor the application of preference schemes by Procuring Organisations through procurement compliance reviews and audits.

(2) All procurement awards by Procuring Organisations where an exclusive preference scheme was applied shall be reported to the Authority.

(3) The Authority may maintain a database of all contract awards under a preference scheme and may publish the same in the Tender Portal or in any other media as it deems fit.

PART V - PROCUREMENT PLANNING

36. Prerequisite steps for initiating procurement proceedings

(1) A Procuring Organisation shall provide to the Authority, an annual procurement plan describing the extent, timing and purposes of projected procurement requirements for the budget period in accordance with their respective thresholds.

(2) The annual procurement plan shall be submitted during the Annual Budget process in a form issued by the Authority.

(3) A revised annual procurement plan is to be provided to the Authority during the Budget Execution process, following announcement of the budget in a form issued by the Authority.

(4) A Procuring Organisation may initiate actual procurement proceedings only after the determination and approval of budgetary allocations, or other funds sufficient to fund the procurement are available for that purpose.

(5) A Procuring Organisation shall devise procurement planning strategies and procurement packages, taking into account the following factors and steps as appropriate-

(a) identification and assessment of the need for the procurement;

(b) designation of procurement planning team;

- (c) conducting market research in order to identify various technical solutions, in particular in the commercial market, to identify the range of available suppliers, contractors, and consultants, and to determine the most favourable contractual and guarantee terms available in the commercial market place that would be suitable for public procurement;
- (d) studying acquisition history for similar objects of procurement;
- (e) conducting feasibility and other pre-contract studies;
- (f) defining and describing the requirement;
- (g) estimation of the cost of a proposed procurement;
- (h) identification of the sources and amount of financing;
- (i) selection of contracting approach and structure, including verification of possible availability of umbrella or framework contract arrangements for the item in question;
- (j) selection of appropriate procurement method; and
- (k) determination of required contract administration resources.

(6) The Authority may establish a means for providing information to Procuring Organisations as to the availability and source of common-use items procured on a centrally designated basis.

(7) Procurement not included in the annual procurement plan submitted to the Authority shall be communicated to the Authority by the procuring organisation.

37. Selection of appropriate contract form

(1) In the planning and preparation of procurement, a Procuring Organisation shall determine the appropriate contracting approach and structure to be utilised for any given procurement.

(2) A Procuring Organisation shall identify any standard contract form promulgated by the Authority and required to be utilised pursuant to regulation that may be applicable.

(3) The Instructions shall provide guidance on the use of framework agreements.

38. Lotting of procurement

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

39. Procurement requests

- (1) Preparation of a procurement request is the responsibility of the end user body that seeks to submit a requisition for procurement, in accordance with the Authority's Instructions.
- (2) In addition to preparing of the procurement request; the role of the end user body shall include -
 - (a) initiating procurement and disposal requirements and forwarding them to the specialized procurement unit;
 - (b) upon request of the contracts committee, the end user body may act as an ad hoc member of the evaluation of bids, proposals and quotations';
 - (c) reporting any departure from the terms and conditions of the contract to the specialized procurement unit;
 - (d) forwarding details of any required variations to contracts to the specialized procurement unit for consideration and action;
 - (e) maintaining and archiving records of contract management;
 - (f) preparing any reports required for submission to the specialized procurement unit, the contracts committee, the accounting officer, the Authority;
 - (g) undertaking conformity assessments of supplied goods, works and services with the specifications of the contract documents;
 - (h) endorsing the issuance of goods, works and services received notes;

- (i) preparing technical specifications and submitting the same to the specialized procurement unit;
- (j) assisting in the preparation of procurement and disposal plans;
- (k) making clarifications on tenders, requests for quotations and any other matter as may be required;
- (l) carrying out any other functions and duties as may be provided under the Act or these Regulations, or as may be stipulated by the Authority.

PART VI - BIDDER QUALIFICATIONS

40. Threshold for required documentation of qualifications

A Procuring Organisation shall request bidders to provide supporting documentation showing that they fulfil the qualification requirements referred to in section 22 of the Act, for all procurement contracts whose estimated value exceeds the threshold set in Schedule 1- Table of Thresholds

41. Information on financial standing

Supporting documents to prove financial standing may include -

- (a) appropriate statements from the bidder's bankers;
- (b) statement of accounts or extracts there from relating to the business of the bidder;
- (c) statements of liabilities and assets, and of profit and loss;
- (d) a statement of the overall inventory turnover of the business of the bidder and the turnover in respect of executed contracts; and
- (e) other information if the above types of information are not appropriate or available in order to assess the bidder's economic and financial standing.

42. Information on technical capacity

Supporting documents to prove technical capacity may include -

- (a) a list of the educational and professional qualifications;
- (b) required expertise of the bidder where the bidder is an individual and a list of qualifications of the managerial staff of the bidder if any and those of the person or persons who would be responsible for carrying out the contract;
- (c) certificates of good standing of the bidder issued by the relevant trade or industry associations;
- (d) contracts, carried out over satisfactory completion, or equivalent period specified in bidding documents;
- (e) in the case of procurement of consultants' services, a list of consultancy contracts of the type in question carried out over the period specified in request for proposal;
- (f) a statement of the tools, plant and technical equipment available to the bidder for carrying out the contract;
- (g) a statement of the average annual manpower and the number of managerial staff of the bidder in account with the bidding documents; and
- (h) a statement of the technicians or technical services which the bidder may call upon for the carrying out the contract; where applicable, in particular in the case of procurement of consultant services from firms, statements of availability of key personnel.

43. Information on Ethical Observations

A bidder who -

- (a) is guilty of fraudulent practices;
- (b) is involved in corrupt practices; and
- (c) its or majority shareholder's assets frozen by a statutory body,

shall not qualify for the award of a procurement contract.

44. Record of qualification determination

A Procuring Organisation shall maintain a record of qualification determination by using the prescribe GPPA Form 016.

45. Post qualification following selection

In bidding proceedings-

- (a) that are not preceded by a pre-qualification proceeding;
- (b) if the time lapse between the time prequalification was concluded and the issuance of the bid has been long enough; and
- (c) in confirming information submitted by the bidder,

the Procuring Organisation may carry out a post qualification to determine the suppliers qualification, following the evaluation of bids and the determination of the lowest priced or best evaluated bid, and it shall conduct a detailed confirmation of the qualification data submitted by the bidder that submitted the bid, prior to issuance of the notice of acceptance of the bid.

46. Record of pre-qualification determination

Pre-qualification determination shall be recorded using the prescribe GPPA Form 010.

47. Sub-contractor qualifications

(1) A Procuring Organisation may require bidders to provide qualification information and documentation to sub-contractors involved in the performance of the procurement contract.

(2) Where it is in the public interest to do so, a Procuring Organisation may directly determine the suitability of the qualifications of a sub-contractor, in accordance with the qualification criteria set forth in section 22 of the Act.

48. Deficiencies in qualification information

(1) Other than in a case to which section 22(7) of the Act applies, a Procuring Organisation shall not disqualify a bidder on the ground that information submitted concerning the qualifications of the bidder

was inaccurate or incomplete in a non-material respect.

(2) Notwithstanding sub-regulation (1), the bidder may be disqualified if he or she fails to remedy such deficiencies promptly upon request by the procuring organisation.

PART VII - PROCUREMENT METHODS AND PROCEDURES

49. Identification of procurement method to be used

A Procuring Organisation shall include in the invitation to bid or to apply for pre-qualification, or in any other document used to solicit an offer, proposal or quotation, an indication of the procurement method being used.

Sub-Part 1- Procedures for procurement of goods and works

50. Contents of invitation to bid and invitation to pre-qualify

(1) The invitation to bid shall contain at a minimum, the following information-

- (a) source of funding for the procurement;
- (b) the address of a procuring organisation;
- (c) the nature and location of the works to be effected;
- (d) the desired or required time for the supply of the goods, for the completion of the works or for the performance of the services;
- (e) the means of obtaining the bidding documents and the place from which they may be obtained;
- (f) the price, if any, charged by a procuring organisation for the bidding documents;
- (g) the currency and means of payment for the bidding documents;
- (h) a statement that the language in which the bidding documents are available is English;
- (i) the date of any pre-bid conference and site visit;

- (j) the deadline for submission of inquiries and requests for clarification;
- (k) the place and deadline for the submission of bids; and
- (l) time and place for bid opening.

(2) Apart from information in sub-regulation (1), an invitation to pre-qualify shall contain, the requirement for pre-qualification.

51. Public notice of procurement

(1) A Contracts Committee, prior to the public notice of an invitation to bid, shall have available in a sufficient number of copies, the bidding documents and shall assure that the invitation is in compliance with the requirements in the Act and these Regulations.

(2) A public notice shall be by publication of the invitation to bid in the local press, and, in the case of international bidding, in an international print media.

(3) A public notice shall be by publication of the contracts award in the Authority's website, local press of wider circulation, and in the case of international bidding, in an international print media.

(4) In addition to the publication referred to in sub-regulation (3), the invitation to bid may be broadcast on local radio and television and shall be displayed at the head office of the Procuring Organisation in a publicly accessible place.

52. Formulation of evaluation criteria

(1) Quantifiable evaluation criteria shall be used to assess the qualifications of bidders, and the technical merit of their bids.

(2) The evaluation criteria shall be formulated in as clear, precise, and objective a manner as possible.

(3) The evaluation criteria shall be subject matter related and arranged in chronological order of significance.

53. Preparation of bidding documents

(1) The bidding documents shall be prepared by the specialised procurement unit of a Procuring Organisation using standard formats issued by the Authority.

(2) The information in the bidding documents shall, at a minimum,

comply with details in the Instructions.

54. Price of bidding documents

(1) The price that a Procuring Organisation may charge for the bidding documents shall reflect only the cost of printing them and providing them to bidders.

(2) Sixty percent of the proceeds obtained from the sale of bidding document(s) shall be paid to the Authority before the submission of the evaluation report.

55. Distribution of bidding documents

(1) Bidders interested in the bidding process may preview the bidding documents at the office of the Procuring Organisation indicated in the invitation to bid.

(2) Bidding documents shall be provided to all bidders responding to the invitation to bid or, in the event of pre-qualification proceedings, to all bidders that have been pre-qualified.

(3) A record of the transmission of bidding documents shall be maintained by using the prescribe GPPA Form 011.

56. Pre-bid conference

(1) A Procuring Organisation may organise a conference for the purpose of briefing bidders and taking their questions on the bidding documents, including the technical specifications and other requirements.

(2) Any such conference shall take place at an early point following the distribution of the bidding documents.

(3) Clarification of defects or ambiguities in the bidding documents at the conference does not relieve a Procuring Organisation of the obligation to amend the bidding documents.

(4) A Procuring Organisation shall amend the bidding document to remedy any defect or ambiguities.

(5) Where a Procuring Organisation convenes a meeting of bidders, it shall prepare minutes of the meeting containing amongst others-

- (a) the requests submitted at the meeting for clarification of the bidding documents; and

- (b) its responses to those requests, without identifying the sources of the requests.

(6) The minutes shall be provided promptly to all bidders to which a procuring organisation provided the bidding documents.

(7) The amended version of the bidding document shall be submitted to the Authority prior to distribution to the participating bidders.

57. Site visits

Procuring Organisations shall provide reasonable access to project sites for visits by prospective bidders.

58. Cancellation of proceedings before opening of bids

(1) A Procuring Organisation shall endeavour to avoid the cancellation of procurement proceedings unless it is clearly in the public interest to do so.

(2) Any cancellation or termination of procurement proceedings shall be approved by the Authority.

(3) A cancellation shall be deemed to be in the public interest where-

- (a) the procurement need in question has ceased to exist;
- (b) the bidding documents have to be modified to such an extent that economy and efficiency in procurement dictates the re-commencement of the tendering proceedings;
- (c) it would likely lead to an inevitable cancellation of the proceedings after the opening of tenders if no action is taken at this stage to cancel the proceedings; and
- (d) there is proven conflict of interest.

59. Deadline for submission of bids

(1) Subject to sub-regulation (2) deadlines for submission of bids shall be no less than thirty days from the date of publication or dispatch of the invitation to bid –

- (a) in the case of procurement whose estimated value is above five hundred thousand dalasi or more;

- (b) in the case of restricted bidding, the minimum period shall be fourteen days.

(2) Factors to be considered in determining the period of time to be allowed for preparation of bids include-

- (a) the nature and complexity of the object of the procurement;
- (b) whether the item to be procured is readily available commercially or must be produced to the unique specifications of the procuring organisation;
- (c) the time period during which the procuring organisation needs to have its requirement fulfilled;
- (d) whether it is anticipated that foreign bidders will participate; and
- (e) the amount of time required for distribution of invitations to bid and bidding documents.

(3) A Procuring Organisation may extend the deadline for submission of bids for a period to be determined by it if, following a clarification or modification of the bidding documents, or the late issuance of minutes of a conference of bidders of a site.

(4) Where an extension is necessary to allow bidders sufficient time to take the clarification, modification or other added information into account in preparing their bids.

60. Time and place of submission of bids

A Procuring Organisation shall state -

- (a) the date and specific time that bids must be submitted; and
- (b) the specific address to which bids must be lodged or submitted in the bidding documents.

61. Mode of submission of bids

(1) The bidder shall submit a signed bid, in the required number of copies and in a tightly sealed envelope, including the copy marked as the "original".

(2) In addition to direct deposit in the tender box, bids may be

submitted by registered mail, courier or any other means that may be permitted by the bidding documents.

(3) A Procuring Organisation shall maintain a register showing the date and time when bids were received, signed by the person submitting the bid with his or her name clearly written.

62. Reception and security of bids

(1) A Procuring Organisation shall ensure that all bids and any samples that it receives are kept in a confidential and secure manner to avoid disclosure of their characteristics prior to bid opening.

(2) Further guidance on the receipt of bids shall be provided in the Instructions.

63. Rejection of late bids

(1) A bid received by a Procuring Organisation after the deadline for its submission shall not be opened and shall be returned to the bidder that submitted it.

(2) The date and time of arrival of a late bid shall be noted in the record of the procurement proceedings.

64. Requirements applicable to bid securities

(1) A Bid security shall be required in all bidding proceedings whose estimated value exceeds one million dalasi.

(2) The amount of the bid security shall be set in the bidding documents as a percentage of between two and three percent of the estimated value of the bid.

(3) Where a Procuring Organisation requires bidders submitting a bid to provide a bid security, the requirement shall apply to all bidders.

(4) The bid security shall be subject to a demand for payment only in the following cases -

- (a) withdrawal of the bid after the deadline for submission;
- (b) failure to correct errors as provided for in regulation 63(2) or to sign the procurement contract if required by the procuring organisation to do so, and
- (c) failure to provide a required security for the

performance of the contract after the bid has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the bidding documents.

(5) The Procuring Organisation shall make no claim to the amount of the bid security, and shall promptly return, or arrange the return of, the bid security document, after whichever of the following that occurs earliest-

- (a) the expiry of the bid security;
- (b) the entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the bidding documents;
- (c) the termination of the bid proceedings without the entry into force of a procurement contract;
- (d) the withdrawal of the bid prior to the deadline for the submission of bids, unless the bidding documents stipulate that no such withdrawal is permitted; or
- (e) where the bid is not selected.

(6) A record of receipt of bid securities shall be maintained by using prescribed GPPA Form 015.

65. Required validity period of bid security

The bidding documents shall require that the bid securities provided by bidders shall have a validity period extending for a period of four weeks beyond the expiry of the validity period of bids, in order to allow the Procuring Organisation sufficient time to make a demand for payment under the bid security in accordance with regulation 81(4).

66. Basic provisions of bid validity period

(1) The bidding documents shall set a bid validity period that is of a sufficient length to enable the Procuring Organisation to complete the evaluation of bids and to obtain all the necessary approvals so that the procurement contract can be awarded within that period.

(2) The period shall be a minimum of ninety days.

67. Extension of bid validity period

(1) Where prior to the expiry of the validity period of bids, a Procuring Organisation requests bidders to extend the validity period of their bids, it shall address such a request all the bidders.

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

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

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

68. Modification or withdrawal of bid

A modification or notice of withdrawal of a bid is effective and not subject to forfeiture of the bid security only if it is received by the Procuring Organisation prior to the deadline for the submission of bid.

69. Bid opening

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

(2) The date of bid opening shall coincide with the deadline for submission of bids.

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

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

(5) The communication in sub-regulation (4) shall be recorded immediately in the record of the bidding proceedings as required by section 35 of the Act by using prescribed GPPA Form 013.

70. Timeframe for evaluation of bids

The evaluation process shall be done within twenty days from the date of opening of bids, which period may vary depending on the complexity or urgency of the procurement.

71. Purpose and scope of preliminary examination

(1) After the opening of bids in accordance with regulation 69, a preliminary examination of bids shall be carried out.

(2) The preliminary examination shall determine whether bids comply with a Procuring Organisation's requirements as to the bids themselves and the accompanying documents. This may involve examining-

- (a) whether all the required documents, including any standard forms supplied with the bidding documents, have been submitted fully completed;
- (b) whether the bidder has met the qualification requirements, including the requirements applicable through the involvement of a financing institution;
- (c) whether the bid substantially conforms with the contractual terms and technical requirements set out in the invitation to tender and instructions to bidders;
- (d) whether the bid has been signed by an authorised representative of the bidder;
- (e) whether a bid security, if required, has been provided;
- (f) if any other stipulated requirement has been complied with.

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

(4) At the stage of preliminary examination, bids may be categorised according to whether they contain deviations from the technical specifications and contractual terms set forth in the bidding documents in the following categories -

- (a) those bids that do not contain deviations or reservations;
- (b) those bids that contain material deviations,

reservations or qualifications and are therefore to be rejected as non-responsive in accordance with regulation 96 (1) (d); and

- (c) those bids that contain minor deviations or reservations, but that may be considered responsive, provided that the deviations or reservations are quantified and taken into account in the evaluation and comparison of bids.

72. Assessing responsiveness of bids

(1) A Procuring Organisation may regard a bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bidding documents or if it contains errors or oversights that are capable of being corrected without affecting the substance of the bid.

(2) Any such deviations shall be quantified to the extent possible, and appropriately taken account of, in the evaluation of bids.

73. Correction of arithmetical errors in the bid

(1) The Contracts Committee of a Procuring Organisation shall correct any arithmetical errors appearing on the face of a bid and inform the bidders in question of the correction.

(2) If there is a discrepancy between the unit price and the total price, or the line item total, that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Procuring Organisation there is an obviously gross misplacement of the decimal point in the unit rate or a similarly obvious gross mathematical error, in which cases the line item total, or total price, as the case may be, as quoted will govern and the unit rate will be corrected.

(3) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.

(4) If any contradiction occurs in the figures between the submitted copies, the original copy shall be adopted.

74. Conduct of the evaluation

(1) A Contracts Committee may establish an evaluation Committee for the purposes of carrying out the technical and financial evaluation

of the bids or proposals.

(2) An evaluation committee established may comprise -

- (a) a separate technical evaluation committee and a separate financial committee, or
- (b) a combined technical and financial evaluation committee

(3) An evaluation committee shall consist of a chairperson, a minimum of two and a maximum of six members appointed by the head of the Procuring Organization upon recommendation by the specialized procurement unit. A person familiar with the procurement item shall be part of the evaluation committee.

(4) A technical evaluation committee established in accordance with sub-regulation (1) shall be responsible for-

- (a) the technical evaluation of the bids or proposals received in strict adherence to the compliance and evaluation criteria set out in the bid documents;
- (b) performing the evaluation with all due diligence and within a given period after the opening of the bids.

(5) Each member of the technical evaluation committee shall assess the bids independently from the other members prior to sharing his or her analysis, questions and evaluation including his or her rating with the other members of the technical evaluation committee.

(6) A financial evaluation committee established in accordance with sub-regulation (2) shall be responsible for-

- (a) the financial evaluation of the bids or proposals received in strict adherence to the compliance and evaluation criteria set out in the bid documents or request for proposals; and
- (b) performing the evaluation with all due diligence and within a given period from the time of completion of the technical evaluation.

(7) Under no circumstances may any member of an evaluation committee enter into direct communication with any of the bidders participating in a bid or proposal that such evaluation committee is considering.

(8) A person with vested interest shall not be made part of the evaluation committee.

(9) An evaluation committee shall prepare a report on the analysis of the bids received, and final ratings assigned to each bid and submit the report to the Contracts Committee.

(10) The report prepared under sub-regulation (9) shall include-

- (a) minutes of the opening of the bids or proposals;
- (b) the results of the preliminary examination, with reasons why any bid or proposals were rejected;
- (c) the scores awarded by each evaluator for each proposal;
- (d) a summary of the relative strengths and weaknesses of each proposal;
- (e) the total score for each proposal; and
- (f) recommendation to award the bid to the lowest evaluated bidder or to the person who submitted the proposal with the highest total score.

75. Application of evaluation criteria

(1) A Procuring Organisation shall evaluate the bids that have been received in order to ascertain the successful bid, as defined in sub-regulation (4), in accordance with the procedures and criteria set forth in the bidding documents.

(2) No criterion shall be used that has not been set forth in the bidding documents.

(3) A record of the evaluation of the each bid shall be maintained by a procuring organisation by using prescribed GPPA Form 017.

(4) The successful bid shall be-

- (a) the most responsive bid, subject to any margin of preference applied pursuant to sub-regulation (5)(d); or
- (b) if a Procuring Organisation has so stipulated in the bidding documents, the lowest evaluated bid ascertained on the basis of criteria specified in the bidding documents, which criteria shall, to the extent

practicable, be objective and quantifiable in monetary terms, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms wherever practicable;

(5) In determining the lowest evaluated bid in accordance with sub-regulation (4)(b), a Procuring Organisation may consider only the following-

- (a) the bid price, subject to any margin of preference applied pursuant to sub-regulation (5)(d);
- (b) life cycle costs, including the cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services;
- (c) the effect that acceptance of a bid would have on the environment, the extent of local content, including local manufacture, labour and materials, in goods, works or services being offered by bidders, the transfer of technology and the development of managerial, scientific and operational skills; and
- (d) in evaluating bids a procuring organisation may grant a margin of preference for the benefit of bids for works by domestic contractors or for the benefit of bids for domestically produced goods or for the benefit of domestic suppliers.

(6) Information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination or evaluation of bids or in the decision on which bids should be accepted, except as provided in section 35(3) and section 35(6) of the Act.

(7) The award decision shall be subjected to the Authority's approval if the value of the procurement is above the corresponding threshold.

76. Evaluation of bids in different currencies

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

77. Early-payment discounts

(1) An early payment discount included in a bid shall become a term of the procurement contract if that bid is accepted, and shall be utilised by the procuring organisation if payment is made in accordance with the terms of the discount.

(2) Early payment discount shall not be considered in the evaluation and comparison of bids.

78. Confirmation of qualification information

(1) Whether or not it has engaged in pre-qualification proceedings pursuant to section 23 of the Act and regulation, a Procuring Organisation may require the bidder submitting the bid that has been found to be the successful bid pursuant to regulations 72 and 75 to demonstrate again its qualifications in accordance with criteria and procedures conforming to the provisions of the PART VI Regulations 45.

(2) The criteria and procedures to be used for such further demonstration shall be set forth in the bidding documents.

(3) Where post-qualification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.

(4) Where the bidder submitting the successful bid is requested to demonstrate again its qualifications in accordance with sub regulation (1) but fails to do so, the procuring organisation shall reject that bid and shall select a successful bidder, in accordance with Regulations 72 and 75, from the next lowest responsive bidder, subject to the right of the procuring organisation, in accordance with section 31 of the Act, to reject all remaining bids.

79. Rejection of bids

(1) A Procuring Organisation shall not accept a bid-

- (a) if the bidder that submitted the bid is not qualified, including bidders that are debarred, or suspended,
- (b) if bidder that submitted the bid has submitted, or participated in, another bid for the procurement in question, in which case both bids shall be rejected;
- (c) if the successful bidder that submitted the bid does not accept a correction of an arithmetical error made

pursuant to Regulation 73;

- (d) if the bid is not responsive;
- (e) for which a bid security is not provided, if such a security was required by the bidding documents; or
- (f) in the circumstances referred to in section 27(4) of the Act.
- (g) If the bidder's or majority shareholder's assets are frozen by statutory body.

(2) A record of bids not accepted shall be maintained by using prescribed GPPA Form 014.

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

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

80. Cancellation of procurement proceedings after opening of bids

(1) The cancellation of procurement proceedings after opening of bids shall be avoided to the greatest extent possible and limited to exceptional cases in sub-regulation (2).

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

- (a) the object of the procurement is no longer required;
- (b) it has become necessary to modify the specifications;
- (c) defects or gaps in the specifications have been revealed;
- (d) failure to accommodate the fulfilment of the

procurement need;

- (e) failure to include all items of cost to a procuring organisation;
- (f) there is evidence of collusion among bidders in setting bid prices;
- (g) where the bid prices exceed substantially the estimated value of the procurement or the financial allocations available; and
- (h) if the bid price is abnormally low as per prevailing market price.

(3) The cancellation shall be approved by the Authority.

81. Acceptance of bid and entry into force of contract

(1) Notice of acceptance of the bid shall be given promptly to the successful bidder.

(2) The notice of acceptance shall not be sent until all the necessary approvals have been obtained.

(3) A procurement contract, in accordance with the terms and conditions of the accepted bid and minutes of negotiations shall enter into force when that notice is dispatched to the successful bidder.

(4) The notice is deemed to be dispatched when it is properly addressed and transmitted to the successful bidder.

(5) Where a procurement contract is required to be signed, the successful bidder shall do so and return the contract within twenty days after the notice referred to in sub-regulation (1) is dispatched to the bidder, or other period of time set forth in the notice.

(6) Between the time when the notice referred to in sub-regulation (1) is dispatched to the successful bidder and the entry into force of the procurement contract, neither a procuring organisation nor the successful bidder shall take any action that interferes with the entry into force of the procurement contract or with its performance.

(7) Where a successful bidder fails to-

- (a) sign a written procurement contract as per the bidding documents; or

- (b) provide any required security for the performance of the contract,

the Procuring Organisation shall select a successful bid in accordance with regulation 72 and 75 from among the remaining bids that are in force and according to their ranking.

(8) A Procuring Organisation shall not request or require the successful bidder to sign a contract at variance with the terms and conditions set forth in the bidding documents or the terms of negotiations.

82. Submission of performance security

If required to do so by the bidding documents, the successful bidder shall submit the performance guarantee within the time stated, following the date of the notification of acceptance of the bid.

83. Form of performance security

(1) A Procuring organisation may solicit and accept a security for the performance of the procurement contract.

(2) Security for performance may take the form of -

- (a) guarantees;
- (b) surety bonds;
- (c) stand-by letters of credit;
- (d) bankers drafts;
- (e) cash deposits;
- (f) promissory notes;
- (g) bills of exchange;
- (h) surety or performance bonds; or
- (i) other security acceptable to the Contracts Committee.

(3) Where the performance security takes the form of an independent guarantee or stand-by letter, the amount shall be set at a minimum of ten percent of the value of the procurement contract, or, in the case of an indefinite quantity contract, of the value estimated by a procuring organisation.

84. Validity period of performance security

Unless otherwise stipulated in the procurement contract, the validity period of the performance security shall extend to at least one month beyond the -

- (a) latest date of the time of delivery;
- (b) time for completion of performance; or
- (c) warranty or defects liability period, as the case may be, under the procurement contract.

85. Return of performance security

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

- (a) the procuring organisation has no claim against the supplier or contractor arising out of the contract or relating in any manner whatsoever to the contract; and
- (b) the performance security shall be returned to the supplier or contractor

86. Maintenance guarantee

(1) A procurement contract may require the supplier to provide a maintenance warranty in the form of a bank guarantee, or other form stipulated in the contract.

(2) The value of the warranty shall not be less than two and half percent of the value of the guaranteed goods.

(3) Where the contractor fails to provide the required maintenance, a Procuring Organisation shall be entitled to claim the warranty value and conduct the maintenance at the cost of the contractor.

(4) The validity period of the maintenance guarantee shall extend at least one month beyond the expiry of the warranty period.

(5) In supply and installation contracts, unless otherwise provided by contract, the maintenance period shall be deemed to begin ninety days after the receipt of the equipment or machinery, in the event that a Procuring Organisation has not requested installation to be started at an earlier time.

87. Manufacturer's warranty

(1) A procurement contract shall set forth the supplier's warranty obligation to replace at its own expense, defective goods within a one year period or other period specified in the contract.

(2) In the event of a breach of warranty, the Procuring Organisation shall be entitled to claim the entire value of the warranted goods and additional charge of up to fifteen percent of the value of the defective goods.

88. Notice to unsuccessful bidders

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

89. Return of samples

(1) Samples that have not been destroyed in testing shall be returned to the bidders at their written request and expense.

(2) The bidder shall lose the right of claiming return of samples after two months from the date of notification of the award.

(3) Samples approved in relation to the successful bid shall after being signed for by the Contracts Committee, be kept by a Procuring Organisation for the purpose of comparison with the delivered goods.

90. Debriefing of unsuccessful bidders

The information required by section 32 of the Act shall be provided in writing within seven days of the date on which the request is received by the Contracts Committee and shall include -

- (a) a general description of strengths and weaknesses of the requestor's bid; and
- (b) the characteristics and relative advantages of the bid selected (but without revealing any proprietary information);

91. Conditions for use of bidding for commodities

When bidding is used for procurement of raw materials and other commodities whose prices are quoted in established commodity

markets, the following conditions shall apply -

- (a) bidders shall be invited to quote prices linked to the market price at the time of or prior to the shipments;
- (b) bid validity periods shall be kept as short as possible; and
- (c) the bidding documents may permit electronically sent bids, if there is no requirement for a bid security or if standing bid securities valid over a specified period of time have been provided by pre-qualified bidders.

92. Procedures for restricted tendering

(1) When restricted tendering is employed on the grounds referred to in section 39 (a) of the Act, all suppliers capable of supplying the goods, works or services shall be solicited.

(2) When restricted tendering is employed on the grounds referred to in section 39 (b) of the Act, the Procuring Organisation shall solicit bid from a minimum number of five independent bidders.

(3) The procedures for bidding proceedings set forth in PART VII Regulations 49 to 127 apply to restricted tendering proceedings, except to the extent they are modified by this regulation.

93. Procedures for two stages tendering

(1) Pursuant to section 40 of the Act, the bidding documents shall call upon bidders to submit, in the first stage of the two-stage bidding proceedings, initial bids containing their proposals without a bid price.

(2) The bidding documents may solicit proposals relating to the technical quality or other characteristics of the goods, works or services as well as the contractual terms and conditions of supply, and, where relevant, to the professional and technical competence and qualifications of the bidders.

(3) A Procuring Organisation may in the first stage, engage in discussions with any bidder whose bid has not been rejected, in pursuance of section 40 of the Act.

(4) In the second stage of the two-stage bidding proceedings, a Procuring Organisation shall invite bidders whose bids have not been rejected or the successful bidder to submit final bids with prices

with respect to a single set of specifications.

(5) In formulating those specifications, a Procuring Organisation may delete or modify any aspect, originally set forth in the bidding documents.

(6) Any deletion, modification or addition regarding the technical quality characteristics of the goods, works or services to be procured, and any criterion originally set forth in those documents for evaluating bids and for ascertaining the successful bid, shall be communicated to bidders in the invitation to submit final bids.

(7) A bidder who does not wish to submit a final bid may withdraw from the bidding proceedings without forfeiting any bid security that the bidder may have been required to provide.

(8) The procedures for bidding proceedings set forth in PART VII Regulations 49 to 127 apply to two-stage tendering proceedings, except to the extent they are modified by this Regulation.

Sub-Part 2- Procedures for procurement of consulting services

94. Scope of request for proposals method

(1) This Sub Part 2 applies to the procedures to be followed in the case of a request for proposals procurement method.

(2) A Procuring Organization shall submit a Request For Proposals for the approval to the Authority as applicable.

(3) After the procedures for solicitation of participation, the Procuring Organisation shall carry out an assessment of quality and technical aspects of the proposals.

(4) After the assessment in sub-regulation (3) the Procuring Organisation shall evaluate the financial proposals.

95. Preparation of short list

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

(2) In order to establish the short list, a Procuring Organisation may seek Expressions of interest by publishing a non-binding notice with the information described in sub-regulation (1) in the local or international media, GPPA's website, including in a newspaper of wide circulation or in a relevant trade publication or technical or professional journal.

(3) The information requested shall be the minimum required to make a judgement on the bidder's suitability and not be so complex as to discourage Consultants from expressing interest.

(4) No less than thirty days shall be provided for responses, before preparation of the short list.

(5) The short list may comprise entirely of bidders from The Gambia for procurements with a value of one million dalasi or less and when at least three national bidders are available at competitive costs.

(6) A Bidder who expresses so requests shall be provided the final short list of firms.

96. Issuance of Request for Proposals

A Procuring Organisation shall provide the Request For Proposals to the short list of Consultants as prepared in accordance with regulation 95.

97. Avoidance of conflict of interest

(1) Consultants shall provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work.

(2) Consultants shall strictly avoid conflicts with other assignments or their own corporate interests.

(3) Consultants shall not be hired for any assignment that would, by its nature be in conflict with their prior or current obligations to the Government of The Gambia or other clients, or place them in a position of not being able to carry out the assignment in the best interest of a procuring organisation.

(4) Without limitation on the generality of this rule, Consultants shall not be hired under the circumstances set forth below-

- (a) a firm hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project ex-poste;
- (b) a firm assisting a client in the privatisation of public assets shall not purchase or advice purchasers of such assets;
- (c) a firm which has been engaged by a Procuring Organisation to provide goods or works for a project, and any of its affiliates, shall be disqualified from providing consulting services for the same project; and
- (d) a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services related to the initial assignment, other than in the case when, subject to satisfactory performance of the initial assignment, it is essential for continuity that there be a continuation of the firm's earlier consulting services for the same project.

(5) This regulation does not apply to the various firms (consultants, contractors, or suppliers) that together are performing the contractor's obligations under a turnkey or design-and-build contract.

98. Contents of Requests for Proposals for services

(1) The request for proposals shall provide bidders with the information necessary to enable them to participate in the procurement proceedings and to submit bids that are responsive to the needs of the procuring organisation.

(2) At a minimum, the information set forth in the Instructions shall be provided.

99. Clarification and modification of Request for Proposals

(1) A bidder may request a clarification of the Request For Proposals from a Procuring Organisation, up to fourteen days before deadline for submission of proposals.

(2) A Procuring Organisation shall respond in writing to any request by a bidder for clarification of the Request For Proposals within a reasonable time prior to the deadline for the submission of

proposals.

(3) A Procuring Organisation shall respond within a reasonable time, without identifying the source of the request.

(4) The response shall be in writing and communicated to all bidders to whom Requests for Proposals was sent.

(5) At any time prior to the deadline for submission of proposals, a Procuring Organisation may, whether on its own initiative or based on a request for clarification by a bidder, modify the request for proposals, including modification of the criteria for evaluating proposals, by issuing an addendum.

(6) The addendum shall be communicated promptly to all bidders to which a Procuring Organisation has provided the Request for Proposals and shall be binding on those bidders.

(7) Where a Procuring Organisation convenes a meeting of bidders, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the request for proposals, and its responses to those requests, without identifying the sources of the requests.

(8) The minutes shall be provided promptly to all bidders participating in the procurement proceedings.

(9) The amended version of proposals shall be submitted to the Authority prior to transmission of the final bidding document to the participating bidders.

100. Method of selection procedures

(1) A Procuring Organisation shall use one of the following procedures for selection of the winning proposal, in accordance with the notice provided to bidders in the request for proposals-

- (a) Quality and Cost Based Selection (QCBS), which takes into account both the quality and the cost aspects in selecting the winning proposal;
- (b) Quality-Based Selection (QBS), which focuses primarily on quality in selecting the winning proposal;
- (c) Fixed Budget Selection – FBS;
- (d) Least Cost Selection – LCS;

- (e) Consultants' Qualifications and Selection – CQS; and
- (f) Single Source Selection.

(2) The Procuring Organisation shall include in the record required under section 35 of the Act, a statement of the grounds and circumstances on which it relied on to justify the use of a selection method pursuant to sub-regulation (1).

101. Submission of proposals

(1) A Procuring Organisation shall safeguard all submitted proposals to prevent unauthorised disclosure of information.

(2) When the QCBS method is applied, the technical and financial proposals shall be submitted at the same time, in separate sealed envelopes.

(3) When the other methods are applied, the instructions shall outline the mode of submission of proposals.

(4) At the option of a Procuring Organisation, bidders may be requested to submit at the outset of the proceedings, only technical proposals.

(5) A Procuring Organisation shall set the deadline for submission of proposals not less than thirty days from the date of the issuance of the request for proposals.

102. Evaluation and selection

(1) Any award by a Procuring Organisation shall be made to the bidder whose proposal best meets the needs of the Procuring Organisation as determined in accordance with the criteria for evaluating the proposals and final selection procedures set forth in the request for proposals.

(2) A record of the evaluation of each proposal shall be maintained by the Procuring Organisation by using prescribed GPPA Forms 021 and 022.

103. Evaluation of proposals in Quality and Cost-Based Selection method

The evaluation of the proposals shall be carried out in two stages -

- (a) the technical envelopes shall be opened in the first stage, which shall concern only the quality and

technical aspects of proposals, and the valuation of the technical proposals shall be in accordance with the Instructions;

- (b) the financial proposals shall remain sealed and evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded; and
- (c) on conclusion of the technical evaluation, the financial proposals shall be opened and evaluated in full compliance with the provisions of the request for proposals.

104. Rejection of proposals

Following evaluation and rating of proposals, a Procuring Organisation shall reject proposals that are unresponsive to important aspects of the terms of reference or that fail to achieve the minimum threshold score as specified in the request for proposals.

105. Notification of results of first stage quality evaluation

(1) After the evaluation of quality is completed, a Procuring Organization shall notify those bidders whose proposals did not attain the minimum qualifying score or were considered non-responsive, indicating that their financial proposals will be returned unopened after completing the selection process.

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

(3) The opening date shall not be sooner than seven days after the notification date.

106. Quality evaluation report and retention of evaluation records

(1) A Procuring Organisation shall prepare an evaluation report of the "quality" of the proposals.

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

(3) All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

107. Opening of financial proposals

- (1) The financial proposals shall be opened publicly in the presence of representatives of the bidders who choose to attend.
- (2) The name of the bidder, the technical scores, and the proposed prices shall be read aloud and recorded when the financial proposals are opened.
- (3) The Procuring Organisation shall prepare the minutes of the public opening, which shall form part of the record of the procurement proceedings.

108. Evaluation of financial proposals

- (1) For the purpose of evaluation, "cost" shall exclude Gambian taxes, but shall include other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses.
- (2) In the evaluation of financial proposals, only the conditions set forth in the request for proposals shall be applied.

109. Criteria for selection

Following the evaluation of the quality and the financial proposals, the successful proposal shall, in accordance with the approach disclosed in the request for proposals, be -

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

110. Combined quality and cost evaluation

- (1) If the successful proposal is selected on the basis of a combined evaluation of quality and price aspects, the total score shall be obtained by weighting the quality and cost scores and adding them.
- (2) The weight for the "cost" shall be chosen taking into account the complexity of the assignment and the relative importance of quality, and level at which the minimum quality threshold is set.
- (3) The weight for cost shall normally be in the range of 10 to 40 percent, but in no case shall exceed 40 percent out of a total score of 100. Only the weighting disclosed to bidders in the request for

proposals may be used.

111. Negotiations and award of contract

(1) The bidder submitting the proposal determined to be successful in accordance with regulation 129 shall be invited for negotiations aimed at finalisation of the contract.

(2) The negotiations shall include discussions of the terms of reference, the methodology, staffing, the Procuring Organisation's inputs, and special conditions of the contract.

(3) The negotiations shall not substantially alter the original terms of reference or the terms of the contract and major reductions in work inputs should not be made solely to meet the budget.

(4) The final terms of reference and the agreed methodology shall form part of the contract.

(5) The selected bidder shall not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment.

(6) If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the bidder may be disqualified and the process continued with the next ranked bidder.

(7) The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

(8) Financial negotiations shall include clarification of the bidder's tax liability in The Gambia (if any), and how this tax liability has been or would be reflected in the contract.

(9) Proposed unit rates for staff-months and reimbursable shall not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons.

(10) For whatever procurement item, negotiation shall not impact on quality or affect the unit prices.

(11) Negotiations shall be summarised and recorded in the prescribed forms.

112. Quality Based Selection procedure

Where a Procuring Organisation uses the QBS procedure provided for in these Regulations, it shall engage in negotiations with bidders in accordance with the following procedure and as described further in the Instructions -

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

113. Failure to reach agreement with successful bidder

- (1) If the negotiations with the first selected bidder fail to result in an acceptable contract, a Procuring Organisation shall terminate the negotiations and invite the next ranked firm for negotiations.
- (2) The bidder with whom negotiations are being terminated shall be informed of the reasons for the termination.
- (3) Once negotiations are commenced with the next ranked firm or individual, the Procuring Organisation shall not reopen the earlier

negotiations

(4) After negotiations are successfully completed, the Procuring Organisation shall promptly notify other bidders on the short list that they were unsuccessful.

114. Rejection of all proposals

A Procuring Organisation may reject all proposals only -

- (a) if all proposals are non-responsive and unsuitable either because they contain major deficiencies in complying with the terms of reference;
- (b) because they involve costs substantially higher than the original estimate; or
- (c) where the need for the procurement has lapsed.

115. Role of advisory experts panel

(1) A Procuring Organisation may utilise a panel of experts for the purpose of obtaining independent recommendations as to the selection of the winning proposal in design contests and other types of services contracting.

(2) The panel of experts shall consist exclusively of individuals that are independent of the consultants in the competition, and if a particular specialisation is required for participation in the competition, at least one third of the panel members shall possess that same or an equivalent specialisation.

(3) The panel shall evaluate and compare the proposals in relation to the requirements set forth in the bidding documents, and shall rank the proposals.

(4) The panel shall prepare a report to the Procuring Organisation summarising its deliberations and explaining its recommendations as to the winner.

Sub-Part 3 - Application of request for proposals to BOT and similar forms of infrastructure and services procurement

116. BOT procurement

The expression "BOT and similar forms of infrastructure and services procurement" refers to various forms of contracting for the delivery of infrastructure projects and public services by way of private

investment and private service providers, including "Build-Operate-Transfer" and other variants.

117. Preparation of short list

A Procuring Organisation shall prepare a short list in accordance with regulation 95, in order to identify potential bidders that possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement object, reputation and personnel, to perform the contract.

118. Solicitation in one or two-stages

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

(2) A two-stage request for proposals procedure shall be used when it is not feasible for a Procuring Organisation to formulate project specifications or performance indicators and contractual terms in a manner sufficiently detailed and precise to permit final proposals to be formulated.

(3) In the first stage of a two-stage procedure, a Procuring Organisation shall call upon the pre-selected bidders to submit proposals relating to output specifications and other characteristics of the project as well as to the proposed contractual terms.

(4) In the second stage of a two-stage procedure, a Procuring Organisation shall, following examination of the proposals received, review and, as appropriate, revise the initial project specifications and contractual terms prior to issuing a final request for proposals.

119. Contents of the final request for proposals

The final request for proposals shall include at least the following -

- (a) general information as may be required by the bidders in order to prepare and submit their proposals;
- (b) project specifications and performance indicators, as appropriate, including the Procuring Organisation's requirements regarding safety and security standards and environmental protection;
- (c) the contractual terms proposed by the procuring organisation; and

- (d) the criteria for evaluating the proposals, the relative weight to be accorded to each such criterion and the manner in which criteria are to be applied in the evaluation of proposals.

120. Evaluation criteria

(1) The criteria for the evaluation and comparison of the technical proposals shall concern the effectiveness of the proposal submitted by the bidder in meeting the needs of the Procuring Organisation, including the following -

- (a) technical soundness;
- (b) operational feasibility;
- (c) quality of services and measures to ensure their continuity; and
- (d) social, environmental and economic development potential offered by the proposals.

(2) The criteria for the evaluation of the financial proposals may include, as appropriate -

- (a) the present value of the proposed tolls, fees and other charges over the concession period;
- (b) the present value of the proposed direct payments by the procuring organisation, if any;
- (c) the costs for design and works activities, annual operation and maintenance costs, present value of capital costs and operating and maintenance costs;
- (d) the extent of financial support, if any, expected from the Government;
- (e) soundness of the proposed financial arrangements; and
- (f) the extent of acceptance of the proposed contractual terms.

121. Final negotiations

(1) A Procuring Organisation shall rank all responsive proposals on the basis of the evaluation criteria set forth in the request for proposals and invite for final negotiation of the project agreement the

bidder that has attained the best rating.

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

122. Unsolicited proposals

By way of exception to the selection procedures described in these Regulations, a Procuring Organisation may consider unsolicited proposals pursuant to this regulation and regulations 123 to 125.

123. Determining admissibility of unsolicited proposals

(1) Following receipt and preliminary examination of an unsolicited proposal, a Procuring Organisation shall inform the proposer within a reasonably short period, whether or not there is a potential public interest in the project.

(2) If the project is found to be in the public interest, the Procuring Organisation shall invite the author to submit a formal proposal in sufficient detail to allow the Procuring Organisation to make a proper evaluation of the concept or technology and determine whether the proposal meets conditions set forth in Act and is likely to be successfully implemented on the scale of the proposed project.

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

124. Unsolicited proposals not involving proprietary concepts or technology

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

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

125. Unsolicited proposals involving proprietary concepts or technology

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

(2) For that purpose of sub-regulation (1) above, the Procuring Organisation shall publish a description of the essential output elements of the proposal with an invitation for other interested parties to submit alternative or comparable proposals within thirty to ninety days.

(3) The Procuring Organisation may engage in negotiations with the author of the unsolicited proposal if no alternative proposals are received, *subject to approval by the Authority or the Board.*

(4) Where alternative proposals are submitted, the Procuring Organisation shall invite all the bidders to negotiations in accordance with the following -

- (a) the Procuring Organisation shall publish a notice of its intention to award a concession for the implementation of the proposed project and shall engage in negotiations with as many bidders it judges capable of carrying out the project as circumstances permit;
- (b) offers shall be evaluated and ranked according to the evaluation criteria established by the Procuring Organisation to select the best offer; and
- (c) the Procuring Organisation shall publish a notice in the media of the contract award, disclosing the specific circumstances and reasons for the award of the contract and the extent of competition involved.

Sub-Part 4- Procedures for request for quotations

126. Procedures for request for quotations

(1) Quotations shall be requested from at least three registered and independent bidders.

(2) For the purpose of determining the potential bidders to be given a request for quotations, a Procuring Organisation shall-

- (a) prepare a list of bidders selected from the list maintained by the Specialised Procurement Unit (SPU) or from its own knowledge of the market;
- (b) ensure a fair and equal rotation amongst the persons on the list kept by the Unit in respect to giving the requests for quotations;
- (c) submit the list to the contracts committee for approval; and
- (d) ensure the supplier is registered for the appropriated procurement request.

(3) The request shall contain a clear statement of the requirements of the Procuring Organisation as to quality, quantity, terms and time of delivery as well as any other special requirements and shall be formed by using the prescribed GPPA Form 101.

(4) Bidders shall be given adequate time to prepare their quotations, with each bidder permitted one quotation, which shall be submitted in written form.

(5) Quotations may also be submitted by electronic means or in any other form that leaves a record of the content of the communication and is acceptable to the procuring organisation.

(6) Where the SPU is of the view that the successful quotation is higher than the prevailing market price, it shall reject the quotations and repeat the process by giving a fresh request for quotations to a set of new bidders in the list approved by the contracts committee.

(7) The duration for the submission of quotations shall not exceed seven (7) working days.

(8) Submitted quotations shall be evaluated and recommendation submitted to the Contracts Committee or Authority within ten (10) working days.

(9) A purchase order, based on prescribed GPPA Form 102, shall be placed with the bidder that provided the lowest-priced responsive quotation.

Sub-Part 5- Single-source procurement

127. Procedures for local purchase orders and petty contracts

(1) In accordance with section 44(1)(a) of the Act -

- (a) the Local Purchase Order Form shall be used for goods and non-consultant services below the threshold established in regulation Schedule 1; and
- (b) the Petty Contract Form shall be used for works below the threshold established in Schedule 1.

(2) Procurement transactions referred to in this regulation shall be documented, as a minimum, with two copies of the annotated invoice for the item, with the name of the procuring organisation who bought the item.

(3) Any single source procurement actions within the thresholds set forth in Schedule 1 shall be aggregated into a summary monthly report identifying the types of items purchased, amounts vendor, and purchaser for each such transaction.

(4) The monthly summary report referred to in sub-regulation (3) shall be submitted to the Contracts Committee by the user units by using the prescribed GPPA form 006.

(5) The report referred to in sub regulation (4) above shall be submitted by the Contracts Committee to the Authority not later than the fifteenth day of subsequent month.

128. Procedure for other single-source procurement

(1) Procurement carried out on a single source basis over the thresholds set forth in schedule (1) shall be embodied in a written contract or purchase order as approved by the Contracts Committee in accordance with section 49(c) of the Act.

(2) When the Procuring Organisation engages in single-source procurement on the grounds referred to in section 44(1) of the Act, it shall prepare a written description of its needs and any special requirements as to quality, quantity, terms and time of delivery, and shall be free to negotiate with the sole bidder.

129. Procedure for negotiation

(1) A Procuring Organisation shall only enter into negotiations with an approved successful proposal by the Contracts Committee.

(2) The negotiations to be conducted by at least two members of staff of the Procuring Organisation appointed by the accounting officer or the head of the Procuring Organization or contracts committee.

(3) The members of staff conducting the negotiations to prepare a report of the negotiations and submit it to the contracts committee for decision making.

(4) The said report to form part of the records of the procurement.

PART VIII - CONTRACT ADMINISTRATION

130. Establishment and staffing of support operations for contract administration

(1) A Procuring Organisation shall for the purposes of effective contract management, prepare a contract management plan once the contracts have been formalized.

(2) The practical arrangements and those responsible for monitoring the performance of contracts shall be presented to the contractor at the time of contract negotiation.

(3) A Procuring Organisation shall establish and provide the staffing necessary for the operations involved in contract administration and management such as -

- (a) engineering and design services, providing design and monitoring functions for preparation and implementation of procurement contracts;
- (b) financial control and payment services;
- (c) management information systems for co-ordinated processing and communication of and access to relevant information by all parties involved in contract administration, including document control services, for establishing and maintaining filing systems for correspondence and other paperwork and records relating to procurement contracts; and legal services.

(4) Procuring Organisations shall make available to the Authority,

Auditor-General and any other relevant statutory body, documentation, reports, and other information required by those bodies for the purposes of monitoring contract administration.

131. Contract variations

Variations shall be approved by the Contracts Committee and the Authority depending on the given threshold.

132. Inspection of goods

(1) A Procuring Organisation is entitled to carry out acceptance inspections and, in the case of custom made goods, observe and inspect the manufacture of the goods at the supplier's premises during regular working hours.

(2) The supplier shall at his or her, or its own expense place at the Procuring Organisation's disposal, any premises, facilities and personnel needed for normal inspections.

(3) The supplier and the Procuring Organisation shall each bear the expenses for the attendance of their respective representatives at the inspection.

(4) Any deficiencies and omissions detected shall be remedied by and at the expense of the supplier.

(5) The Procuring Organisation has no obligation to pay for any goods or accessories that have become unserviceable or lost value in the course of a normal inspection.

(6) Where an item or consignment of goods inspected does not meet the requirements set for it, the supplier shall bear all the expenses that renewed inspection, handling or transport may involve.

(7) The observation and inspection of the manufacture of the goods affected by the procuring organisation do not in any way limit the supplier's responsibilities and liabilities.

(8) If the supplier has been permitted to employ the services of a sub-contractor, he or she shall in the contract with the sub-contractor, reserve to the Procuring Organisation the rights referred to in this regulation.

133. Pre-shipment inspection services

- (1) A Procuring Organisation may engage an external agent for the purposes of conducting pre-shipment inspection of goods being purchased by procuring organisations.
- (2) As far as possible, contracts with such firms shall be awarded by way of competitive procedures pursuant to the Act and Regulations.

134. Examination and receipt committee

- (1) A Procuring Organisation shall establish an Examination and Receipt Committee, or appoint an individual who has not participated in the ordering of the items, for the purposes of inspecting and examining supplied goods.
- (2) The Committee shall inspect and examine the supplied items, compare them with the stamped and approved samples, and put aside the rejected goods to be returned to the supplier.
- (3) The Committee shall examine varying percentages of shipments, to be determined depending on the importance of the item.
- (4) The Committee shall prepare an examination report indicating acceptance or rejection of the goods.
- (5) The examination report shall indicate the percentage which the Committee have examined, the names, specifications, results of testing, and shall be included in the record of the procurement proceeding.
- (6) In the event of a dispute between the supplier and the Examination and Receipt Committee, the matter shall be submitted to dispute settlement procedures under the procurement contract.
- (7) Goods, whose value is below an amount set by the Contracts Committee of the Procuring Organisation, may be examined and received by the storekeeper without examination by the Examination and Receipt Committee and such examination and receipt is also permitted in urgent circumstances referred to in section 44(1)(c) of the Act, subject to approval in accordance with the delegation of authority by the head of the procuring organisation.

135. Acceptance of works and services

A Procuring Organisation shall ensure that appropriate mechanisms and procedures are in place to ascertain that works and services,

prior to being accepted by the procuring organisation, have been performed satisfactorily in accordance with the procurement contract.

136. Record of supplier performance

Each Contracts Committee shall ensure that for all contracts in excess of the threshold prescribed in the GPPA Form 041 in the Regulations, is completed and made part of the contract record.

137. Remedies for breach of contract

The procurement contract shall specify remedies available to the Procuring Organisation in the event of breach of the procurement contract by the supplier, which includes -

- (a) rejection of defective performance;
- (b) prompt removal and replacement of defective items;
- (c) liquidated damages for delay, in accordance with a rate set for each week or other unit of time, or part thereof, of delay;
- (d) termination of the contract for default and purchase of replacement performance, at the expense of the defaulting party;
- (e) enforce the performance bond under the contract; and
- (f) such other remedies as may be available pursuant to the contract or to applicable Act.

138. Rejection of goods

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

(2) Where the supplier refuses to take delivery of the rejected goods, he or she shall be charged storage expenses at a reasonable amount or at the rate to be specified in the procurement contract.

(3) The Procuring Organisation is entitled to sell the goods by public auction and recover all expenses and charges from the sale value,

and the balance shall be returned to the supplier.

139. Termination of contract

(1) The termination clause or other contract clauses may authorise a Procuring Organisation to terminate contracts for convenience, or for default only when it is in the public interest, and to enter into settlement agreements under these Regulations.

(2) An approval of the contracts committee which authorised the original contract prior to its termination, shall be sought and the request for approval shall clearly state-

- (a) the reasons for termination;
- (b) the contractual grounds for termination; and
- (c) the cost of terminating the contract.

(3) The Procuring Organisation shall terminate contracts for convenience or default only by a written notice to the supplier, and when the notice is mailed, it shall be sent by either electronic or certified mail, return receipt requested.

(4) Where the Procuring Organisation arranges for hand delivery of the notice, a written acknowledgement shall be obtained from the supplier.

(5) The termination notice shall state -

- (a) that the contract is being terminated for the convenience of the procuring organisation (or for default) under the contract clause authorising the termination;
- (b) the effective date of termination;
- (c) the extent of termination;
- (d) any special instructions; and
- (e) the steps the contractor should take to minimise the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the supplier's work force.

140. Termination for default

(1) A Procuring Organisation has the right, subject to the notice requirement in the contract, to terminate the contract completely or partially for default if the supplier -

- (a) fails to make delivery of the supplies or perform the works or services within the time specified in the contract,
- (b) fails to perform any other provision of the contract,
- (c) fails to make progress and that failure endangers performance of the contract, and
- (d) in the judgement of the procuring organisation, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

(2) In the event the Procuring Organisation terminates the contract pursuant to sub-regulation (1), the Procuring Organisation may procure, upon such terms and in such manner as it deems appropriate, replacement performance similar to that undelivered, and the supplier shall be liable to the Procuring Organisation for any excess costs for such similar performance. However, the supplier shall continue performance of the contract to the extent not terminated.

(3) The Procuring Organisation shall authorise payment for the value of the work done, or goods or services supplied, or materials ordered less advance payments.

(4) If the total amount due to the Procuring Organisation exceeds any payment due to the supplier, the difference shall be a debt owed by the supplier to the Procuring Organisation.

141. Termination for convenience

(1) Where a contract is terminated for convenience, a Procuring Organisation shall authorise payment for-

- (a) the value of the work done;
- (b) materials ordered;
- (c) goods or services supplied;

- (d) the reasonable cost of removal of equipment;
- (e) repatriation of the supplier's personnel employed solely on the works; or
- (f) the supplier's costs of protecting and securing the works, where applicable, and less advance payments received up to the date of the certificate.

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

(3) Notwithstanding sub-regulation (2), goods that are complete and ready for shipment within forty days after the supplier's receipt of notice of termination shall be accepted by a Procuring Organisation at the contract terms and prices.

(4) For the remaining goods, a Procuring Organisation may elect -

- (a) to have any portion completed and delivered at the contract terms and prices; or
- (b) to cancel the remainder and pay to the supplier an agreed amount for partially completed goods and services and for materials and parts previously procured by the supplier.

142. Basic pricing approaches

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

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

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

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

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

143. Price adjustment

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

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

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

144. Payment

(1) Where goods are to be procured, unless otherwise stipulated in the procurement contract, payment for the delivery of goods shall be made on submission of invoices, together with any shipping or other required documents, in the prescribed GPPA Form 040 as indicated in the contract, and in accordance with the instructions given in the purchase order, letter of acceptance of bid or procurement contract, as the case may be.

(2) Where works or services are to be procured, the procurement contract shall indicate the manner and timing of payment of the contract price.

(3) Payments that become due to the supplier shall be made in accordance with the deadlines set forth in the procurement contract,

(4) Notwithstanding sub-regulation (3), where intermediary or progress payments are made, the procurement contract may provide that a percentage of amounts due to the supplier may be withheld until performance of the procurement contract is completed.

(5) A record of the authorisation of payment shall be maintained by using the prescribed GPPA Form 040.

145. Advance payments

(1) The procurement contract may provide for advance payments to suppliers and such payment shall not exceed 20% of the total

contract amount.

(2) If the payment referred to sub-regulation (1) exceeds 20% of the contract amount, prior approval shall be sought from the Authority.

(3) The total amount of advance payment amount made under the procurement contract shall be made against a bank guarantee.

(4) Advance payments shall not exceed 50% of the total amount under any circumstance.

(5) Unless otherwise authorised by the Procuring Organisation or its representative, the supplier, and any of its subcontractors, shall utilise materials, equipment and personnel that are the subject of advance payment only for supply of goods or works related to the procurement contract.

146. After-sale service

(1) Unless technical or commercial factors dictate otherwise, the bidding documents shall require a supplier to provide workshops and spare parts for goods that require such after-sale service.

(2) The period of the supplier's commitment in this regard shall be specified in the procurement contract.

147. Insurance requirements

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

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

148. Settlement of disputes

In accordance with Section 30 (2) of the Act, the parties to a procurement contract may submit disputes arising under the procurement contract to settlement by negotiation, mediation, adjudication or arbitration as described in the General Provisions of the standard contract.

PART IX - STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

149. Declaration and disclosure requirements

(1) All members of the Contracts Committee or Evaluation Committee established to evaluate bids shall sign a declaration, using the prescribed GPPA Form 012, to the effect that they have no relationship with bidders of the following types -

- (a) a marital or direct birth relationship with a bidder participating in the procurement proceedings;
- (b) during last three years has been an employee or officer of a bidder participating in the procurement proceedings, or has held a financial interest in a bidder;
- (c) is negotiating or has an arrangement concerning prospective employment in a bidder involved in the procurement proceedings; or
- (d) has a potential conflict of interest with regards to the procurement under consideration

(2) An employee or consultant of the Procuring Organisation who becomes aware that he or she has a relationship with a bidder referred to in sub-regulation (1) shall immediately report that to the head of the procuring organisation and request exclusion from the procurement proceeding, including from any activities referred to in regulation 150.

(3) A report and request for exclusion shall be made a part of the record of the procurement proceeding.

(4) Before contract execution, where it is discovered that a person has contravened the requirement of sub-regulation (2), the procurement decision shall be revoked and the committee shall be reconstituted to carry out a fresh evaluation

150. Activities subject to conflict of interest restrictions

Procurement-related activities that are subject to the conflict of interest restrictions referred to in section 27(1)(c) of the Act or in Regulation 150 include the following -

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

151. Post-employment restrictions on public procurement officials

Individuals who have served as procurement officers or who have exercised some other activity referred to in regulation 150 with respect to a procurement shall not participate in any manner, as an officer, employee, agent or representative of a supplier, in any negotiations or technical discussions leading to the award, modification, or extension of a contract for such procurement.

152. Prohibition of contingent fee arrangements

(1) Activities prohibited pursuant to this Part of the Regulations include the retention of any person, including former public officials, on a contingent fee basis for the purposes of influencing the election process in procurement proceedings.

(2) The bidding documents shall require bidders to disclose any contingent fee arrangements entered into for the purposes of securing the procurement contract, and that information shall be made a part of the record of the procurement proceedings.

(3) In this regulation, "contingent fee" means a payment that is dependent on the success of a bid.

153. Conspicuous notice of prohibitions

A Procuring Organisation shall give notice conspicuously in the solicitation and contract documents that bidders are not permitted to-

- (a) enter into contingent fee arrangements prohibited by Section 27 (2) of the Act; and
- (b) directly or indirectly offer, give or agree to give inducements of the type referred to in section 27(2) of the Act, and that rejection of the bid, offer or quotation results from a violation of that rule.

154. Prohibition of award to consultant affiliated bidder

(1) A Procuring Organisation shall not sign a procurement contract with a bidder associated as a parent company or branch, with a consultant who is responsible for preparing the specifications or bidding documents for the procurement contract or supervising the execution of the procurement contract.

(2) This regulation does not apply to the various firms (consultants, contractors or suppliers) which together are performing the supplier's obligations under a turnkey or design and build contract.

155. Confidentiality of procurement information

(1) In accordance with section 27(5) of the Act and subject to applicable oversight, auditing or other Acts, or to the order of a competent court, public officials are not permitted to disclose to any third party, whether for personal gain or for any other motive, confidential or proprietary commercial information obtained by virtue of their involvement in, or contact with officials involved in, procurement proceedings or the planning of procurement.

(2) Prior to opening of bids, disclosure of the number of the bids and their identity shall be made only to public officials who as part of their official duties require that information.

(3) Information relating to the examination, clarification and evaluation of bids shall not be disclosed to bidders or to any other person not involved officially in the examination, evaluation, and clarification of bids or in the decision on which bid should be accepted, except as provided in section 35(3) and section 35(6) of the Act.

156. Confidentiality obligations of third parties

(1) The requirement of confidentiality, imposed on the Authority and Procuring Organisations by section 27(5) of the Act and regulation 155, extends also to those acting on behalf of procuring organisations in procurement proceedings.

(2) The requirement of confidentiality referred to in sub-regulation (1) is subject to the provisions in the Act, applicable legislation and these Regulations relating to oversight and auditing of the activities of Procuring Organisations.

157. Dissemination of applicable conflict of interest rules to public officials

(1) The Authority and the heads of all public entities shall ensure that each public official, including any member of a Contracts Committee, is provided a copy of the prohibitions and requirements set forth in this Part of the Regulations.

(2) After having been furnished the text of the provisions referred to in sub-regulation (1), each public official shall sign a statement on a form issued by the Authority, acknowledging receipt.

158. Remedies against breach of conduct standards by public officials

(1) Apart from any other existing civil and administrative remedies, and sanctions under the penal Act, the Authority may take one or more of the following sanctions for breach of conduct standards -

- (a) written warnings or reprimands;
- (b) recommendation for suspension with or without pay for specified periods of time; and
- (c) recommendation for termination of employment.

(2) All procedures under this regulation shall be in accordance with due process requirements and existing laws and in addition, notice and opportunity for a hearing shall be provided prior to imposition of any suspension or termination of employment.

159. Recovery in case of breach of conduct standards

The value of anything transferred or received in breach of the standards of conduct set forth in the Act or in these Regulations, and additional costs to the procuring organisation, resulting from the

breach, may be recovered from any culpable person.

160. General policy for debarment

(1) Procedures for debarment of suppliers shall provide public entities with a means to deny suppliers the opportunity to seek public contracts.

(2) Where a person is debarred from participating in procurement proceedings, the debarment shall extend to any firm in which the debarred person has a controlling interest.

(3) The debarred person or firm shall be subject to self-cleaning as prescribed by the Authority before they are allowed to compete in public procurement.

161. List of debarred suppliers

(1) The Authority shall compile and maintain a list of debarred suppliers in The Gambia.

(2) The Authority may also take into account any other international list of debarred suppliers and contractors.

(3) The Authority, and all Procuring Organisations shall ensure that debarred suppliers do not participate in public procurement for the duration of their debarment.

162. Procedures for debarment

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

(2) Without prejudice to the grounds specified in the Act, the grounds for debarment include-

(a) conviction of fraud or other criminal offence in connection with obtaining, attempting to obtain, or performing a public contract or subcontract; or

(b) conviction for bribery, forgery falsification or destruction of records, making false statements, tax evasion, receiving stolen property or any other crime or corrupt acts or omissions.

(3) The Procuring Organisations and any other relevant state organ shall encourage prompt reporting, investigation, and referral to the Authority of matters appropriate for the Authority to consider taking a

debarment action.

(4) Any referral to the Authority from the Procuring Organisations shall be signed by the Chairperson of Contracts Committee.

(5) The referral documents shall identify the party or parties proposed to be debarred, the grounds for debarment, the information, facts and documents supporting allegations, and any other information that the Procuring Organisation considers should be considered in the decision-making process including any mitigating factors.

(6) The Authority shall consider a debarment petition referred to it by the Procuring Organisation unless the allegations are clearly insubstantial, arbitrary, capricious or erroneous.

(7) The debarment petition shall be placed before a three-member committee whose members shall be appointed by the Director General of the Authority, which shall reach a decision on the petition.

(8) Immediately upon referral, the Authority may suspend the suppliers' right to participate in public procurements pending the outcome of the debarment action if the alleged grounds for debarment.

(9) A decision to exclude a supplier or bidder from participation in public procurement may be preceded by a suspension of the right to participate in public procurement proceedings for a period not exceeding six months.

(10) A decision by the Authority to exclude a supplier or bidder from participation in its procurement proceedings may only be taken after written notice to the supplier or bidder of the proposed exclusion and of the grounds thereof.

(11) A copy of the notice shall be provided by the Authority to the Procuring Organisation or other entity or official that brought the debarment petition to the Authority.

(12) The notice shall-

- (a) specify if the supplier is temporarily suspended from participating in public procurements pending the outcome of the debarment proceeding;
- (b) specifically describe the alleged impropriety in order to afford the supplier a meaningful opportunity to present

evidence rebutting the allegation;

- (c) define the proposed scope of the debarment action (i.e. the legal and judicial persons subject to the debarment action); and
- (d) inform the supplier or bidder of its right to a hearing prior to any decision to debar.

(13) In considering the scope of the debarment action, the Authority shall consider the following-

- (a) the level of power and control of the legal persons involved in the activity;
- (b) the actions or omissions by others associated with the supplier;
- (c) the existence of effective standards of conduct in force in the supplier's organisation; and
- (d) whether the supplier himself or herself, or itself brought the misconduct of an employee to the attention of the Procuring Organisation or other reporting entity, in which case the Authority might limit the scope of the debarment action to the employee involved.

(14) Within thirty days of receipt of the notice, the supplier shall submit in writing or through a representative, information and arguments in opposition to the proposed debarment, and also request a hearing before the Authority in which the supplier can submit documentary evidence, present witnesses and confront any person the Authority presents.

(15) The Authority shall grant the request for a hearing, unless the supplier's written submission opposing the debarment is clearly arbitrary, capricious or erroneous.

(16) The following procedures shall apply to hearings under this Regulation-

- (a) the supplier or bidder has the right to be represented by legal counsel or any other person designated by him or her;
- (b) the hearing shall be recorded and all evidence presented shall be preserved; and

- (c) witnesses must testify under oath and may be cross-examined.

(17) Within ninety days from the date notice of the debarment action is sent to the supplier, the Authority shall issue a final decision on the debarment action, either instituting the debarment or dismissing the action.

(18) Before issuing its decision, the Authority shall investigate the facts and weigh the response by the supplier.

(19) The Authority's final decision shall define the scope and period of debarment.

(20) The period of debarment shall not be less than one year and not more than five years.

(21) The period of debarment shall be at the discretion of the Authority but shall be reasonably related to the cause of debarment and reasonably consistent with the Authority's decision in other debarment actions.

(22) A debarment decision takes effect upon issuance of the written decision, and stays in effect until overturned on appeal by a court, or until the expiry date of the debarment period.

(23) The three-member committee shall promptly notify its decision on debarment to the concerned supplier, the Authority and the Procuring Organisation or other entity or official that brought the petition for debarment.

(24) Immediately following the decision to debar a supplier, the Authority shall place on the debarred list the names of all suppliers that are subject to the debarment and the duration of their debarment.

(25) The effect of a debarment action shall not be avoided by any scheme to circumvent the debarment.

(26) The debarment shall also apply to any "successor in interest" which means any entity that is substantially similar to an entity that was previously debarred.

(27) A business entity that employs or is associated with any partner, member, officer, director, responsible managing officer, or responsible managing employee, or a business entity that was

previously debarred shall be presumed to be a successor-in-interest.

(28) A supplier that has been debarred may appeal against the debarment to the High Court within thirty days of the decision to debar the supplier or contractor.

(29) Debarment does not relieve the supplier, of responsibility for existing obligations under a public procurement.

(30) A supplier who has been debarred may re-apply to the Authority after the period of debarment is over with affirmative declarations that future misconduct will not arise and that it has under taken self-cleaning.

PART X - CONTROL OF PUBLIC PROCUREMENT

163. Required contents of record of procurement proceedings

(1) In addition to the information listed in section 35(2) of the Act, information to be contained in the record of procurement proceedings shall include-

- (a) the names and titles of the members of the Contracts Committee;
- (b) the date and time of arrival of each bid;
- (c) the price, or the basis for determining the price, and a summary of the other principal terms and conditions of each bid and of the procurement contract, where the procurement proceedings have resulted in a procurement contract;
- (d) copies of any conflict of interest declarations and requests for members of Contracts Committees of procuring organisations to be recused from the procurement proceedings pursuant regulation 149 (2);
- (e) information on contingent fee arrangements, disclosed pursuant to Act Section 171(2);
- (f) in the procurement of services by means of request for proposals for services, a statement of the grounds and circumstances on which the procuring organisation relied to justify the selection procedure used;
- (g) in domestic procurement proceedings in which the procuring organisation limits participation on the basis

of nationality, a statement of the grounds and circumstances relied upon by the procuring organisation for imposing the limitation;

- (h) a summary of any modification of the pre-qualification or bidding documents;
- (i) if a successful bidder in tendering proceedings fails to enter into a procurement contract, a statement of the grounds thereof; and
- (j) a summary of final negotiations in accordance with Regulation 128 (5).

(2) The record shall be in accordance with the prescribed forms and bidding documents shall be numbered and records identified as set forth in the Instructions.

164. Retention of documentation

A Procuring Organisation shall retain documents and records generated in conducting procurement proceedings, including the record of the procurement proceedings, for a period of five years, as specified in section 35(5) of the Act.

165. Disclosure

In disclosure of the record of the procurement proceedings, and in debriefing of bidders, and in other contexts, except when ordered to do so by a competent court, and subject to the conditions of such an order, a Procuring Organisation shall not disclose bid evaluation reports, except for the summary information referred to in section 35(2) of the Act.

166. Availability of record to oversight organs

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

167. Record keeping requirements

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

168. Contracts Committee

(1) Each Contracts Committee shall open a special file with an index for every procurement proceeding.

(2) *In accordance with section 35(1) of the Act and regulation 182, all the documentation relating to the procurement proceeding, including the bid invitation, decision of award, work take-over certificate and any other information on the method of the supplier's completion of his or her commitment shall be kept in the file.*

169. Reporting requirements of Procuring Organisations

(1) Each Procuring Organisation shall file a monthly report on status of procurements by using prescribed GPPA Forms 006 and 200.

(2) Each Procuring Organisation shall file an annual report of single-source procurements by using prescribed GPPA Forms 201.

(3) All such report referred to in sub-regulation (1) and (2) above shall be submitted to the Authority monthly and annually respectively.

170. Constitution of a Complaints Review Board

(1) For the purposes of hearing applications for administrative review and appeals by aggrieved suppliers, the Minister shall constitute a Complaints Review Board

(2) The Complaints Review Board shall consist of members of high integrity with experience in public procurement or related fields, but with no direct or indirect personal involvement in public procurement functions during the period of their service on the Review Board.

(3) In selecting members of the Complaints Review Board, the Minister shall seek to establish a balance of relevant knowledge and experience among members to ensure that it has both-

- (a) knowledge and experience of the applicable public procurement rules; and
- (b) technical knowledge of the subject of the contract.

(4) The Review Board shall designate staff to provide secretarial services to the Complaints Review Board, but no staff of the Authority or the Procurement Cadre shall be selected as a member.

(5) The Review Board may engage technical specialists to assist in

its work if so required.

(6) The members of the Complaints Review Board, technical specialists and staff providing secretariat services shall be required to declare that they have no conflict of interest in relation to any application being heard.

(7) The members of the Complaints Review Board shall be paid such allowances determined by the Minister.

(8) The review procedures provided for in the Act and in any subsidiary legislation shall be followed.

171. Compensation for aggrieved bidder

Any damages payable pursuant to the right of review under section 54 of the Act shall be limited to the cost of preparing and submitting a bid, and shall not include loss of profit, and may only be awarded to a bidder that would have been awarded the contract but for the action or omission complained of.

172. Recording of decisions

Any decision by a Procuring Organisation, the Authority or by the court under section 54 of the Act and the grounds and circumstances therefore shall be made part of the record of the procurement proceedings.

173. Notice of procurement contract award

(1) The price level referred to in section 34(1) of the Act is hereby set at one million dalasis and above for the procurement of goods and services and five million dalasis and above for works.

(2) The notice referred to in section 34(1) of the Act shall be in the prescribed GPPA Form 030 and refer to -

- (a) the announcement of the procurement published in the media at the commencement of the procurement proceedings;
- (b) the subject matter of the procurement;
- (c) the name and address of the successful bidder;
- (d) the contract price; and

(e) shall be written using the prescribed GPPA Form 030.

174. Supervision and checking

All staff of a Procuring Organisation involved in purchasing shall be subject to supervision to ensure that staff is performing to meet standards and in accordance with procedures and guidelines in force.

SCHEDULE 1

TABLE OF THRESHOLDS (IN GAMBIAN DALASI)

Procurement Methods	Max or Min expenditure allowed for each procurement				
		Goods	Works	Services	Awarding Committee ***
					CC/A. Officer (Subject to GPPA Approval)
International Procurement	Max	as per budget	as per budget	as per the budget	CC/A. Officer (Subject to GPPA Approval)
	Min	10 million	15 million	10 million	
Open (National) Procurement	Max	<10 million	<15 million	<10 million	CC/A. Officer (Subject to GPPA Approval)
	Min	1 million	1 million	1 million	
Restricted Tender: Sec. 39(a)(c)	Max	<10 million	<15 million	<10 million	CC/A. Officer (Subject to GPPA Approval)
	Min	1 million	1 million	1 million	
Restricted Tender: Sec. 39(b)	Max	5 million	10 million	5 million	CC/A. Officer (Subject to GPPA Approval)
	Min	1 million	1 million	1 million	

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Single Sourcing: Sec. 44(1)(a)	Max	20,000	50,000	20,000	CC/A. Officer (Subject to GPPA Approval)
	Min	No min	No min	No min	
Single Sourcing: Sec. 44(1)(b,c,d)	Max	No max	No Max	No Max	CC/A. Officer (Subject to GPPA Approval)
	Min	No min	No min	No min	
Single Sourcing: Sec. 44(1)(e)	Max	20,000	NA	NA	CC/A. Officer (Subject to GPPA Approval)
	Min	No min	NA	NA	
Request for Proposal	Max	N/A	N/A	No max	CC/A. Officer (Subject to GPPA Approval)
	Min	N/A	N/A	>500,000	
Request for Proposal	Max	N/A	N/A	500,000	CC/A. Officer
	Min	N/A	N/A	20,000	
Request for Quotation	Max	1,000,000	1,000,000	1,000,000	CC/A. Officer (Subject to GPPA Approval)
	Min	>500,000	>500,000	>500,000	
Request for Quotation	Max	500,000	500,000	500,000	CC/A. Officer
	Min	20,000	50,000	20,000	

DONE ON THIS 05TH DAY OF AUGUST, 2019.

**HON. MAMBURY NJIE
MINISTER OF FINANCE AND ECONOMIC AFFAIRS**