

OPERATIONS MANUAL

**STANDARD OPERATING POLICIES AND
PROCEDURES
FOR PUBLIC PROCUREMENT**



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STANDARD OPERATING POLICIES AND PROCEDURES FOR PUBLIC
PROCUREMENT**

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Chapter 1. Definitions

1.1. Whenever used in the present paper, each of the following terms shall have the indicated meaning, unless the context within which such a term appears clearly intends another meaning.

"Accounting Officer" is a Permanent Secretary, or the Head of the District Administration, who is accountable for all procuring activities of the Procuring Entity. The Accounting Officer may delegate an level of authority to other person(s), such as the Procurement Specialist/Unit.

"Advertising" means the statutory requirement to advertise a tender in newspapers, websites, international tender sites, the Government Gazette, etc.

"Alternative item" An item that is *different*, yet will still perform to the same specifications, or better, and is of a different chemical composition, or a different physical material, and may be supplied by a different manufacturer. Alternative items may only be accepted if allowed for in the bidding documents and then agreed in the contract documents.

"Artistic items" Any object of art, usually protected by intellectual rights or otherwise authorship, delivered by an artist who has the necessary know-how, ingenuity, skill, dexterity, artfulness and creativity (see definition in *Design Contest*)

"Arbitrator(s)" means an Arbitrator(s) who is called to convene, to adjudicate and decide the outcome of a dispute between two parties to a legal contract.

"Award" means award of a contract to a successful bidder, after the submission of a recommendation, to the Board or its Committees, or any other subsidiary body of a Procuring Entity to which the Board may delegate powers of adjudication and award, within specified financial ceilings, to determine the successful bidder. The award may go ahead after a review, adjudication and approval by the above mentioned bodies.

"BCF" means the Botswana Consolidated Fund.


"Best practise" means the best practise of accepted industrial or international standards.

"Bid" means a completed set of documents of a Tender Dossier (in writing) that is presented to a Procuring Entity as part of a Public Tender award process. A Supplier's offer submitted in response to an invitation to offer under a competitive bidding process or other approved method as the case may be.

"Bidder" means any natural, or legal person, or group of such persons submitting a bid to a Procuring Entity, with a view to concluding a contract for goods, works or services. The term Bidder and Tenderer shall have the same meaning and vice versa.

"Bid Evaluation Committee" shall mean a committee tasked with the function of organising evaluation of bids.

"Bid notice" means any advertisement by which eligible providers are invited to submit written offers to provide works, services and supplies, or any combination thereof.

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"*Bid Opening Committee*" shall mean a committee tasked with the function of organising the official opening of the bids received. Normally the members are appointed as an ad-hoc committee and generally managed by the Board or its Committees. In small organisations only, ad-hoc committees may be difficult to arrange, so members may be appointed for a period of up to 12 months.

"*Bid price*" means the sum stated by the bidder in the bid proposal for carrying out the contract. The term bid price and tender price shall have the same meaning and vice versa.

"*Bid submission methods*" means documents containing instructions on the methods of bid submissions.

"*Bill of Materials*" means an itemised list of raw materials, materials, components, sub-assemblies, with their quantities and description, required to construct, overhaul or repair something. It gives an itemised breakdown of the quantities of materials that will be used in a contract. Most commonly associated with works / construction, but can be applicable to any type of project. It may also be broken down by each individual work task and its related quantities. There is a degree of overlap with a Bill of Quantities and the term is often used interchangeably.

"*Bill of Quantities*" means a list which is usually prepared by a Quantity Surveyor and provides an itemised list of materials, parts, labour (including costs) required to construct, maintain, refurbish, or repair a specified structure or a building. It gives an itemised breakdown of quantities of materials that will be used in a contract. Most commonly associated with works / construction, but can be applicable to any type of project. It may also be broken down by each individual work task and its related quantities. There is a degree of overlap with a Bill of Materials and the term is often used interchangeably.

"*Board*" means the Public Procurement and Asset Disposal Board established under the Act, section 10.

"*BOM*" Bill of Materials.

"*BOQ*" Bill of Quantities.


"*Client*" means an organisation or person who uses the professional services of an individual, an Agency or another organisation. It is generally used in the context of the term Procuring Entity.

"*Code of Ethics*" shall mean adhering to the ethical standards issued by a competent body and of the ethical standards as set out in this PPADB Operations Manual.

"*Commodities*" means (i) all food items and (ii) goods such as raw materials or an agricultural product for which prices are quoted in established commodity market.

"*Committee*" means any committee of the Public Procurement and Asset Disposal Board, established by a decision of the Board, and delegated specific functions and powers by the Board in respect of public procurement or the disposal of public assets, under the Act.

"*Complainant*" shall mean an interested party who is filing or has filed a complaint in what is considered to be a potential irregularity or violation, in a procurement or asset disposal

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procedure, or in a clause(s) of a contract between the parties.

"Conditions of Contract" means the general conditions of contract. They are fixed and never altered. Any alterations are normally included in the *Special Conditions of Contract* or the *Contract Data*.

"Contract" means an agreement between a Procuring Entity or a Disposal Entity and a contractor resulting from the application of the appropriate and approved procurement or disposal procedures and proceedings, and shall be concluded in the pursuance of a bid award decision or one of its Committees. *"Contract"* is a legally enforceable agreement. The legal definition of a contract is a promise, or a set of promises, which if found to be in breach of the duty of performance, the law will provide a remedy.

"Confidential" means that any information provided during the course of potential business transaction is to be kept confidential and may not be divulged to other interested parties. Confidentiality is binding upon both staff of the Procuring Entity, the PPADB and its committees and those of potential Suppliers.

"Conflict of Interest" means those persons or organisations that may benefit from some action or involvement in the preparation, selection of or control over the result of a Contract award. Any involvement at whatever stage, that may appear to have the potential to cause a conflict, whether directly or indirectly, must be made known to senior officials of the Procuring Entity and/ or the Board or its Committees.

"Contractor" means an independent entity that agrees to provide a certain number or quality of goods, material or equipment, or personnel and/or services that will meet or exceed the stated requirements, terms of reference or specification, at a price that is agreed by both parties in a predetermined time schedule to another entity such as principal, project owner, or procuring entity. *"Contractor"* means a natural person or an independent body licensed by the competent authority to undertake works, services or supplies, or any combination thereof, however classified.


"Contract Authority" has the equivalent meaning to the term *Procuring Entity*.

"Contracts Committee" are a variety of appointed ad-hoc committees that are tasked with oversight of certain activities of the preparation, monitoring, managing of a contract, although this function would normally be undertaken by the Procurement Unit, the Engineers, or a Project Manager. The committees are temporary in nature. They occasionally may be the Ministerial Tender Committee, or the District Administration Committee.

"Communications" a technical term meaning the certification, notice, amendment, order, clarification and any instruction issued under the contract and shall include any expression or exchange of information by speech, writing or gestures;

"Consultant" a person, natural or corporate, delivering consulting services or artistic items;

"Consulting Services" means any service task(s) to be performed by the consultant under a service contract. It is normally associated with the provision of a particular skill or provision of specialist knowledge.

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"DATC" District Administration Tender Committee.

"District Administration Tender Committee" shall be composed of a Chairperson, a Vice Chairperson, and other members, not exceeding 7, appointed by the Board on the recommendation of the Accounting Officer, and in writing.

"Design Contest" means an artistic design contest (competition) which is open to artists, architects, designers to design an artefact, painting, sculpture, building, etc., and normally for a prize(s). Normally, a committee will decide the ranking. The committee is composed of members who are familiar with the type of item and will include at least one representative who is employed in that speciality (e.g. an Artist).

"Direct procurement method" means a sole source procurement method for requirements due to exceptional circumstances it prevents the use of competition.

"District Committee" means the District Administration Public Procurement and Asset Disposal Committee established under section 64.

"Disposal" means the divestiture of public assets, including intellectual property rights and goodwill, and any other rights of the State, by any means, including sale, rental, lease, licenses, tenancies, franchises, auction or any combination thereof, however classified.

"Disposal process" means the successive stages in the disposal cycle, including the planning, item condition, choice of procedure, measures to solicit offers from bidders, examination and evaluation of such offers and award of contract.


"Dual envelope system" means a one stage two envelope method of bid submission in which a bid is submitted in an outer sealed envelope, which contains two separately sealed and labelled envelopes, duly marked and which contain separate technical and financial proposals, which are opened at different dates, and in separate bid openings. *"Economies of Scale"* means where larger orders (often by combining together smaller lots) are placed, which result in lower units costs per item.

"Electronic transmission" means the use of electronic equipment for the processing (including digital compression) and storage of data transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

"Emergency procurement" means a procurement activity carried out under the circumstances which are urgent, unforeseeable and not caused by any dilatory conduct, or bad management, of the Procuring Entity.

"EOI" means Expression of Interest (see definition).

"Evaluation Criteria" shall mean a measure of specific requirements such as values, standards or specifications, by which a tender bid will be evaluated. Failure to correspond to, or meet with those requirements, in part or in whole, will mean that the Bidder fails to satisfy the criteria required and will be eliminated from the evaluation process. Each evaluation criteria may be given marks or percentage points and the total of each added. The highest evaluation score will normally win, or as in a two tier envelope system, will progress to the second envelope, the financial evaluation component.

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"Expression of Interest" means a letter, advertisement, publication, etc. which briefly states a requirement of need by a Procuring Entity. Any interested party may respond and provide an outline of how they can satisfy that need and request the Procuring Entity, if interested, to supply detailed information, so a formal bid can be prepared.

"Extension of contract" means the addition to the scope of a contract resulting from a voluntary choice by a Procuring Entity.

"Financial evaluation" the evaluation of the monetary value of a proposal, generally used for consulting services or for artistic items;

"Fixed budget selection" means selection of a bidder with the best technical bid, who is within the fixed budget.

"Foreign currency" any permissible currency which is not the one utilised locally in Botswana and which has been indicated in the solicitation documents;

"Foreign provider" means a provider who is not a citizen of Botswana and whose operations are not based in Botswana

"Framework contract" means a contractual arrangement which allows the Procuring Entity to procure works, services or supplies that are needed continuously, or repeatedly, at an agreed price, over a set period of time, through a placement of a number of orders.

"Goods" means all items, ready-made or assembled, which the supplier is required to provide to the Procuring Entity, including, and not limited to, specially manufactured goods that are movable at the time of identification, subject to a contract for sale. Supplies items can also include the installation, testing, and commissioning of the supplies items, or equipment. It is freely interchangeable with the term *"Supplies"*.

"Guidelines" means any advice given by the Board through any circular that may be issued to Procuring or Disposal Entities in accordance with section 28 of the Act.

"Impartiality" means that persons or companies partaking in a tender process will do so in an honest, objective, impartial and transparent manner.


"INCO terms" means the internationally accepted terms of sale legislated by the International Chamber of Commerce (ICC). The most recent publication is number 560 INCO terms 2000 or latest version thereof.

"Independent Committee" means the Independent Complaints Review Committee established under the Act Section 12 (1).

"Interested party" shall mean a person who, or an undertaking that, has or had a specific material interest in the outcome of a procurement activity conducted by a Procuring Entity and relating to a specific public contract or design contest.

"IFB" means invitation for bids

"Independent Complaints Review Committee" means a body of specialists appointed to review the complaint of alleged contract irregularities.

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"ITB" means instruction to bidders, or invitation to bid.

"*Justification of needs*" and "*needs to be satisfied*" means that the initial requirement (demand) must be fully justified and supported by cost effective analysis and explanation of the benefits that will accrue to the Procuring Entity

"*Least cost selection - Services*" means the cost selection evaluation method set out in Part V of the Forth Schedule.

"*Least cost selection - Supplies and Works*" means the cost selection evaluation method set out in Part IV of the Forth Schedule.

"*Legal Person*" means a natural person or an undertaking or organisation having a separate legal personality.

"*Restricted domestic bidding*" a local solicitation to selected or prequalified bidders and/or citizen contractors, from Botswana.

"*Restricted international bidding*" an international solicitation to selected or pre-qualified bidders from Botswana and abroad.

"*Local currency*" the currency used in Botswana.

"*Local contractor or provider*" means a company registered in Botswana irrespective of whether or not it is wholly owned and controlled by citizens of Botswana.

"*Lots*" shall have the same meaning as "slices" "portions" and vice versa; parts of contracts to be awarded in *lots* as stipulated in the solicitation documents; an article that is the subject of a separate sale, lease, or delivery, whether or not it is sufficient to perform the contract.

"*Lowest cost*" shall mean the lowest cost for a specific item.

"*Lowest calculated price*" the sum stated by the supplier in his tender for carrying out the contract, thereafter calculated as being the lowest by using predetermined factors.


"*Mandatory requirement*" shall mean a compulsory requirement that has to be part of the bid offer. Failure to meet the requirement means that the bid fails the requirement and will be eliminated from the tender process.

"*MTC*" or "*Ministerial Tender Committee*" shall be composed of a Chairperson, a Vice Chairperson, and other members, not exceeding 7, appointed by the Board on the recommendation of the Accounting Officer, and in writing.

"*Most economic value*" shall mean the total of all costs (sum of), such as unit costs, taxes, operating costs, consumable costs, etc., added together which truly identify the full costs of procuring and operating a particular item, equipment, function or activity.

"*Offer*" means any offer to pre-qualify, to quote, to bid or to propose for a purpose of procurement, a promise to do or refrain from doing something in the future, a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a contract.

"*Open international bidding*" means a procurement or disposal method, open to competition and

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participation by all providers, through advertisement of the procurement or disposal opportunity and which specifically seeks to attract foreign providers.

"Open domestic bidding" means a procurement or disposal method open to participation by all providers through advertisement of the procurement or disposal opportunity in the Gazette and in a newspaper of wide circulation in Botswana.

"Originating Department" means the department that prepared the original request and specification, for the procurement of a goods, works or services (also known as the *requisitioning* or *demand* department).

"PE" means Procuring Entity.

"Performance requirements" the requirements of successful completion of a contractual duty for a qualitative, quantitative, competitive and timely delivery, substantial and future, whereby what is delivered meets the pre - determined requirements.

"Post-qualification" is the verification of criteria to be met by a supplier before an award.

"PPADB" - means the Public Procurement and Asset Disposal Board of the Republic of Botswana.

"Pre-qualification" means providing prior proof, financial, technical, and managerially that a Supplier organisation is capable of undertaking and completing satisfactorily, the required outputs of a proposed tender activity. It is the verification of the capabilities of suppliers to be eligible to bid.

Pre-qualified Supplier" a supplier who meets predetermined criteria whereby he becomes eligible to bid.


"Present Law" means the present law and the subsidiary normative acts and instruments issued in furtherance of or under the authority of the present law, including the public procurement rules and code of ethics issued pursuant to or under the authority of the present law.

"Price revision formula" means a formula that is included in a contract and is used to calculate the revision of prices to cover any claims for future price changes.

"Price schedule" the completed schedule of prices, including the breakdown of the overall price, submitted by the bidder with his bid modified as necessary and forming a part of the unit price contract.

"Procurement" shall mean the acquisition of goods and services, the contracting of works, purchasing (including purchasing in instalments, with or without purchasing commitment) and buying, renting or leasing, hire-purchase, licences, tenancies, franchises, etc., and the management thereof in accordance with methods and procedures established hereby, whereby the ordering party may make commercial use of the goods, works or services procured. The term procurement and public procurement in this Operations Manual shall have the same meaning and vice versa.

"Procurement Committee" shall mean any committee that may be created to assist in any role-playing procurement activities, whether on a permanent or ad hoc basis, for the benefit of the PE (may also be called a Tender Committee or one of its derivatives). Such committees include, but are not limited to the:-

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- a) Pre-Tender Committee (Preparations of Specifications/TOR/BOM/Drawings)
- b) A Tender Committee, or the Procurement Unit - the main tender creation
- c) Bid Opening Committee (Technical).
- d) Bid Opening Committee (Financial).
- e) Bid Evaluation Committee (Financial)
- f) Bid Evaluation Committee (Technical)
- g) Samples Evaluation Committee
- h) Post Tender Negotiation Committee (clarification of issues).

"Procurement method" means the methods defined in Part V.

"Procurement process" means the successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of such offers, award of contract and contract management.

"Procurement Specialist" in this document is a generic term to cover a variety of possible titles such as Procurement Director/Manager/Specialist/Officer. The Procurement Specialist is normally authorised to sign a contract on behalf of an Accounting Officer. At certain very high levels of monetary thresholds, the Accounting Officer may wish to sign the contract. The Procurement Specialist and the Procurement Unit is responsible to the Accounting Officer.

"Procuring Entity" Procuring Entities are ministries, departments, agencies, and all other organisations that are designated, from time to time, by the government of Botswana as a Procuring Entity. Procuring Entities are generally Entities that are deriving public funds for their main activities. In essence, they are Contracting Authorities.

"Project Manager" or *"Project Administrator"* means a person who has been given the complete authority to manage a project and take decisions on behalf of a Procuring Entity. It is normally associated with large Works, Construction or Capital projects.


"Provider" means a natural person, or an incorporated body which include consultant, contractor or supplier, licensed by a competent authority to undertake business activities.

"Public procurement" and procurement shall have the same meaning and vice versa.

"Public Procurement Law" means the public procurement law of the Republic of Botswana and any of its amendments, or succeeding law.

"Qualification" means providing the proof, financial, technical, or managerially that a Supplier organisation is capable of undertaking and completing satisfactorily, a particular set(s) of functions/ activities.

"Quality" shall mean a special, distinctive, or essential character, or attribute. The totality of features and characteristics of a product or service that bear on its ability to satisfy the stated or implied needs. This should not to be mistaken for "degree of excellence" or "fitness for use", which meet only part of the definition.

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"Quality and cost based selection" means a procurement method defined in regulation 76 (2.)

"Quotation" also see Request for Quotation

"Quotation procurement method" commonly referred to as a "proposal procurement method" means a simplified procurement and disposal method obtained from a number of providers.

"Rationalisation" means a study to rationalise a variety of very similar items and reduce the number to the lowest minimum possible and still satisfy the needs of the Procuring Entity. The result is a reduction in cost and the number of line items held in the stores.

"Recuse" means to disqualify oneself from a particular case, or course of action; to declare oneself disqualified to act (maybe due to a conflict of interest). In procurement terms, it is generally to withdraw from an action such as to vote, for or against, a motion.

"Responsive bid" means a bid which confirms to all the terms, conditions and requirements of the solicitation document without any material deviation, reservation or omission thereof.

"Request for Proposals" the set of documents enabling a Consultant or an artist to prepare a proposal. Provision of skills or artistic services.

"RFQ" means a Request for Quotation (see below).

"Request for Quotations" means an offer made by a Supplier. The obtaining of written quotations from suppliers; where a quotation is found satisfactory, the acceptance may be communicated by a purchase order issued by the Procuring Entity

"Resile" means pull out or away from an agreement, contract, statement, etc. In procurement terms it generally means to cancel a contract.


"Round Robin" means a letter, a document or a petition, which is signed by a number of people. In the procurement sense and because of an emergency situation, it means document(s) that are circulated, or hand carried, as a matter of urgency, around a number of authorised personnel, to obtain signatures of approval and authorisation, so as to proceed with a procurement related activity.

"SADC" Southern African Development Community "SCC" means special conditions of contract.

"Selective tendering" is a limited procurement method in which tenders may only be submitted by tenderers that have proven their qualifications and are invited to do so by the Procuring Entity.

"Scope of Work" means the definition, design, creation and assembly of the deliverables of a project. It is normal to include the background history of the project and the objectives that are to be achieved

"Separation of Duties" means that the authority of a person(s) to approve and sign approval in one area of responsibility does not also include those of another area of responsibility. The specialist disciplines of contract preparation (legal & technical), contract implementation and payments (invoices) must be kept as separate activities with separate signatory approvals. The Finance Manager, Procurement Manager and the Contracts Manager/ Warehouse Manager may not sign any documentation outside their area of specialisation.

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"Services" means a valuable action, deed or effort performed to satisfy a need or fulfil a demand. Services are intangible products that are not goods (tangible products) such as, consultancy, artistic, know-how, education, accountancy, education, medical treatment, provision of a skill. There is no transfer of ownership or possession when services are sold, they cannot be stored or transported, and are instantly not perishable and come into existence at the time they are bought and consumed.

"Service contract" means a contract for pecuniary interest concluded between a Procuring Entity and one or more service providers that relates exclusively or mainly to the provision of services.

"Service provider" means any person, undertaking or public body, or group of such persons, undertakings and/or bodies that provides and/ or offers to provide services.

"Single envelope submission method" means a one stage single envelope method in which a bid has a specific date and time in a single bid opening, submitted in one sealed envelope which is opened.

"Solicitation" An invitation made to suppliers to participate in a prequalification exercise, or to quote for goods or for ancillary services or, to bid for goods or works or, to propose for consulting services or artistic items.

"Solicitation documents" means tender documents necessary for a supplier to prepare a bid for goods or works or services.

"SOW" Scope of Work (see definition above)

"Specification" shall mean a common technical specification, an international technical approval or a regional or national standard implementing an international, regional or national standard (see also technical specification)


"Standard" shall mean a technical specification approved by a recognised standardising body, Institute, Trade organisation, a Guild, etc., for repeated or continuous application, the compliance with which may, or may not, be mandatory. (see also "technical specifications").

"Standardisation policy" means a policy of standardisation approved by Cabinet through a Cabinet Directive. It may be interpreted as a study to standardise on a wide variety of similar or dissimilar items, and reduce the number to the lowest minimum possible and still satisfy the needs of the Procuring Entity. The result is a reduction in cost and the number of line items held in the stores.

"Standardised bidding package" means standard bidding documents and templates and public assets disposal contracts approved by the Board which shall be used on mandatory basis by all procuring and disposing entities.

"Statement of requirements" means documents prepared by a Procuring Entity providing a correct and competitive description of the subject of procurement for the purpose of creating fair and open competition.

"Substantially responsive" means an offer that, on examination or evaluation, complies for the major part to the critical aspects of a solicitation as provided for in the Standard Conditions of Tender.

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"Substitute item" means an item that is the exactly the *same*. It performs to the same specifications, or better, is the same chemical composition, or of the same physical material, etc. though may be supplied by a different manufacturer. Substitute items may only accepted if allowed for in the bidding documents and then agreed in the contract documents.

"Supervisor" means the Procuring Entity, legal person governed by law, or the natural or legal person designated by the Procuring Entity in accordance with the law, who is responsible for directing and/ or monitoring the performance of the contract, and to whom the Procuring Entity may delegate rights and/ or powers under the contract;

"Supervisors representative" any natural or legal person, designated by the supervisor as such under the contract and empowered to represent the supervisor in the performance of his functions, and in exercising such rights and/ or powers as have been delegated to him. Accordingly, where functions rights and/ or power of the supervisor are delegated to the supervisors representative, references to the supervisor include the supervisors representative. The Supervisors Representative may also be called the Engineer, or Site Engineer.


"Supplier" means any natural person, undertaking or public body, or group of such persons, a company or firm, undertakings and/or bodies that provides and/or offers to supply products, delivering works or goods, including ancillary services, equipment, plant, supplies, or consulting services including artistic items. Also means companies or firms constituted under civil or commercial law, including corporations, whether public law, including corporations, whether public or otherwise, cooperative societies and other legal persons and partnerships governed by public or private law, save for those which are non-profit making;

"Supplies" means all items, ready-made or assembled, which the supplier is required to provide to the Procuring Entity, including, and not limited to, specially manufactured goods that are movable at the time of identification, all things, and other things, that will come into being, subject to a contract for sale. Supplies items can also include the installation, testing, and commissioning of the supplies items, or equipment. The term is freely interchangeable with the term "*Goods*".

"Supply contract" means a contract for pecuniary interest concluded between a Procuring Entity and one or more suppliers that relates exclusively or mainly to the purchase, lease, rental or hire-purchase, with or without option to buy, of one or more products; "products" shall be interpreted broadly to include one or more items of tangible movable property, including - but not limited to commodities, fungible items, goods, manufactures, raw materials, and equipment.

"Technical evaluation" means an evaluation of the capabilities of a supplier of services as set out in the criteria. Technical evaluation can also be applied to the technical conformity and performance of specific goods to pre-defined criteria.

"Technical specifications" shall mean technical requirements defining the characteristics of a set of works, material, product, supply or service, and enabling a piece of work, a material, a product, a supply or a service to be objectively described in a manner such that it fulfils the use for which it is intended by the Procuring Entity. Technical specifications may include quality, performance, safety or dimensions, as well as requirements applicable to the material, product, supply or service as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. In the case of works contracts, they may also include

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rules for the design and costing, the test, inspection and acceptance conditions for works and techniques or methods of construction and all other technical conditions which the Procuring Entity is in a position to prescribe under general or specific regulations, in relation to the finished works and to the materials or parts which they involve. Additionally, technical specifications represent International and National specifications such as the organisations ANSI, BSI, DIN, ISO, JISC, and National standards BOBS, and Regional standards SABS etc.

"*Tender*" means a set of documents of legal construction that is composed of the following, but not limited to, an Invitation to Bid, Instructions to Bidders, Bid Data Sheet., General Conditions of Contract, Special Conditions of Contract, Technical Specification, Schedule of Requirements etc. These documents collectively are called a "*Tender dossier*". The intention of the creation of the Tender is to cost effectively engage a potential Supplier to supply the Procuring Entity with, goods, works or services. The term "tender" shall also include, but not be limited to, a proposal or price quotation.

"*Tenderer*" means any natural, or legal person, or group of such persons submitting a bid to a Procuring Entity, with a view to concluding a contract for goods, works or services. The term Bidder and Tenderer shall have the same meaning and vice versa.

"*Tender committee*" or "*Procurement Tender Committee*" is any of a variety of appointed ad hoc committees that are tasked with oversight of certain activities of the tender preparation and process (see the definition in *Procurement Committee*).

"*Tender Notice*" means any invitation to eligible contractors to submit written offers to provide works, services or supplies, or any combination thereof.

"*Tender price*" means the sum stated by the bidder in the bid proposal for carrying out the contract. The term tender price and bid price shall have the same meaning and vice versa.

"*Terms of Reference*" means the statement issued by the Procuring Entity giving the definition of their requirements and/or objectives of the consulting services, including, where applicable, the methods and means to be used and/ or results to be achieved; any terms of reference to be issued by a Procuring Entity shall be in the format laid down by the public procurement rules.

"*Third part procurement provider*" means any provider of services to whom procurement and disposal functions of a Procuring and Disposal Entity is contractually assigned.


"*Time limits*" means those periods in the contracts which shall begin to run from the day following the act, or event, which serves as the starting point for those periods.

"TOR" means Terms of Reference (see definition above).

"*Validity period*" means the period for the duration of which an offer made by a Supplier remains valid, as requested in the solicitation documents;


"*Variation*" means a minor change in the value, at time of the execution of a contract, that the parties could not foresee at the time the contract was entered into.

"*Violation*" means a failure to comply with one or more provisions of the present law or of the signed contract between the parties.

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"Work" means the outcome of construction or civil engineering works or activities that, taken as a whole, is sufficient to fulfil an economic or technical function. "Works contract" means a contract for pecuniary interest concluded between a Procuring Entity and one or more works contractors, or sub-contractors, that has as its principal object the execution, design and execution, or realisation, by whatever means, of a work, or construction, or civil engineering activities, i.e. any work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, erection, assembly of buildings, facilities, civil engineering structures, other structures, or any part(s) thereof., installation of plant, fixing of equipment and laying out of materials decoration and finishing as well as drilling, mapping, satellite, photography, seismic investigation, temporary or permanent, and any activity incidental thereto under a contract, activities that are directly involved in the construction, restoration, repairing or demolition. It also includes the provision of expertise, supervision, maintenance, repair, training and other such obligations connected with the items to be provided under a works contract.

"Writing" or "in writing" means any expression that is handwritten, type written or printed communication, consisting of words and/or figures that can be read, reproduced and subsequently communicated including by telex, cable, facsimile and includes information transmitted and stored by electronic means.

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Chapter 2. The Scope of Public Procurement Procedures

This Operations Manual is designed to assist procurement staff in the management of procurement and asset disposal. It provides an essential knowledge base, which imparts a clear understanding of what is expected to be done and how it should be done. Having the correct methodology at hand will speed up the business process.


All civil servants, contractors, public enterprises and parastatals, local authorities, consultants or private sector firms, suppliers involved in procurement activities will be bound by the policies, procedures and practises appearing in this manual, which may change from time-to-time in line with the provisions of the PPAD Act and Regulations.

2.1 The development of modern Public Procurement


- 1) In Botswana government expenditure through public procurement activities represents about 70% of the Gross National Product. Public procurement activities may operate within a political system that conducts government business with varying degrees of flexibility, or rigidity, that may be based solely upon the national interest, or in the self-interest of certain government officials. Many public procurement activities suffer from neglect, lack of direction, poor co-ordination, lack of open competition and transparency, differing levels of corruption and most importantly not having a cadre of trained and qualified procurement specialists, who are competent to conduct and manage such procurements, in a professional, timely and cost effective manner.
- 2) Inflexible and bureaucratic systems of procurement contribute to unacceptable contract delays, increased costs, the potential for manipulation of contract awards and lack of fair competition, all of which create the perception in the population at large, that public expenditure is slow, ineffective, expensive and often corrupt. Improvements can easily be made by the creation of a strong and modern public procurement law, the introduction of clear procurement policies and procedures, procurement responsibilities being given to the procuring units responsible for conducting such activities and the streamlining of procurement methods.
- 3) In recent years, there has been major movements in the development of public procurement legislation throughout the world, through multinational trade agreements such as the World Trade Organisation (WTO) and Government Procurement Agreement (GPA), and through international bodies such as the International Monetary Fund (IMF), the Organisation for Economic Co-operation and Development (OECD), the World Bank (WB) and the European Union (EU) and many others.

2.2 Procurement Philosophy

- 1) The philosophy for public procurement in Botswana is to continually introduce higher standards and to achieve:
 - a) Open, fair and transparent tendering and commercial practices
 - b) Uphold integrity, impartiality, anti-corruption measures
 - c) Abide by a Code of Conduct and Ethics
 - d) Specifications offering the widest participation of competition - neither to favour, nor discriminate against any potential contractors
 - e) Specifications to be open and generic in nature (they may be to an international, regional or a national standard)

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- f) Greater cost effectiveness in the acquisition of goods, materials, services, works, resulting in value for money
 - g) Changes to levels of authority, responsibility and accountability in the Tender Committees of Procuring Entities
 - h) Business opportunities for all sectors of the economy
 - i) Tenders are to be widely advertised
 - j) Provide the same information to all contractors
 - k) Public opening of tenders
 - l) Clear criteria for the evaluation process
 - m) Fair commercial and technical analysis for each offer
 - n) Advertising of contracts awarded
 - o) Documents available for inspection by oversight bodies
 - p) A robust complaint handling mechanism for contractors
 - q) Monitoring compliance of procuring entities and Board Committees by the PPADB.
- 2) Transparency in procurement activities is essential. The expenditure of taxpayer's money needs to be accounted for to ensure that contracts are awarded in the most cost efficient manner are open to fair competition and offer value for money.
 - 3) Public procurement law is designed to curb fraud, waste, abuse and corruption, which threatens all countries and impedes competition. A clear public procurement law coupled with strong compliance measures will promote and assist national and international trade, which will attract investment and create conditions for economic development.
 - 4) Government Procuring Entities require a cadre of professional personnel trained in public procurement practice. As national and international laws on procurement constantly change, as do market conditions, the procurement specialists need to be constantly updated and aware of economic and legal changes and require frequent training to keep up to date with the latest developments in procurement.
 - 5) Most governments nowadays invest heavily in procurement training and in related computer systems which give access to the procurement activities of government departments, through integrated networks, common databases, accessible web sites, and which provide details of the tender requirements of the government organisations. In addition, Procurement Regulatory Authorities normally assist the contractors with training to improve their capability and capacity to participate in government procurement,
 - 6) Looking towards the long term future and development of public procurement practice in Botswana, it was clear that the development of procurement practice should be consistent with the developing procurement practices of the rest of the world. There are many common practices that can be implemented that will bring both short and long term benefits. To comply with the manpower development programme there should be the strengthen of Procurement Units within the Procurement Entities, headed by a dedicated Procurement Manager. This is both a requirement of the PPAD Regulations and a priority aim of the PPADB.
 - 7) Over the next few years it is the intention of PPADB to move towards a regulatory, standards setting, capacity building and monitoring compliance role. It will reduce its tender adjudication role by devolving responsibility to the Procuring Entities, in particular the Board Committees. However, it is important to note that while the PPADB will initially retain the adjudication of all high value, high profile procurement activities, this role will be reviewed in favour of a clear regulatory function. The PPADB will also provide the support and training to the Procuring Entities to achieve the devolved status. Note that procurement training expenses, in the short,

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medium and long term, is the responsibility of the participating organisations and not that of the PPADB.


- 8) It is the intention with this Operations Manual to assist the Procurement Units of the Procuring Entities with a standard set of procurement policies, procedures and practices to be used as a reference manual. It is a living and evolving document which will need to be constantly updated, over the years.

2.3 Procurement Reform

- 1) For the reform in public procurement the following principles will need to be considered:
 - a) Periodically reviewing the legal framework by reviewing the current procurement law, to be more consistent with international best practises.
 - b) Establishing a new and independent public procurement Regulatory Authority, responsible for the application of the law on procurement, with the authority to monitor all government bodies for compliance with the regulations. The Regulatory Authority would advise the government on procurement procedures and potential changes to the law, as well as introducing any recommendations required by the government.
 - c) The Regulatory Authority will publish national policies and procedures on procurement matters and will be responsible for settings procurement standards, training and capacity building and monitoring compliance. The Procuring Entities and other organisations will be responsible for their own procurement training expenses.
 - d) Establish a capacity development program suitable for all procurement levels
 - e) The PPADB would still retain the adjudication role for the high profile and high value projects, including those issues of national security.
 - f) Procuring entities will be responsible for their own procurement activities in the interest of ensuring accountability and expediency. The role of procurement will be strengthened by devolving procurement responsibilities in the individual Procuring Entities.
 - g) Over time, a full set of capacity building and procurement training modules has been developed and reviewed, and supported by suitable training programmes to enable the PE's to conduct the Procurement and Asset Disposal transparently, efficiently and in an accountable manner.

2.4 Strategic Implementation

- 1) To ensure its success, an effective strategy must be designed to support the implementation of the procurement reform and should include:
 - a) Public procurement reform should be consistent with the government's overall policy and development objectives.
 - b) Advice to be taken from the local stakeholders to identity their needs, obtain their support and elicit their commitment.
 - c) Wide publicity needs to be transmitted through the media to promote a clear understanding of the objectives and benefits of the reform to the general public.
 - d) The critical provision of the resources to drive forward the reforms, including skills of training and capacity building
- 2) Public procurement represents a huge amount of the national government expenditure and therefore offers a great opportunity for cost savings, for the greater accountability of the expenditure, a potential for streamlining the tender process and most importantly to show that the Botswana budget allocations are spent in a truly controlled and cost effective manner.


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2.5 The Operations Manual

- 1) The Public Procurement and Asset Disposal Board (PPADB) was established by an Act of Parliament as an independent parastatal authority, accounting administratively to the Ministry of Finance & Development Planning, responsible for the coordination and management of public procurement of works, supplies, services for central government and the disposal of assets. The Public Procurement and Asset Disposal Act (Cap. 42:8) came into force on 2nd July 2002.
- 2) The PPADB's current role is principally one of tender adjudication, vetting of tender documents, contractor registration, with an increasing important input on legislation and regulation, policy and procedures, training and capacity building and compliance monitoring. It adjudicates on the recommended tender awards submitted by various Procuring Entities (PE's) of various Ministries and Departments of Government.
- 3) This Operations Manual gives details of the policies and procedures governing the procurement of supplies, works, services and asset disposal. It is a "*living document*" that will constantly change due to changing circumstances; and to changes in the Public Procurement and Asset Disposal Act (Cap. 42:8) and/ or the Public Procurement and Asset Disposal Regulations, 2006. The objective of the Operations Manual is to create a standardised national approach to public procurement activities. The aim is to ensure that due care is taken in the expenditure of public funds and that the process is undertaken in an economic and efficient manner, is transparent, and offers equal opportunity for eligible competitors.
- 4) The Operations Manual derives authority from the PPAD Act and Regulations. Where there may be a conflict between this manual and the Public Procurement and Asset Disposal Act (Cap. 42:8) and Regulations, the statutory provisions of the Public Procurement and Asset Disposal Act (Cap. 42:8) take precedence. In the case of a conflict between the provisions of the PPAD Act of 2001 with any obligations of the Republic of Botswana arising from any treaty or other agreement to which Botswana is a party, the requirements of such treaty or agreement shall prevail over the PPAD Act of 2001(4 (1) of PPAD Act) and the PPAD Regulations
- 5) All Procuring Entities are obliged to:
 - a) Ensure that their requirements for goods, works, services, and disposal of assets, are met through a transparent, open and fair process that provides the maximum degree of competition and optimum value for money to the Government of Botswana;
 - b) Ensure that bidders are given a reasonable time frame within which to prepare and submit their bids (see below);
 - c) Give competent Botswana companies the chance to participate in government tenders, so as to promote national economic development.
 - d) Encourage Botswana businesses to be competitive and to develop and sustain quality product development and service level improvements;
 - e) Comply with international agreements covering relations with SADC countries and other trading and development partners;
- 6) All respective Accounting Officers for every PE are to be held accountable for the execution of all procurement decisions.

Table 1 Prescribed bidding periods

PROCUREMENT METHOD	BIDDING PERIOD (minimum)
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Open International Bidding	6 Weeks
Open domestic Bidding	4 Weeks
Restricted bidding (on basis of a shortlist)	2 Weeks

2.6 Scope of Application


- 1) Public Procurement has been defined as the acquisition of goods, works or services, including the disposal of assets by a Procuring Entity, with funding provided from the Botswana Consolidated Fund (BCF).
- 2) This Operations Manual and its standard operating procedures and the standard tender documents, as contained in the Standardised Bidding Packages, will cover the entire scope of procurement in the Procuring Entities.
- 3) The Procuring Entities are governed by the Public Procurement and Asset Disposal Act, 2001 as may be amended from time to time by a decree of the Government of Botswana. The provisions of the Act shall apply to all entities of central Government which are involved in public procurement, or the disposal of public assets, whether they are located abroad, or within Botswana (PPAD Act).

2.7 The Practise of Procurement

- 1) The activities of a Procurement Unit are an important function in any organisation. The acquisition of assets, materials, consumables, spare parts, equipment, logistics, works, supplies and services are necessary for the organisation to fulfil its core business responsibilities and development programmes.
- 2) The purpose of procurement procedures is to guide and standardise the manner in which procurement activities are carried out at all levels. The procedures in this Operations Manual will enable the Procurement Specialist / Procurement Unit to carry out procurement activities in a controlled and standardised manner.
- 3) Although the volume and scope of procurement varies from one organisation to another, the principles, procedures and practises will be the same. Therefore it is very important for those involved in procurement activities, to have a thorough understanding of procurement principles and legislation and be aware of the responsibilities and accountability associated at each and every level of procurement activity.

2.8 Mis-procurement

- 1) Mis-procurement refers to a situation where a procurement activity is not carried out according to statutory rules and regulations.
- 2) The Public Procurement and Asset Disposal Act (2001) places the overall accountability for all procurement activities in the hands of the respective Accounting Officer of each Procuring Entity, including mis-procurement. It is the responsibility of the Accounting Officer to ensure that procurement activities will be conducted by knowledgeable and qualified staff i.e. procurement professionals who will efficiently manage and coordinate the procurement activities of the organisation (PPAD Reg. 11).

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Chapter 3. The Procuring Entity and its Procurement Unit

3.1 The Procuring Entity


- 1) A Procuring Entity refers to any Government Ministry or Department, undertaking procurement and/or asset disposal according to the PPAD Act. A Procuring Entity is subject to the rules laid down in the PPAD Act, the PPAD Regulations and any other relevant legal instrument of the Government of Botswana, issued in consultation with the PPADB.
- 2) The Procuring Entity shall be responsible for the management of all procurement activities within its jurisdiction and in accordance with the provisions of the Act and Regulations (PPAD Reg. 6).
- 3) The Accounting Officer shall make the recommendations to the PPADB of suitably qualified and experienced staff to become member of the Ministerial Tender Committees PPAD 7 (1).
- 4) The District Commissioner shall make recommendations to the PPADB of suitably qualified and experienced staff to become member of the District Administration Tender Committee.
- 5) The Accounting Officer shall have the overall responsibility of the procurement process in the Procuring Entities (PPAD 7 (2)).
- 6) No procurement activity may commence without a signed certificate (warrant) verifying the availability of adequate funds, or that there has been suitable written assurance received from the Ministry of Finance and Development Planning, that suitable funds will be made available to cover the expected expenditure of the procurement, prior to any procurement activity, or before the awarding of a contract (PPAD Act 45).

3.2 The Head of a Procuring Entity

- 1) The Accounting Officer is responsible for the following:
 - a) Making recommendations for appointment of members to the MTCs / DATCs
 - b) Establishment of a Procurement Unit, staffed by qualified persons with the requisite qualifications and experience to competently manage its procurement activities (PPAD Reg. no. 11, 12, 13)
- 2) The Accounting Officer for each Procuring Entity shall establish and strengthen a Procuring Unit, staffed at an appropriate level.
 - a) Establishment of a Procurement Unit (PPAD Reg. no. 11), staffed by qualified persons with the requisite qualifications and experience to competently manage its activities (PPAD Reg. no. 12, 13).

3.3 The Management of a Procuring Entity

- 1) The organisation and management of procurement activities within each Procuring Entity will be guided by:
 - a) The requirements laid down by the PPAD Act and the Regulations.
 - b) The policies of Government impacting on public procurement and asset disposal.
 - c) The policies and procedures of the PPADB encapsulated in this Operations Manual and circulars issued from time to time.
 - d) The working practices, policies and procedures of the Procuring Entity.
 - e) The organisational and management structure of the Procuring Entity
 - f) The scope of procurement functions within the Procuring Entity
 - g) The authority and responsibilities given to the Procurement Unit

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- h) The quality, quantity and experience of staff within the Procurement Units
- i) The accuracy and integrity of records and archives (procurement audit trail)
- j) The role and responsibilities of Auditors.

3.4 Procurement Activity Monitoring and Evaluation


- 1) Either the PPADB, or its Committees, or the Auditors (technical audits), will formally monitor the procurement and disposal activities and procurement practises or project implementation. The monitoring will be carried out at regular intervals and at least once annually, by *compliance teams* of the PPADB
- 2) The Procurement Unit of a Procuring Entity will record all the management information concerning the procurement activities which will, at least, include the number, nature and value of contracts awarded and the procurement method used for each contract. Such procurement information will be recorded in a Procurement Register, or a computer Database. The Procurement Unit shall collate and compile all information relating to procurement in the organisation and its agencies. The monitoring system shall be consistent with the PPADB's monitoring framework (also see Chapter 7 on Procurement and asset disposal planning)

3.5 The Originating Department

- 1) The Head of an Originating Department, or Unit, which is the initiator of requests for procurement, or an asset disposal action, has the following responsibilities:
 - a) Prepare a procurement and asset disposal plan according to the needs of the department;
 - b) Prepare a Procurement Requisition, or Asset Disposal Requisition, with authorised signature;
 - c) That the request is not for goods already available in stock;
 - d) The activity is in the previously approved annual procurement / development plan;
 - e) Budget funding has been approved and is in writing;
 - f) Provide technical assistance to the Procurement Unit for the preparation of a specification (generic) / TOR / SOW / BOM.
- 2) The originating department staff may be called to be members of the:
 - a) Bid Opening Committee (Technical).
 - b) Bid Opening Committee (Financial).
 - c) Bid Evaluation Committee.

3.6 The Procurement Unit

- 1) The Procurement Unit will be required to ensure that the procurement requirements for Supplies, Works and Services and Disposal of Assets are met through an open and fair process that ensures:
 - a) A high degree of competition and optimum value to the economy of Botswana;
 - b) That all potential bidders have timely notice and adequate opportunity to bid; (advertising)
 - c) That national economic development is fostered by allowing every eligible and capable Botswana firm registered with the PPADB the opportunity to do business with the Government;
 - d) To encourage Botswana businesses to provide adequate competition, quality services and product development;
 - e) Adherence to international agreements, development of partnerships with other countries that


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can create economic opportunities for Botswana.


- 2) The Procurement Unit will be supported by the Accounting Officer and will become the centre of expertise for all procurement activities of the Procuring Entity. The PPADB recommends that each Procurement Unit should be headed by a Procurement Specialist/ Manager, who possesses the requisite qualifications and experience in public procurement and asset disposal activities.

3.7 Responsibilities of the Procurement Unit


- 1) The head of the Procurement Unit will be responsible for the following departmental activities:
 - a) Obtain estimated requirement of consumables and non-consumables, including cost estimates, for each financial year, from all departments.
 - b) In consultation with all departments prepare a costed annual procurement and asset disposal plan and prioritise requirement. Where possible ensure common items are consolidated.
 - c) Ensure that supplies, services and works are procured in the most economical, efficient and effective manner according to the PPAD Act of 2001.
 - d) In association with Heads of Department and Technical Specialists, will prepare and coordinate all the associated paperwork, specifications, terms of reference, bills of quantities, drawings, short-lists, advertisements, prequalification, tender or request for quotation documents, to ensure completeness, accuracy and competitive qualities to allow for equal treatment and competition among all contractors.
 - e) Ensure that all demands and requisitions are approved and signed by an authorised official.
 - f) Ensure that all demands and requisitions for non-recurring expenditure (capital expenditure), includes a clear statement of need and justification, including an estimate of cost benefits or savings, which is approved and signed by an authorised official.
 - g) Organise quotations and tenders depending upon the estimated cost and within the agreed monetary thresholds levels of authority.
 - h) That budgeted funds are available prior to commencement of procurement or disposal proceedings and authorised in writing (Chapter 3, 3.1 (6)). Section 45 of the PPAD Act should be adhered to:
 - i) *“.... no Procuring Entity should invite bids for a procurement activity for which there are no funds” and/or the confirmation, in writing, of the availability of funds for procurement.*
 - i) The proposed Tender/Contract documentation will be vetted by the Board, or its Committees. The proposed Tender Documentation will be reviewed and approved by the Board or its Committees, prior to its issue.
 - j) Ensure there are no restrictions (e.g. brand names or brand specific measurements) in the specifications, or TOR, so as to ensure that competition is maximised.
 - k) Perform market research in order to establish readiness and facilitate choice of procurement and asset disposal methods and strategy
 - l) Prepare contract documents and contract conditions, using the approved forms and templates of the Standardised Bidding Packages, including advertising to the widest possible audience.
 - m) Observe and follow the financial instructions and guidelines issued by the MFDP regarding procurement under the Consolidated Fund.
 - n) Will organise and manage the workings of the Committees for Bid Opening (Financial and Technical), the Tender Evaluations and prepare the associated reports and minutes. The composition of such committees may well vary due to the complexity of the subject matter and the need to call or the assistance from technical experts.
 - o) Will oversee the workings of the Tenders Evaluation Committee and prepare the evaluation

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- report, which will include each evaluator's points table and include the strengths and weaknesses of each of the participating bidders.
- p) Ensure history records are kept of the participating bidders, proceedings and decisions that are made during each stage of the procurement process.
 - q) Evaluation Committee members' comments will be recorded and the members will sign the dated minute papers/reports.
 - r) Take part in the Post Tender Negotiations and ensure an equitable outcome (not a renegotiation of contract). Preparing the contract variations and modifications and formally issuing the final contract documents.
 - s) Upon completion of the evaluation and administrative process, present to the PPADB, or its Committees, the proposed contract recommendation for award, for independent adjudication. The submission will also include an Evaluation Report signed by all members of the evaluation committee.
 - t) After approval to proceed by the Board or its Committees mentioned above (authorising of expenditure PPADB 3 form), finalise and sign the contract (Tenders above certain monetary threshold levels may require signing by a nominated officer within the Procuring Entity).
 - u) Preparing notification of awards and contracts, and ensuring publication of same through the appropriate media.
 - v) Monitor the execution of the Contracts and Government Purchase Orders, and ensure copies of all contracts and purchase orders are sent to the appropriate finance and receiving/ originating/ project management departments.
 - w) Follow-up the delivery of goods and services, or works construction, according to the contract agreement.
 - x) Evaluate vendor performance as regards quality, prices, delivery, equipment;
 - y) Coordinate timely delivery of goods and services and keep detailed records of the performance and efficiency of all contractors.
 - z) Where disputes, damaged goods, overages or shortages, failure to perform or other related complications arise, ensure detailed records are kept of all such communications and evidence.
 - aa) Follow-up the failures of contractors who have failed to fulfil their contractual obligations and obtain adequate compensation, liquidating damages and arrange for the cancellation of the contract, where appropriate. Where there has been a failure of a Contractor to fulfil a contract, or there has been falsification of documents, or blatant corruption or fraud, then refer to the Chapter on Delisting, Penalty Clauses and Breach of Contract.
 - bb) Check invoice(s) for accuracy with contract, goods received notes, delivery notes, packing slips, materials, timesheets, claims etc, each duly signed by the nominated officers and where appropriate, the hand-over certificate, commissioning approval or contract completion certificate, prepared and signed by a project manager, divisional head, or engineer, or technical expert, appointed or approved to authorise the acceptance and completion of such contractual obligations.
 - cc) Certify that all such documentation are correct and complete and send to the finance department for final examination and processing of the invoice(s).
 - dd) Advise the PPADB, or its Committees, the Accounting Officer and respective Department Head in case of non-performance of the contractor (PPAD Act 84, PPAD Reg. 18, 21).
 - ee) Co-ordinating and recording the inspection and acceptance of goods, works and services, and maintaining of procurement records.
 - ff) Expedite outstanding deliverables or scheduled deliveries.
 - gg) Provide the PPADB, or its Committees, the Accounting Officer, and respective Department

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- Heads, with monthly details of all types of contracts entered into.
- hh) Ensure that a detailed End of Activity Report as provided for in the PPAD Act (see 0 End of Activity Report Template) is prepared and submitted. The 'End of Activity Reports' should be submitted at the end of each project life before the final payment to the contractor is made.
 - ii) Prepare a Contractor '*performance letter*' and submit to the Contractor at the end of the contract.
 - jj) Contribute to the development of the PE's procurement policies and procedures; develop standards and criteria for the evaluation of goods, services, works, contractor capacity, etc.
 - kk) Keep a small store room of frequently used items and record all issues and receipts.
- 2) Ensure that all those personnel entrusted with tender preparation and award, at whatever stage; including potential bidders, follow the PPADB Code of Ethics / Code of Conduct and the procurement rules, including the signing appropriate letters of "Code of Conduct", "Integrity Pact" etc.
 - 3) The Procurement Units will take advantage of economies of scale, centralisation of contracts, eliminate duplication of effort, and introduce the practise of standardisation and rationalisation of Supplies.
 - 4) The head of the Procurement Unit will be responsible for preparing and assembling the standard bidding packages and tender documentation and oversee the day to day processing of Government Purchase Orders (GPO).
 - 5) In the absence of a Procurement Unit, the Accounting Officer may appoint a Procurement Committee whose terms of reference should be aligned to the functions of a Procurement Unit provided for in the PPAD Regulations.
 - 6) Politicians, or any person who, as a result of a political decision, are appointed to a position that involves the making of procurement decisions, or are an active member of a political party, are *not* allowed to be a member of any of the above mentioned committees, nor to attend their meetings. The Committees are to be composed of Civil Servants, seconded technical experts and staff members of the Procurement Unit.
 - 7) To follow the rule of the "*separation of duties*" principle, each committee should be staffed by different individuals without compromising on efficiency. In small organisations, this principle may be difficult to adhere to all of the time, though every effort must be made to follow the principle.
 - 8) The representative of the Procurement Unit will not normally take part in the Bid Evaluation Committee, but act in an oversight role as an Invigilator. The other members of the committee should be selected as ad-hoc members/experts, ensuring a random or revolving membership. In smaller organisations, the principle may be difficult to follow all of the time and by necessity the representative of the Procurement Unit may be required to become a committee member.
 - 9) After the Bid Evaluation Committee has made its deliberations, the head of the Procurement Unit will collect all the members working papers, the signed individual score sheets, the comments about the quality about each bidder's proposal, and prepare a technical report detailing the strengths and weakness of the submissions and the ranking of each bidder.
 - 10) Following the technical evaluation, a request will be sent to PPADB or its Committees for the financial bids to be opened by the Bid Opening Committee (Financial) at a public opening. The cost of each bid is publicly announced, followed by an announcement of each of the scores from the technical evaluation. The Procurement Unit prepares the minutes of the opening and obtains each panel members signature.
 - 11) The Evaluation Committee then combines the technical and financial reports and prepares a written recommendation for the PPADB, or its Committees, as may be applicable. The report will include


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both the reports from the technical evaluation and financial bid opening session.

- 12) The proposed bid submission and evaluation report will be accompanied by a comprehensive Adjudication Summary, giving a synopsis of all the pertinent facts, to enable the Committees to come to a timely and objective decision. The Adjudication Summary will be prepared by the Secretary to the Adjudication Committee or technical staff assigned to advise the secretary or adjudication committee but not part of the evaluation committee.
- 13) The proposed bid submission will also include copies of all other relevant reports, fact sheets and evaluations, which are necessary for the Board, or its Committees, to come to a considered decision.
- 14) The Procurement Unit and its staff shall report and be accountable to the Accounting Officer or her/his representative.

3.8 The Management of the Procurement Unit

- 1) The head of the Procurement Unit shall be responsible for the overall management of all procurement and asset disposal activities of the Procuring Entity, except for adjudication and authorisation of award of contracts.
- 2) The Procurement Unit will manage the following activities (PPAD Reg. 12 (b - r)):-
 - a) Managing all procurement and disposal activities of the procuring and disposing entity, except adjudication and award of contracts;
 - b) Implementation of the decisions of the Board, or its Committees;
 - c) Liaising directly with the Board on all matters pertaining to the Board;
 - d) Prepare the annual procurement and asset disposal plan of the Procuring Entity;
 - e) Recommending procurement procedures to the procuring entity;
 - f) Checking and preparing statements of requirements;
 - g) Preparing tender documents;
 - h) Maintaining lists of suppliers;
 - i) Managing the evaluation of bids;
 - j) Preparing contract documents;
 - k) Issuing approved contract documents;
 - l) Administering contracts - once commenced, or liaise with the Head of a Department, Engineer or Project Manager;
 - m) Facilitate payments to contractors;
 - n) Maintaining and archiving records of procurement;
 - o) Preparing monthly reports for the Board, or its Committees;
 - p) Coordinating projects and liaising with the procuring entity's departments about all other aspects of their procurement;
 - q) Acting as a procurement coordinator for the user department of the Procuring Entity; and
 - r) Liaising with the Board, or its Committees to ensure that submissions to the Committee are correct and submitted on time.
- 3) In the discharge of its functions, the Procurement Unit may: (PPAD Reg. 13):
 - a) Nominate persons to the evaluation committees for appointment by the Accounting Officer).
 - b) Obtain independent technical or financial advice.
 - c) Ensuring compliance with the provisions of the Act, Regulations and best practices.
 - d) Management of bid proposals and pre-qualification submissions and making appropriate recommendations to the Ministerial Committee.
 - e) Advertise tender opportunities.
 - f) Facilitate the sale of tender documents.

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- g) Issue tender clarifications.
- h) Receive tenders and keep them secure.

3.9 Determining the Best Buy or Best Price Disposals


- 1) It is the duty of the Procurement Unit to ensure the best buy (most economical value) is obtained by taking into account the optimum combination of costs, which will include the total life cycle costs of the goods, works or services. Cost is directly related to the *performance requirements* stipulated in the TOR and/or the specification. The higher the performance requirements that are demanded, then the costs will increase proportionally. This type analysis is called obtaining the most economically advantageous offer.
- 2) When determining the most economically advantageous offer, it is necessary to look at all those costs that will contribute to the running or operational costs of the project that will be reasonable to expect, over the lifetime of the project. It is not just the cost of the items, goods or services in the bid, but the inclusion of all the costs, both direct and indirect, for example:-

THE ITEM COST + THE OPERATIONAL COSTS + OTHER CONSIDERATIONS OF COSTS

- a) Examples Of Typical Operational Costs
 - i) Costs of Disposable items (items used with the equipment)
 - ii) Costs of Consumable items (items used with the equipment)
 - iii) The running cost (operational cost)
 - iv) The human resources involved (labour costs)
 - v) Cost of a recommended spare parts list
 - vi) Maintenance costs / servicing costs (weekly, monthly)
 - vii) Repair costs
 - viii) Inclusion of rental or lease costs
 - ix) Excise taxes (import duties)
 - x) Value added tax
 - xi) Insurance cover
- b) Other Considerations Of Cost
 - i) Additional man-hours required
 - ii) Additional security needed (security guards)
 - iii) Depreciation value (over set period of time)
 - iv) Replacement cost
 - v) Re-sale value, or scrap value
 - vi) Environmental Impact considerations
 - vii) Any other additional resources needed in the operation
 - viii) Any other cost savings, or additional expenditure
 - ix) Health and Safety considerations
 - x) Cost of Disposal of the item


**Note: If the above examples are going to be used to assess the true cost of the offer, then they should be clearly stated in the Quotation / Tender documents*

- 3) It is important to be aware of *all* those additional costs and ensure that where appropriate, they are included with the main tender items and that it truly reflects the total costs involved. Comparison should be made of each offer, side by side, in a table format. Without full cost analysis it is often possible to commit the Procuring Entity to very high costs over a number of years, as

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suppliers will often omit to include the full operating costs of systems, or to include excessively high consumable/disposable items.

- 4) All procurement decisions must be based on vigorous assessment of all the available options in each set of circumstances, throughout the expected life of a project, by employing effective contract monitoring and measurement controls.

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Chapter 4. The PPADB

4.1 The PPAD Act and Regulations

- 1) All contractors involved in any aspect of public procurement using the Botswana Consolidated Fund are required to adhere to the rules and regulations stipulated in the PPAD Act of 2001 and Regulations of 2006 and this Operations Manual.

4.2 Compliance Status of MTCs/DATCs

- 1) The PPADB will monitor MTC / DATC adjudication meetings, at least once annually, to ensure compliance with the PPAD Act, the Regulations and this Operations Manual.

4.3 Business Profile Analysis Review


- 1) At least once annually, the PPADB will examine the whole of the business practises and compliance of each Procuring Entity, and present a proposed plan of action to correct irregularities and errors identified during the Business Profile Analysis review.
- 2) For whatever reason, when monitoring a MTC / DATC adjudication meeting, it is noted that the business practises and decision making processes lacks rigour, are defective, are made under a misconception, or that members may need re-training in identified topics, then the compliance team of the PPADB will take steps to rectify the situation. In the first instance, the compliance team will report their concerns in writing to the DATC/MTC. If, after a concerted effort of assistance, improvements are not evident, then the problem shall be brought to the attention of the Accounting Officer of the Procuring Entity. Failure of the MTC/DATC to satisfy the compliance team in its capabilities will ultimately result in the removal of the unsuitable members.

4.4 Capacity Building for Procurement Units

- 1) It is important that the PPADB support procurement capacity building in the PE's. In particular, it is necessary for the staff of Procurement Units to be targeted and constantly trained and kept up-to-date in the principles and practise of procurement management.

4.5 Coordination of Procurement Activities by the PPADB

- 1) The Public Procurement and Asset Disposal Board's (PPADB) primary mandate is to manage an efficient public procurement and asset disposal system on behalf of Government of Botswana. Therefore, all Procurement Entities, their Procurement Units, and Tender Committees are expected to abide by the guidelines and regulatory provisions of the PPAD Act and PPAD Regulations, including this Operations Manual.
- 2) The PPADB is responsible for the management, co-ordination, direction and development of Government procurement and asset disposal operations and procedures. The function and powers of the Board, and its Committees (PPAD Act. 26) are to ensure that procuring and disposing entities, when making decisions on procurement and asset disposal take into account the principles of:
 - a) An open, competitive economy and changing external obligations, generally to trade and specifically to procurement, which dynamically impact on a continual basis on domestic procurement policy and practice;
 - b) Standardisation of procurement items in the interest of cost reduction, ease of maintenance and

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- technological effectiveness;
- c) Rationalisation of procurement items in the interest of cost reduction, ease of maintenance and technological effectiveness;
 - d) Aggregation of procurement and disposal activities and items that are common to procuring or disposing entities in order to benefit from economies of scale;
 - e) Competition among contractors by using the most efficient and competitive methods of procurement or disposal, to achieve the best value for money;
 - f) Fair and equitable treatment of all contractors in the interest of efficiency and the maintenance of a level playing field;
 - g) Accountability and transparency in the management of public procurement and in the disposal of public assets, in order to promote ownership of the system and minimise challenges thereto; and
 - h) Integrity, fairness of and public confidence in, the procurement and disposal processes.
- 3) The Board is also responsible for the following:-
- a) Ensuring that all PE's fully comply with all the provisions of the PPAD Act sec. 27.
 - b) Advising PE's on all aspects of procurement and disposal management and particularly on the application of the provisions of the PPAD Act sec. 28.
 - c) Adopting and circulating, and amending where necessary, standardised bidding packages and public assets disposal contracts which shall be used on a mandatory basis by all procuring and disposing entities PPAD Act sec. 29.
 - d) Adjudicating on bid recommendations submitted to the Board by competent bodies and awarding of those bids PPAD sec. 36.
 - e) Investigating and delisting from participating in public procurement activities, suppliers, contractors and consultants who have contravened the provisions of the Act and Regulations, and communicating a list of debarred firms to Procurement Entities; (a records register shall to be kept on the PPADB website)
 - f) Devolving authority and delegating responsibilities to Committees of the Board – PPAD Act 61-65.

4.6 Thresholds for Procurement

- 1) The Board is mandated to set financial thresholds for Board Committees and these thresholds are only subject to a review every two years and normally at the beginning of the financial year.
- 2) Procuring Entities and Board Committees are to adhere to the prevailing thresholds at all times.

4.7 Contractor Assessment and Registration

- 1) Local or International suppliers/contractors can be identified using sourcing techniques of the internet, BOCCIM, trade directories etc., or through the PPADB contractor registration database.
- 2) Local contractors are initially asked to complete contractor registration application forms to provide information on their operations and resources.
- 3) Contractor qualification shall be evaluated against specified criteria, to assess whether they match the standard for the type of classification.
- 4) On completion of the evaluation, the assessment is to be confirmed before a contractor is approved for registration and inclusion in the Register of Contractors and allowed to participate in tender bidding.

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4.8 Review of Bid Packages


- 1) At any point in the adjudication review of a bid proposal, the Board, or its Committees, may return the bid package to a Procuring or Disposal Entity and request additional information, or clarification of the details provided, so as to enable it to fairly and objectively reassess the bid proposal (PPAD Act 27, 33).
- 2) As a case may arise, or in complex or technical cases, the Board, or its Committees, may request the attendance of staff and/or technical experts of the Procuring or Disposal Entity, to present themselves and explain, or clarify, any unclear aspects in the bid proposal.

4.9 Compliance with the law by Procuring and Disposal Entities

- 1) The Board, and its Committees, will ensure compliance of public procurement responsibilities with the PPAD Act, the PPAD Regulations, the PPADB Operations Manual, legal instruments of the Government of Botswana, and lawful instructions of the MFDP and of the Auditor General (PPAD Act, 27). In this respect, the PPADB compliance teams when investigating the procurement business practises of an organisation which is subjected to the Act, can:
 - a) Visit the Headquarters, a division, a department, a branch of any organisation which is subject to any of the legal provisions related to the activities of public procurement and stated in the above paragraph.
 - b) Attend and question any meeting(s) that prepares, plans, discusses, decides, authorises any or all of the procurement activities that are the responsibility of the Procuring and Disposal Entity.
 - c) Request access to any offices, computers, storage units, contract documents, records, working papers, evaluation reports, archives, samples, plans, drawings, models or other procurement related items, either in a physical form or as a digitally electronic format.
 - d) Remove any items as stated in sub section 9.1.3 above for study and examination purposes and retain them for evidential purposes, as the case may arise.
 - e) Request password(s) to encrypted files that warrant further investigation. Failure to provide the passwords will be considered as obstruction and will be dealt with accordingly (see 9.2 below).
- 2) In the first instance, the PPADB will write to the organisation and request access to the areas in which they wish to conduct an investigation. Failure to provide access to, or any of the articles requested, as stipulated in 9.1.3 above, will be considered a deliberate act of prevention and obstruction to the PPADB's legally prescribed duty to ensure compliance. Appropriate action will be taken against the offenders.
- 3) If the PPADB staff sequesters any items motioned in 9.1.3 above, the team members will sign for each individual item removed.
- 4) During the investigations, the PPADB shall in writing, request from any Supplier/ Contractor information, evidence, or a meeting that may further the cause of a compliance investigation.

4.10 Potential Modifications to a Contract

- 1) In the case of contracts requiring amendments that will change the original terms and conditions, approval should be obtained from the PPADB, or its Committees (PPAD Reg. 95 (2)).
- 2) Where the amendment is for an increase in the quantities of the same item, the original unit price or rates should be used (PPAD Reg. 95 (5)). Any individual increase should not be more than 15% of the original contract amount, and the aggregate increases of the contract should not be

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more than 25 percent of the original price (PPAD Reg. 95. (6), (7)).

4.11 Requests for a Waivers or Extension to a Contract


- 1) A request for a waiver or extension must be accompanied in writing by the history of the contract, a full justification of the reasons for the request, the potential cost implications, and be approved by the PPADB, or its Committees. Availability of funds for any increase in costs should be confirmed accordingly. Steps must be taken to start a new procurement process as it is not expected that a particular waiver or extension will be requested again. Poor contract management will not be allowed as an excuse for requests for additional waivers or extensions.

4.12 Duties of the Secretary to the Board, or its Committees

- 1) To ensure continuity of service, knowledge of and understanding of the procurement processes, the PPAD Act and Regulations, the Operations Manual and other statutory instruments, the Secretary to the Board, or its Committees, will have an office with suitably qualified and experienced persons to seamlessly undertake the duties of the Secretary, in their absence.
- 2) The Secretary to the Board, or any of its Committees or a duly authorised representative, shall attend meetings, and participate in the deliberations but shall have no right to vote (PPAD Reg. 8 (d) and PPAD Reg. 10 (7)).
- 3) The Secretary to the Board, or any of its committees or a duly authorised representative, shall record the minutes of the meetings, which shall include:
 - a) A register of attendance of committee members (signed by the participants);
 - b) A register of the attendance of any specialists, or visitors, called before the committee meeting;
 - c) An Agenda of the topics to be discussed;
 - d) A list of the submissions to be considered;
 - e) The decision made for each submission, including any major issues discussed, the reasons for any rejections and any clarifications, or minor amendments, which the approval may be subject to;
 - f) Any conflicts of interest declared by members; and
 - g) Any dissenting opinions among the Tender Committee members (without identifying the member(s)).
- 4) The Secretary to the Board, or any of its committees or a duly authorised representative will collect and collate all the tender submission proposals and ensure that each submission contains the information required to make an objective and impartial decision. Each submission will be accompanied by a comprehensive Adjudication Summary Report.
- 5) Where it becomes obvious that documents, reports, information or other data are missing from a tender submission and the omission will cause a delay in the decision making process of the Adjudication Committee, prior to its meeting, the Secretary will immediately request from the PE action to provide that missing information.
- 6) During the formal vote on a deliberation, the Secretary shall record the number of votes, for and against and whether the Chairperson, or in the Chairperson's absence, the Deputy or an acting appointee Chairperson, was required to take a casting (deliberate) vote. Where the number of votes for and against is not recorded, the decision will be considered invalid. The document will be signed by all the members irrespective of the outcome of the vote. The name of the members voting for or against will remain anonymous. The decision will be annotated to the proposal package.
- 7) Where there is a consensus of opinion and also a dissent, then the reasons for and against the vote will be recorded. The name of the members voting for or against the motion will remain anonymous.

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- 8) If during a deliberation, a submission lacks clarity and/or lacks supporting or critical information and may make any decision taken potentially unsound, then the Chairperson or in the Chairperson's absence, the Deputy or an acting appointee Chairperson, will issue an instruction to an individual, a Consultant, a Committee, or a Procuring Entity, to provide such information, to change, augment, or to supply facts that will assist the Board, or its Committees, in making its decision. Such an instruction will be written and signed by the Chairperson. Without the instruction being signed by the Chairperson, Deputy or an acting appointee Chairperson, the instruction is invalid. The formal letter, requesting such information, will be prepared, signed and sent by the Secretary to the committee or representative or duly authorised person.
- 9) At any point in time, if a member of an MTC / DATC has a direct or indirect interest, or influence in their private or work capacity in a matter under consideration, has been involved in the preparation of information, TOR, Specification, then the member should disclose such an interest at the beginning of the meeting, or as the situation becomes known. The member should excuse themselves from the meeting (during the time the matter is being considered) and should not take part or vote on any matter in relation to the subject matter (PPAD Reg. 10 (8)). The Secretary shall record the recusal of the member in the minutes of that meeting.

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Chapter 5. Selection of simplified bidding packages

5.1 Introduction

- 1) The PPADB has adopted and posted mandatory standardized bidding packages to be used by all Procuring entities (PPAD Act section 29). The standardized bidding packages are available from the PPADB and Botswana Government websites.
- 2) The main aim of this guideline is to provide information, support and development services to Procuring Entities and the Contracting Community on the use of the Standardized Bidding Packages (SBPs) with a view to speeding up the preparation of the tender documents and simplifying the compilation of the SBPs.
- 3) Specifically, the guide is meant to assist users such as Procurement Units, Ministerial Tender Committees and District Administration Tender Committees secretaries on compilation and vetting of the SBPs who for a variety of reasons cannot use the Standardised Bidding Package Wizard to put together a bidding document but prefer to download ready SBP templates.
- 4) The guide is intended for cases where there is need for guidance and clarity on the SBPs; otherwise users may visit the PPADB or Government of Botswana websites to access the SBP Wizard.
- 5) The simplified SBPs, also accessible from the PPADB website, are grouped into broad categories of Disposal, Services, Supplies and Works as defined elsewhere in this manual and the PPAD legislation.
- 6) Services being a contract in which a contracting authority engages a person to provide a service, if the value of the consideration attributable to those services exceeds that of the goods covered by the contract.
- 7) Supply being a contract for:-
 - a) the purchase of goods (whether or not the consideration is given in installments and whether or not the purchase is conditional upon the occurrence of a particular event);
 - b) hire of goods (both where the contracting authority becomes the owner of the goods after the end of the period of hire and where it does not); and /or
 - c) where setting or installation of the goods is to be provided and the value of the consideration attributable to the goods and any setting or installation is equal to or greater than the value attributable to the services.
- 8) Works being a contract that consists of or includes:-
 - a) the grant of a right to exploit the work or works to be carried out under the contract;
 - b) carrying out of a work or works for a contracting authority; and/or
 - c) engaging a person to procure by any means the carrying out for the contracting authority of a work corresponding to specified requirements.
- 9) The broad categories of the SBPs described above are further broken down by type of procurement activity or disposal, for example Building Construction, Cleaning Services, Contract Management, Supply of Drugs and Auctioneering Services.

5.2 Description of activities – simple or complex procurement

- 1) The forms and/or documents that are compiled for each activity were selected based on the description of the activity as being simple or complex procurement.
- 2) Simple Procurement & Disposal is conducted in an environment where:
 - a) routines, methods, procedures, standard terms and conditions are well established and used without alteration;

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- b) value for money considerations are only limited to price, compliance to technical specifications, requested timeframes and /or delivery needs;
 - c) purchases are of standard commercial off-the-shelf Goods and Service (*no management plan*);
 - d) the contract is only between the Procuring Entity and the Contractor.
 - e) a sole contractor is to manage and provide a service involving their own physical work with little technical resource of skill and equipment.
- 3) Complex Procurement & Disposal is conducted in an environment where:
- a) the procurement of several interdependent contracts (supply and/ or services), and involving several entities, are undertaken concurrently;
 - b) the supply involves repetitions, re-ordering and/ or stock holding arrangements;
 - c) the contract conditions are to be reviewed during the running of the contract or procurement process; and/ or
 - d) there is limited guidance within a broad framework of policy and best practice.

5.3 How to access procurement or disposal package (forms & documents)

- 3.1. Under each procurement/disposal activity there is folder with a collection of minimum standardized forms and documents required for the procurement or disposal of Government assets. Clicking on the serial label (“**WOR01**”) of the activity will lead to the folder with the forms.
- 3.2. In the folder there is a document labeled “**SBP Forms**” which contains information on what each form is used for and under what conditions.
- 3.3. The forms have fields that require the compiler to input required information. Alongside (on the right column) there is guidance on the required information.
- 3.4. The standard text in the forms is not to be modified.
- 3.5. The forms or documents in Adobe Acrobat shall not be modified, there are to be used as they are.
- 3.6. The main purpose of the Standardised Bidding Packages is to have standard forms, documents and information for the procurement or disposal of similar items.

5.4 How to select a bidding package

- 1) A Procuring Entity, in selecting of a Bidding Package will have to first select the package then the group (by clicking on the link bearing the title),
- 2) Procuring Entities are advised to select the package that closely fits the description of the procurement activity that they wish to undertake. In selecting an appropriate package, which may be done even before the start of the procurement process, the Procuring Entity will then have to:-
- 3) **Select** the broad category (e.g. Works Packages);
 - a) **Choose** the appropriate activity (e.g. WOR01- Building; Reserved; Small Value)
 - b) **Click** on the serial label (e.g. WOR01) to access the list of minimum forms and documents that are applicable for that activity).
 - c) **Download** the forms/documents and save them accordingly
 - d) **Input** the required information
 - e) **Compile** into a single document sequencing them as listed under the group, with each form starting on a new page. The document will have to be page numbered and the following broad sections:-


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- i) Volume 1: Lists and contains documents that have procedures (that are to be followed when bidding) and conditions for bidding.
 - ii) Volume 2 : Lists and contains forms that are to be completed and submitted by the Bidder, when the Bidder should submit them as well as what the Procuring Entity is going to use them for.
 - iii) Volume 3: Contains Standardised documents (such as Standardised Conditions of Tender and General Conditions of Contract) that apply to the tendering and contracting processes.
- f) Send the complete Bidding Package to the PPADB or appropriate Committee (depending on the threshold) for vetting before the documents can be published.

5.5 Works packages

- 1) These packages are broken into broad categories by type of activity. Applicable forms are listed under each package. Go to www.ppadb.co.bw and follow links to select the package that closely fits the description of the procurement activity you wish to undertake. Click on the link to go to the forms.

- WOR 01- Building; Reserved; Small Value
- WOR 02- Building; Reserved; Small Value; Refurbishment
- WOR 03- Building; 30% Reserved; High Value; Refurbishment; No site visit
- WOR 04- Building; 30% Reserved; High Value; Refurbishment; Site visit
- WOR 05- Building; Not Reserved; High Value; Refurbishment; No Site visit
- WOR 06 - Building; Not Reserved; High Value; Refurbishment; Site visit
- WOR 07 - Civil; Reserved; Small Value; No Site visit
- WOR 08 - Civil; Reserved; Small Value; Site visit
- WOR 09 - Civil; Reserved; High Value; Site visit
- WOR 10 - Complex Building; Reserved; No Site Visit
- WOR 11 - Complex Building; Reserved; Site Visit
- WOR 12 - Complex Building; Not Reserved; No Site Visit
- WOR 13 - Complex Building; Not Reserved; Site Visit
- WOR 14 - Complex Civil; Reserved; Maintenance; No Site Visit
- WOR 15 - Complex Civil; Not Reserved; No Site Visit
- WOR 16 - Complex Civil; Not Reserved; Site Visit
- WOR 17 - Design & Build; Reserved
- WOR 18 - Design & Build; Not Reserved
- WOR 19 – Develop & Construct; Reserved
- WOR 20 - Develop & Construct; Not Reserved
- WOR 21 - Simple Construction; Reserved; Small Value; No Site Visit
- WOR 22 - Simple Construction; Reserved; Small Value; Refurbishment; Site Visit
- WOR 23 - Simple Construction; 30% Reserved; High Value; No Site Visit
- WOR 24 - Simple Construction; 30% Reserved; High Value; Refurbishment; Site Visit
- WOR 25- Building; Not Reserved; High Value; Refurbishment; Site Visit
- WOR 26 - Building; Not Reserved; High Value; No Site Visit
- WOR 27- Building; Design by Employer; Reserved; No Site Visit
- WOR 28 - Building; Design by Employer; Reserved; Site Visit

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- WOR 29 - Building; Design by Employer; Not Reserved; No Site Visit
- WOR 30 - Building; Design by Employer; Not Reserved; Site Visit
- WOR 31 - Civil (Maintenance); Design by Employer; Reserved; Site Visit
- WOR 32 - Civil; Design by Employer; Not Reserved; No Site Visit
- WOR 33 - Civil; Design by Employer; Not Reserved; Site Visit
- WOR 34 - Design & Build; Reserved
- WOR 35 - Design & Build; Not Reserved
- WOR 36 - Develop & Construct; Reserved
- WOR 37 - Develop & Construct; Not Reserved
- WOR 38 - Construction Management
- WOR 39- Management Contract
- WOR 40 - Works General
- WOR 41 - Request for Quotation (RFQ)

5.6 Supplies packages available

- 1) These packages are broken into broad categories by type of activity. Applicable forms are listed under each package. Go to www.ppadb.co.bw and follow links to select the package that closely fits the description of the procurement activity you wish to undertake. Click on the link to go to the forms.
 - SUP 01 – Books
 - SUP 02- Dressing, X-Ray & Medical Supplies
 - SUP 03- Drugs & Vaccines
 - SUP 04- Food Rations
 - SUP 05- Fuel
 - SUP 06 - Furniture
 - SUP 07- General Equipment
 - SUP 08- Grains & Oils
 - SUP 09 – IT Equipment
 - SUP 10 – Medical Equipment
 - SUP 11- Stationary
 - SUP 12 – Uniform
 - SUP 13 - Vehicles
 - SUP 14 - Request for Quotation (RFQ)

5.7 Services packages


- 1) These packages are broken into broad categories by type of activity. Applicable forms are listed under each package. Go to www.ppadb.co.bw and follow links to select the package that closely fits the description of the procurement activity you wish to undertake. Click on the link to go to the forms.
 - SER 01 - Professional - NEC PSC2
 - SER 02- Term Long - NEC TSC3
 - SER 03- Term Short - Botswana TSSC / TSC3
 - SER 04- Request For Quotation (RFQ)

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- SER 05- Request for Quotation (RFQ) - Consultancy
- SER 06- Request for Quotation (RFQ) - IT
- SER 07- Request for Quotation (RFQ) - Catering
- SER 08- Request for Quotation (RFQ) - Accommodation
- SER 09- Request for Quotation (RFQ) - Maintenance of Vehicles
- SER 13- Customised SBP for Auctioneering
- SER 10- Request for Quotation (RFQ) - Auctioneering Services
- SER 11- Customised SBP for Public Auction
- SER 12- Customised SBP for IT Systems
- DIS 01 - Sealed Bidding
- DIS- Auction

5.8 Description of Forms used in the Tender Documentation (SBP forms)


- 1) **Front Cover Sheet** of the Tender Document; gives details of the contract (Name & Address of the Procuring Entity, Contract.
- 2) **Volume 1 Cover Sheet**; used in all tender documents.
- 3) **T1.1 Tender Notice & Invitation to Tender**; used in all formal tender documents as an official notification that alerts prospective Bidders of the proposed tender. The document outlines the requirements (what the procurement intends to achieve) and eligibility criteria (for tendering and award of the tender) as well as specifying where the actual tender documents can be collected and the conditions of collecting such documents.
- 4) **T1.2 Tender Data**; used in all tender documents to specify applicable Standardized and Specific Conditions of the particular tender (Submission of bids, Supplier and Requirements Selection Process). Failure to follow the instructions may mean the bid is rejected and /or not evaluated without any possibility of award part or whole tender.
- 5) **Volume 2 Cover Sheet**; used in all tender documents and it lists forms that are to be completed and returned by the Bidder to the Procuring Entity.
- 6) **T2.1 List of Returnable Documents**; used in all tender documents and it lists forms (*by category of use*) that are to be completed and returned by the Bidder to the Procuring Entity. Failure to submit these forms (by the Bidder) may result in the Bidder being removed from the evaluation process and shall not be awarded part of the whole tender. Therefore, care must be taken in requesting for only absolutely necessary documents, because requesting for unnecessary documentation and eliminating Bidders because they have not completed it is not only unacceptable but also unfair.
- 7) **T2.2GA Certificate for Authority**; used in all tender documents and it is to be signed by the Bidder, giving details and position of the person who has the authority (legal position) to sign the bid and any contract resulting from it (formally commit to contractual relationships of the Bidder).
- 8) **T2.2GB Certificate of Attendance at a Clarification Meeting**; used when contents of tender documents and /or expected outputs need explaining to the prospective Bidders. This may be due to the complexity and /or technical nature of the proposed tender. When the Procuring Entity decides that a clarification meeting will be held, all potential Bidders should attend. Failure to attend the meeting may result in the Bidder being disqualified. However, all prospective bidders (whether they attended the meeting or not) should receive the minutes to constitute the only legal statements that are used in the tender preparation.

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- 9) **T2.2GC Record of Addenda to Tender Documents;** used in all tender documents to record of any alterations that need to be made to the tender documents. The PE has to ensure that communication has reached and been received, by the prospective Bidder, on time (usually 14 days before deadline for submission for bids).
- 10) **T2.2GD Tender Security;** used for projects that are complex, multi-faceted, have strategic and security implications, are of high profile (national importance) and /or are technically difficult when the PE wants to guard against Bidders who may submit bids only to withdraw from the Tender during the tendering process. The Tender Security form is filled in by a financial institution acceptable to Bank of Botswana and is often up to 10% of the total bid value.
- 11) **T2.2GE Form of Intent to Provide a Performance Bond;** used issued for high value, complex, high profile, multi-faceted and /or technically difficult projects that have strategic and security implications. Bidders are to indicate that, when awarded the tender, they shall provide a performance bond filled in by a financial institution acceptable to Bank of Botswana and is often up to 10% of the total contract value.
- 12) **T2.2GF Form of Intent to Provide a Parent Guarantee;** The term “guarantee” can apply to any form of guarantee such as parent guarantee, debt-purchase agreement, surety bond and letter of credit. Used for high value, complex, high profile, multi-faceted and /or technically difficult projects that have strategic and security implications. The Bidder is to indicate their willingness to provide a Parent Guarantee, when awarded a tender.
- 13) **T2.2GG Proposed Subcontractors** used for high value, complex, high profile, multi-faceted and /or technically difficult projects that have strategic and security implications to advise the PE of the names of the proposed sub-contractors that the bidder intends to use and the type of work they will be used for.
- 14) **T2.2GH Quality Plan;** used in technically complex projects where there is a need to control outputs and /or maintain standards of a particular contract.
- 15) **T2.2GI Provision of Samples;** used when the PE wants to ensure that the produced product will meet certain technical aspects (quality and /or standard) that the PE may have not been able to describe. Sample (prototype, mannequin or model) may be provided by the manufacturer or PE.
- 16) **T2.2GJ Stock Holding of Spare Parts;** used when procuring new equipment or plant that requires maintenance (replacement of some worn out parts) and the PE wants to ensure that the required parts are available during the use of such equipment or plant. Spare parts may be held by a Supplier as a critical spares list or a minimum guaranteed list.
- 17) **T2.2GK Curriculum Vitae of Key Personnel;** used for projects where knowledge of the requirements is critical. This may also be applicable the Bidder has to have a particular monetary turnover per year.
- 18) **T2.2GL Experience of Bidder;** used for complex, sensitive projects when the PE cannot take risks of engaging a non-experienced bidder.
- 19) **T2.2WA Certificate of Attendance at the Site Meeting;** used for contracts whose performance depends on environmental conditions such as type of soil, community access and /or climatic conditions. When the Procuring Entity decides that a clarification meeting will be held, all potential Bidders should attend. Failure to attend the meeting may result in the Bidder being disqualified. However, all prospective bidders (whether they attended the meeting or not) should receive the minutes to constitute the only legal statements that are used in the tender preparation.
- 20) **T2.2WB Basis of Design;** used for high value, high profile design projects.
- 21) **T2.2WC Plant & Equipment;** use for high value, high profile projects that require the use of specific plants and /or equipment.

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- 22) T2.2WD **Management Plan**; used in management projects where the PE has not been able to outline the management process.
- 23) TW2.2WF **NEC Model Tender Assessment Sheet**; used for medium to high value projects when the PE has not been able to set milestones of the project.
- 24) Volume 3 **Cover Sheet**; lists parts and documents of the resulting contract.
- 25) C1.1: **Form of Offer and Acceptance**; used in all formal tenders. The Bidder certifies that they OFFER to perform the obligations and liabilities of the Contractor and PE certifies that they ACCEPT the offer.
- 26) C1.2: **Contract Data**; used to specify applicable General and Specific Conditions of Contract. Failure to follow these may result in the application of penalties.
- 27) C1.3a **Parent Company Guarantee**; used on high value, high profile and /or strategic projects when as well as when an advance payment was issued and T2.2GF (*Form of Intent to provide a Parent Guarantee*) was used and the Bidder is awarded the contract. The parent company irrevocably and unconditionally guarantees the PE, as a primary obligation, the due performance of all the Contractors obligations and liabilities under the contract, including the Contractors compliance with all its terms and conditions according to their true intent and meaning.
- 28) C1.3b **Performance Security Demand Guarantee**; used T2.2GE (*Form of Intent to Provide a Performance Bond*) was used OR advance payment was issued and the Bidder is awarded the tender. It is the formal and legal document that will irrevocably undertake to pay the PE, a stated sum or sums, not exceeding a certain amount, upon receipt, by a financial institution, the PE demand in writing.
- 29) C1.3c **Advance Payment Guarantee**; used in construction where an advanced percentage of the fee is requested, normally as mobilization costs.
- 30) C1.3d **Pro-forma Parent Company Guarantee; (Option X4-NEC3 TSC)**; same principles apply as the C1.3a (*Parent Company Guarantee*), but this one is to Option X4-NEC3 TSC.
- 31) C1.3e **Pro-forma Performance Bond (Option X3-NEC Tern Service Contract)**; same principles apply as C1.3b (*Performance Security Demand Guarantee*), but is specific to Option X13-NEC3 TSC.
- 32) C1.4 **Forms for Adjudicators Appointment**; used when the contracting parties do not want to use the Courts of Law to solve problems that may arise. The adjudicator's decision is binding upon all parties.
- 33) C2.1 **Pricing Instructions**; used to specify the award criteria (either as single items or group of items) and the assumptions which will Bidder assumed and taken into account when developing their prices or targets. (*Refer to appendix 2B of the User's Guide for specific guidance in respect of each standard conditions of contract provided for in the Standardized Bidding Packages*).
- 34) C3 **Scope of Work**; used to define the objectives of the main and subsidiary tasks (purpose and extent of requirements as well as expected outputs), in terms of quality of the required elements and expected role of the potential contractors.
- 35) C4 **Site Information**; used when the site may have influence on the work to be done, the site may need to be prepared for the required work OR the site (itself) is to be worked on such as in Environmental Impact Assessments (EIA).
- 36) T1 **Standardized Conditions of Tender**; provide formal details of how the tender processes should be undertaken, by both the PE and the potential Bidder. It states the obligations and the expectations that are placed on both parties. The contents of the document are fixed, but any variation is provided for under the Tender Data

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- 37) **C1 General Conditions of Contracts**; provide formal details of the conditions contract; responsibilities and obligations of the contracting parties during the performance of the contract. The contents of the document are fixed, but any variation is provided for under the Contract Data.
- 38) **S1 Reserved Procurement Scheme 1**; used when a reserved procurement scheme is required.
- 39) **S2 Direct Preference Scheme 2**; used when the procurement is per a CAB Memo OR Directive that excludes all other participants.
- 40) **S3 Direct Participation Scheme 3**; when the procurement is per a CAB Memo OR Directive that directs that requires subcontracting of the requirements. The sub-forms are specific to the various groups.
- 41) **T 2.2.GB PPADB Declaration Form For Directors and Shareholders**; used in all packages for a Company Director or Shareholder to declare that they have not submitted any other tender through a different company name. The contents of the document are fixed, and the declaration is to be made on oath.

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Chapter 6. Procurement Committees and their Responsibilities

6.1 Procuring Entities and Procurement Committees

- 1.1. The Head of the Procuring Entity is the Accounting Officer, who is the responsible fund holder and is both responsible and accountable for all the procurement activities taking place within the Procuring Entity.
- 1.2. At times, particularly during the preparation of the more complex type of procurement projects, the PE may be required to establish various types of Procurement Committees, so as to assist in that process (see other types e.g. 6.8 Other Tender Committees, 6.9 Procurement Pre-Tender Committee , 6.10 The Bid Opening Committees and 6.11 Tender Evaluation Committee – Pre-Tender Meeting).
- 1.3. No member of a Procurement Committee may delegate his/her responsibilities to any other person, unless in circumstances approved by the Accounting Officer (leave, holidays, sickness, study tours, etc.).

6.2 Ministerial Tender Committee {MTC} / District Administration Committee {DATC}


- 1) For each Ministerial Tender Committees (MTC's) or District Administration Tender Committees (DATCs), the members shall be recommended by the Accounting Officer and approved by PPADB. The mandate of the MTC/DATC is to adjudicate on and approve the recommended/proposed contract awards, within specified monetary thresholds.
- 2) The MTC / DATC shall be responsible for the implementation of procurement procedures (as directed by PPAD Act of 2001) and approval of recommendations of tender evaluation committees, or of the Procurement Specialist/Unit. In this regard, the MTC / DATC shall monitor the overall procurement and asset disposal planning, review and approval of contracts and the implementation of procurement activities of the PE's, as specified in the law and this the Operations Manual.
- 3) The MTC / DATC are independent committees and the award of a contract shall be made solely on the basis of the information and evaluation criteria provided in the tender documents, or the request for proposals, and without influence by personal, or political preferences, or other influence.
- 4) The composition of a Ministerial Committee/DATC shall be (PPAD Reg. 8):
 - a) A Chairperson
 - b) A Vice-Chairperson
 - c) Other members are not to exceed five (5)
- 5) If a quorum is present and a MTC/ DATC meeting is in progress, should a member be obliged to leave the meeting for a period of time and a quorum is no longer present, then Committee may not vote until the member returns. If a member has to permanently leave the meeting and a quorum is no longer present, then the meeting will be closed and the reason recorded in the minutes of the meeting. (The quorum of a MTC shall be four members (PPAD Reg. 10 (4)).
- 6) The Chairperson, or in his/her absence the Vice Chairperson shall preside over every meeting of the MTC/ DATC. In the absence of both the Chairperson and the Vice Chairperson, and assuming the quorum is present, the members shall elect amongst themselves a Chairperson for the purpose of that particular meeting (PPAD Reg. 10 (2) (c)).
- 7) In considering the submissions made by the Procurement Unit, or the Tender Evaluation Committee, the MTC/ DATC may:

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- a) Approve a submission;
 - b) Stand down a decision, subject to clarifications, or minor amendments.
 - c) Defer a decision, with given reasons; or
 - d) Reject a submission, with given reasons.
- 8) The MTC/ DATC shall *not*:
 - a) Modify a submission, including, in particular, the recommendations for contract award; or
 - b) Reject any submission without a good and justifiable reason, in writing.
 - 9) The MTC/ DATC shall regulate its own procedure, and shall meet as frequently as it may be necessary for the discharge of its functions or as dictated by the amount of work outstanding (PPAD Regulations 10 (1) & (2)) but not less than monthly. The MTC/DATC duty is to facilitate the rapid throughput of outstanding work, therefore it is expected to meet each week, even if there is only a small number of adjudications to process and not to postpone them to a following week, or to accumulate the submissions and meet only once per month.
 - 10) Decisions of the MTC should be unanimous. Where unanimity cannot be achieved after extensive discussions, a decision shall be by simple majority vote with the Chairperson of the MTC / DATC having a casting (deliberate) vote in the event of a tie (PPAD Regulations 10 (5)). The result of the voting shall be recorded in the Minutes of the MTC together with an explanation of the outcome (also applicable to DATC's).
 - 11) After due consideration, the MTC/ DATC shall provide an explanation and a justification of its reasons for any rejection, so as to assist the Procurement Unit, or the Tender Evaluation Committee in remedying any defects in the submission, prior to its resubmission.
 - 12) All decisions of a MTC/ DATC, including reasons for any rejections, shall be recorded in the minutes and be formally notified to the Procurement Unit and the Tender Evaluation Panel, in writing.
 - 13) A MTC/DATC may co-opt advisers to assist it in complex procurement cases, though the advisers are not allowed to vote and must sign a confidentiality agreement (PPAD Reg. 8 (2) and see 0 Annex 5 –).
 - 14) If, due to market conditions, or changing circumstances, procurement is estimated to exceed the approved budget of the procurement and asset disposal plan, then the MTC/ DATC may authorise the review the Tender upon request by the PE. The review may suggest:
 - a) Revision of the TOR, EOI
 - b) Revision of the Scope of Work/ BOM,
 - c) Revision of the Specification,
 - d) The postponement of the tender,
 - e) Request that sufficient budgets funds be approved.

6.3 Duties of a Tender Adjudication Committees (MTC/DATC)

- 1) Tender Adjudication Committees shall have the following functions;
 - a) The MTC / DATC is an independent committee of persons who have been given the authority to consider and review procurement and asset disposal plans, monitor compliance of the procuring entity, adjudicate and award bids within a set threshold, approve, and advise on the procurement and asset disposal activities of the Procuring Entity.
 - b) Review procurement and asset disposal plans in order to ensure that they support the objectives and strategic operations of the Procuring Entity and submit it to the PPADB on an annual basis (by 1st January).
 - c) Ensure that the costs of items to be procured are acceptable and match those with the available

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- funds in the approved budget and procurement and asset disposal plan of the Procuring Entity.
- d) Review the procurement schedules, the TOR's and Specifications, to ensure that the procurement procedures proposed are in strict conformity with the provisions prescribed in the Public Procurement and Asset Disposal Act of 2001 (CAP 42:08) and Regulations of 2006.
 - e) Ensure that the monetary threshold levels are adhered to;
 - f) Ensure that stores and equipment are disposed of in compliance with the Public Procurement and Asset Disposal Act of 2001 and the Regulations of 2006 and the PPADB Operations Manual (Chapter 10 Disposal guidelines).
 - g) Make impartial and objective decisions on the tender awards, based on the recommendations made by the Procurement Unit, or a Tender Evaluation Committee and the presentation of supporting reports, facts and evidence.
 - h) Ensure that Emergency, or Critical Emergency requests, are promptly addressed, and when necessary, through a 'Round Robin' approach.
 - i) Ensure that requests for Waivers or Extensions to contracts are fully justified.
 - j) Consider and assess procurement and asset disposal plans. Vet bid documents including RFQs. Vet and approve recommendations for contract awards.
 - k) Where there are found to be errors or omissions in a bid proposal, or it appears that the recommendation was not a correct decision, due to either the lack of supporting evidence, a misunderstanding, the lack of training, a failure, or as a deliberate act not to follow the procedures of this Operations Manual, the PPAD Act or the PPAD Regulations, then on behalf of the Chairperson, the Secretary will write to the Procuring Entity, stating the facts and observations, and request that steps be taken to ensure that such an occurrence will not be repeated.
- 2) Where it is considered that there may be suspicions of fraudulent activity and warrants further investigation, then the Chairperson will immediately inform the PPADB and retain the bid package with all its documents for examination.

6.4 Decisions of the Board and its Committees

- 1) During its deliberations the Board or its Committees will make adjudication decisions according to the following table:

Table 2 Types of adjudication decisions

DECISION	ACTION
APPROVAL	The recommendation is approved
REJECTION	A recommendation that does not meet criteria of the ITT, or is against the provision of the PPAD Act or Regulations, or the Operations Manual. Needs either redoing, or preparation of a new tender.
DEFERRAL	Contains a possible problem, omission, or oversight, which could change the recommendation, or the substance of the recommendation. Needs to be restudied, revised and resubmitted
STAND DOWN	Contains a minor error or omission which does not change the substance of the recommendation, but requires an action to correct the error and then the process can

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DECISION	ACTION
	proceed forward.
NOTED	This is pertinent information, which is shared with the Board because it may later affect, or influence, a future decision of the Board.

6.5 The Adjudication Checklist

- 5.1. For adjudication committee (DATC/MTC) to be able to make a fair, objective and impartial decision it has to be provided with a clear and unambiguous set of facts, figures and information.
- 5.2. The Secretary to the adjudication committee will ensure that the members of the committee are supplied with the requested information (as appropriate), as detailed in the following checklist. If the information is not already supplied, the proposed package will be returned to the PE requesting them to provide the additional information.

Table 3 Adjudication checklist


Adjudication Checklist	
Attendance sheet	The Committee members attending the meeting will sign an attendance sheet.
Adequate time	Adequate time will be allowed to receive the submissions. Submissions received just before the meeting are to be strongly discouraged.
The Agenda	The Agenda should clearly indicate the topics for discussion. The subcategories for the submissions mission will include the tender title and a brief description of the tender underneath
Minutes of previous meeting	The previous minutes will include the Tender title description, quantities and unit prices of items previously awarded.
Copies of the submission package	At least one day before the committee meeting, each member will receive a full photocopy of the submission package to be adjudicated, which includes a front sheet copy of the Adjudication Summary Report. Where possible, they should sent two days before and study the submissions prior to the meeting.
Adjudication Committee Report	The Secretary will ensure that an Evaluation Adjudication Report is submitted with each submission. The Adjudication Committee members will be sent an electronic copy of the Evaluation Adjudication Report to peruse, prior to the Adjudication meeting (where possible)
Pre-Qualification	Where a Supplier has to be pre-qualified that check must be carried out. If the Supplier is not pre-qualified it shall be rejected. (Record the reasons). Missing signatures where the Suppliers bidding documents should be signed by an authorised official and the signature is missing,

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	the bid will be rejected.
Missing or suspect information	When bids, quotations or documents are received from Bidders, the letterheads and accompanying documents should be officially signed. At the official bid opening, the bidders' documents will be stamped with the official date stamp and logo of the PE. Odd dates or dates that after the bid opening date, or those without the official PE date stamp will be investigated and rejected
Bid Opening Committee record	A copy of the related Bid Opening Committee record should be included with the submission package
RFQ	If less than five quotations were obtained a justification will be provided giving the reason why (Regulation 59 (3))

Table 4 Suggested contents of an adjudication summary report


ADJUDICATION SUMMARY REPORT		Ideal information	Minimum information
<p>An Adjudication Summary Report must be completed and submitted with every package submission. In the absence of the Adjudication Summary Report the submission package should not be considered, as the submission does not have the facts to make an adjudication decision.</p> <p><i>* This checklist is designed to assist the Tender Adjudication Committee (MTC/DATC/PPADB) in the adjudication process. If information is not provided to the committee, the committee should take action to ensure that in future, the information is provided. Failure to provide the information is not a reason for the MTC/DATC to delay, or to stop the process. The MTC/DATC must work with and educate the PE to provide the type of information requested. If there is repeated lack of cooperation from the PE, then the offenders should be reported to the PPADB who will take the appropriate action.</i></p>			
Tender/RFQ number	Have its own an unique sequential Tender / RFQ number	X	X
Type of Tender / RFQ	Tender description. Justification and reasons for purchase. Justification for this type of procurement, if not an annual Tender.	X	X
Number of Responses	How many Suppliers sent information and the number who responded	X	X
Specifications and TOR/SOW	Include the purpose of the procurement, the specifications and/or the TOR, or defined work plan requirements. The committee needs to know the purpose of the procurement activity.	X	
Currency rate conversion	Currency rate details will be stated including the conversion rate and the day that the rate was to be fixed, as it appears in the bidding documents.	X	

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Currency comparison	Where there may be different currencies quoted, the currencies will be converted to a common currency (normally Pula), for comparison purposes. Including the rate and date of the conversion (see above). Currency conversion and comparison must be compared as at the same date and time.	X	
Cost Analysis	Is the cost - cost effective or reasonable, have costs increased?	X	
Evaluation Report	Include a copy of each of the original members signed evaluation report, including the summary of the evaluation report which be attached to each submission. The points awarded by each evaluator will be recorded, including their opinion of the strengths and weaknesses of each potential bidder.	X	
Decision by the Board, or its Committees	All documents made by and all decisions made by the Board, or its Committees, must be signed by the Chairperson of the Board, or its Committees, or those authorised by the Act (PPAD Act 19).	X	X

Table 5 Problems to look out for when vetting a draft bid document and/or adjudicating a tender

PROBLEMS TO LOOK FOR	
Separation of Duties	<ul style="list-style-type: none"> * Is there a clear "separation of duties" or not? * Has the same person(s) been responsible for creating the specification, the selection of Suppliers, prepared the bidding documents, involved in the evaluation committee, monitoring the contract performance, signing off the activity has been completed, approving payments. Look for the same signatures throughout the documents. If so, the proposal package is illegally constructed and may be recommended for, rejection. It should be brought to the attention of the Accounting Officer and the Adjudication Committee.
Common shareholding and directorship	Evaluate the Declaration for shareholders and directors form submission to ensure that bidders are not involved in collusion or bid rigging and that competition is fair
The number of responses	<ul style="list-style-type: none"> * Where many companies were sent bid packages and the number of replies was small - investigate further. Was it too small an order, or was the order split? * Check if the Suppliers receive the bids?
Falsification of documents	<ul style="list-style-type: none"> * Check if the RFQ's / Bids are obviously fabricated, use amateur logos or letterheads, exactly the same wording or spacing in sentences, exactly the same formatting used. Suppliers letterheads that do not have dates or signatures, artificially high or low prices, include clauses in contradiction of the tender documents, or exclusion clauses, or dates after the bid closing date, etc. * Look for no official PE date stamp on the quote/bid/RFQ

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Splitting of lots	<ul style="list-style-type: none"> * Is there evidence of splitting lots to come below the monetary threshold levels? * Where possible, small orders should be aggregated into a public tender.
Emergency Procurements	<ul style="list-style-type: none"> * Analyse all emergency procurements. (Must be supported by a full justification). * Is the same Procuring Entity repeatedly requesting emergencies, or a person submitting repeat emergency requests?
Evaluation Criteria	<ul style="list-style-type: none"> * No submission may be evaluated by criteria that does not appear in the tender/RFQ package. * Where specific criteria, or documentation, is asked for and is not provided, or something completely different is provided, then the submission will be disqualified, with the reasons recorded. * Tender Evaluation Criteria are often unclear, evaluation points allocated irrationally, TOR often vague.
RFQ bidding period	<ul style="list-style-type: none"> * The bidding period shall be such a length of time as is necessary to respond to the RFQ (PPAD Reg. 33 (1)). The minimum time allowed for the Suppliers to respond to a RFQ is 7 days. Often this is far too short a period and results in very low responses. Where possible allow 14 days.
Number of responses for quotations	<ul style="list-style-type: none"> * Identify PE's which frequently get a low number of responses for quotations.
Single sourcing (Direct procurement)	<ul style="list-style-type: none"> * Requests for single sourcing will provide proof of the sole source dealership and a convincing justification why sole source should be used * Check on single sourcing, is it warranted, is it fair, is it actually from a single source, where is the proof? Does the same PE constantly go for single sourcing? Keep a simple database of single source, waivers, emergency procurement. Did the PE produce an annual procurement and asset disposal plan? Identify poor management.
Conflict of interest	<ul style="list-style-type: none"> * Committee members should be careful to separate their adjudication responsibilities from those of their PE's, also where they may have conflicts as described within the Code of Ethics / Code of Conduct. * All committee members and other staff taking part in tender document preparation, evaluation, and adjudication with or planning to acquire direct or indirect personal interest in relation to the procurement activity should declare such interest and recuse themselves. (PPAD Act Section 88)
Bad management practice	<ul style="list-style-type: none"> * Where there is bad management practise, or evidence that those involved in procurement activities are not abiding by the procurement rules, then a strong letters must be sent to the Head of the PE to take appropriate action. A copy of the letter shall be sent to the Chairperson of the PPADB.
PE's not following to the rules continue	<ul style="list-style-type: none"> * MTC / DATC shall take a much more vigorous approach violations or omissions. Write

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to breach the regulations.	to the PE concerned. Continual offenders will be removed from procurement activities.
Look for PE's who have not had the proposed tender documents pre-vetted	<ul style="list-style-type: none"> * It is required by law that all tender documents should be pre- vetted. It saves a lot of problems later on *Documents must be vetted to ensure compliance with empowerment schemes and the PPAD Act. *Non-compliant bid documents are invalid.
Evaluation Reports	<ul style="list-style-type: none"> * Look for too many points of the same values. Or where there is not a properly written evaluation report and signed by all the participants *Confirm that evaluation is consistent with that spelt out in the tender documents.
Specifications/ TOR/ BOQ/ SOW	* Are the Specifications / TOR / BOQ / SOW deliberately too restrictive, thereby eliminating competition.
Procurement and asset disposal planning	<ul style="list-style-type: none"> * Did the PE produce an annual procurement and asset disposal plan? The MTC /DATC will check for evidence of why orders for small quantities are being processed. *Is the procurement activity included in the annual procurement and asset disposal plan or has an amendment to plan been made?
Date Stamps and Signatures	* Look for the lack of date stamps and missing signatures on documents. Can be an indicator for the switching of documents.
End of activity reports	*Look out for end of activity reports that are not consistent with common knowledge and project progress reports or PPDB project site visit reports

6.6 Checklist for Submission of Requests under the Direct and Restricted Bidding Method

- 1) The purpose of this checklist is to standardize the format and content of submissions to be presented before the Board or its Committees in submitting requests for approvals for Direct Appointment and Restricted bidding method and to act as a reference point for information to be provided to the Board or its Committees for adjudication of such requests. It is anticipated that the checklist will improve the quality of submissions brought before the PPADB/ SPADC/ MTC/ DATC thereby reducing delays in decision making.
- 2) Where applicable, PE's are required to place a mark over each requirement on the list to indicate that the information is enclosed in the submission.
- 3) Where the information is not relevant, the words "**N/A**" must be clearly shown in bold letters.
- 4) The checklist must be enclosed in each submission brought before the Committee for adjudication. This is in respect of requests for direct appointment, selective/ restricted bidding, and variations and/ or amendment of contracts. **Key:** # *Optional*; * *Compulsory*
- 5) *Direct Procurement method* #
 - a) Full description of goods or services required;
 - b) Purpose and objectives of the goods or services required;


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- c) Inclusion in Annual Procurement and asset disposal plan;
- d) Justification for direct appointment must be supported by full and convincing reasons for departure from other methods:
 - i) Motivation for direct appointment in line with requirements of PPAD Regulation 61 (1) (a) to (f);
 - ii) Functional description of the goods (indicate any safety or environmental features justifying direct appointment). Where physical, technical or policy reasons are advanced, explanation to be clear and detailed;
 - iii) Indicate previous method used in acquiring the required goods/services;
 - iv) Demonstrate advantage over competition;
 - v) Proof of Original Equipment Manufacturer;
 - vi) Proof of sole source dealership;
 - vii) Where non-economical considerations (e.g. national security) are paramount the objective must be clear and precise. Security risks sought to be avoided must be such that they are reasonably anticipated risks and must be clearly identified.
 - viii) End of Activity Report/ Progress Report: Analysis of contractor's performance record where a re-appointment is sought. Information to include the estimated cost of project; awarded cost; and final cost of project
 - ix) In emergency situations, the emergency must be fully described;
 - x) Indicate minimum quantity of goods/services required to address the emergency;
 - xi) Indicate measures to be put in place to avoid recurrence of the emergency.


7) *Restricted Bidding Method/Shortlist #*

- a) Full and unambiguous description of goods/services required;
- b) Purpose and objectives of the goods / services required;
- c) Functional description of the goods (indicate any public safety or environmental features necessitating the restricted method);
- d) Inclusion in Annual Procurement and asset disposal plan;
- e) Minimum of three firms;
- f) Justification for use of Restricted bidding / Shortlist method:
 - i) Justification to be in line with PPAD Regulation 57 (1) or 58 (1).
 - ii) Full identification of selected firms
 - iii) Criteria for selection method adopted. i.e. basis for the shortlist must be shown
 - iv) Indicate previous method used in acquiring the required goods/services
 - v) Proof of sole source dealerships
 - vi) Where non-economical considerations (e.g. national security) are paramount the objective must be clear and precise. Security risks sought to be avoided must be reasonably anticipated and must be clearly identified.
 - vii) Complete End of Activity Report/ Progress Report submitted: Analysis of contractor's performance record in the event of a re-appointment.
 - viii) In emergency situations, clear description of the emergency
 - ix) Indicate minimum quantity of goods/services required to address the emergency
 - x) Indicate measures to be put in place to avoid recurrence of the emergency

8) *Contract Amendments **

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- a) Full history of the contract including date of award of contract by PPADB/ SPADC/ MTC/ DATC; date of commencement; expected date of expiry
 - b) Define the original contract terms and conditions sought to be amended
 - c) Details of proposed remedy/ solution (proposed amendment): A full justification for the amendment clearly describing reasons for extension, renewal or other amendment sought
 - d) Proof of contractor's consent to the amendment
 - e) Potential cost implications: Percentage increase in revised contract price over original contract price to be shown in line with PPAD Regulations 95 and 96 respectively.
 - f) Details of previous contract amendments
 - g) Percentage increase in cumulative value of previous contract amendments including the cost of proposed amendment over the original contract price
 - h) Changes in legal status of firms post award (e.g. subsequent mergers or takeovers): Any changes in circumstances of bidder must be fully explained and supporting documentation provided. Supporting documentation to include shareholders agreement or Resolution of the Board of Directors of new entity signifying that new entity assumes all rights and liabilities in the contract.
 - i) Performance Reports (Submission of End of Activity / Progress Report): Have performance targets been met in accordance with agreed timelines; Quality of goods/services rendered
- 9) *Confirmation of availability of funds for procurement activity required above **
- a) Full cost estimate of the project –include all running and/or operational costs
 - b) Confirmation of availability of funds in the full amount required. PPADB Form (First Schedule) to be completed and submitted.
 - c) Written confirmation of future source of funds, where available funds are insufficient
- 10) *Payments of ongoing projects **
- a) Duly completed PPADB Form
 - b) Quotation
 - c) Demonstration of the reasonableness of price quoted in accordance with PPAD Regulation 61 (7).
- 11) *Tender Evaluation Reports**
- a) Evaluation Report with proper recommendations and duly signed by evaluation team members.
 - b) Duly completed PPADB Form 3.
 - c) Letter of approval of a waiver.
 - d) PPADB Form 1.
 - e) Demonstration of the reasonableness of price quoted in accordance with PPAD Regulation 61 (7).
- 12) *End of Activity Reports **
- a) An End of Activity Report detailing milestone achievements, delays and any variations in the scope and tender amount in a project must be submit at the end of every procurement activity. This marks the completion and closure of procurement.

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6.7 Responsibilities of the MTC/DATC to the Board

- 1) The MTC/DATC have responsibilities to the Board and in particular for all tenders which are within their approved monetary thresholds (PPAD Reg. 9 (1)):-
 - a) To ensure compliance with the provisions of the Act and best practices in procurements;
 - b) To liaise directly with the Board, or its Committees (see 7 below) on any matter within its jurisdiction;
 - c) Preside over and manage public bid openings;
 - d) Ensure that the preparation of contract documents are in line with the authorised evaluation report;
 - e) Propose or approve the delegation of authority to a procurement unit; and
 - f) Provide overall guidance to officials of a Procuring Entity on the development of rules and regulations on public procurement.

6.8 Other Tender Committees


- 1) Where necessary, other tender committees may be established and their members shall be appointed on an adhoc basis. These are ad-hoc committees that are tasked with oversight of certain activities involved in the tender preparation and process. They are temporary in nature and may include the following:
 - Pre-Tender Committee (Preparations of Specifications/ TOR/ BOM/ Drawings)
 - Bid Opening Committee (Technical).
 - Bid Opening Committee (Financial).
 - Bid Evaluation Committee (Financial)
 - Bid Evaluation Committee (Technical)
 - Samples Evaluation Committee, if separate from Bid Evaluation Committee
 - Post Tender Negotiation Committee (clarification of issues).

6.9 Procurement Pre-Tender Committee

- 1) A Pre-Tender Committee may be necessary when the project is technically complex and where considerable work needs to be undertaken, before the tender process can begin. It will normally involve the preparation of Specifications / TOR / BOM / Plans / Drawings / Obtaining Licences / Changes to the Law / Obtaining planning permission and such other types of pre-tender activities.
- 2) A Pre-Tender Committee is composed of the Procurement Specialist and Procurement Staff, members of the Originating Departments and where necessary specialists and technical experts. In complex cases, specialist companies are often employed to undertake the preliminary work.

6.10 The Bid Opening Committees

- 1) The Bid Opening Committee shall be managed by the Board or its Committees and will be composed of procurement personnel and a rotating membership from other departments within the organisation, and/or member(s) of the MTC/DATC who shall preside over the committee.
- 2) For Micro Procurement the Bid Opening Committee members will usually be selected from the Procurement Unit, although ad-hoc members of the organisation may be co-opted on to it. At such an internal bid opening (non-public opening) it shall be witnessed by at least three staff

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members of the procuring entity.


- 3) At the higher threshold levels, members of the Procurement Unit will recommend other members of the Organisation/Institution to be seconded onto the Bid Opening Committee. The Bid Opening Committee will comprise of no less than three (3) members.
- 4) The staff of the Procurement Unit will normally undertake this responsibility for procurement within the financial thresholds of MTCs/DATCs, as determined by the Board from time to time.
- 5) Bidders shall be invited to send their representatives to witness the public bid opening.
- 6) Minutes shall be kept of the bid opening meetings and shall be signed by all Committee members attending.

6.11 Tender Evaluation Committee – Pre-Tender Meeting

- 1) Prior to the formal sitting of the Tender Evaluation Committee, the appointed committee members are expected to have read and understood the:
 - a) The aims and objective(s) of the tender.
 - b) Specifications / BOM / TOR / SOW and other instructions.
 - c) The methodology by which the points are to be assessed and awarded (how the criteria are to be evaluated).
 - d) Confidentiality and declaration of interest instructions.
- 2) Accordingly, all the bids/proposals/documents are to be assembled in a lockable room, for study by the members and explanation by the Procurement Unit representative (acting as the Invigilator). No documents are allowed to be removed from the room.

6.12 Composition of Tender Evaluation Committees


- 1) The committee shall be composed of members with the necessary skills, knowledge and experience, relevant to procurement requirements. Where appropriate, the members of the Evaluation Committee shall be on the basis of their knowledge and expertise in the supplies, works or services, as well as procurement procedures and the law. Tender Evaluation Committees will be composed of at least 3 members, with the required technical expertise suitable for the evaluation of specific tenders. Subject matter experts may be used in evaluation committee. The committee membership should be an *odd* number in total and include members who have skills in any of the following areas:
 - a) Relevant technical expertise and knowledge;
 - b) End user representation;
 - c) Procurement and contracting skills;
 - d) Financial management or analysis skills; or
 - e) Legal expertise (where possible).
- 2) To ensure separation of roles and where resources permit, it is preferable that members of the Tender Evaluation Committee should not be involved in the preparation of the specifications or TOR, nor in the approval of an award of contracts.
- 3) The Procurement Unit will make recommendations of membership for the Tender Evaluation Committee to the Accounting Officer, who shall either approve all the nominations or where appropriate elect alternative members to the Committee. The Accounting Officer will sign the approved Tender Evaluation Committee membership list.
- 4) The representative of the Procurement Unit will normally act as the Invigilator to the Evaluation Committee.

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- 5) No member of the MTC/ DATC can be appointed a member of a Tender Evaluation Committee (the 'separation of duties' principle).
- 6) In the case where the evaluation is of an especially technical, complex or specialised nature, then additional members may be co-opted to the Tender Evaluation Committee.
- 7) Evaluation of low value / micro procurement activities, where no Tender Evaluation Committee is necessary, shall normally be undertaken by the staff of the Procurement Unit, with the evaluation records / quotations securely kept for submission to the MTC/ DATC and for audit purposes by the PPADB compliance teams and/or the Government Auditors.

6.13 Proceedings of Tender Evaluation Committees

- 1) Recommendations for award of contracts shall be made solely on the basis of information and evaluation criteria provided in the tender documents, and without influence by personal or political or other preferences.
- 2) In the event that a member of the Tender Evaluation Panel should find that they have a conflict of interest in the tender evaluation, he/she shall declare his/her interest in the tender and leave the meeting and shall not participate further in the deliberations, or decision-making process, of the committee, in relation to the said submission. The individual, who no longer takes part in the evaluation, is still sworn to confidentiality (though a conflict of interest should have been discovered much earlier).
- 3) All the evaluation team members will assemble together at an agreed time and date. Team members may not conduct the evaluation outside of the designated room, nor are any of the documents allowed to be removed from the room unless an alternative arrangement has been approved by the Accounting Officer or her/ his representative.
- 4) Arrangements should be made to provide light refreshments and regular breaks for the participants. Complex evaluations may take up to one week, or more, to complete, therefore the members must be prepared to dedicate sufficient time to complete the task.
- 5) The Evaluation Team members will sign a Declaration of Secrecy Form committing them to secrecy and confidentiality (see 0 Annex 5 –).
- 6) The evaluation room must be kept locked between the evaluation sessions, the key being kept in the custody of the Procurement Adjudicator/Invigilator.
- 7) The evaluation shall be conducted on the basis of predetermined and publicly published evaluation criteria.
- 8) The points recorded on the evaluation forms should be kept secret and hidden from the other committee members. Discussion about the merits, or otherwise, of the bids are strictly not allowed. The Committee should work in silence apart from scheduled breaks. Cross-talking, or asking opinions of the other panel members, is not allowed.
- 9) The committee members will record their points on the form provided, including a statement as to the strengths and weaknesses of each bidder's proposal.
- 10) The Procurement Unit representative shall act as an Invigilator and shall organise and advise the Committee, during its deliberations. If the evaluation is to be seen as fairly appraised, it will be expected that the points awarded to each criteria should be reasonably close to one another. Where some points clearly diverge from the points of other assessors, the Invigilator will ask for an explanation. The member may have misunderstood the criteria, or the proposal. Without any pressure, the Invigilator will explain any misconception and request the member to re-examine that particular section of the tender submission, once again. The member may, or may not, revise their points.


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- 11) The recommendations of the Tender Evaluation Committee shall normally be unanimous, but any divergent views shall be recorded in the evaluation report to be submitted to the MTC/ DATC.
- 12) The individually scored points shall be summed together to arrive at an aggregate score, the basis on which a recommendation report for the contract award shall be made. The Procurement Unit Invigilator will prepare a formal evaluation report for each evaluation conducted and the report shall be signed by all participating members of the Evaluation Committee. The evaluation report and the written justification of the recommendations, is sent to the Tender Adjudication Committee for decision on the contract award.
- 13) The Procurement Unit Invigilator shall record the minutes of the Evaluation Committee meetings, which will include:
 - a) A register of attendance of members;
 - b) A list of all submissions considered and the recommendations made;
 - c) Any conflicts of interest declared by members; and
 - d) Any dissenting opinions among the Tender Evaluation Committee members on any submission.

6.14 Negotiation

6.14.1 Negotiations under Open, Restricted and Quotation biddings

- 1) No negotiations shall be held with any bidder who has tendered a bid under the above methods, *until* after the decision is made for the preferred bidder and that the negotiation document has been approved by the Board, MTC, or DATC (PPAD Reg. 51 and Ch 4 sec. 14.7).
- 2) The Tender Evaluation Committee shall prepare the suggested negotiating document and give approval to it by:
 - a) Preparing the evaluation report with clear recommendations on the award of the contract,
 - b) Providing details of the nature of the proposed negotiations, listing the points to be clarified, and the objectives to be attained (The negotiation document is as sec. 14.7 below, and will not necessarily be limited to the stated topics),
 - c) Obtain the approval of the Accounting Officer prior to the start of negotiations, then present the documents to the Board, MTC, or DATC for approval (PPAD Reg. 51).
- 3) The Procuring Entity shall be represented at the negotiations by at least 3 staff members (PPAD Reg. 51 (3)). The negotiating committee shall not commit the PE to any changes to clauses, or to the substance of the contract, without confirming any such terms with the Accounting Officer or representative.
- 4) After the negotiations have been completed, the negotiating team shall submit the minutes of the negotiations and report, in writing, to the MTC/ DATC, on the success in attaining the objectives set out in the negotiating document.
- 5) The MTC/ DATC may:
 - a) Approve the outcome of the negotiations in their entirety; or
 - b) Request further negotiations on specific points, or
 - c) Reject and cancel the negotiations in their entirety, and shall give reasons for the action taken,
 - d) The results of any approved negotiations shall be incorporated into the contract document.
- 6) No condition of the award shall require the bidder, under any circumstances to:
 - a) Undertake any further responsibility not specified in the bidding documents, or
 - b) Amend the bid price, or otherwise modify the bid.
- 7) The following type of request, communications or confirmations shall be made in writing:

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- a) Request for amendments to the terms of a bid affecting the responsibilities and/or tasks which are defined in the bidding documents; and
- b) Communication or confirmations of all subsequent and supplementary discussions or meetings.

6.14.2 Negotiations for Direct Procurement Method

- 1) A Procuring Entity shall **not** hold negotiations to consider a bid under the direct procurement method, unless a written bid has been received and evaluated.
- 2) Approval of the negotiation document shall be as the following procedure:
 - a) The PE shall issue a written bidding document, modified as necessary to suit the requirements, the value and particular circumstances, based upon standard documentation,
 - b) The bidder shall submit a written bid in accordance with the terms of the bidding documents,
 - c) The Evaluation Committee shall evaluate the bids received according to its compliance with the documents and undertake an analysis of value for money by comparing the bid price with prices previously obtained through competitive procedures in respect of similar procurements (where available) or prepare a breakdown analysis of current component costs for the basic items, freight and insurance elements, and also take into account any other circumstances and value that affect the procurement.
 - d) The PE shall provide details of the nature of the proposed negotiations listing the points that are to be clarified and the objectives to be obtained, and
- 3) The Procuring Entity shall be represented at the negotiations by at least 3 staff members (PPAD Reg. 52 (3)). The negotiating committee shall not commit the PE to any changes to clauses, or to the substance of the contract, without confirming any such terms with the evaluating committee.
- 4) The staff representing the PE at the negotiations shall submit minutes of the meeting for approval and a report, in writing, to the MTC, on the success in attaining the objectives set out in the negotiating documents.
- 5) The Board or any of its committees may:
 - a) Approve the outcome of the negotiations in their entirety; or
 - b) Request further negotiations on specific points, or
 - c) Reject and cancel the negotiations in their entirety, and shall give reasons for the action taken,
 - d) The results of any approved negotiations shall be incorporated into the contract document.


6.15 Post Tender Negotiation Committee (PTN)

- 1) In technical and complex tenders, Post Tender Negotiations have to be held, to agree responsibilities, prior to the signing of the contract documents.
- 2) A Post Tender Negotiation Committee (PTN) will be composed of a least three members, who may be the representative of the Procurement Unit, a Lawyer (if available), staff of the Originating Department and if called for a Specialist/Technical expert, as the case may be. The discussions will be led by the representative of the Procurement Unit.
- 3) Prior to Post Tender Negotiations (clarification of contract details) the notification shall also contain specific timeframes for post award activities beginning with negotiations (*clarifications*), the contract signing, contract commencement and completion dates. The purpose of negotiations is to ensure agreement on all aspects of the offer and acceptance thereof and to end in a contract.
- 4) In complex PTN's frequent breaks should be catered for, with both parties being allowed to retire to

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separate and quiet rooms to discuss any complex/ technical matters.

- 5) PTN are **not** as many people think, a way to re-negotiate parts of a tender, or to make changes to the conditions of contract, or the main set of deliverables expected. They are a final clarification of the previously held discussions and a recording of the agreements that were reached during those discussions. *Note:* There may be certain minor modifications to the contract, but they should be exactly that, minor modifications.
- 6) If PTN are not handled with care, it can be looked as effectively re-negotiating the tender. If it turns out that there are substantial changes to the tender then those changes should also be offered to the other bidders; otherwise it could be a cause of complaint by the Suppliers that they also could have offered the same changes, or alternatives, and then followed by possible calls for an investigation on irregularities in procedures, with a resultant court case.
- 7) PTN will not normally affect the tender structure, nor its outcome. It is used to agree the processes, procedures and responsibilities, to be attributed to each of the parties to the contract. Use the following list of topics in the negotiation document structure as a checklist (the discussions will not necessarily be limited to these suggested topics):
 - Reporting procedures
 - Resources needed and their schedules/frequency
 - Frequency and types of reports (by whom and the frequency)
 - Complaints procedures
 - Installation of equipment and testing
 - Hand-over agreements
 - Agreeing expected delivery dates
 - Types of packaging or marks on packaging
 - Mode of payment and schedules
 - Agree financial responsibilities (tax due)
 - Payment schedules
 - Discounts rates (NOT negotiation of rates)
 - Composition of Project Management team (Staffing)
 - Composition of Procuring Entity Project team (Staffing)
 - Agree the work plan
 - Agree the technical proposals,
 - Agree the methodology proposed
 - Agree any suggested improvements on the TOR by the consultant
 - Exact start date
 - Phased Handover (of completed sections of the project)
 - Expected completion date
 - Storage of equipment and materials
 - Site preparation issues
 - Site security issues
 - Claims and adjustments methods
 - Change Orders and amendments
 - Methods for agreeing work completed
 - The Award of Contract
- 8) The successful firm shall not be allowed to substitute key staff, except by mutual agreement


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with the client. The substitute staff shall be of equal or higher qualification and experience.

- 9) A formal award should be a properly executed and signed contract and not a Letter of Intent. Letters of Intent can be dangerous and are not to be advised. The successful Contractor must not be allowed to start work or mobilisation without a formal legal contract and has proof of adequate and current insurance.
- 10) The Procuring Entity must fulfil its responsibilities under the contract. The site should be available for the contractor to commence work after the PTN's are completed and agreed and the resultant contract signed by both parties.

6.16 Award of Contract

- 1) The bidding documents state the procedures for the award of the contract.
- 2) *Most important.* The exchange of the letter of offer and acceptance between the PE and the successful bidder and with the authorised signatures of parties shall legally constitute the award of the contract.
- 3) No communication, in whatsoever form, that will bind a PE to a contract, unless the proposed communication has received the prior approval of the Board, or its committees, or any authority, or person, to who the Board has delegated the power to approve communications.

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Chapter 7. Procurement and asset disposal planning

7.1 Introduction

- 1) The Procurement Policy in this manual is based on competitive bidding standards and practices stipulated by the PPAD ACT of 2001(Cap 42:08) and PPAD Regulations of 2006. The main objective is to attain value for money through the application of practices that take into account efficiency, economies of scale and transparency in the procurement process.

7.2 Responsibility of Procuring Entities

- 1) Each Procuring Entity is responsible for managing funds allocated for its use by planning and executing procurement and asset disposal activities, subject to the provisions of this Manual the PPAD Act, the PPAD Regulations, as well as any other conditions as may be laid down by the Government of Botswana and the Minister of Finance and Development Planning. The Head of a Procuring Entity and any other Officer to whom such responsibility is delegated shall be responsible and accountable for all actions taken subject to the provisions of this Operations Manual and other available statutory instruments (PPAD Reg. 6).

7.3 Approving Authorities and Financial Ceilings


- 1) The PPADB Board and its Committees must adjudicate and award procurement and disposal contracts, within their allowed expenditure thresholds. (Part VII Clause 65 of the Act)

7.4 Role of PPADB and its Committees

- 1) The role of the MTC and DATC is to adjudicate and award proposed contracts and/ or the disposal of assets, as well as the use of proposed exception methods of procurement for civil works, supplies and services. They serve as the review and adjudication committees for procurement activities, initiated by the Procurement Unit and evaluated by the Tender Evaluation Committees (PPAD Act 62 and 64 (3) and PPAD Reg. 9).

7.5 Procurement and asset disposal planning


- 1) The annual procurement and asset disposal plan is a written document indicating the goods, works and services, expected to be procured, the procurement methods, recurring or non-recurring expenditure, the targets and milestones, and the estimated costs. Where payments are expected to be made on a regular basis then a cash flow chart should be created.
- 2) The plan must include estimated timelines for each stage of the procurement process as well as the estimated cost of each activity. The procurement and asset disposal plan must be reviewed and adjusted throughout the given period.
- 3) Effective procurement requires adequate, timely and efficient planning, which includes the production of an annual procurement master plan.

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- 4) For Procuring Entities to economically and efficiently implement their programs, they shall collect and present in an orderly manner the relevant information, as well as stating the organisations strategic objectives.
- 5) Planning for procurement eliminates the necessity of emergency orders, or waivers, and the resultant complaints from the contracting community. Planned procurement results in lower purchase costs, as well as improved service delivery.
- 6) All procurement activities should be initiated early enough to ensure that delivery schedules are reasonable and that no premium has to be paid for emergency or urgent deliveries. Effective procurement and asset disposal planning results in acquiring Supplies, Services and Works when they are needed.
- 7) Failure to undertake procurement and asset disposal planning is considered bad management and may have a detrimental impact on the entire organisation and the attainment of its objectives. If the lack of procurement and asset disposal planning frequently results in emergency procurement, or waivers, punitive action may be taken against such offenders by the Accounting Officer.
- 8) Each Procurement Unit shall prepare an annual procurement and asset disposal plan showing the expected procurement activities, the annual consumption figures, the estimated cost for each package, the procurement method to be used, brief chronology of processing steps to be followed and estimated processing times, as well as the expected completion date. The Procurement and asset disposal plan will include both recurring (revenue) and non-recurring (capital) expenditure.
- 9) Production of the procurement and asset disposal plan is expected no later than the last day of January of each fiscal year. Each Procurement Unit shall submit to its Authorising Officer and adjudicating body, the procurement and asset disposal plan for the following year for record, planning and/or approval. A copy of the final authorised plan shall be sent to the PPADB.
- 10) After the budget approval, each Procurement Entity shall submit an update of the procurement and asset disposal plan process to the Authorising Officer and the Tender Adjudicating body on a quarterly basis.
- 11) The Procurement and asset disposal plan should be in line with the annual master plan and budget of each Procuring Entity.
- 12) When the budget is approved, the total funds approved may not cover every procurement activity on the annual list of procurement requirements, therefore there may be a need to re-prioritise the annual list. Due to changing circumstances the procurement and asset disposal plan must be reviewed every quarter throughout the year.

7.6 The Procurement and asset disposal planning Process

- 1) Procurement and asset disposal planning is a crucial task for an organisation's annual planning requirements as it is necessary to calculate the expected procurement costs likely to be incurred. The plan will include both recurring and non recurring costs (revenue and capital expenditure). In order to avoid delivery delays, the planning of procurement activities should be carried out in advance of budget approvals.
- 2) In consultation with the Heads of Department, the Procurement Unit will develop the annual procurement and asset disposal plan and the prioritisation of needs. Information will also be gathered from Warehouse/Stores units (to reduce the risk of stock outs, overstocks and emergency procurements). The Procurement Unit will provide cost estimates of the projects that will be guided

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by budget ceilings.


- 3) A review of the previous year's procurement and asset disposal plan will be undertaken. This will establish what has been achieved and what is outstanding, as well as the reasons for any delays.
- 4) Procurement in the Procuring Entity shall aim for achieving of best value for money through application of practices that take into account efficiency, economic value, openness and transparency in the procurement process through solicitation of bids from eligible sources.

7.7 Procurement and asset disposal Planning Cycle

- 1) The planning cycle is related to the procurement and asset disposal plan. This involves the areas of selecting, forecasting, quantifying, sourcing, receiving, storing, distributing, inventory control, monitoring, and financing. Such procurement and asset disposal planning involves three categories, i.e. Goods, Services and Works. Each process starts as follows:
 - a) Situational analysis
 - b) Setting objectives/targets
 - c) Decision making
 - d) Estimation and Quantification
 - e) Establishing the Source of funding
 - f) Costing annual estimates
 - g) Timing of the entire procurement or asset disposal process

7.8 Procurement and asset disposal plan implementation and monitoring

- 1) The Procurement Unit will closely monitor the implementation and adherence to the procurement and asset disposal plan (see 0Annex 1- Procurement plan template and 0Annex 3 – Procurement Plan Monitoring Template).
- 2) Quarterly progress reports should be submitted by the head of the Procurement Unit through the Accounting Officer to the PPADB for performance monitoring purposes.
- 3) Non-adherence will be brought to the attention of the Accounting Officer immediately.
- 4) While the procurement and asset disposal plan represents planned or targeted expenditure for the entire financial year, there may be changes in priority occurring during the financial year due changing circumstances. Such changes should be clearly communicated and addenda and amendments to the plan.
- 5) Addenda and amendments to the procurement and asset disposal plan will be recorded as deviations and all efforts shall be made in the planning cycle to minimise them.

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Chapter 8. The Selection of Procurement Methods

8.1 Introduction


- 1) The methods of procurement described in this chapter are applicable to the procurement of supplies, works and services. The methods shall be used within the parameters of the PPAD Act and Regulations and government directives as pronounced from time to time.

8.2 Types of Procurement Activities

- 1) There are three main categories of procurement activities that an entity can choose from when contracting with a potential contractor. The choice of the type of procurement method depends on the category and nature of the item or service that needs to be provided.
- 2) The categories of procurement activities are as follows:
 - a) Procurement of Supplies
 - i) This refers to the physical products, articles or equipment as described in the contracts, which are to be supplied to the Procuring Entity. It involves delivery of the items and transfer of ownership from the Supplier to the Procuring Entity. In some cases it may involve the items being installed and connected to utility services (water, gas, electricity) of the organisation and the items being tested and issued with a test certificate.
 - b) Procurement of Services:
 - i) This activity refers to the provision of services to the Procuring Entity that facilitates, or creates change. It may be the provision of services (security guards, cleaning, pest control etc) or the provision of professional services or advice (consultancy services, creative/artistic services) to the Procuring Entity, through the provision of skills or knowledge based services. Some consultancy, professional, advisory, or artistic services may be difficult to measure in real quantifiable terms, as they can often be intangible or creative services.
 - c) Procurement of Works
 - i) This activity involves the physical construction e.g. a new School, or Road, or Hospital extension; or the demolition of a physical structure such as a dangerous building. Alternatively, it may be the refurbishment/rehabilitation of a building such as an old Office or School premises.

8.3 Tendering Procedures

- 1) The following procurement methods shall be used:
 - a) Open Domestic Bidding;
 - b) Open International Bidding;
 - c) Restricted International Bidding;
 - d) Restricted Domestic Bidding;
 - e) Quotations Proposals Procurement;
 - f) Direct Procurement;

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8.4 Prequalification


- 1) Pre-qualification may be conducted prior to the issue of an invitation to tender mainly to identify potential suppliers who are qualified to deliver the required supplies, works or services.
- 2) Pre-qualification maybe used for procurement of:
 - a) Large or complex works
 - b) Custom design equipment
 - c) Design and build infrastructure
 - d) Turnkey projects
 - e) Management contracts
 - f) Industrial plant and equipment
 - g) Strategic goods
 - h) Special/specific goods such as drugs, vaccines, etc,
 - i) Special/specific services
 - j) In any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plant, specialised services, and contracts to be let under turnkey, design and build, or management contracting.
- 3) Prequalification shall be conducted in accordance with PPAD Reg. no. 28 and in accordance with the Third Schedule of the PPAD Regulation. The Procurement Unit should:
 - a) Submit the Third Schedule to the Board, or its Committees, for approval
 - b) Develop the pre-qualification notice, including scope of procurement and criteria to be used for the pre-qualification.
 - c) Advertise in the Government Gazette, and another media of wide international circulation, when the pre-qualification will include foreign bidders. (Prequalification period should be no less than fourteen (14) days.
 - d) Receive and store until the closing date
 - e) Open applications and minute the details of the submissions
 - f) Assess applications in accordance with the criteria in the prequalification notice
 - g) Develop short list of pre-qualified bidders
 - h) Follow the restricted domestic / international procedure in inviting the short listed bidders for bidding.

8.5 Emergency Procurement

- 1) In the first instance, the focal point for all emergency procurements is the Procurement Unit. Emergency procurements may require a PE to revise their procurement and asset disposal plan.
- 2) There are two distinct types of emergency procurement:
 - a) Critical Emergency Procurement: (Category 1)

(Category 1 emergency will be hand carried through the system - fast tracked)

 - i) Where an unavoidable accident, a calamity, an epidemic, or a national catastrophe has occurred, where action has to be taken immediately and where any delay may result in further and potentially more serious complications. As there is no time to undertake formal procedures, action


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is taken immediately and the payment should be made after the activity, as an approved and retrospective authorised payment. The PPADB, or its Committee's will be immediately informed and make themselves available for signature authority of official documents.

b) Emergency Procurement: (Category 2)

(Category 2 emergency is to be used for the standard type of emergency).

- i) Where, because of mitigating circumstances, such an unexpected increase in stock usage which has resulted in a reduction in normal stock levels and replenishment has to be fulfilled within one week and up to one month, or the item will be out of stock. Alternatively, where it becomes essential to procure specific goods, or services, that were not part of the original annual procurement and asset disposal plan, and are subject to the PPADB, or its Committee's approval, in accordance with PPAD Regulation 23. Then action has to be taken immediately to avoid a stock out, or to procure a specific item(s). Small quantities may be procured to augment stock until the purchase orders are due (e.g. important medical supplies). The full history and justification of the cause of the emergency *must* accompany the request for emergency procurement. (Emergency procurement is no excuse for bad management and action shall be taken against repeat offenders).
- 3) Action for a Critical Emergency Procurement (Category 1).
- a) A Critical Emergency Procurement (Category 1) is a very rare occurrence. In a Critical Emergency Procurement (Category 1) the action is classed as top priority and will be immediately fast tracked. The Procuring Specialist / Procuring Unit will immediately:
 - i) Inform the Board, or its Committees, and the Accounting Officer of action that is being taken
 - ii) Telephone, fax or email, to specific or selected Suppliers, requesting an immediate response by return,
 - iii) Obtain costs and select the most responsive Supplier as to cost, quantity and quality, and the most responsive to speed of delivery
 - iv) Prepare/assemble the Contract documents/GPO,
 - v) Call an emergency MTC/ DATC meeting or, alternatively hand-carry the Contract documents/GPO to each of the members of the Board, or its Committees, with all relevant documents, and obtain signatures of approval. ("round-robin" the documents),
 - vi) Telephone the Supplier to immediately action the order, followed by a confirmation fax or email,
 - vii) Inform the necessary departments of the action taken.
 - viii) Where applicable, arrange with the Customs Department for immediate customs clearance and of the likely time, and place of delivery/airport/border point,
 - ix) Arrange with the receiving departments, distribution services, emergency services, of the likely time, and place of delivery and arrange pickup,
 - x) Create an evaluation report and a matrix of the evaluation criteria points, if applicable, listing a breakdown of criteria and an explanation of why the decisions was taken and the Supplier selected,
 - xi) Inform the Accounts Department and the Accounting Officer of the expected and arrange for funds to be promptly paid,

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- xii) Prepare and assemble all supportive documents and present them to the Board, or its Committees, for approval and sign-off,
- xiii) Send documents for retrospective payment, with the supporting documents.
- 4) Action for an Emergency Procurement (Category 2)
 - a) An Emergency Procurement (Category 2) should only occur infrequently. Such an action has to be a genuine emergency and if is deemed to not be a genuine emergency then the request will be rejected. The Procuring Specialist/ Procuring Unit will immediately:
 - i) Prepare a brief history of the events leading up to the emergency, supported by a full justification,
 - ii) Estimate the expected cost of the procedure,
 - iii) Ensure there is funds available (certified in writing),
 - iv) Prepare the Standard Bidding Documents or RFQ's,
 - v) Either present the documents to the Board, or its Committees at the next official meeting, or
 - vi) Call an extra-ordinary meeting to obtain signatures to proceed, or round-robin the documents, by fax or email, send to specific or selected Suppliers, requesting a response by return,
 - vii) Evaluate responses and create an evaluation report and a matrix of the evaluation criteria points, when applicable,
 - viii) Prepare and assemble the Contract documents/GPO,
 - ix) Present the documents to the Board, or its Committees at the next official meeting, or call an extra-ordinary meeting to obtain signatures,
 - x) Inform the Supplier, by telephone, fax or email, requesting verification of receipt,
 - xi) Inform the necessary departments of the action taken and expected delivery date.

8.6 Open International Bidding

- 1) Open International Bidding shall be used where:
 - a) Foreign bidders' participation may enhance competition.
 - b) Anticipation by non-resident foreign bidders would increase value for money; or,
 - c) The procurement requirement's technical complexity will benefit from the participation of non-resident foreign bidders.
- 2) Tenders for open international bidding shall be open to eligible bidders and shall be advertised in the Gazette as well as publications of wide international circulation.
- 3) The language used for the open international bidding method shall be the English language.
- 4) The currency of the bids shall be any internationally tradable currency and fixed as at the date of opening of the tender

8.7 Procedure for Open International Bidding


- 1) The Procurement Entity procuring through the Open International Bidding (OIB) shall follow the procedure below:
 - a) Ensure that the item is on the annual procurement and asset disposal plan. Bad planning is not an excuse to obtain the item by emergency procurement.
 - b) Obtain signature approving availability of funds.

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- c) Prepare bidding documents and obtain bid identification number.
 - d) The Procurement Unit will develop the Specifications and/or Terms of Reference, Bills of Materials, Quantity, Quality, etc., and where appropriate with assistance of specialists, or an appointed committee.
 - e) Issue a public tender invitation.
 - f) Allow for no less than six (6) weeks from first date of advertisement for submission of bids.
 - g) Specify the date, time, place, and format for submission and opening of bids.
 - h) Establish the date on which all the currency exchanges are to be fixed so there is an equitable comparison.
 - i) Include in the bidding documents an invitation for the bidders to attend the bid opening.
 - j) Include an invitation for a site visit, where appropriate.
 - k) The bids shall be opened in public by the tender opening committee at the specified time and place.
 - l) The bids and original packages are sent to the appropriate evaluation committee, where an appointed member will keep the bids under lock and key until the committee assembles to commence its work.
- 2) After its deliberations, the Procurement Unit will prepare a report from the individual reports of the members of the Evaluation Committee, which details the points awarded for each criterion, the ranking of bidders, the strengths and weaknesses of each bidder, and a final statement which justifies the winning selection. The Procurement Unit, on behalf of the Evaluation Committee, will submit the evaluation report to the Board or its Committees for adjudication and/or award (refer to evaluation in Chapter 6, 6.13).

8.8 Open Domestic Bidding

- 1) The open domestic bidding method is the preferred method of procurement of supplies, works and services, except as provided for in the PPAD Regulations.
- 2) The currency of the bids and payment shall be Botswana Pula unless specified otherwise in the bidding documents.
- 3) Foreign bidders may participate in open domestic bidding subject to eligibility requirements.
- 4) The PPADB approved Standardised Bidding Packages for supplies, works and services, as amended from time to time, shall be used for open domestic bidding.
- 5) All Invitations to bid shall be advertised in the Government Gazette and at least one newspaper of wide circulation in Botswana.
- 6) Allow for no less than four (4) weeks from first date of the advertisement for submission of bids.
- 7) Where applicable, preferential treatment, which should be specifically stated in the bidding documents, and shall be used accordance with the applicable government directives.
- 8) Price negotiation shall not be allowed except with prior approval from PPADB, or its Committees.
- 9) When a bid validity period expires, the PE may request the Bidders to extend the bid period, but only once. Afterwards, any further extension of bid validity period shall not be allowed, without prior approval from PPADB, or its Committees.
- 10) Re-bidding shall not be allowed except with prior approval from the Board, or its Committees,

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following a written reason and justification.

8.9 Procedures for Open Domestic Bidding

- 1) A Procuring Entity should use the following procedure for procuring through open domestic bidding:
 - a) Obtain approval of items previously submitted in the yearly procurement and asset disposal plan.
 - b) Confirm availability of funds and obtain a signed docket.
 - c) Prepare bidding documents and obtain bid identification number.
 - d) The Procurement Unit will develop the Specifications and/or Terms of Reference, Bills of Materials, Quantity, Quality, etc., and where appropriate work with technical specialists, or an appointed committee.
 - e) Advertise in the Government Gazette and at least one newspaper of wide circulation in Botswana.
 - f) Allow for no less than four (4) weeks from the first date of advertisement for submission of bids.
 - g) Specify time, date, format and place for bid submission and opening.
 - h) State clearly that envelopes must be clearly marked “not to be opened until date and time of bid opening”.
 - i) Invite (in the bidding documents) bidders to attend the bid opening.
 - j) Bids shall be opened in public by the tender opening committee.
- 2) The opened bids will be kept under lock and key until the arranged transfer to the appointed Tender Evaluation Committee to evaluate the bids.
- 3) The Evaluation Committee, through the Procurement Specialist, should submit the evaluation report to the Board, or its Committees, for adjudication and/or award.
- 4) In order to ensure delivery in a timely manner the Procurement Specialist Procurement Unit shall prepare an operational schedule and proceed with the procurement process as soon as practical after receipt of procurement plans, or requisition, and notification of the availability of funds.
- 5) All open bidding shall be invited on the basis of detailed public notice and bid documents.
- 6) The solicitation documents shall be in the form of the appropriate standardised bidding documents approved by the Board.

8.10 Restricted International Bidding

- 1) Restricted International Bidding (RIB) is subject to PPAD Reg. 57 (1) which requires that RIB be used only where:
 - a) Items to be procured are only available from a limited number of suppliers.
 - b) There is insufficient time for open bidding due to an emergency situation
 - c) The value does not exceed the threshold stated in the guidelines
 - d) Other circumstances where departure from opening bidding is justified
 - e) Foreign bidders are included in the short list
- 2) Prior written authority must be sought from the PPADB, or its Committees to follow the RIB procedure.
- 3) The invitation to bid is addressed directly to a limited number of potential bidders, without publicly advertising the opportunity.


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8.11 Restricted Domestic Bidding


- 1) Restricted Domestic Bidding (RDB) is used subject to PPAD Reg. 58 (1) which requires that RDB be used only where:
 - a) Items to be procured are only available from a limited number of suppliers.
 - b) There is insufficient time for open bidding due to an emergency situation
 - c) Other circumstances where departure from opening bidding is justified
 - d) Prior written authority must be sought from the PPADB, or its Committees to follow the RDB procedure.
- 2) The invitation to bid is addressed directly to a limited number of potential bidders, without publicly advertising the opportunity.
 - a) A procuring entity shall use the following procedure for procuring through restricted bidding:
 - b) Ensure that the item is on the yearly procurement and asset disposal plan. Obtain approval. (Bad planning is not tolerated and is not an excuse to obtain an item by emergency, waiver, or restricted procurement).
 - c) Obtain signature approving availability of funds.
 - d) Prepare bidding documents and obtain bid identification number.
 - e) The Procurement Unit will develop the Specifications and/or Terms of Reference, Bills of Materials, Quantity, Quality, etc., and were appropriate work with technical specialists such as the Engineering Department, or an appointed committee.
 - f) Invite short-listed bidders directly without advertising.
 - g) Allow for at least two (2) weeks for submission of bids.
 - h) Specify the time, date, format and place for bid submission and opening.
 - i) State clearly that the envelope(s) must be clearly marked “Not to be opened until the appointed date and time of bid opening”.
 - j) Invite bidders, in the bidding document, to attend the bid opening.
 - k) The bids shall be opened in public by the Bid Opening Committee.
 - l) The bids will be examined for integrity.
- 3) Late bids will be rejected.
- 4) The Procuring Unit will store the bids under lock and key until required by the Tender Evaluation Committee.
- 5) The Procurement Unit shall prepare and submit the evaluation report to the Board or its Committees, for adjudication.

8.12 Quotation Proposals Procurement

- 1) Quotation proposals procurement shall be used for acquiring supplies, works or services of a value not exceeding a set threshold, as may be reviewed from time to time.
- 2) Quotations proposals procurement proposals shall be in accordance with PPAD Regulation 59 (1) which requires that this method be used where:
 - a) There is insufficient time for open or restricted bidding due to an emergency situation
 - b) The value does not exceed the threshold stated in the guidelines
 - c) Other circumstances where departure from opening or restricted bidding is justified

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- 3) Requests for Quotation (RFQ) shall be solicited from at least five (5) suppliers (PPAD Reg. 59 (3)), though there is no restriction on the number of quotations that may be obtained. There are exceptions for Foreign Missions and those in remote/ rural areas where it may be difficult to obtain the minimum of the 5 potential Suppliers. In such a case, the action should be fully documented with an explanation and justification, and appropriately signed. For audit purposes, the explanation will be kept in the associated procurement file.
- 4) Invitation for quotations shall be in writing and will indicate the description/ specification and quantity of the supplies, works or services, as well as the closing date, time, and location address for submission of the quotations.
- 5) The minimum time allowed for the Bidders to respond to an RFQ is 7 days. (This is often found to be inadequate, tends to be restrictive and a barrier to competitive bidding. Where possible allow 14 days).
- 6) Generic specifications can normally be established very easily, from a variety of sources.
- 7) Any suitable Supplier may obtain an RFQ by:
 - a) Collecting the RFQ from the procuring entity
 - b) Be sent the RFQ by mail or courier services
 - c) Be sent the RFQ by Fax
 - d) By email, with attachment of an electronic RFQ
 - e) By downloading an RFQ form from the Procuring Entity website.
- 8) RFQ's vary considerably in size and in content. They may vary from only a few pages to considerably larger ones, which may contain attachments, plans, detailed specifications, bills of materials or bills of quantities etc.
- 9) Procurement following award of bid in response to an RFQ is implemented by the issue of a Purchase Order raised by the Procurement Unit. Each purchase order will have a unique and sequential number.
- 10) Each RFQ will contain the following information:
 - a) The RFQ number (normally the year and a sequential number) which is to be used on all enquiries and on any reply envelopes
 - b) Contact persons' name in the contracting authority, location, department, telephone number, fax number, email address etc. The contact person should be a member of the Procurement Unit
 - c) Date and time of closing of the quotation. The submission must be received before the closing date and time
 - d) Opening of the quotations by a Committee. As RFQ's are generally low procurement value, the committee is normally composed of members of the Procurement Unit. Originating Department representatives and other departments can be invited to participate
 - e) Name and address of the potential vendor will be included. If the vendor has its own vendor number, then include this Business Registration Number
 - f) The bid return address is where the vendor should mail, courier mail, deliver by hand, fax or email the RFQ (if allowed) before the closing time and date.
 - g) Fax or emails may not be allowed if there has to be submission of plans, diskettes, samples, catalogues etc.
 - h) The delivery address is the location where the goods, services, works, activities etc., are to be delivered. (Locations may be more than one)

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- i) Delivery date is the date by which the end user should receive the goods
 - j) The general description of the requirement, or the project title
 - k) Item number refers to a stock code number or specific identifying reference number
 - l) Quantity is the number of units of the item that is required, or the number, or frequency of services to be provided
 - m) The unit of purchase shall be included (volume, weight, pack size e.g. 12/box, etc.).
 - n) The unit cost is the price of the unit of purchase described. It should be provided for each line in the RFQ. Should there be any mathematical differences between the unit price, the extended price and the total price, then this must be questioned and the answer received in writing, fax or email
 - o) The unit costs should be as the basic unit cost. Any taxes, customs duties, discounts etc., should be kept apart from and not included in the final unit price. Such information should be added into the sub-totals and then the total costs of each item accrued together
 - p) The item description should fully describe the item, service or works required
 - q) The quality standards required, which will include a clear and unambiguous generic specification and description of the item, and where necessary quoting the specification/quality reference number and the name of the standards body to which it refers (Some specifications are very detailed and may refer to Botswana National standards, SADC, European or International standards)
 - r) The length of time of the contract
 - s) Special conditions are optional. They may refer to the RFQ as a whole, or to individual line items. They may set out certain terms and conditions such as specials discounts, reference to attachments that give fuller descriptions, special delivery instructions, special packaging or marks, frequency of payments, storage temperatures, environmental conditions, health and safety considerations etc.).
 - t) The extended price is the unit price multiplied by the required quantity
 - u) The total price will include all the sub-total prices and all additions, or discounts allowed.
 - v) There should be a signature box where an authorised official of the vendor should sign and stamp that the details are correct. Any unsigned quotations will not be considered.
- 11) Instructions and conditions are related to the type of information the vendor must supply, how the reply should be prepared, delivery and packaging, complaints procedure, any documents samples or evidences to be produced.
- 12) Templates for standard RFQ and variations for supplies and services are available for downloading from the PPADB website.

8.13 Direct Procurement (Single Source)

- a) Direct Procurement relates to a situation where goods, works or services are available from only one source. The request to use this method of procurement must be accompanied by a convincing justification, and where appropriate, the cost benefits. [Regulation 61 (1) (b)].
- b) Direct Procurement may be used where one supplier is selected without competition such as where:-
 - i) The procurement of item(s) is of proprietary nature.

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- ii) There is only one supplier for the supplies, works or services.
- iii) Extension of existing Supplies, Works or Services contract is deemed the most economical procedure.
- iv) Where an emergency situation exists, and there is insufficient time for any other procurement methods.
- v) Additional quantities are required for continuity, or to be compatible with existing supplies, works or services, and the prices for the additional quantities are deemed reasonable.
- vi) There is justification against the use of any other procurement method.
- c) The use of the direct procurement method (single sourcing) shall require prior written approval of the PPADB, or its Committees
- d) Where appropriate, obtain a sole source, or agency letter, which verifies the sole source claim.

8.14 Procedures for Direct Procurement (Single Source)

- 1) A procuring entity should use the following procedure for procuring through direct procurement:
 - a) Written approval must first be obtained from the PPADB, its Committees.
 - b) Develop specifications, quality and quantity.
 - c) Formally communicate the requirements to the potential supplier. The bidder should be given a reasonable time to respond to the requirements.
 - d) The Procurement Unit will receive and open the bid.
- 2) Constitute and evaluation committee to evaluate the bids.
- 3) The evaluation committee should submit the evaluation report to the appropriate Board, or its Committees, for adjudication and/or award.

8.15 Thresholds for procurement methods

- 1) The Board shall from time to time review thresholds for procurement methods in order to improve efficiency in the public procurement and asset disposal system
- 2) All procuring entities and Board Committees are to adhere to the set thresholds.


8.16 Expression of Interest

An Expression of Interest (EOI) may be used under the Open Domestic Bidding or Open International Bidding method, to obtain a shortlist of bidders who have the proven capability and resources to perform the contract satisfactorily. The EOI may be used where the goods or services to be procured are highly complex and require detailed design; where there is an unlimited number of service providers capable; or providing the goods or services to be procured, or where there is justification for the use of the EOI.

8.17 Procedure for Expression of Interest:


A procuring entity shall use the following procedure for EOI:

- a. A written approval must first be obtained from the PPADB or its Committees.
- b. Develop specifications, quality and quantity of the goods or services to be procured, and

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clearly indicate the criteria for evaluation of the EOI..

- c. Advertise an EOI Notice to potential service providers in at least one print media nationally of daily wide circulation, and where necessary, one print media of international wide circulation (for international tenders).
 - d. Potential service providers should be given a reasonable time to respond to the Expression of Interest, not less that fourteen (14) days from date of publication.
 - e. The letter of invitation shall contain a Request for Proposals [RFP] and Terms of Reference in line with Part VIII of the PPAD Regulations.
 - f. State clearly that the envelope(s) must be clearly marked “Not to be opened until the appointed date and time of bid opening”.
 - g. The Procurement Unit will receive and open the bids in public.
 - h. Late bids will be rejected.
- 2) The Procuring Unit will store the bids under lock and key until required by the Tender Evaluation Committee.
 - 3) Constitute an evaluation committee to evaluate the EOIs.
 - 4) The Procurement Unit shall prepare and submit the evaluation report to the Board or its Committees, for adjudication and/or approval of the recommended contractors.
 - 5) The Procurement Unit shall adhere to the requirements set out under Part III of the PPAD Regulations (See PPAD Regulation 28).

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Chapter 9. Procurement of Services, Supplies and Works

9.1 Introduction

- 1) There are three main categories of procurement activities that a procuring Entity (PE) when considering to enter into a contract with a supplier of Goods and /or provider of services. The choice of the type of procurement method depends on the category and nature of the items or services that needs to be procured based on the statement of requirements (Specifications and /or terms of reference) stated in the Bidding Documents.
- 2) The procurement process would normally include:
 - a) Preparation of an Annual Procurement Plan;
 - b) Preparation of a Bidding Document for each procurement activity;
 - c) Tendering; Advertising; Bidding; Receiving and Opening Bids, Selection of Suppliers and Items to be procured; Adjudication and Award of Tenders; Contract Placement and management;
 - d) Preparation and Submission of End-of-Activity Report for each procurement activity.
- 3) The categories of procurement activities are described in the following sub-sections.

9.1.1 Procurement of Services:


- 1) This activity refers to the acquisition of services that facilitate or create change; may be the provision of skills or knowledge with or without the provision of accompanying management services:
 - a) General Services: may include: Gardening, Pest Control, Security Guards or Patrols, Waste Collection or Removals, Catering, Cleaning, Collection and Delivery of Goods.
 - b) Consultancy Services (Generally classified as the provision of intellectual skills) may include Advisory, Studies, Design, Institutional Training and Professional.
- 2) The Statement of Requirement for the provision of services will generally be in the form of Terms of Reference (TOR).

9.1.2 Procurement of Supplies

- 1) This activity refers to the acquisition of physical items (goods, raw materials, products, equipment or objects of any kind and description in solid, liquid or gaseous form or articles) by transferring ownership from the Supplier to the Procuring Entity, as well as services incidental to the provision of such supplies (as explained in the PPAD Act).
- 2) The Statement of Requirements for the supply of Goods will generally be in the form of Item Specifications, which could be functional, technical and /or performance based.

9.1.3 Procurement of Works

- 1) This activity refers to the construction, demolition and /or Refurbishment of existing physical structures (Buildings or Roads). In this manual, works shall mean general construction works and works related consultancy services:
 - a) General Construction Works includes: Building; Civil Engineering; Water Engineering; Roads Ancillary; Civil Aviation; Electrical; Mechanical; Drilling and Fencing Works.

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- b) Related Consultancy Services Include: Architectural; Quantity Surveying; Civil Aviation; Electrical; Mechanical; Civil; Structural and Geological Engineering Services.

9.2 Procurement methods


- 1) The methods of procurement described in this chapter are applicable to the procurement of supplies, works and services and shall be used within the parameters of the PPAD Act, Regulations and Government Directives as pronounced from time to time. The procurement of Services, Supplies and Works shall be based on the following Competitive Bidding methods as outlined under PPAD Regulations 55 – 61:
 - a) Open Domestic Bidding;
 - b) Open International Bidding;
 - c) Restricted Domestic Bidding;
 - d) Restricted International Bidding;
 - e) Direct Appointment;
 - f) Quotations Proposal Procurement;
 - g) Micro Procurement.
- 2) In Botswana, the default procurement method is the Open Domestic Bidding, and where this method is not used and the estimated cost of the procurement activity is not within the Quotations Proposal Procurement financial threshold, a waiver should be obtained from the adjudicating authority providing valid reasons for the diversion.

9.2.1 Competitive Bidding

- 1) Open competitive bidding is the preferred procurement method as it invites all eligible bidders to take part, and ensures equal opportunity and promotes efficiency in the procurement in the procurement process. However, Reservation and Price Preference Schemes for citizen companies as per Presidential Directive Cab 22(a)/2001 shall be taken into consideration and in accordance with PPAD Act Section 72 as amended. Competitive bidding can either be Open Competitive or Restricted Competitive Bidding. In both cases there will be more than one bidder invited to submit their offers.
- 2) When procurement is through a restrictive method, a reasonable number of firms shall be shortlisted and invited to submit bids. A waiver shall be obtained from the adjudicating authority prior to inviting such shortlisted companies. The invitation letter shall be directed only to those shortlisted. The short list may be obtained from the PPADB database, by contacting those with information on relevant Suppliers or Service Providers and /or through an expression of interest.

9.2.2 Statement of Requirements

- 1) The Statement of Requirements is very important in the tendering process and therefore should contain all relevant information.
- 2) The Statement of Requirements:
 - a) advises Bidders on the intentions, aims and ideas of the Procuring Entity;

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- b) defines assignment objectives and available data;
 - c) scope of works;
 - d) client's input, and
 - e) what is expected of the bidder.
- 3) The successfulness of the assignment depends largely on how well these requirements have been drafted.
 - 4) The Statement of Requirements should, therefore be very clear, unambiguous and contain precise description of requirements; and contain sufficient information to assist the bidder to submit a responsive bid.
 - 5) The statement of requirements should generally be included in the bid documents.

9.2.2.1 Terms of Reference


- 1) A number of above items have been discussed under different topics of this manual.
- 2) The Terms of Reference (TOR) are important and advise the Bidders of the ideas, aims and intentions of the Procuring Entity and as such shall include:
 - a) Background, history and objectives of the assignment;
 - b) List of specific tasks to be performed;
 - c) Required minimum expertise and resources;
 - d) Standards to be followed, e.g. National or International, Relevant Industrial standards, etc
 - e) Methods;
 - f) Deliverables;
 - g) Reporting lines; and
 - h) Duration.
- 3) Bidders are normally requested to make comments and/or suggestions of possible improvements on the terms of reference, where it is appropriate.

9.2.2.2 Item Specifications

- 1) When developing Item Specifications, care must be taken not to describe a particular brand, and at the same time they should be able to ensure that bidders quote for acceptable quality items. National or International quality standards shall be used to specify the required items and, where practicable, Item Specifications must be given as a range to allow options from different suppliers.
- 2) The submission of samples and item catalogues/brochures can also be required from Bidders in order to facilitate the evaluation process.

9.2.3 Open Bidding

- 1) Open Domestic Bidding is the default method for all procurement activities including supplies. This method ensures economy, efficiency and equal opportunity for all bidders. Where a different method other than the Open Domestic Bidding is intended to be used, the Procuring Entity shall obtain an authority to depart from this default method.
- 2) The invitation to tender is published in the Government Gazette and where necessary any other

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media of wide circulation targeting the particular industry. Where Open International Bidding is used, the invitation to tender should be published in media of wide circulation in other countries.


- 3) The selection (evaluation) method shall be Least Cost Based Selection method, and where there is a need to use any other method, such a method must be approved by the Board or its committees.

9.2.4 Restricted Competitive Bidding

- 1) The Restricted Competitive bidding method involves inviting a limited number of service providers to compete by submitting their bids or proposals. The selection may either be through Short-Listing or expression of Interest.
 - a) Short-listing
 - i) When selecting procuring works or consultancy services through a short list firms shall be invited to submit technical and financial proposals.
 - ii) The short list maybe drawn from the PPADB database, or by contacting those with information on relevant consultants.
 - iii) The processes shall require approval from PPADB, or its Committees
 - b) Expression of Interest
 - i) An Expression of Interest (EOI) shall be used for very large contracts.
 - ii) The EOI shall be advertised in at least one print media of national daily wide circulation and one print media of international wide circulation for international tenders. The advertisement shall state a brief outline of the assignment and invite interested consultants to be considered for short listing to submit the required information.
- 2) The short-listed companies shall be directly invited to submit proposals. The letter of invitation shall contain a Request for Proposals [RFP] and Terms of Reference in line with Part VIII of the PPAD Regulations.

9.2.5 Direct Procurement or Single Sourcing

- 1) Direct Procurement (Single Source or direct appointment or direct negotiations) is not a preferred method as it does not provide the benefits of competition with regard to quality and cost. There must be a pre-amble and a verifiable statement which clarifies the need to use this type of method and requests for a waiver from open bidding with justification in line with PPAD Regulation 61.
- 2) Direct procurement or Single Sourcing should be used only in exceptional cases, where:
 - a) It presents a clear advantage over competition and specifically in the following instances;
 - b) It is essential to procure additional services from the original firm, or Consultant to ensure continuity of work;
 - c) The requirements are not available from other sources, but only one qualified source);
 - d) There is an emergency or national disaster situation, and there is not enough time to use any other procurement method.
 - e) The Board or its committee has authorised the use of the method, with a pre-amble and a verifiable statement which clarifies the need to use this type of method.

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9.2.6 Emergency Procurement


- 1) Emergency Procurement is a very rare occurrence that, because of mitigating circumstances and often no time to undertake formal actions, will require having to revise the Procurement and Asset Disposal Plan. Action for an Emergency Procurement, the Procuring Unit will immediately:
 - a) Inform the Board or its Committees and the Accounting Officer of action that is being taken;
 - b) Telephone, fax or email, to specific or selected Suppliers, requesting an immediate response by return;
 - c) Obtain costs and select the most responsive Supplier as to cost, quantity and quality, and the most responsive to speed of delivery;
 - d) Prepare, assemble Contract Documents or Government Purchase Order (GPO);
 - e) Call an emergency Board or its Committee meeting or, alternatively "round-robin" the Contract Documents to each of the members of the Board or its Committee, with all relevant documents, to obtain signatures of approval;
 - f) Telephone the Supplier to immediately action the order, followed by a confirmation fax or email;
 - g) Inform the necessary departments of the action taken;
 - h) Where applicable, arrange with the Customs Department for immediate customs clearance and of the likely time, and place of delivery/airport/border point,
 - i) Arrange with the receiving departments, distribution services, emergency services, of the likely time, and place of delivery and arrange pickup,
 - j) Create an evaluation report and a matrix of the evaluation criteria points, if applicable, listing a breakdown of criteria and an explanation of why the decisions was taken and the Supplier selected,
 - k) Inform the Accounts Department and the Accounting Officer of the expected and arrange for funds to be promptly paid,
 - l) Prepare and assemble all supportive documents and present them to the Board, or its Committees, for approval and sign-off,
 - m) Send documents for retrospective payment, with the supporting documents.
- 2) When using any procurement method, the Procuring Entity (PE) must follow the normal procurement procedure as specified in the PPAD Regulations.

9.3 Two Stage Procurement process

- 1) The two stage procurement process may be conducted when the procurement activity:
 - a) is large and /or complex for procurement of Services, Supplies or Works involve an expression of interest and /or pre-qualification exercise; and
 - b) in which the high costs of preparing detailed bids could discourage competition;

9.3.1 Expression of Interest

- 1.1. An Expression of Interest (EOI) shall be used for very large contracts and advertised in at least one print media of national daily wide circulation and one print media of international wide circulation for international tenders. The advertisement shall state a brief outline of the assignment and invite interested consultants to be considered for short listing to submit the required information. The short-listed companies shall be directly invited to submit proposals. The

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letter of invitation shall contain a Request for Proposals [RFP] and Terms of Reference in line with Part VIII of the PPAD Regulations.

- 1.2. To obtain expressions of interest the assignments will be advertised in the national media with a brief description of the Statement of Requirements and duration of the assignment.

9.3.2 Pre-Qualification

- 2.1. Pre-qualification may be conducted prior to the issue of an invitation to tender mainly to identify potential suppliers who are qualified to deliver the required supplies, works or services.

9.3.3 Short Listing


- 1) When short listing, the Procuring Entity shall invite a minimum of five (5) firms to submit technical and financial proposals, which may be drawn from the PPADB database, by contacting those with information on appropriate firms and /or through an expression of interest.

9.3.4 Cost Estimates: Budgeting

- 1) Following the development of the Statement of Requirements, the Procuring Entity shall estimate the costs of the assignment by factoring in the cost of staff, office accommodation, operating costs, transportation disbursements and the costs for undertaking tests or obtaining samples. The cost estimate will be used as the basis for determining the availability of funding and the procurement method to be followed.
- 2) Comparative costs can be obtained from other Procurement Units, studying of the current market or through historic information.

9.3.5 Company Data Bank

- 1) The PPADB shall keep an up to date database of all companies / firms wishing to do business with the Botswana Government and registered with the Board. The registered firms must be licensed or incorporated under the relevant laws of Botswana. A file shall be opened for each firm to facilitate the monitoring of their performance on contracts. The Procuring Entity:
 - a) shall keep a file, for firms that do business with them;
 - b) will assess the performance of Suppliers and Service provider that they do business with;
 - c) may take action as may be permitted by the law or under the signed contract including de-listing, if the Supplier or Service Provider fails to deliver as per the agreement; on time, deliver sub-standard or poor quality Goods that are not in accordance with their contract and Scope of Supplies.
- 2) Contracts shall be concluded within the agreed lead times as would have been stated in the tender offer or in the signed contract. Where contractors fail to meet their obligations, penalties stated in the contract shall be applied accordingly.
- 3) A file, on the performance of each contract, will include a mandatory "End of Activity Report" that shall be submitted to the adjudicating authority at the end of the contract. An interim activity or performance report may be prepared where necessary.

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- 4) Procurement of consultancy services may include selection of individual consultants. The selection of individual consultants shall be on the basis of their qualifications for the specific assignment by comparing qualifications, experience, and /or using references on past performance as per PPAD Regulation 48.
- 5) Terms of Reference (TOR) will be prepared for individual assignments.
- 6) The registration of individual contractor shall be reviewed biennially and upgraded or strike off the firm from the register if non-active.

9.3.6 Bid Submission

- 1) Bidders shall be allowed adequate time to prepare and submit proposals. The bidding period shall depend on the nature of the assignment and the deadline for submission of proposals shall be stated in the ITT. The Procurement Unit may extend the deadline for submission of proposals, before the closing date, only where there is sound justification to do so. The minimum time allowed shall be as per PPAD Regulation 33(2).
- 2) After the deadline for submission of proposals no amendments to the technical or financial proposals shall be allowed.

9.4 Selection methods

- 1) Evaluation process is often determined by the submission system; whether it is a single or a two envelope system. The ITT shall state the PE goals and objectives to enter into a contract, the source of the funds, the background and the nature of the contract, the mode of submission of proposals, and the date by which requirements should have been delivered.
- 2) For the two envelope system:
 - a) The technical and financial proposals shall be submitted in separate sealed envelopes clearly labelled technical and financial proposal respectively and enclosed in an outer large envelope. The two envelopes shall indicate the tender identification details, name and address of the Bidder while the outer envelope shall only indicate the tender details.
 - b) The evaluation will start with the technical proposal and secondly the financial proposal after the Boards authority to open and evaluate the financial proposals. The criteria used, to determine which financial proposals to open and evaluate shall be stated in the ITT. The bids that fail to acquire the specified minimum technical requirements shall be eliminated from further evaluation and possible recommendation for award of the tender. Their financial proposals will, therefore, be returned to them unopened.
 - c) The financial proposals for those bids that meet the specified minimum technical requirements will be publicly opened, after the Board's approval that they should be opened. Short listed bidders shall be invited at least two (2) weeks (international), or one (1) week (local), prior to the opening of the financial proposals and the proposals ranked according to the quoted prices. The total combined score shall be arrived at by adding together the weighted score for both quality and cost. The weight assigned to the cost and price shall be determined by the relative importance of quality in the assignment and may be up to 30 points. Note that the PPADB does have the power to change the point ratings.

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- 3) At the time of opening, only the envelope containing the technical proposal is opened. The opened bids are then collected by the procuring entity for evaluation.
- 4) The criteria to be used under technical evaluation and the indicative weights are shown in the following table. The weights may be adjusted to suite a specific procurement:

Table 6 Suggested technical evaluation weightings

Specific experience	10
Adequacy of methodology / work plan	0 - 50
Key staff qualifications	0 - 60
Transfer of knowledge	10
Total points	00


- 5) For a single envelope system, both technical and financial bids are submitted in a single envelope but separately marked. The technical proposals are evaluated first but there is no need for the Board's authority to evaluate the financial proposals.

9.4.1 Least Cost Based Selection

- 1) In the Least Cost based Selection (LCBS) method, a high emphasis is put on both the quality and cost. The method is used where the assignment is of a standard or routine nature. For works and supplies bids will not be scored under this method while for services the relative weights are given to both quality and cost depending on the nature of the required service.

9.4.2 Fixed Budget Selection

- 1) Under the Fixed Budget Selection method, the Procuring Entity must indicate the available budget and invite Bidders to submit the best technical offer within the stated budget. The method is used where assignments are simple and can be precisely defined and when the budget is fixed.
- 2) Therefore, the Statement of Requirements should be well prepared to make sure that the budget is sufficient for the Bidders to perform the expected tasks.
- 3) Technical proposals shall be evaluation first, as per in the two envelope system, then the price comparison. Bids with the financial proposals exceeding the indicated budget shall be rejected. Therefore, the Bidder who submitted the highest ranked technical proposal, within budget, will be recommended for award of the tender.

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9.4.3 Quality Based Selection

- 1) Under the Quality Based Selection (QBS) method, quality is the determining factor. This selection method may be used where:
 - a) the assignment is of complex or highly specialised nature;
 - b) it is difficult to precisely state the Statement of Requirements but requires the best in the field; and/ or
 - c) there are many ways to do the assignment.
- 2) There shall be minimum technical requirements to pass. The bid with the highest score above the required minimum technical requirements shall be recommended for the award.

9.4.4 Award of Contract and Negotiations


- a) PPAD Reg. 51 outlines the procedure for negotiations for Restricted and Quotations Bidding methods, and PPAD Regulation 52 gives guidance for negotiations under Direct Appointment method.
- b) The contract may be awarded subject to the successful contract negotiations. After the award and signing of the contract the Procurement Unit shall, as soon as is practical, notify other Bidders that they were unsuccessful and citing the reasons why they were not successful.
- c) No negotiations may be held with any bidder that has tendered a bid under:-
 - i) Open bidding,
 - ii) Restricted bidding, or
 - iii) Quotations procurement until the preferred bidder has been selected.
- d) Once selected and only after the approval of the negotiation document by the Board, or its committees, may negotiations begin (PPAD Reg. 51 sec. (2)). (See also suggested negotiation topics Chapter 6).

9.4.5 Performance Rating


- 1) The Procuring Entity will assess the performance of the contractor and make recommendations to the Board for action as may be permitted by the law or under the contract including suspension or de-listing if the contractor fails to deliver on time, delivers sub-standard or poor quality work not in accordance with their contracts and Terms of Reference.

9.5 Conflict of Interest

- 1) The General Conditions of Contract should outline the possible conflict of interests that may be encountered in the supply of Goods and/ or provision of services. Firms or individual should, therefore:
 - a) Represent the interests of the Client without any consideration for the possibility of future work;
 - b) Not be involved, either directly or indirectly, in professional or commercial activities, which would be in conflict with their current contract and/ or other individual assignments;
 - c) Not be engaged in other work that is compatible with the work for which they are making proposals;

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- d) Not be associated with suppliers of goods, or works, for the contract that they are preparing, or providing assistance to;
- e) Not be involved in two different components of the project that would have conflicting objectives.

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Chapter 10. Disposal guidelines

10.1 Authority of the guidelines


- 1) These Guidelines are designed to assist the Procuring Entities to dispose of their surplus goods and equipment and other assets, in an efficient, consistent, equitable and accountable manner (PPAD Regulations, Part XI 98 to 138).
- 2) Assets are obtained as a result of the expenditure of public funds in the acquisition of Goods, Works and Services, or those supplied through Donor assistance. Where assets (stores, property, infrastructure, plant, equipment or other) become unserviceable due to fair wear and tear, or due to changing circumstances, become obsolete, or surplus, the persons responsible for the management of assets shall, instigate disposal and in conjunction with the Procurement Unit, prepare a technical report which states the condition of the item, the justification for disposal and suggested method of disposal (see 10.7.7below).

10.2 Definitions and Acronyms

- 1) Words and terms are defined as per PPAD Act and PPAD Regulations.
 - a) AO: Accounting Officer
 - b) CECA: Corruption and Economic Crime Act 1994
 - c) DE: Disposing Entity
 - d) DATC: District Administration Tender Committee
 - e) MTC: Ministerial Tender Committee
 - f) PPAD Act: Public Procurement and Asset Disposal Act 2001
 - g) PPADR: Public Procurement and Asset Disposal Regulations 2006

10.3 Overview and Scope

- 1) The Public Procurement and Asset Disposal Act 2001 (PPAD Act) and Public Procurement and Asset Disposal Regulations (PPAD Regulations) of 2006 together with Treaties or Agreements to which Botswana is a party provide the authority and direction in the disposal of public assets. The Act is administered by the Public Procurement and Asset Disposal Board (PPADB) which has the authority to delegate its power as per Section 61-65 within the set financial ceilings to its Committees.
- 2) In addition, the PPADB establishes thresholds for the disposal of surplus or obsolete assets which guides as to where disposing entities ought to submit their disposal requests where it may be to the PPADB, Ministerial Tender Committees and District Administration Tender Committees as per PPAD Act 65. This is reviewed biennially.
- 3) The purpose of this guideline is to:
 - a) describe the process required which will ensure that public assets are disposed of in an effective and efficient manner taking into account the principles of aggregation of disposal activities and items, competition, fair and equitable treatment, accountability and transparency, integrity (probity), fairness of and public confidence in the disposal process.

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- b) Achieve uniformity and consistency in the observance of public disposal law.
- c) Provide a practical guide on how to dispose of public assets.
- d) These guidelines apply to all assets of the central Government in accordance with Section 3 of the PPAD Act, whether located in Botswana or outside. However the guidelines shall not apply to public assets which are subject to the provisions of the Public Enterprises Evaluation and Privatization Agency. It is to be noted that no exception is made in the Act whether the disposal of the assets is part of the core business of the disposing entity such as land allocation by Land Boards and Department of Lands or issuing of mining licences by the Department of Mines.
- e) The guidelines are to be followed by all employees of the central Government who are involved in the identification, replacement planning, approval and management of disposal.
- f) The implementation of this guideline will ensure that public assets are effectively managed when they reach end of life and reduces the level of risk as much as is possible whilst adhering to the Disposal Regulations and asset specific guidelines.

10.4 Roles and Responsibilities

- 1) **Accounting Officer** - Accountability for disposal of assets rests with the Accounting Officer of a disposing entity, who shall constitute the procurement unit staffed at appropriate level and appoint the evaluation committee where appropriate to undertake the same. This is generally the Permanent Secretary or any other designated accounting officer of a disposing entity. Furthermore the Accounting Officer or an officer authorized by the Accounting Officer shall approve the commencement of disposal proceedings.
- 2) **The PPADB** - The Board is to:
 - a) Ensure that all public procurement and asset disposal entities, in making their decisions, take into account the principles as described in Section 26.
 - b) Ensure that procuring and disposing entities comply fully with all the provisions of the Act.
 - c) Advise all procuring and disposing entities on all aspects of disposal management and the application of the provisions of the Act.
 - d) Adopt, circulate and amend where necessary public assets disposal bidding packages which shall be used on mandatory basis by all procuring and disposing entities.
 - e) Examine instructions and conditions of contract in each bidding package prior to the issuing of a notice and ensure that the instructions and conditions of contract are congruent with the Act.
 - f) Adjudicate bid recommendation and award those bids (s. 37 and other requests for derogations s.6 & 31 but s.43 not to waive good practices).

10.4.1 Ministerial Tender Committees (MTCs) and District Tender Committees (DATCs)

- 1) Ensure that all public procurement and asset disposal entities, in making their decisions, take into account the principles as described in Section 26.
- 2) Ensure that procuring and disposing entities comply fully with all the provisions of the Act.
- 3) Advise all procuring and disposing entities on all aspects of disposal management and the application of the provisions of the Act.

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- 4) Ensure that disposing entities use on mandatory basis public assets disposal bidding packages where the Board has issued them.
- 5) Examine instructions and conditions of contract in each bidding package prior to the issuing of a notice and ensure that the instructions and conditions of contract are congruent with the Act.
- 6) Adjudicate bid recommendation and award those bids (s. 37 and other requests for derogations s.6 & 31 but s.43 not to waive good practices).
- 7) Submit monthly adjudication statistics on asset disposal to the Board.

10.4.2 Disposing Entities through their Procurement Units are to:

- 1) Plan and manage disposal activities of the PE;
- 2) Submit annual disposal plans to DATC, MTC and PPADB as part of the annual procurement and asset disposal plan for the PE;
- 3) Recommend disposal procedures to the PE;
- 4) Initiate disposal requirements and obtain valuation of the assets to use for setting the reserve price where appropriate;
- 5) Prepare disposal documentation with contracts and select method;
- 6) Advertise disposal tender opportunities;
- 7) Receive, record, evaluate the bids and submit evaluation report;
- 8) Engage an auctioneer, where necessary;
- 9) Administer/manage disposal contracts once placed;
- 10) Maintain records on disposal proceedings;
- 11) Prepare end of activity reports;
- 12) Prepare and submit quarterly and annual disposal reports for performance monitoring and PPADB annual performance report.

10.5 Asset Recognition


- 1) **Asset Definition** - An asset shall mean any resource controlled by a procuring and disposing entity from which the entity expects to derive economic benefits or 'service potential', that is, use for service delivery to the general public over a period of time. Assets can take a variety of forms such as financial, physical, intangible, movable or immovable. Whatever the form an asset takes there are generally two guiding features which determine what constitutes an asset. It will:
 - a) have a value, and;
 - b) provide benefits from its use over the period of its useful life, that is, 'service potential' or economic benefit.
- 2) **Asset Types.** The guideline covers the following types of assets as per Section 3(d) of the PPAD Act:
 - a) Physical Properties (Buildings & Infrastructure)
 - b) Land
 - c) Plant and Equipment (Engines, ICT, etc)
 - d) Financial instruments (Shares, stock, bonds etc)
 - e) Intellectual and Proprietary Rights
 - f) Goodwill and any rights of State

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- g) Items acquired through works, **services, supplies contracts** or by any means
- 3) **Asset Classes.** Generally assets can be classified as follows:
- Non-current assets (fixed) and current - Current** have short life due to inherent feature (e.g. perishable goods) or will be converted into cash, another asset or consumed within the entity in a short timeframe usually 12 months (e.g. inventory, debtors, deposits, raw materials etc). **Fixed** have extended useful life greater than one year. This may reflect their physical life (e.g. motor vehicle) in the case of tangible assets or their legal life (e.g. patent) in the case of intangible assets.
 - Tangible and intangible assets - Tangible** assets are physical in nature. These are assets that one can touch and feel and can be either current or non-current. All tangible assets are either movable or immovable. **Intangible** assets are trademarks, licenses (e.g. fishing or exploration licenses) and/or the legally enforceable rights associated with copyright and patents. Assets belonging to the category ‘intangible’ do not have a physical form.
 - Movable and immovable - Movable** assets can be moved (e.g. machinery, equipment, vehicles, aircraft, engines and motors) All inventories and valuables and most non-current assets belong to this category. **Immovable** consist of tangible assets namely land, subsoil assets, and water resources and fixed structures such as bridges, houses, offices, roads, etc.
 - Primary and Secondary Assets** - Assets with components each of which can be considered as a unique asset in its own right, but related to others. *Example:* Desktop personal computer, the monitor, CPU and perhaps keyboard might be valuable enough to require their separate registration in the asset system. **Primary** asset will be the CPU with the other peripherals registered as linked ‘secondary assets’. **Secondary** assets can have a different depreciation method, useful life and depreciation rate from the primary assets
- 4) See an example of the classification of assets below.


Table 7 Example of assets classification

Movable	Immovable	Intangible
Equipment	Land	Computer Software
Machinery	Buildings	Trademarks
Supplies such as Furniture, drugs	Infrastructure	Licenses & Patents
Computer Hardware	Heritage assets	Capitalised Development costs
Transport assets	Mineral & other Resources	Bonds, shares and stocks

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10.6 Asset Disposal Guiding Principles

- 1) **Rationale for Disposal.** Public assets can be available for disposal because of many reasons some of them being:
 - a) Safety issues – when the asset poses an unacceptable safety risk to the operations, personnel and environment or are found to contain hazardous materials
 - b) Not cost-effective to maintain or are beyond repair but are able to be sold as scrap
 - c) Assets have reached their optimum selling time for maximization of returns
 - d) Unreliable or Obsolete - When it cannot meet operational requirements/ specifications e.g. image of user, performance, capability etc.
 - e) Assets no longer comply with occupational health and safety standards
 - f) No longer required due to changed procedures, functions or usage patterns.
 - g) Bridge budget gaps
 - h) Assets have reached their optimum selling time for maximization of returns
 - i) Assets are surplus to the requirements and will not be needed in the foreseeable future
 - j) Pay government debt without increasing taxes.
 - k) Mandate variation of disposing entities
- 2) **Benefits.** Benefits can be realized from timely and proper disposal of assets including:
 - a) Release of value and availing of assets to the entire organization to enable reinvestment of the disposal revenue.
 - b) Cost may be reduced by using another department's idle equipment
 - c) Minimizes time for inventories
 - d) Properly prepared for any audit
 - e) It is possible to gain profit from the sales
 - f) Enable realization of business goals.
 - g) Reduces wastage of resources and maintenance/financial burden
 - h) Enhanced service delivery and Operational efficacy
- 3) **Disposal Risk Management.** The Disposal of public assets is a risky business and therefore it is important that disposing entities are alive to the risks and adopt and implement appropriate risk management strategies.
- 4) If the disposal process is not supported by competent and professional advice and the use of accurate and relevant information, this may result amongst other things in inadequate return on the disposal of assets; insufficient security or inappropriate maintenance of obsolete assets and lost opportunities to gain value.
- 5) The improper disposal of assets can constitute an offence as per Section 128 of the PPAD ACT or corrupt conduct as defined in the Corruption and Economic Crime Act (CECA) of 1994. In particular Section 32 (1) of CECA makes it a corruption offence where a person, ‘...directly or indirectly accept a or agrees to accept for himself or any other person any valuable consideration as an inducement or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body. Therefore it is important for disposing entities to put controls in place to prevent and manage the risks.
- 6) **Disposal Principles.** S. 26 of the Act and Regulation 123 (2) requires that disposing entities must take into account principles as follows when disposing of public assets:

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- a) Incorporate consideration of alternatives evaluated in cost-benefit terms. VFM considerations - Realize the best available net value/ possible price. Be undertaken with integrity, i.e. ethically, honestly and with fairness to all participants. Conducted in an open and accountable environmentally friendly manner with due consideration given to dangerous or environmentally-unfriendly goods. Consideration of sustainability implications, environmental and social impacts associated with the disposal.
- b) Disposal requirements should be taken into account at the time of procuring assets by applying the principles of whole life cost of assets.

10.7 Asset Disposal Process

10.7.1 Disposal Process Overview


- 1) In summary asset disposals focus is on ensuring that under-performing and non-essential assets are quickly identified and disposed of.
- 2) According to PPAD Regulation 2 Disposal process means the successive stages in the disposal cycle, including: Planning; Approvals: Choice of Procedure; Bidding: Measures to solicit offers from bidders; Evaluation and Negotiations; and Award of contract.

10.7.2 Disposal Prerequisite

- 1) Prior to the actual disposal of assets, the assets must be written-off from the asset register. Only then may the procedure of physical disposal commence.
- 2) The process of disposal is as follows:
 - a) Inspection team assesses condition of the assets;
 - b) Prepares report on the condition of the asset(s);
 - c) Obtain approval to write-off assets as per the Supplies Regulations;
 - d) Arrange write-off of the assets(s) from the asset register;
 - e) Adjust the stock balances of the stores/stock records (where applicable);
 - f) Physically remove from stock (where applicable);
 - g) Set reserve value(s);
 - h) Request approval to dispose and recommends the method of disposal;
 - i) Commence the disposal procedures.

10.7.3 Disposal Planning

- 1) Asset Disposal Planning is a structured and systematic process aimed at ensuring that a procuring and disposing entity's portfolio comprises only those assets that effectively meet its service delivery requirements at the lowest long term cost to Government. Planning for disposals must be conducted by Procuring and Disposing entities on annual basis and revised on quarterly basis. Disposal Planning links via the Procurement Plans and Asset Strategy with service delivery in the following five stages.

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10.7.3.1 Stage 1: Identify assets for disposal.


- 1) The first stage in the disposal process is to assess in detail those assets identified as surplus to service delivery needs both at the present time and over the longer planning time frame or identified as unserviceable or obsolete by annual asset surveys and specific asset disposal policies such as Transport Orders and Procedures.
- 2) Assets to be disposed of are public resources and, even if redundant or depreciated, may still have financial value for the government. Consequently disposing of assets should be carefully planned as per PPADR 100 and conducted in a way that obtains value for money for the government and reduces opportunities for exploitation by individual employees, private persons or organisations. Preparation of an asset disposal plan requires both a strategic and operational focus.

10.7.3.2 Disposal Survey Team

- 1) A survey will be undertaken by a team which may be composed of the following; the Procurement Unit, and optionally, representatives from any of the following departments, Administration, Finance, Supplies, Engineering Department, or an Officer from any public or private institution with related or special knowledge (a technical expert). Where possible, the team should be composed of a minimum of three people.
- 2) The technical expert's mandate shall be to inspect the assets to ascertain their serviceability or otherwise, and where applicable, the potential sale value.
- 3) The report of the survey shall be submitted to the Accounting Officer/ Head of the Organization who shall instruct the Procurement Unit to initiate the disposal process for the asset(s) in line with the recommendations of the Disposal Survey Team.
- 4) The reasons for any asset becoming surplus, obsolete or unserviceable, shall be justified and the recommendations made to the Board, or its Committees. The Procurement Unit shall prepare a disposal report, which includes the technical report stating the detailed condition and classification of the asset to be disposed of, the justification for disposal, and the proposed method of disposal.
- 5) For simple straight forward items, then the items condition may be classified as in Table 7 and recorded in Table 8 below. Items that may have had a high original value, or are expected to have a high bidding price, or items that are technically complex should also include an additional and detailed report, justifying the sale.
- 6) A Procurement Entity shall effect disposal using any of the methods as specified in PPAD Regulations 123 (1) and approved by the Board or its Committees.

10.7.3.3 The Grading of Assets for Disposal

- 1) An unused item held in a warehouse/store attracts hidden costs of storage, security, risk, fire hazards, and record keeping. It retains an artificial cost/ stock/ asset value. It also requires repeat stock checking. An unused item is any item that for whatever reason can no longer be put to use by the PE (example: expired item which can no longer used). It is therefore necessary to obtain the necessary authority to dispose of the item in order to reduce costs, free capital and free up storage space.
- 2) A damaged item that does not work, or works intermittently, or is no longer able to provide the function

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that was intended, or is possibly beyond repair.


- 3) An obsolete item is any asset which can no longer be put to any further effective use, due to advancements in technological development, or its lack of compatibility with associated items/equipment.
- 4) An unserviceable item is any asset which can no longer be utilised for its original intended purpose in its current condition due to extensive defects or damage, and is beyond economic repair. Classification of an asset as “beyond economic repair” for the purpose of this section refers to a situation where the repair costs exceed fifty percent (50%) of the current market price of a new replacement item.
- 5) A surplus item is any asset which has not moved for a period of over of two years (for store items), or which has remained unused for a period in excess of two years (for plant & equipment), and where no potential use for the asset can be envisaged within the Entity. Care needs to be taken with plant and equipment to ensure that the parts are not strategic parts, or that the equipment for which it was intended to be used has been decommissioned.
- 6) Cannibalize items refers to assets whose useable parts may be removed from a damaged, broken or non-working asset, and then the shell of the asset sent for scrap. The useable parts can be used to repair other non working equipment and to bring them back to working order.
- 7) Scrap items refers to a situation where nothing can be gained by keeping the asset. The asset may be sold if it has some residual market value, or scrap value, or recycling value, otherwise it shall be disposed of by appropriate means.

10.7.4 Stage 2: Weigh the Benefits of disposal versus retention

- 1) Not all assets identified for disposal will be sold at values greater than their residual value and in some cases this will be negative when the disposal costs are included. In such instances, the advantages of disposing must be weighed against the cost of continued ownership. The cost of ownership might include insurance, maintenance and repair, storage costs, operating costs, staffing costs. Retaining such assets in service when they no longer effectively support service delivery will expend resources that could otherwise be used elsewhere and could effectively constrain investment in more suitable and economic assets. Disposals need not always be for a financial gain. Other opportunities and gains should also be taken into consideration such as swapping one asset for another or construction of a facility for the government/public in return for the asset.

10.7.5 Stage 3: Value maximisation

- 1) Maximisation of net benefits requires a whole of organisation view of the asset to be disposed of over the period under consideration. The disposal value of an asset is its sale value and the savings achieved in the cost of service delivery or other benefits. The sale value depends on the market for the asset and the perceived advantages it offers buyers in that market. An asset can have a range of values to potential buyers, with each valuing different aspects of the asset. For instance a disused hospital may be valued as a domestic residence or a classroom block by an adjoining school or even offices. So the cost of alternative disposal processes must be weighed against the marginal increase in price received. Aggregation of asset must be pursued to reduce disposal administration costs. So unless directed otherwise the disposing entity should pursue that source of disposal action that maximises

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benefit to itself and government. Disposal of assets from one disposing entity to another may maximise the benefit to government. Assets must then be valued to set the reserve price. Disposing entities should consider if disposal is necessary or extension of useful life of the asset is the best option.


- 2) In order to maximise value of an asset to be disposed of, the Procuring entity may have to reassess the nature of the asset in terms of security requirements that may limit competition. The PE may have to declassify an item by stripping it of the security features or installations in order to make it available to the open market, unless there are end user restrictions that determine disposal procedures for the item or the cost of declassification outweighs the disposal value.

10.7.6 Valuations (Market Value of Assets)


- 1) Valuation of assets is important as it provides a Procuring Entity with a reference point to assist them in selecting the most suitable disposal option for the assets being disposed of.
- 2) A valuation of any assets due for disposal should be obtained before any disposal proceedings commence, and the valuations shall be used to determine a reserve price, which shall be the minimum sale price of the asset, where appropriate and in accordance with PPAD Regulations 103 (1 and 4).
- 3) The valuation should consider the following:
 - a) The condition of the item (the condition code);
 - b) The present market conditions of Supply and Demand;
 - c) A residual book value.
- 4) The most accurate and realistic value of an asset is always the potential current market value. Note that the estimated reserve price may in fact bear no relationship to what the market may actually offer.
- 5) There are a number of Agents who can assist the Procuring Entity with expert valuations, so as to ensure that the Procuring Entities sales expectations are realistic. It is suggested, however, that entities only engage the services of an Agent if the goods are of more than sufficient value to cover any Agency fees.
- 6) It is important to be aware that in some cases, Valuers may apportion a value on a good that is based on their replacement cost (for insurance purposes). It should be recognized that this value will often be considerably more than what will eventually be realized at sale. Alternatively, Valuers can claim that goods have a nil book value after depreciation, when in fact they could realize a considerable sum at sale. It is therefore recommended that Procuring Entities identify an appropriate type of valuation and instruct the Valuer accordingly.

10.7.7 Stage 4: Disposal method selection


- 1) The Disposal method must be carefully chosen, as guided in Chapter 3, 3.9 in order to maximise the returns. Depending on the method chosen this will inform the timing of the disposal. Investigations of whether take-back option was included in the procurement contract should be done. Disposal methods must be carefully chosen to ensure that the disposal of assets is carried out to:
 - a) Achieve the best return to government so it should be most cost effective method
 - b) Provide adequate and equal opportunity to purchase, including clear stipulation of the basis on which decisions will be made
 - c) Satisfy probity/integrity consideration

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- d) Avoid any adverse environmental impacts
- 2) Section 2 of the PPAD Act provides for disposal by any means including **sale, rental, lease, licenses, tenancies, franchises, auction or any combination thereof, however classified.**
- 3) PPAD Reg 98 (2) provides that provisions from procurement can be applied on disposal process to the extent that they are applicable.
- 4) PPAD Regulation 123 provides for the following methods: Public Auction; Sealed Bidding; Direct Negotiations; Trade-in; Transfer to another procuring and disposing entity; Conversion or Classification of assets into another form; and Destruction of assets. Regulation 123 gives the circumstances to be taken into account in selecting a disposal method. The selection of method is not dictated by value thresholds as it is for procurement. The following examples show how circumstances might affect the choice of method e.g.
 - a) A low value asset doesn't justify sealed bidding due to the cost of the process
 - b) An auction may be ineffective if bidders are geographically scattered and unable to attend or the assets themselves cannot easily be transferred to the auction site for viewing
 - c) Assets cannot be publicly auctioned or tendered where their use is restricted e.g. some equipment being disposed of by the security services
 - d) Some assets require careful disposal to avoid environmental damage, e.g. chemicals
 - e) Some assets need to be destroyed for the protection of the public, e.g. expired drugs which might otherwise be unofficially sold or distributed.
- 5) Therefore the following should be considered when deciding on the most appropriate method of disposal:
 - a) The potential market value of the asset;
 - b) The volume / quantity of the asset;
 - c) The number and location of potential bidders;
 - d) The location of the asset;
 - e) Restrictions on export or on the end users;
 - f) National security or public interest issues;
 - g) Legal or human rights issues;
 - h) Environmental considerations;
 - i) The trade-in value of the asset; and
 - j) The possibility of transferring the asset to another Procuring Entity.
- 6) Sections 124 to 130 of the PPAD Regulations set out the conditions under which each of the below disposal methods may be used. Regulations 131-137 gives the procedure to be followed for each of the seven methods under Regulation 123:
 - a) Sale by Public Auction Public Auction
 - i) The disposal under this method shall follow the process as set out in the PPAD Regulations 131 (2 - 15). For this method to be used the condition in PPAD Reg. 124 must be satisfied.
 - ii) When undertaking disposal by Public Auction, a licensed professional auctioneer shall be appointed by the Procuring Entity, to conduct the auction on their behalf. The appointment of the auctioneer shall be done using the appropriate procurement method for services, which method shall take into account the criteria as set out in PPAD Regulations 132 (2) (a - g).

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- b) Sale by Sealed Public Bidding Sealed Bidding
 - i) The disposal under this method shall follow the process as set out in PPAD Regulations 133 (2 - 15). For this method to be used the condition in PPAD Reg. 125 must be satisfied.
 - ii) The bidders are required to submit written, sealed bids which must be kept in a locked container until the bid opening
 - iii) A record of each bid received including the name, address and contact details will be kept
- c) The bid opening shall be a public bid opening
- d) The minimum bidding period shall be 10 days
- e) Post-bid negotiation may be conducted, as per the rules of the PPAD Regulations
- f) *Disposal of goods through an in-house tender* This may be acceptable for goods of a low value where the costs of externally advertising and selling the goods would exceed the value of the goods being sold. This could include individual or small amounts of redundant office furniture, and courtesy gifts of a token amount that the disposing entity has received. However, there will always be corruption risks associated with in-house tenders. The DCEC recommends that agencies conduct an assessment of the corruption risks and implement a policy and procedure prior to conducting in-house tenders.
- 7) *Direct Negotiations: The situations under which a disposing entity can enter into direct negotiations with the private sector to dispose of an asset*
 - a) The disposal under direct negotiation shall follow the process as set out in of the PPAD Regulations 134 (2 - 13). For this method to be used the condition in PPAD Reg. 126 must be satisfied.
 - b) There is no minimum bidding period.
 - c) Disposal by direct negotiation is permitted in certain circumstances. The PPAD Regulations, states that "direct negotiation may occur without public competition where it can clearly be shown that there are no other purchasers". In all cases, the current market value for the asset must be obtained by the State Valuation Officer or an independent valuer.
- 8) Trade-in
 - a) The disposal under this method shall follow the process and conditions as set out in of the PPAD Regulations 136 (1) - (16). For this method to be used the condition in PPAD Reg. 127 must be satisfied.
 - b) To be used when the item to be disposed of is used as a 'Trade-in' (sometimes part exchange) and becomes an integral part of the procurement process.
- 9) The transaction is classed as a transfer of assets, therefore appropriate receipt and transfer of asset documents must be used and signed for.
 - a) Transfer to another procuring and disposing entity
 - i) The disposal under this method shall follow the procedure and conditions as set out in of the PPAD Regulations 128 (1 - 3) and 137 (1 - 6).
 - ii) Used only after discussions with another procuring and disposal entity and the agreement being in writing. There may be a payment of money involved, or alternatively the disposal may be of no economic value.
 - b) Conversion or Classification of assets into another form
 - i) The conditions under which such an event might happen are spelt out in the PPAD Regulations 129, although the procedure is not.


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- ii) This is the transformation of an asset in one form, into an asset in another form. The same as described in cannibalization (see sec. 16.6). Making a useable/ functional item out of two, or more, non-useable/non-functioning item(s). Some assets may become usable and others become scrap items.
- iii) Authorization must be sought before re-categorization of, or cannibalization of, assets may begin. Categorization of assets will be conducted as in Table 7.
- c) Destruction
 - i) Disposal under this method shall follow the procedure and conditions as set out in of the PPAD Regulations 130 and 138 (1 - 5).
 - ii) Disposal by destruction, dumping or burying shall be used where the asset has no residual value and cannot be converted into any other form which subsequently may give it value.
 - iii) To ensure that the destruction, dumping or burying is properly executed, it is recommended that a committee of at least three persons supervise the process. Care has to be taken to ensure that there is no contamination or pollution of the environment. Only licensed disposal operators may be used if this process is to be followed.
 - iv) Where pharmaceuticals/ drugs are concerned, the destruction must be authorized and supervised by a licensed Pharmacist. For other types of potentially dangerous chemicals, the destruction must be authorized and the disposal method approved by a scientist/engineer qualified to assess the environmental impact. In all cases, the Procurement Unit will retain a copy of the certificate, authorizing the destruction of the item and its disposal method.
 - v) When an item is certified for destruction, it will cost money to destroy it. It may be cheaper to give the item away, or place in a landfill site, than to proceed with the destruction process. Review all the possible destruction options (also refer to the Waste Management Act).
- d) Other methods allowed under Regulation 2 could include Donation, Direct Sale, Dumping, Recycling, etc. The disposing entity will have to justify the use of any other method of disposing before using it when requesting for approval from the Board or its Committees.
- 10) Selecting a Disposal Method
 - a) When selecting a disposal method for an asset, a procuring and disposing entity should take into account the factors outlined in PPAD Regulations 123 (2).
 - b) The Procurement Units shall arrange for an annual survey of all the assets held by the organization, or as the need may be, to ascertain their current condition and potential value and record the asset condition in the asset register (refer to sec. f)).
 - c) The survey shall be undertaken by at least three members of the Disposal Survey Team, comprising of suitable personnel from the Procurement Unit, Administration, Finance department, Supplies Department, and a technical expert from any public or private institution with special knowledge of the items to be disposed of.
 - d) The reason for any item becoming surplus, obsolete, unserviceable, cannibalization item, and scrap item shall be explained and recommendations submitted on the appropriate method of disposal.
 - e) The report of the survey shall be submitted to the Accounting Officer/Head of the Organization who shall instruct the Procurement Unit to initiate the disposal process for the asset(s) in line with the recommendations of the Disposal Survey Team.

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10.7.8 Stage 5: Annual disposal planning

- 1) The Disposal plans must be done on annual basis however they should also cover the same period as the Government's capital investment and asset maintenance plans on a medium to long term basis. This will ensure that departments remain focused on service delivery rather than the assets. Assets should be grouped into lots, or contracts, in a way that will attract the maximum possible competition, and they may also pool assets for purposes of common disposal. Where the public auction method is used for the disposal of assets, a Procuring Entity shall maximize the number of assets to be disposed of at any one time in order to reduce the administration and transaction costs (PPAD Regulations 100). Disposal plans should cover various timescales – annual, medium term and long term. An annual plan will provide a work plan for imminent disposal processes, allowing aggregation, resource planning etc. Longer term plans link with both management of assets and procurement planning for replacements. The disposal plan as a minimum should contain: Description of Assets and quantities; Estimated value; Timing of disposal; Method of disposal; Special considerations e.g. Write-offs. Special considerations should be noted e.g. environmental issues, need for technical advice, requirement for community consultation prior to disposal etc. The Disposal Plans should be submitted for vetting in the format as per Table 3 by PPADB the December of the preceding financial year with the expectation that they will be finalised by March of the preceding year ready for implementation when the financial year commences. A disposal plan should take the following areas into consideration.
 - a) When assets become redundant, obsolete, unserviceable or surplus to requirements then they should be disposed of in an authorized, orderly and organized manner. This will have the advantage of ensuring transparency in the process, protect the organization from possible fraud or wastage, and releases both storage space and money otherwise locked up in the assets for further use. Such assets should be taken out of use and placed in a safe and secure place until they are disposed of.
 - b) If assets are not held in the Warehouse/ Stores but in a User Department, the User Department will initiate the disposal process (PPAD Regulations 101). The Procurement Unit will assist in the valuation and documentation process.
 - c) Assets to be disposed of should be grouped into lots in a way that will attract the maximum possible competition (PPAD Regulations 100 (1)).
 - d) Where assets are to be disposed of through public auction, a procuring and disposing entity shall maximize the number of assets to be disposed of at any one time in order to reduce the associated administration and transaction costs (PPAD Regulations 100 (2)).
 - e) A Procuring and Disposing Entity may pool assets for common disposal (PPAD Regulations 100(3)).
 - f) At the end of each financial year, the Procurement Unit (with technical assistance, where appropriate) shall survey and ascertain a 'book value' (where there was none before) of all stock items, parts, equipment, held in the Warehouse / Stores, and other government assets, such as buildings (offices etc.), ageing animals, land (plots), construction(s) to ascertain whether any of the items have become: (refer to sec. 26.2)
 - i) Unused (or expired)
 - ii) Surplus


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- iii) Damaged
- iv) Obsolete
- v) Unserviceable
- vi) Suitable for cannibalization
- vii) Scrap (condition)
- viii) Suitable for sale or disposal.

10.8 Choice of Procedure and Approvals


10.8.1 Initiation of Disposal Requirements and Approval for Disposal

- 1) The User Department will initiate the disposal process and request the Procuring Unit to grade the asset for disposal. Once the disposal plans have been finalized to implement the plans the disposing entity will initiate the disposal requirements by submitting their requirements to the Board of its Competent Committees depending on the threshold. The submission should have evidence that commencement of the disposal process was approved by the Accounting Officer. In the case where disposal is part of the Disposal Plan it will be taken that the Accounting Officer has approved the disposal process. The Procurement Specialist/ Procurement Unit will prepare a report of the item(s) and will grade the condition according to the table 1 below.
- 2) Upon receipt of request the Board will consider:
 - a) Adequacy of the request: reasons, information, reasonableness of reserve values, referencing of items, accounting officer's approval;
 - b) Method proposed against asset type and conditions for use;
 - c) Assess if the proposed disposal promotes principles in s.26 including environmental considerations;
 - d) Compliance with policy and the law;
 - e) If transfer, has an agreement between PEs been submitted;
 - f) If insufficient request, PE would be advised to submit outstanding information.
- 3) After due consideration, the Board, or its Committees, will give the authority, for the disposal of the assets (PPAD Regulations 101);
- 4) Approval to commence disposal proceedings shall be evidenced by the signature of the Board, or its Committees, on the assigned form documenting disposal requirements, (as in table 2 below) or through a letter;
- 5) A disposal reference number shall be allocated to each disposal activity at the initiation stage. All documentation related to the disposal requirement shall state the appropriate cross-reference number from the asset register;
- 6) Depending on the method of procurement chosen, once the Board or its Committee has approved the disposal and the method the next stage will be soliciting offers. It should be noted that in the case of conversion and transfers, the disposing entity, at the time of submitting the request should also submit consent from the recipient entity so that the Board or its Committee awards the conversion or transfer simultaneously when considering the method. Hence the disposal activity will move to the reporting stage.

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10.8.2 Bidding: Measures to solicit offers from bidders.


- 1) A bidding/ disposal document shall be drafted using the appropriate standard forms from the Standardized Bidding Packages templates, which should then be submitted to the Board, or its Committees for vetting and approval. The Bidding document (PPAD Regulations 104, 105) shall include among others:
 - a) A description of the assets to be disposed of;
 - b) The location of assets;
 - c) The deadline, location and submission method
 - d) Qualification requirements to be met by bidders
 - e) Evaluation method and basis for award
 - f) Details of any reservation scheme in place
 - g) Conditions of sale if any.
 - h) The requirements for payment of the sale, before the handover of the assets.
- 2) Reducing Liability of the Procuring Entity: A bidding/disposal document, or notice, and any related information availed to prospective bidders must specify that the assets are sold on an “as is” and “where is” basis, proffer no warranty, implied, intended or otherwise and shall disclaim all further liability after the sale. These terms must appear in all bidding documents or adverts promoting the disposal activities. (PPAD Regulation 104).
- 3) In addition, the Procuring Entity must include a statement in the bidding/disposal document, or notice, and any related information availed to prospective bidders that "the risk and cost of dismantling and removal of the assets shall be the responsibility of the successful bidder".
- 4) The disposing entity should submit the bidding documentation in the case of Public Auction and Public Bidding for examination by the Board, MTC or DATC depending on the total reserve value of the assets.
- 5) The Procurement Unit of the Procuring Entity shall publish a public invitation notice in the Government Gazette and at least one newspaper of wide circulation in Botswana.
- 6) Where a Procuring Entity is a given District Administration, then the Procuring Entity will follow the same rules of this Chapter, but it is advisable to submit the assessments reports and obtain approval of the related District Administration and DATC.
- 7) *Advertisement and Bidding Periods* - Where the solicitation of bids is by invitation notice only, the minimum period for advertising should be ten (10) days (PPAD Regulations 106). Where the solicitation of bids is by both invitation notice and bidding document, the advertising period shall be for a minimum of four (4) days, though should be as long as is reasonably possible, with the advertising seeking to capture as wide an audience as possible.
- 8) *Inspection of Assets* - An arrangement should be made for inspection of assets to be disposed of, by prospective bidders, before the closing date for bidding. Information on the arrangements for inspection i.e. date, time, venue, etc shall be included in the invitation notice and the bidding documents, as where applicable (PPAD Regulations 107).
- 9) *Bid Submission, Withdrawal of Bids, Bid closing and Bid Opening Processes* - Bid submission, withdrawal, closing and opening procedures are similar to those of procurement (PPAD Regulations 109 to 112).
- 10) For other methods like public auction, direct negotiations, sealed bidding, and even destruction sometimes, documentation for disposal should be submitted in the standard form where applicable for vetting by the Board or its Committees before the documents can be issued.

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- 11) The minimum time frames for floating tenders must be observed as stated in the regulations and provision should be made for inspection of the assets.

10.9 Evaluation and Negotiations

- 1) *Bid Evaluation* :Bid evaluation is normally based on price only, but can also be based on price and other factors where there is need to attach certain conditions to the sale; i.e. citizen empowerment schemes, end-user restrictions, export restrictions, etc (PPAD Regulations 113, 115, 116).
- 2) *Re-bidding due to identical bids*: Where written bids have been requested and the highest priced bid has been submitted by more than one bidder, then the Procuring Entity should arrange a re-bidding procedure where only the bidders who submitted the highest identically priced bids are allowed to submit revised bids. The revised price shall contain a revised price only, and the bidders should not be permitted to change any other aspect of the bid. The revised price should not be lower than the original price, otherwise it should be rejected (PPAD Regulations 114). The bid submission opening and evaluation procedures should be conducted in the same manner as for the original bid.
- 3) *Evaluation Teams and Reports*: No detailed evaluation report is required under the public auction method of disposal although the name of the successful bidder, and their bid price should be reported to the Board, or its Committees, in the End of Activity Report. For written bids, an evaluation report shall be produced and submitted to the Board, or its Committees, for approval, before contract award (PPAD Regulations 117). Refer to (PPAD Regulations 117 (5)) for details of the evaluation report where evaluation is based on price only; and (PPAD Regulations 117 (6)) for details of the evaluation report where evaluation includes other factors apart from price.
- 4) *Negotiations Under Competitive Methods* : Post-bid negotiations maybe undertaken where, either the highest bid is below the reserve price, valuation or anticipated sale price of the assets, or where there is a need to negotiate the conditions of sale (As per PPAD Regulations 118). The procedure for negotiations under competitive methods is clearly spelt out under PPAD Regulations 118 (2)).
- 5) *Negotiations under Direct Negotiation*: Under direct negotiations, negotiations are not allowed until after a written bid has been received and evaluated, and the results of the approved negotiations shall be incorporated into the contract document (PPAD Regulations 119). The procedure for negotiations under direct negotiations are spelt out under (PPAD Regulations 119 (2) (a - h)).
- 6) *Failure to Reach The Reserve Price* Where the best evaluated bid is less than the reserve price, the Board, or its Committees, may, in consultation with the Accounting Officer (PPAD Regulations 120):-
 - a) Obtain a further valuation from an independent source;
 - b) Advise the Disposing Entity to negotiate the price with the best evaluated bidder;
 - c) Advise the Disposing Entity to arrange for new bids to be submitted;
 - d) Advise the Disposing Entity to use an alternative disposal method likely to obtain a higher price;
 - e) Advise the Disposing entity to consider rescheduling the disposal to a period when the market is favourable (for high value items); or
- 7) In arriving at a decision on the appropriate action to take the Board, or its Committees, shall be guided by:-
 - a) The difference between the best evaluated bid and the valuation or reserve price; and
 - b) The likely costs implications of any the further action.
- 8) An evaluation committee (Chapter 6) should be set up for sealed bidding which should submit a report and recommendations to the Board or its committees.

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10.10 Award of contract


- 1) In the case of a public auction, an award of contract shall be by a declaration of the successful bidder (e.g. by an Auctioneer) at the time of bidding (PPAD Regulations 121).
- 2) For all other methods of disposal, an award of contract shall be by a decision of the Board, or its Committees, in which case a contract placement shall be by through the issue of a contract document to the successful bidder (see also (PPAD Regulations 122 (1))).
- 3) The contents of the contract document are spelt out in section (PPAD Regulations 122 (4(a) - (g))).
- 4) Once a contract is awarded the award decision should be advertised through publication of a notice on the Procuring Entities notice board.

10.11 Accounting and Reporting Requirements


- 1) Revenue from the Sale of Assets: All the revenue proceeds from the sale of assets shall be deposited into the Consolidated Fund, or as may be directed by the Accountant General.
- 2) No assets can be approved to be removed from the storage location(s), or 'titles' given, or 'change of ownership' certificates given, until the full sale value is confirmed received in the appropriate Government bank account.
- 3) End of activity reports should be submitted for all disposals despite the method used in terms of PPAD Section 46. As a minimum the report should indicate the number of assets approved for sale vis-à-vis number actually sold, reserve value against the total proceeds, remaining items and how the disposing entity intends to dispose of the remaining assets. Any challenges experienced should be shared as well as how they were addressed.
- 4) Disposal Reporting and Performance Monitoring – The disposing entities are to submit on quarterly basis reports on the performance status in relation to the (procurement and asset) disposal plan implementation as per Table 11 Disposal reporting template format.
- 5) A cumulative report should be submitted at the end of the year detailing all the disposal transactions that occurred and the amount of revenue raised.

10.12 Record Keeping and Management

- 1) The records and original bids should be archived with the cross-reference of the asset disposal number.
 - a) Keeping details concerning the date of purchase of resources, length and condition of warranty, maintenance and repairs undertaken, and other related information for consideration in the valuation and disposal of goods.
 - b) Conducting and recording regular inventories of goods.
 - c) Keeping a checklist of each stage in the disposal process including the decision to dispose, valuation of items, and who approved the disposal of the goods, plus the method of disposal – for example, through public advertisement, auction, or in-house tender.
 - d) Keeping a record of the external valuations.
 - e) Maintaining a register of all the assets held by the agency.
 - f) Regularly auditing the asset register to ensure no items have been improperly disposed of.
 - g) Referring to the underpinning legislation and government policies.

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- h) Putting asset maintenance systems in place to determine and report on when goods become surplus and/or unwanted and what their monetary value is at that point.
- 2) All records to be kept for at least seven years from the date of a decision to terminate the disposal action, or the date of contract completion whichever is the later as per Regulation 99.
- 3) The disposing entity shall keep disposal records open to inspection by competent authority during working hours.

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10.13 Report on Damaged, Obsolete, Excess and Surplus Materials

Date: **Location:** **Examiners:**

Table 8 Report on damaged, obsolete, excess and surplus materials

Code	New	Code	Used	Code	Scrap	Code	Reconditioned	Code	Cannibalize	Code	Excess
N1	New – Excellent	U1	Used – Useable without Repairs – Excellent	S1	Suggested Scrap – Requires Major Repairs	R1	Reconditioned – Excellent	C1	Request Permission to Cannibalize – Beyond Economic Repair	E1	Excess to Requirement – Surplus – Redundant. Expired. No longer used
N2	New – Good	U2	Used – Useable without Repairs – Good	S2	Scrap – Beyond Repair - Unserviceable	R2	Reconditioned – Good	C2	Suitable to Cannibalize – Beyond Repair		
N3	New – Fair	U3	Used – Useable without Repairs – Fair			R3	Reconditioned – Fair				
N4	New - Poor	U4	Used – Useable without Repairs – Poor			R4	Reconditioned - Poor				



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Code	New	Code	Used	Code	Scrap	Code	Reconditioned	Code	Cannibalize	Code	Excess
		U5	Used – Useable when - Poor								

Table 9 Condition of assets or disposal of assets

(PPAD Regulation 101 (2 &4))

ID No	Qty	Disposal Condition Code	Year of Purchase	Description	Purchase Cost or Current Value	Estimate Valuation Price	Reserve Price	Total Reserve Price

(1) Confirmations of need to dispose (Disposal Survey Team)
Signatures: _____ Date: _____

Signatures: _____ Date: _____
Signatures: _____ Date: _____



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Signatures: _____ Date: _____

(2) Approval to Dispose

Authorizing Officer: _____ Date _____

Witness: _____ Date _____

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Chapter 11. The Management of Tender Documents and Tender Processes

11.1 Applicable Law


- 1) All procurement activities, processes, documents, and procurement contracts or any other agreements arising out of such activities shall operate under, and governed by the Laws of the Republic of Botswana.

11.2 Management of Contract Information

- 1) A file shall be open for every project and shall contain a dated history and activity sheet of the procurement. Where applicable, a software programme may be used to record the same information (print out at the completion of the procurement process and include in file).
- 2) The history / activity sheet will maintain a concise and chronological summary of all actions from initiation to completion stage of the procurement. It shall also provide the full history of transactions, for the purpose of:
 - a) Record of the history of a project, dates, costs, quantities and proceedings at each stage of the procurement cycle;
 - b) Providing a record of actions taken by procurement personnel in the procurement cycle;
 - c) Providing information that may be needed for review and investigation of procurement activities and the phased stages;
- 3) By recording the dates of activities, it is possible to determine where the delays (bottlenecks) are occurring;
- 4) Providing critical information should there be any enquiries, litigation or audit.
- 5) The history/ activity sheet must record the actual and expected time schedules, the procurement activities and the costs as accrued
- 6) The files shall be kept by the Procurement Unit

11.3 Separation of Duties

- 1) In the interests of combating collusion between parties involved in the any part of the procurement process, there has to be a clear distinction between who may sign the various types of documents and/or authorise activities in their area of responsibility. It is not allowed to authorise activities which are outside of their area of responsibility. To do so, will result in them being held legally responsible for any liabilities that may occur. This distinction is called the 'Separation of Duties'.
- 2) An Accounting Officer, or other authorised Official can sign a Purchase Order / Contract, but may not sign for the receipt of supplies, items installed, completion of a Project, phased handovers, or the payment of an Invoice;
- 3) A Finance Officer can sign the payment of an Invoice, or their associated documents, but may not sign for the receipt of supplies, items installed, completion of a Project, or the Purchase Order / Contract;
- 4) A Goods Received Officer, or Engineer, or Consultant can sign for items received, or items installed, or Quality Standards, or for a Project completed, but not the payment of an Invoice, or the Purchase Order/ Contract;

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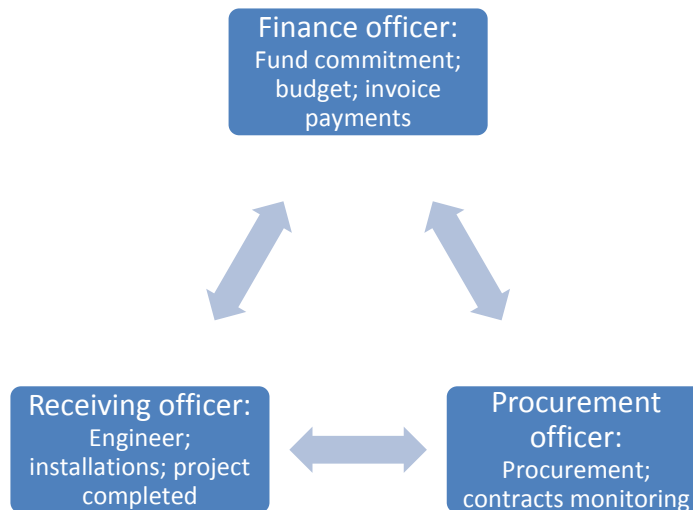



Figure 1 Illustration of separation of duties

11.4 Preparation of the Bidding Document

- 1) The Procurement Unit shall prepare the appropriate standardised bidding documents in respect of each contract.
- 2) The Bidding documents shall be prepared in accordance with PPAD Regulation 30 and shall include the evaluation criteria for bid evaluation and contract award. The details of the bidding documents will depend upon the nature and technicality of the proposed contract. The bidding documents shall specify clearly the:-
 - a) The items required
 - b) The technical and quality characteristics (Specification / TOR)
 - c) The bidding procedure used
 - d) Each criterion to be used in the bid evaluation
 - e) The points allocated to each criteria
 - f) How each criterion will be evaluated (the standard(s) by which it will be measured)
- 3) The evaluation criteria shall be as per the Fourth Schedule of the PPAD Regulations.
- 4) Where possible, involve the Legal Representative of the PE in the preparation of the draft contract documents.

11.5 Barred from entering Bids

- 1) A PE must ensure that a company, a consultant and/or another person(s), either employed by the PE or externally to the PE, who have been instrumental in the preparation of standards, specifications, terms of reference, or scope of work, in part or in full, which may result in a PE issuing solicitation/tender documents, is *not* allowed to partake, offer advice or assistance in the preparation of the tender documents to any and all potential bidders. The barring period is for a minimum period of 24 months, and this will cover any employee(s) past or present, and those who have previously been employed and have moved to a new employer. Such persons are classed as having both a

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'unique and privileged knowledge'.

- 2) It is very important to ensure that persons, consultants or companies who have been involved in the setting of standards, specifications, TOR or related assistance, are not allowed to be involved in the bidding process, or its evaluation.
- 3) A tender document shall include the following clause:


Any company, consultant, or employee(s), present or previous, who were involved in creating, or establishing either the standards, specification, terms of reference, or scope of work, shall not be allowed to partake, offer advice or assistance in the preparation of the tender bidding documents to a potential bidder. This will cover all individuals, companies, consultants or previous employees of any organisation involved in the creation or preparation of any of the above activities, for a minimum period of 12 months following the finalisation of those requirements.

11.6 Specifications and Terms of Reference (TOR)

- 1) The Specification/ TOR shall be clear, unambiguous and precise and must not be unnecessarily restrictive, thereby unduly limiting competition.
- 2) The Specifications/ TOR must be defined so as to leave no doubt of the nature of the goods, works or services required.
- 3) The Procurement Units will consult with the User Departments when drawing the Specifications/ TOR/ BOM.
- 4) On technically complex procurement the Procurement Unit/ User Departments shall seek expert advice to draw the Specifications/ TOR to ensure that they are not unnecessarily restrictive and to ensure that the requirement is open and fair and that it offers the maximum of competition.
- 5) Item specifications should be those most suited to the general function for which it is intended. They should not only be based upon the design, cost or quality of the product. It is very important to avoid the use of brand names in material specifications. Where the use of a brand name to illustrate a requirement is unavoidable, the phrase "or nearest equivalent" should be used (refer to sec. 5.11).
- 6) A performance specification, or generic specification, gives a clear idea of the function, purpose, and performance required of the goods or services requested. Therefore, it is important to make clear, if the requirement is for the specific type of specification, or if the specification is to be used only as a guide and that an alternative may be offered, which will be equal to, or superior to, that specification. From such specifications, suppliers can often provide new technological improvements or economical solutions. The evaluation process must cater for such offers.
- 7) Specifying a particular, or very specific specification instead of a functional specification, restricts the supplier to providing the actual article physically specified. This can seriously restrict competition.
- 8) Specifications must be clearly written, accurate with complete details so as to leave no ambiguous thoughts in the supplier's mind as to what the purchaser requires. Unnecessarily restrictive requirements, that may unduly limit the number of bidders, shall be avoided.
- 9) Upon solicitation, every effort must be made to obtain full competition among the distributors that carry the manufacturer's identified product. The purpose for the use of a proprietary specification shall be made in advance, in writing, and submitted with the requisition and must be included in the procurement records.

11.7 Substitute and Alternative Items

- 1) There may be occasions when it is decided that a substitute or alternative item may also be offered in place of the requested item. If this is allowed, then it should be clearly stated in the ITT/RFQ documents and these definitions included. It has to, at the very least, do the same job, achieve the

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same results, or have the same performance, or to be superior to that which was requested.


- 2) Substitute item
 - a) An item that is the *same*, it performs to the *same* specifications, or better than, is of the *same* chemical composition, or made of the *same* physical material etc. though it may be supplied by a different manufacturer. Substitute items may only accepted if allowed for in the bidding documents and agreed in the contract documents.
- 3) Alternative item
 - a) An item that is *different*, yet will perform to the same specifications, or better than, but is of a *different* chemical composition, or a *different* physical material, and maybe supplied by a *different* manufacturer. Alternative items may only be accepted if allowed for in the bidding documents and agreed in the contract documents.

11.8 Drawings and Plans

- 1) Drawings may be used to provide further detail on the specifications, the TOR, the scope of work, design, landscape and location, or other functions where drawings or illustrations may add to clarity of the project.

11.9 Bid Security

- 1) The bid security is used to commit bidders to maintain the validity of their bids until the contract is awarded and signed and a performance bond has been submitted within the specified time. The Procuring Entity may include in the bidding documents a condition requiring bid security, where required.
- 2) The Bid Security, from a reputable Bank or financial institution, shall be submitted in any of the following formats:
 - a) Bank or financial institution Certified cheque
 - b) Letter of Credit
 - c) Bank or financial institution guarantee
- 3) The bid securities shall remain valid for a period of thirty five (35) days after the expiry of the bid validity period.
- 4) The bid security shall be based on the quantity and value of items required.
- 5) The bid security shall be expressed in the tender document as a fixed amount and it shall not exceed five (5) percent of the estimated total contract value.
- 6) The deadline for submission of bid security shall be the same as that for submission of bids. Bid securities received after the time and date of bid opening shall be rejected.
- 7) Failure to submit bid security or submission of inadequate bid security shall lead to rejection of the bid.
- 8) The bidder shall forfeit the bid security under the following circumstances:
 - a) The bidder withdraws its bid, without the agreement of the procuring entity, after tender closer, but before the expiry of the bid validity period;
 - b) The bidder refuses to accept correction of arithmetic errors (PPAD Reg. 41);
 - c) Refuses to accept the award of the tender;
 - d) Fails to sign the contract;
 - e) Fails to provide a performance bond, as stated in the conditions of tender.
- 9) Bid securities shall be released and returned under the following circumstances:
 - a) To the successful bidder after the contract has been signed and performance security has been

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- provided;
- b) To unsuccessful bidder after awards have been made to the successful bidder, or upon expiry;
 - c) Upon termination of bidding proceedings;
 - d) Upon withdrawal of a bid before the closing time and date for submission of the bids.

11.10 Bid Validity


- 1) The bid validity period specified in the bidding document shall vary depending on the complexity of the procurement.
- 2) The bid validity period shall be sufficient to allow evaluation and award of contract.
- 3) Under justifiable and/or exceptional circumstances, such as unexpected delays, clarification of technically complex details, a procuring entity may request the bidders to extend the validity of their bids.
- 4) The request for extension of bid validity shall be in writing, before the expiration date (it is important to verify that the bidder received the request).
- 5) All other Bidders shall also be requested to extend the validity of their bid security accordingly.
- 6) Bidders who choose not to extend the validity of their bids, or bid security, will not forfeit their security.

11.11 Delivery Periods

- 1) When deciding the delivery and performance plans the following shall be taken into consideration:
 - a) Urgency of need
 - b) Lead times for the production of the item(s)
 - c) Prevailing market conditions
 - d) Type of transportation to be used for deliver
 - e) The tendering process time. (From the bid closing date, to the award and signature of the contract)
 - f) The delivery terms (INCOTERMS)
 - g) The procuring entity must state the latest acceptable delivery date. Offers beyond this date may be deemed non-responsive.
 - h) Where delivery of an item is not urgent, then sufficient time *must* be allowed, without imposing penalties.
 - i) The bidding document shall specify where the supplies, works or services are to be delivered.

11.12 Bid Currency

- 1) Except where otherwise specified in the bid documents, the bid currency shall be the Botswana Pula.
- 2) In a case where international convertible currencies are called for in the bidding documents, the bidding document shall also specify the common base currency to be used for the purposes of evaluation.
- 3) The bank selling exchange rate established by the Bank of Botswana, as specified in the bidding document, shall be used for conversions of other currencies to the base currency (normally it is fixed to be between 7 to 10 days before the bid closing date).
- 4) The currency of bid shall also be the currency of the contract and payment.

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11.13 Performance and Liquidated Damages.

- 1) A provision for liquidated damages shall be included as a clause in the bidding documents, which shall apply if the contractor or supplier fails to deliver or perform the contract as required. An appropriate amount to be charged shall be specified.

11.14 Packing and Marking

- 1) The bidding document shall specify appropriate instructions on the method and nature of preservation and packing to ensure that goods will be protected from damage, theft, deterioration and pilferage, while in transit. The addition of identification markings, such as logos and brand advertising, will require artistic proofs to be provided.
- 2) If goods are required to be stored in the packaging or containers, then the instructions must state that the containers will be non-returnable.

11.15 Pre-Approval of Bidding Document


- 1) All proposed bidding documents have to be pre-approved by the Board, or its Committees before any procurement activity can be commenced.
- 2) The proposed bidding document shall also include the proposed contract documents. Without the proposed contract the proposed documents will be returned.
- 3) For contracts which are financed by a funding partner, the bidding documents may have to be pre-approved by the funding partner.

11.16 Invitation for Bids

- 1) Bids shall be invited only after the approval of the bidding document (pre-vetting. See above).
- 2) The advertisements shall be placed in the print media, or sent directly to short listed, or selected bidders, or placed on a suitable web site, as the case may be.
- 3) The invitation for bids does not form part of a subsequent contract. It is intended to alert potential bidders of the procurement opportunities. The advertising net should be spread as wide as possible.
- 4) All invitation for bids shall allow sufficient bidding time to enable bidders to acquire the bidding documents and submit bids. Reg. no. 33 requires that the minimum bidding period be as follows:
 - a) Six (6) weeks for international competitive bidding
 - b) Four (4) weeks for national competitive bidding
 - c) Two (2) weeks for restricted tendering on the basis of a short list.
 - d) One (1) week allowed for RFQ's, but aim for two (2) weeks whenever possible
- 5) Where bidders are required to purchase bidding documents, a record of names, contact addresses, telephone, email and fax numbers (where available) shall be kept to enable the Procuring Entity and the bidder(s) to action any required communication before bid opening.

11.17 Changes, Modifications, Clarifications and Time Extensions

- 1) If after issuing the invitation for bids, but before the time of bid opening, it becomes necessary to amend the bidding documents, changes to the bidding documents shall be in the form of an addendum and shall be issued to all bidders who collected the tender documents. (Examples: changes in specifications, delivery schedules, bid opening dates, or to correct a defective or ambiguous statement).

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- 2) A bidder may also request clarification(s) on the bid documents, in writing, at least seven (7) days, or as the number of days specific in bidding document, before the closing date of the tender. The Procuring Entity's response shall be sent out, in a timely manner, to all bidders who collected the bid documents, but must not reveal the source of the enquiry.
- 3) Where, because of questions, changes or clarifications, there are only seven (7) days left before the time for bid submission, consideration must be given to an extension of time of the bid closing. Such notification must be included in an amendment. Notification for extension of bid submission date shall be included in the addendum and sent to all bidders.
- 4) Where there is a longer period allowed for clarification, particularly in complex technical tenders, then consideration must be made for an extension in the time of bid closing.
- 5) No further action can be taken on a tender when it is discovered that an amendment is made to the bid document and does not allow sufficient time for bidders to correct their bids and deliver the revised bid before the bid closing date. In such cases an extension of bid closing date must be granted.
- 6) If a request for clarification is received after the designated last day for clarifications, no action shall be taken on it and the bidder informed of the reasons.

11.18 Postponement of Bid Opening

- 1) An addendum postponing the bid opening date may be made where:
 - a) The Procuring Entity has made a substantial change in the bid invitation documents;
 - b) A justifiable reason is received from a bidder requesting a postponement;
 - c) Unforeseen circumstances occur which renders the scheduled bid opening impractical.
- 2) If any of the above occurs, then a new bid submission date shall be advertised.

11.19 Cancellation of Invitation before Opening


- 1) Invitations for bids may not be cancelled unless:
 - a) Such cancellation is clearly in the public interest
 - b) There is no longer a requirement for the supplies or services or works
 - c) Where the magnitude of the amendments to the invitation warrants the issue of a new invitation
 - d) Any other justification approved by the Board or its committees
- 2) In such situations, the cancellation shall be published in the same media as used for the invitation of bids, or sent to all short listed bidders who were issued with the invitation to bid. All the bids which have been received shall be returned unopened to the bidders.

11.20 Bid Submission

- 1) Bids shall be submitted, as specified, in the format of submission stated in the bid documents.
- 2) All bids, withdrawals, substitutions or modifications received prior to the time of bid opening shall be kept unopened in a secure place.
- 3) Bids received after the closing date and time shall be marked "late tender" and returned unopened to their respective bidders.
- 4) Bids shall be submitted in writing and in the format specified in the bid document. Telegraphic, email or faxed bids shall not be accepted.

11.21 Bid Opening

- 1) The bid opening shall be conducted by a bid opening team of at least three members (refer to Bid Opening Committee under Chapter 6, 6.10), in the presence of bidders' representatives, who

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may wish to attend.

- 2) The bid opening team shall open the bids at the time and place set in the invitation for bids. The bid opening team shall publicly open the tender box (where such is available) and subsequently open the bids received and shall publicly read out and record the following:
 - a) Name and address of supplier
 - b) Tender price
 - c) Withdrawals
 - d) Substitutions
 - e) Modifications
 - f) If different proposals are offered and their related prices
 - g) If Substitutes or Alternatives are offered (if allowed)
 - h) Bid Security Details (Absence / Presence, Amount and Source)
- 3) Prospective bidders who are not able to attend the bid opening may request the information to be communicated to them by the Procuring Entity.
- 4) The original of each bid shall be initialled by the panel and carefully safeguarded. The copies of submitted bids shall be compared with the originals and corrections made to the copies, if any. Where corrections exist, only corrected copies shall be used for evaluation.
- 5) Where there is a discrepancy between the unit price and the extended price, the unit price will take precedence.
- 6) The original submitted bids are kept securely under the direction of the MTC/DATC.

11.22 Recording of Bids


- 1) The chairperson of the Bid Opening Committee shall call out the contents (in 21.2 above), which shall be recorded by the members of the opening team. The record shall include delivery periods and samples received (where applicable).
- 2) At the end of the bid opening, Bid Opening Committee members shall append their signatures to the bid recording form.

11.23 Bid Samples

- 1) Where samples are called for they may be submitted in the form prescribed in the tender documents before, or at, the time of the bid closing.
- 2) Samples submitted by suppliers as an eligibility condition must be jointly inspected by a committee of the Procurement Unit, the User Department and any other suitable expert.
 - a) Samples are to be kept in a secure place until evaluation as specified in the tender documents.

11.24 Rejection of all Bids after Opening

- 1) After the evaluation of bids an award shall be made as per the basis for award stated in the bid document.
- 2) To avoid cancellation of invitation for bids after opening, the Procuring Entity should make every effort to anticipate changes in a requirement before bids are submitted. All prospective bidders should be notified of any resulting modification at least seven (7) days before bid submission closing date and time in accordance with section 16 above.
- 3) An invitation for bids should not be cancelled solely on the basis of an increase in requirements of items to be procured. In an event where there is an increase in procurement requirements, the tender should be awarded and additional quantities treated as repeat orders to the successful

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bidder in accordance with PPAD Regulations 95 and 96.


- 4) Invitation for bids may be cancelled if during the running of the tender or at evaluation if there is evidence of collusion or any corrupt behaviour in relation to the tender.
- 5) Rejection of all bids may occur if, during the evaluation, none of the bidders meet the requirements of availability, the Specifications / TOR or Mandatory Criteria. It generally shows that care was not taken in setting the Specifications / TOR, or the selection/pre-qualification process was flawed. In such situations, the Procurement Unit shall revise the tender documents accordingly and re-tender. The re-tendering may be through the invitation of prospective bidders who were initially invited, or from the bidders who submitted their bids, subject to approval by the Board, or its Committees.
- 6) Upon rejection of all bids or cancellation of invitation for bids, the Procuring Entity shall promptly notify all the bidders.

11.25 Non-disclosure of Tender Evaluation Details

- 1) During the course of bid evaluation, information relating to the examination, clarification, evaluation, comparison of tenders, points awarded, and the recommendation for the award, shall not be disclosed to bidders or to any other persons who are not officially involved in the examination, evaluation of the Tenders, or adjudication, until after award and the contract has been signed.

11.26 Examination of Bids

- 1) In the preliminary examination, bids shall be examined to identify and eliminate incomplete, invalid or substantially non-responsive bids. The following criterion must be checked, but not only limited to:
 - a) Bidder's eligibility: if the bidder falls within the classification of bidders eligible to bid.
 - b) Goods offered eligibility: if the items to be supplied by the bidder are from such countries that are eligible to participate in the bid.
 - c) Mandatory document completeness: whether the bid form and any other forms have been signed, the bidder is business registered, tax paid and an appropriate bid security furnished (if required), in conformity with the requirements of the bidding documents
 - d) Presentation: whether all items have been quoted, for especially where the procurement is in the form of packages, categories, or lots.
- 2) Bids shall be determined as non-responsive if:
 - a) A bid fails the preliminary examination;
 - b) A bid does not meet the minimum bid specifications;
 - c) A bid substantially exceeds the required delivery schedule;
 - d) A bid imposes certain bidder conditions, which modifies the requirements of the invitation, and making it substantially different from what was intended;
 - e) The price quoted is subject to adjustment when a fixed price is called for.
- 3) Notwithstanding the set evaluation process outlined in the bid document, where samples have been requested, a sample will be first checked for conformity, before examining the bids; only bids with samples that are suitable, or are believed to be suitable for acceptance, shall qualify for further examination and evaluation. Samples may be examined by an appointed committee, prior to the examination of the bids.

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11.27 Minor Irregularities in Bids

- 1) A minor irregularity in any bid may be waived if it is merely a matter of form and will not subsequently result in variations in price, quality, quantity, delivery or the performance of services, and whose correction, or waiver, would not be prejudicial to other bidders and would not materially change the content of the bid (PPAD Reg. 41).
- 2) There are to be no changes of substance to a bid, except for purely mathematical errors.
- 3) Where for Works, Services and Supplies, there is discrepancy in the extension to the unit price, the unit price shall govern. All such errors shall be corrected and the bidders notified. A bidder shall not be permitted to retain any errors in any extension or totals. A bidder who does not agree with the correction of such errors will be disqualified and bid security returned.
- 4) The Procurement Entity shall give prompt notice of the correction to the bidder that submitted the Tender Document.

11.28 Evaluation and Comparison of Bids


- 1) Accepted bids shall be evaluated and compared in accordance with the procedures and criterion set out in the invitation to bid document.
- 2) The evaluation of a bid will take into account, in addition to the bid price quoted, one or more of the following factors as specified in the bid document.
 - a) All costs relating to delivering of the goods to their final destination, including cost of inland transportation, insurance, etc.;
 - b) Delivery schedule;
 - c) Deviation's in payment schedule from that specified in the bidding document;
 - d) The cost of consumables, mandatory spare parts, and service;
 - e) The availability after-sales services and support including recommend spare parts for the equipment offered in the bid;
 - f) The projected operating and maintenance costs during the life of the equipment (refer to Ch 2, sec. 9);
 - g) The performance and productivity of the equipment offered;
 - h) Other specific criteria stated in the bidding document.

11.29 Incidental Services

- 1) A supplier may be required to provide services such as performance or supervision of on-site assembly, installation or start-up of the supplied goods, furnishing of tools for assembling, maintenance of goods or conduct of training for personnel.
- 2) Prices charged by the supplier for the incidental services shall be requested in the bidding document.

11.30 Price Adjustment

- 1) If bids are invited on prices, subject to adjustment, the formula to be used must be specified in the bidding document (frequently for contracts whose delivery exceeds twelve (12) months).
- 2) Bids with adjustable prices shall be compared on the basis of the base price, excluding the price adjustment.
- 3) If in a price adjustment, a bidder quotes a fixed price, no special consideration shall be given. The fixed price bid must be compared to other bid prices subject to adjustment.
- 4) Under normal market conditions there are price variations. Prices go up, as well as down. When

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prices go down it is the responsibility of the Procurement Unit to renegotiate the contract price / unit price.

11.31 Recommendation for Award


- 1) After the evaluation process the bid shall be awarded as per the basis for award statement in the bid document subject to PPADB Act 36. The award shall be completed within the tender validity period.
- 2) Where a delay is foreseen or is unavoidable, which may result the award being made beyond the bid validity period, bidders should be requested to extend the validity period of their bids, before expiration of their bids.
- 3) In the event that the preferred bidder declines to sign the contract, the next ranked bidder will be recommended for awarded of the contract.

11.32 Proposal of a Contract Award

- 1) After the bid evaluation and preparation of the evaluation report, the best evaluated bidder is proposed to the Tender Evaluation Committee for approval. If the proposal is approved, the acceptance is signed by the MTC/ DATC members and the result conveyed to the Procuring Unit of the PE, with the return of the bid packages.
- 2) The Procurement Unit will prepare the award notification and it is signed by either the Head of the Procuring Entity as determined in accordance to monetary threshold authority. The procurement award is given to a bidder that is:
 - a) The best evaluated (highest awarded points) depending on the evaluation method,
 - b) Fully responsive,
 - c) Meets the criteria stipulated,
 - d) Shows capacity and capability to perform the contract
 - e) Has the qualifications to perform the contract

11.33 The Award Notification

- 1) The notification of award establishes the intent to formally sign a contract between the Procuring Entity and the successful bidder (a copy of the award letter is kept in the procurement file).
- 2) All contract awards will be to persons or firms deemed to be the preferred bidder according to criteria specified in the tender documents, provided they demonstrate their qualification to perform the contract, if so awarded.
- 3) The award notification letter must contain:
 - a) The date,
 - b) The name of the winning bidder,
 - c) The title of the Contract,
 - d) The description of the goods, service or works to be provided,
 - e) The tender reference number,
 - f) The price that was announced at the bid opening, or the revised calculated, or award price, and must be signed by either the Procurement Specialist, or the Head of the Procuring Entity (according to monetary threshold responsibilities).
- 4) The successful bidder is required within 10 days of the award notification to confirm acceptance (or otherwise) of the award in writing to the Procuring Entity of their intention to accepting or declining the award of the contract.
- 5) With International Competitive Bidding (ICB), the bid security is released when the award

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notification is being issued to the successful bidder.

11.34 Acceptance of award

- 1) After the successful bidder has been issued with a signed award notification letter, the bidder shall reply in writing accepting the award of the contract by the Procuring Entity, and indicating the firm's readiness to sign the resultant contract with the Procuring Entity.
- 2) Based on the acceptance letter from the successful bidder, the contract documentation shall be prepared for the contractual agreement between the Procuring Entity and the Supplier/ Contractor. If the Supplier/ Contractor does not accept the award, the contract should not be prepared and the defaulting Supplier/ Contractor is penalised by forfeiting their bid security. The second ranked should be sent the new award letter.

11.35 Post-Qualification

- 1) Post-Qualification involves the review of the preferred bidder's qualifications in respect of technical and financial capability, past performance and other information deemed necessary to ensure that the contract will be performed satisfactorily. It is important that this review is carried before the offer and acceptance documents are sent out for formal signature.
- 2) If the preferred bidder fails to meet the post qualification criteria specified in the bidding documents, the same review shall be carried out on the next ranked bidder.

11.36 Amendments and Alterations to a Contract


- 1) Amendments and alterations to a contract are not permitted without prior approval of the Board, or its committees (Refer to PPAD Reg. 95 and 96).

11.37 Contract Signatures

- 1) The representative of the Procurement Unit shall prepare copies of a contract documents for signature by the parties.
- 2) The document comprising the contract and conditions of contract shall be as specified in the bidding documents.
- 3) After PTN negotiations (clarifications) are complete, the contract documents must be signed by the appropriate authorities of all the parties, before it becomes a legal contract (offer and acceptance).
- 4) Once the contract has been formally signed the unsuccessful bidders should be notified and their bid securities should be promptly returned to them.
- 5) The original copy of the Bid Security shall be sent to the issuing Bank with a copy to the bidder and another copy retained on the procurement file.
- 6) The Tender award must be published in the appropriate media and include the name of the winning bidder, price announced at bid opening, evaluated price and scope of contract.

11.38 Distribution of Signed Contracts

- 1) The bidding documents shall indicate the numbers of copies of the contract to be signed. After the contract has been duly signed, by both Contractor and Client, legible copies of the signed contract shall be distributed internally in the organisation, together with copies of the 'Notification of Award' as follows:
 - a) Contractor;

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- b) Accounts Office (Contract File);
- c) Originating User Department;
- d) Procurement Unit (Contract File);
- e) Goods Received Department, or Engineers Department, or the Project Consultant/ Department;
- f) PPADB or its committees;
- g) Funding partner (where applicable).

11.39 Performance Security

- 1) Where a performance security is required the bidding document should clearly indicate the requirement.
- 2) The performance security shall be expressed in the tender document as a fixed amount and it shall not exceed ten (10%) percent of the contract price. The awarded contractor shall provide the performance security within 30 days of receipt of contract award notification and in any case before the formal contract signature.
- 3) If the awarded Contractor fails to submit a performance security, the contract cannot be signed, and the Procuring Entity should inform the Contractor of the serious infringement.
- 4) If immediate steps are not taken by the Contractor to provide the performance security, then the Procuring Entity will commence negotiations with the second ranked Bidder.
- 5) The format of the performance security shall be as specified in the bidding document.

11.40 INCOTERMS (Transportation)

- 1) The bidding and contracts documents should clearly specify the mode of transportation and destination of delivery, using the standard INCOTERMS where applicable. It is vital that procurement personnel are familiar with these terms, as they identify the precise moment when ownership of goods passes from seller to buyer.
- 2) INCOTERMS further assign each party their respective performance responsibilities, elements of cost, and risks. Some of the frequently used terms are:
- 3) CIP Carriage and Insurance Paid To (named place of destination)
 - a) The seller has the same obligations as under CPT but with the addition that the seller has to procure cargo insurance against the buyer's risk of loss of or damage to the goods during the carriage. The seller contracts for insurance and pays the insurance premium. The buyer should note that under the CIP term the seller is only required to obtain insurance on minimum coverage.
- 4) CFR Cost And Freight (named port of destination)
 - a) The seller must pay the costs and freight necessary to bring the goods to the named port of destination but the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time the goods have been delivered on board the vessel, is transferred from the seller to the buyer when the goods pass the ship's rail in the port of shipment. The CFR term requires the seller to clear the goods for export.
 - b) This term above can only be used for sea and inland waterway transport. When the ship's rail serves no practical purpose, such as in the case of roll-on/roll-off or container traffic, the CPT term is more appropriate to use.
- 5) CIF Cost, Insurance and Freight (named port of destination)
 - a) The seller has the same obligations as under CFR but with the addition that he has to procure marine insurance against the buyer's risk of loss of or damage to the goods during the carriage. The seller contracts for insurance and pays the insurance premium. The buyer

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should note that under the CIF term the seller is only required to obtain insurance on minimum coverage. The CIF term requires the seller to clear the goods for export.

- 6) DDP Delivered Duty Paid (named place of destination)
 - a) The seller fulfils his obligation to deliver when the goods have been made available at the named place in the country of importation. The seller has to bear the risks and costs, including duties, taxes, and other charges of delivering the goods thereto, cleared for importation. Whilst the EXW term represents the minimum obligation for the seller, DDP represents the maximum obligation.
 - b) *(This is probably the best INCO term to use in Botswana for imports. DDP is taking over from CIF).*
- 7) A detailed description of the INCOTERMS can be found in Chapter 22 of the PPADB - A Guide to International Procurement Practice and the Preparation of Tenders (PPADB Website).

11.41 Insurance

- 1) Where insurance is required for goods, works and services, the requirement should be explicitly stated in the bidding documents and contract.

11.42 Payments


- 1) Contract payment method and conditions shall be as defined in the bidding document and contract documents.
- 2) Where establishment of a Letter of Credit (LOC) with a commercial bank is required, the Finance Office shall make arrangements for its provision, and immediately inform the Contractor and the Procurement Unit accordingly.
- 3) Where final payment is to be made after delivery of the items, delivery inspection must be carried out and an acceptance certificate issued before authority is given for payment to be made. Payment for imported goods must be supported by shipping documents.
- 4) Prices shall remain fixed for the duration of the contract, except for price adjustment formulae's explicitly stated in the bidding documents or contract.
- 5) The currency for payment of the contract shall be the currency stated in the contract which must also be the currency of the bid.
- 6) All due payments must be paid promptly and against authorised documentation.


11.43 Pre-shipment Inspection

- 1) It may be necessary for certain imported goods to be subjected to pre-shipment inspection. Such instructions must be included in the contract documents.

11.44 Warranty/Defects Liability Period

- 1) Where applicable, the contract documents shall specify the warranty requirements for goods or works supplied. The warranty period shall be calculated from the time of delivery, the commissioning, handover or installation of the goods, works or as specified in the contract documents.
- 2) During the warranty period, the contractor shall compensate, or replace at no charge, the Procuring Entity for losses due to defects resulting from faulty design, materials and/or workmanship which become manifest.

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Chapter 12. Tender Administration and Contract Monitoring

12.1 Introduction


- 1) The term *contract* refers to the general conditions of contract in the Tender Documents and all other official documents that form part of the tender, including any Post Tender Negotiations (Clarification) and the associated signed agreement termed the “contract” as interpreted in the PPAD Act. The point at which a contractor begins the execution of the contract responsibilities is dependent on the terms and conditions stated within the Standard Bidding and Contract Documents and the signing of the contract documents by those authorised to sign.
- 2) In an open international bidding, the contract may impose certain responsibilities which the Procuring Entity will have to complete before the contract commencement, e.g. that the buyer must make the necessary arrangements for the opening of a Letter of Credit (L/C) considering that any delay in this action might result in the postponement of the contract starting date. The contractor, in turn, assumes responsibilities once the contract is signed.
- 3) The contract should make reference to the other documents that form an integral part of the overall Conditions of Contract i.e.:
 - a) Form of offer and Acceptance and Price Schedule;
 - b) Schedule of Requirements and Bill of Quantities;
 - c) Technical Specifications / TOR / SOW;
 - d) General Conditions of Supplies Contract; (always remain unaltered)
 - e) Special Conditions; (changed according to contract needs) or the Tender Data
 - f) Notification of Award.
- 4) For advice on tender administration contact the:
 - a) Procurement Unit
 - b) PPADB or its Committees
 - c) Legal Adviser of the Procuring and Disposing Entity
 - d) Attorney General Chambers

12.2 Contract practice

- 1) Once the award decision has been made, the Procurement Unit informs the Contractor, by means of an award notification, the intention of the Procuring Entity to enter into a contract with the awarded Contractor (see 11.32 Proposal of a Contract Award and 11.33 The Award Notification).
- 2) Post Tender Negotiations (see 6.15 Post Tender Negotiation Committee (PTN)) may have to be conducted, after which the contract document is prepared for the formal signing by both the parties.
- 3) Contracting is the intention of a Procuring Entity and a Contractor to enter into a formal and legally binding agreement, by the signing of a contract document by the authorised persons of both organisations.

12.3 Contract Management


- 1) The expediting process is whereby the Procuring Entity monitors the contract to make sure the Contractor adheres to the conditions, or terms of reference, in the contract and that the items are provided at the right time and place. This process also encourages Contractors to ensure meeting the delivery dates and/ or to effect immediate delivery of overdue contracts. Expediting is a function of the Procurement Unit. The person responsible for expediting may have to be in frequent contact with the contractor, by telephone, e-mail and by fax and even to visiting their

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- premises.
- 2) The delivery schedule/plan is normally the function of the Contract Manager employed within the Procurement Unit. However, in the smaller organisations it will become the function of the Receiving Section, or an activity of the Procurement Unit.
 - 3) Processes for contract expedition for each entity are as follows:
 - a) Obtain a copy of the of the contract
 - b) Study the specific conditions, Specification, TOR, BOM, SOW, etc.
 - c) Check for the latest date of each delivery
 - d) Follow-up deliveries with the Contractor
 - e) Check for performance security (if required)
 - f) Check conformity of products supplied with the Specification, TOR, BOM, SOW, etc.
 - 4) The Contract Manager will analyse the contract and produce a schedule/ matrix of expected delivery dates, which are easy to follow. By advance contact with the Supplier/ Contractor, the Expediter can ensure that the delivery will be on time.
 - 5) An agreed delivery schedule/plan is drawn up which details the frequency of the deliveries and the quantities expected in each delivery. Where high volumes of deliveries are expected it is necessary for the Receiving Section to be ready to unload and store the articles in a timely manner.
 - 6) Orders may be expedited by telephone, fax, email or letter. The dates at which expediting would be carried out should be determined soon after LOC's have been established, or advanced payment has been made. A reasonable amount of time shall be fixed between the date of establishing the LOC or advanced payment and the time of delivery.
 - 7) The Contract Manager shall set up a system whereby dates for expediting orders shall be recorded. Records of the various orders placed shall be updated, as and when information is received, and closed when delivery is completed.
 - 8) When communicating expediting requests to the supplier a customised letter of enquiry on the status of orders made shall be used.
 - 9) The Contract Manager shall submit regular status reports on all outstanding orders to the Procurement Manager. A customised status form shall be used to enquire from the expediting section the status of a specific shipment.
 - 10) The Contract Manager or agent charged with the supervision of the construction works shall be responsible for expediting the works contract, as is necessary and liaise with the Procurement Unit of the PE.

12.4 Contract Monitoring

- 1) Monitoring ensures that focus is placed on what is intended to be provided, delivered, installed, constructed and commissioned and that prompt action is taken on any deviations or delays. Delays in one area can have a direct and delaying effect upon another area and if not quickly acted upon, can ultimately delay, or stop, a project.
- 2) A contract defines the objective of the contract, the scope, specification and the responsibilities of the Procuring Entity and the Supplier/ Contractor. It binds both, the Procuring Entity and the Supplier/ Contractor to be committed to the contract and their respective obligations. It is important that the Procurement Unit staff know what is expected from each contract.
- 3) Copies of the duly signed contract should be distributed to the different parties involved, such as the End-Users, Goods Received section, Project Manager, Site Engineer, Finance Department, etc. When the contract has been fully executed the Procurement Unit/ Project Office will ensure that all the documentation amassed during the project period are correctly filed in clearly labelled contract

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folders and archived for a period of 5 years and forwarded to the National Archives and kept for a further two (2) years (PPAD Act 94 sec. (1 & 2) and Chapter 11, 11.38.).


- 4) The Schedule of Requirements, the delivery terms and the contract documentation provides all the essential information for proper contract monitoring. It is of critical importance to ensure the correct performance and timely completion of contracts. The Procurement Unit will be responsible to monitor the contract deliverables, with input from the Project Manager.
- 5) The progress of a contract needs constant monitoring to ensure:
 - a) Contract is being performed according to obligation (performance targets)
 - b) Scheduled handovers (milestones) are on time
 - c) Handovers are the appropriate signed certification
 - d) Correct quality standards and specifications are adhered to
 - e) Variation/change orders are approved and as agreed, subject to proven availability of funds.
 - f) Claims and invoices are supported by factual documentation
 - g) Any non-compliance is quickly corrected
 - h) Performance security is held (5 to 10%)
 - i) Frequent review of the contract noting changes and amendments (written and agreed upon by both parties)
 - j) Inspection of items installed or constructed are as specified
 - k) Items are safely stored and protected.
- 6) The PPADB or its Committees will, in accordance with PPAD Act Section 52 monitor contract management and performance of selected contracts awarded by the Board and/or its committees.

12.5 Management of Contract Information

- 1) A file shall be open for every project and shall contain a dated history and activity sheet of the procurement. Where applicable, a software programme may be used to record the same information (print out at the completion of the procurement process and include in file).
- 2) The history / activity sheet will maintain a concise and chronological summary of all actions from initiation to completion stage of the procurement. It shall also provide the full history of transactions, for the purpose of:
 - a. Record of the history of a project, dates, costs, quantities and proceedings at each stage of the procurement cycle;
 - b. Providing a record of actions taken by procurement personnel in the procurement cycle;
 - c. Providing information that may be needed for review and investigation of procurement activities and the phased stages;
 - d. Providing critical information should there be any enquiries, litigation or audit.
- 3) By recording the dates of activities, it is possible to determine where the delays (bottlenecks) are occurring;
- 4) The history/ activity sheet must record the actual and expected time schedules, the procurement activities and the costs as accrued
- 5) The files shall be kept by the Procurement Unit

12.6 Defective Goods/Works/Services

- 1) Upon detection of any defect in any item/ equipment/ services/ workmanship supplied, or are still under warranty, or under defects liability period, the Receiving Section or User Department shall notify the Procurement Unit in writing of the problem. Upon receipt of the report, the Procurement

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Unit shall immediately notify the Contractor by telephone/fax/email, followed by a written statement detailing the scale of the problem and possible claims arising and a request to rectify the problem and what action must be taken, as may be permitted by the law, or under the supplier's warranty. As required, copies may also be submitted to the Board, or its Committees, and/or respective funding/donor agency.


- 2) If the item/ equipment/ services/ workmanship are found to be defective and there is damage to property, persons or the infrastructure, then substantial damages shall be claimed by the Procurement Unit.

12.7 Evaluation of Supplier performance

- 1) It is important that the Procurement Unit keep records of the Suppliers performance. The monitoring will include a checklist of:
 - a) Quality of the goods meeting the specifications
 - b) Actual performance against delivery time specified
 - c) Construction completed on time and to the quality expected
 - d) Response time to queries and complaints
 - e) Standard of written reports and reporting requirements including minutes of site/technical meetings with the contractor acknowledged by both parties.
 - f) Keeping the client informed of progress
 - g) Keeping the client informed of problems
 - h) Speed with which problems are resolved
 - i) Accuracy of claims/invoices/materials/man hours worked
 - j) Relationship with the Supplier's Management Team

12.8 Contractor's Performance Report

- 1) On completion of a contract, the Contract Manager will prepare a report on the Contractor's performance under the contract. The Contractor's adherence to contract instructions, responses to progress enquiries, timely completion of delivery and quality of the work carried out shall be the basis of the performance appraisal.
 - 2) When a Contractor does good work it is expected that the Contractor will receive a letter of satisfaction and appreciation. Likewise, where problems were evident and despite efforts to rectify the situation they could not be resolved, then it is appropriate that the Contractor be informed of those problems. The letters should be acknowledgement of the facts, brief and professional. A copy of the report will be kept in the Contract file.
 - 3) The Contractor's Performance Report will be used as reference to inform the preparation of the End of Activity Report..
3. End of Activity Report: -
The preparation and submission of an End of Activity report, to the Board, or its committees, is a mandatory requirement for all PE's (PPAD Act 46). Prior to the issuing of final payment at the completion of a contract, the Procuring Unit (or Project Team) will prepare a detailed End of Activity report, with a copy for the contract file, whereby the performance of the Contractor shall be assessed. It will include the Contractor's adherence to contract instructions, responses to progress enquiries, timely completion of delivery and quality of the work carried out and shall be the basis of the performance appraisal (see 0 End of Activity Report Template for standard template).


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12.9 Debriefing the Bidders

- 1) In the interests of transparency and openness, it is normal practice to debrief each participating bidder of the results of their bid. Debriefing is a mandatory requirement for every PE. The bidder/contractor will have incurred costs in preparing and developing their bid and therefore, at the very least, it is only good practice to inform them of the outcome of the results and why they were not successful. It demonstrates the PE's commitment to good practice and transparency and also it shows an appreciation of the efforts that a bidder/contractor has exhibited, in preparing their bid.


A PE will adhere to the following guidelines when debriefing an unsuccessful bidder:

1. Objectives of Debriefing:
 - a) To assist contractors to improve their bids.
 - b) To establish and maintain a reputation as a fair, honest and ethical entity, to ensure that high quality contractors are encouraged to submit tenders
 - c) To act as a feedback mechanism and to ensure that tender Documents are understood fully.
2. When to debrief: The Timing of the debriefing process will depend on whether:
 - a) Bidders have been eliminated at the Pre Qualification Stage, in which case the debriefing has to be conducted after the pre qualified list has been decided, or
 - b) Where bidders were invited to tender and have submitted unsuccessful bids. In this case debriefing must take place after the award and once all unsuccessful bidders have been informed.
 - c) Debriefing should be used as a pre cursor to the litigation process.
3. Approach to debriefing:
 - a) A letter should be issued to the contractors, confirming the outcome of the award. This letter should include an offer to debrief unsuccessful bidders on request. It must also be stated that debriefing will be done within fifteen (15) days of receipt of such request to debrief.
 - b) The debriefing meeting must not be elaborate and bidders must be informed that only their bids will be discussed. It must be emphasized to bidders that the debriefing process will not be used to debate the merits of the award decision and that it is only their submissions which will be discussed.
 - c) Only the award decision should be communicated to the bidders at debriefing and not the recommendation of the evaluating Committee. This was to avoid a situation where the recommendation was not accepted by the awarding body hence it was concluded that there was no need to communicate the decision of the evaluation committee.
 - d) The notice for debriefing should be included in the Invitation to Tender (ITT) document and bidders should be informed that those who are interested to be debriefed should submit their request in writing to the procuring entity.
 - e) A letter confirming the outcome of the award and informing the bidders of their right to be debriefed should be communicated to the bidder within seven (7) days after the letter of award had been issued. Bidders should be informed that they are liable for costs of debriefing (for example, transport, accommodation and meals)
 - f) Minutes should be recorded but only resolutions should be noted, these should be signed off by both parties immediately after the debriefing.

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- g) Legal representatives for either party may attend the debriefing but should not be allowed to speak at the debriefing.
 - h) The Procuring Unit should be the responsible office to ensure that debriefing is conducted.
 - i) Observers should be representatives of the awarding entity, either the MTC/DATC or PPADB.
4. It is essential that the bidder understands that the discussion is being carried out with the object of mutual longer term benefits and that the contractor will be told honestly of the strength and weaknesses of the bid. The meeting must not be viewed as a forum for debate as to the validity of a tender.
 5. General Instructions on the structure of the Debrief:
 - a) All the people in attendance will introduce themselves and identify their positions and role in the process to be discussed. The composition of the evaluation team may be stated together with the number of bids received and if applicable the number of contractors that were shortlisted.
 - b) The Bidder must be clearly informed that the award was made on value basis and in strict compliance with the requirements of the ITT.
 6. Composition of the Debriefing Team: The debriefing team should comprise of a minimum of three (3) persons who should include the following:
 - a) A member of the evaluation team;
 - b) The Project Manager Responsible for the Project;
 - c) An additional member who may be a member of the PE;
 - d) A representative of the awarding Committee where possible.
 7. Tender Analysis and Summary:
 - The team will explain the criteria that were used for the selection, and show how the bidder fared against the criteria.
 - Care must be taken not to divulge the confidential details of the tender and this discussion must be kept to general terms. Under no circumstances will innovative ideas put forward by another tenderer be discussed.
 8. The recommendation made by the final evaluation report:
 - a) At this stage the team will outline the process, the methodology used, the criteria, and the role of adjudicators and evaluators.
 - b) The evaluation strategy will be described. This will include compliance issues, weighing, and scoring. Specific scoring by other bidders must not be discussed.
 - c) The team will indicate the number of bidders that participated in the tender without discussing particular competitor's bids.
 9. Discussions of a particular invitee's bid:

The purpose of this stage is to give a balanced view of the strengths and weaknesses of the bids in question viz a viz the requirements of the Tender Document. Emphasis must be made on the fact that the purpose is not to discuss the successful bidder's bid but to indicate the strengths and weaknesses of the invited bidder.

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- a) The team should explain how the invited bidder's bid compared to the requirements of the ITT. It should show how the bidder scored against the main criteria, by highlighting their strengths and weaknesses.
- b) At all stages of the debriefing the team must avoid revealing anything about other bids, where information may be sensitive or has been supplied with confidence.
- c) Where the bid price was competitive, this must be acknowledged but it must be explained that this was outweighed by other technical factors in the award decision.
- d) It is important to avoid being drawn into a discussion on the assessment of bidder points or why the bidder disagrees with points allocated to them, or why they should have been allocated higher points.
- e) If the bidder disagrees, they must be advised to follow the procedure for lodging complaints.

10. General discussion:

The debriefing team must seek the views of the bidders about the process. It should be enquired from the bidders as to how the procurement process should be improved and whether the feedback was useful.


11. Closing statement:

The team should thank the bidder for attending the meeting and show an appreciation for effort made by the bidders in submitting the bid. The meeting should then be closed.

12. It is important to note that there should be a record of the meeting kept by the Secretary of the team, who will be recording the proceedings. This should be a brief record capturing the key issues and should be signed off by both parties immediately at the debriefing session.”

12.10 Defaulting Contractors

- 1) The Procuring Entity will take such necessary action to claim compensation, if a Supplier/ Contractor fails to remedy the defect/ performance/ service. Deficient suppliers shall be given the opportunity to exchange, or correct the notified faults.
- 2) A contractor who performs poorly, the goods/ equipment/ services/ workmanship found to be unsatisfactory and not to the contract requirements, and/or fails to complete a contract, may be recommended to be removed from the database of registration. The Procurement Unit shall submit a report on such to the Head of the Procuring Entity with a copy for the contract file. The Contractor will be informed in writing and must be allowed to defend their actions and why their name should not be deleted from the register.
- 3) If the Supplier/ Contractor is given ample opportunity rectify the situation and fails to do so, then the Supplier/ Contractor may be recommended to be de-listed from the approved suppliers' database and may be delisted or suspended from participating in future business government business.
- 4) When a process of investigation conducted by the Suspension and Delisting Disciplinary Committee (PPAD Regulations (amended) Part XIII) has concluded that a Supplier/Contractor has committed an act of indiscretion, or has failed to perform a contract, as expected, then the Supplier/ Contractor will formally be de-listed or suspended from the register The PPADB will remove the Supplier/ Contractor for the determined period.
- 5) The Procurement Unit should seek legal advice from the Chief Legal Counsel within the Ministry, or

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the Office of the Attorney General Chambers, in the event of non-performance by the Contractor.


12.11 Termination of a Contract

- 1) Contract cancellation by the Procuring Entity is a serious decision and should only be taken after considerable consultation with the Contractor, the Accounting Officer, and procurement and legal colleagues. There must be certainty of action, which is supported by factual evidence of the alleged failure(s) which supports the potential decision. If the decision is wrong, the Procuring Entity can be taken to Court and be liable for considerable monetary penalties.
- 2) In a potential contract cancellation, all the evidence must be carefully assembled, including the steps taken to allow the Contractor to rectify the situation, the letters of complaint and warnings, appropriately referenced, and the evidence kept in a secure locked location. When there is a case for termination, all such reasons should be given in writing, including all correspondence.
- 3) Some examples of failure to perform to the contract conditions by a contractor will include, but not be solely limited to:
 - a) Failure to supply all or part of the goods;
 - b) Failure to supply all or part of the goods within the specified timeframe;
 - c) Failure to perform the contractual obligations (by either party);
 - d) Termination for various other defaults (sub-standard items, substitute materials);
 - e) Falsification of bidding documents, or supporting evidence;
 - f) Falsely claiming for items/ equipment provided;
 - g) Falsely claiming for work completed/ hours worked;
 - h) The contractor having become bankrupt or insolvent;
- 4) A PE may not 'resile' from a contract based upon an award of the Board, or its committees, prior to seeking the approval of the Board, or the Committee concerned (refer to PPAD Act sec. 47). Authority for termination, must in all circumstances always be sought.

12.12 Guidelines for Termination of a FIDIC Contract:

Where a FIDIC Contract has been used, a PE will adhere to the following guidelines when terminating the contract:


- a) The contractor defaults.
- b) The PE issues a *Notice to Correct* the default within a stated reasonable time to the contractor.
- c) 14 days before the stated reasonable time expires the PE assesses whether the contractor is likely to comply / correct the default or not.
- d) If in the PE's opinion, the contractor is likely to comply then PE should continue to closely monitor progress.
- e) If the contractor is failing to comply/rectify, then the PE writes to PPADB requesting for approval to give Notice of intention to terminate. The PE attaches a copy of the Notice to Correct previously issued together with a detailed statement elaborating the contractual grounds for wanting to start the termination process, which starts with issuing the Notice of Intention to Terminate. The submission should be such that it can enable the Board to consider the case and make up its mind.
- f) If PPADB agrees with the grounds given by the PE then approval to issue Notice of Intention to Terminate is given by the Board at this stage.
- g) With approval of the Board having been given, the PE should proceed to issue the Notice of Intention to Terminate which gives the contractor 14 days to correct/comply.

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- h) If contractor fails to comply then PE writes to PPADB requesting for Approval to Terminate.
- i) Where termination has been granted by the Board and has taken place, the PE must notify PPADB within 7 days that indeed termination has taken place and that PE is taking over the site from the contractor.
- j) Where the contractor complies with or rectifies default the PE should submit a report indicating how the default was rectified.
- k) If PPADB disagrees with the grounds for the Notice of Intention to Terminate given at (5) above by the PE, and accordingly defers its decision for more information and justification, or disagrees with the request to Terminate as in (8) above, the PE shall revert back to PPADB within 7 days with such justification or information for the Board to consider. If the Board still disagrees with the justification the termination process **shall not start**. It should be noted however that approval by the Board to terminate shall not in any case be unreasonably withheld by the Board.
- l) If the contractor disagrees with the termination and declares a dispute, while the Board had actually given its approval for Termination, the FIDIC Contract should take over, and the case should be referred to the Dispute Arbitration Board (DAB) and/or Arbitration between the PE and the contractor.
- m) PPADB should be formally informed of the outcome of the dispute by the PE.

12.13 Terminating a tender process

- 1) Prior to the award of a contract and signing of the contract, the Procurement Unit may have reasons of its own to terminate a tender process.
- 2) A tender process may also be terminated after an award of contract, but before the signing of the contract.
- 3) Tender documents should carry a termination clause such as the following examples, which need to be included in all tender documents:
 - a) *For whatever reason or at whatever time in the tendering process, the Procuring Entity may wish not to proceed further with the tender process and may cancel any further activity, if it so requires. All costs arising in the preparation of the tender, directly or indirectly, are solely at the cost of the Tenderer.*
 - b) *The Contracting Authority does not bind itself to accept any or all tenders submitted, in part or in full.*
- 4) *Note that the above clauses are only applicable prior to the creation of a legally signed contract by both parties.*
- 5) A public procurement tender proceeding may be terminated for the following reasons, and only if the above clauses (in 1) above) are included in the tender documents:
 - a) The proceedings were conducted in circumstances that contravene provisions of the current law on public procurement;
 - b) If it appears on investigation that the award process was wrongful and in contravention of established public procurement rules and regulations.
 - c) If the offered costs are higher than the current market price(s) or are in excess of the budget available;
 - d) A re-allocation of budgets or a forced re-scheduling of resources;
 - e) If it appears that the lack of response or non-competitive response is due to a restrictive tender construction (collusion);
 - f) Following a pre-qualification exercise, the contracting authority materially changes the

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- solicitation documents;
- g) That the PPADB, or its committees, rejects the recommendation for the award;
 - h) Cancellation of any proceeding must have the prior approval of the PPADB, or its Committees. Note that in Botswana the interpretation of the Act is that if the PPADB rejects a recommendation from the Procuring Entity, then the tender has reached one of the two possible conclusions (an approval of award or a reject), therefore there is no need to cancel such a tender but simply inform the bidders that none of them was successful for the given reasons;
 - i) Emergency measures overtaking current activities;
 - j) Change in the present circumstances, or of the original requirements that could not be foreseen by the contracting authority;
 - k) Changes to specifications;
 - l) Changes in demand patterns, altering the need to be satisfied;
 - m) Items are no longer needed;
 - n) Protection against unrealistic tenders;
 - o) Protection against frivolous tenders.
6. A Procuring Entity shall not terminate a contract duly awarded by the Board or its Committees, without the prior written approval of the Board or its Committees. (Section 47)
 7. In the event of such termination, the provisions of the Contract shall be adhered to.

12.14 Notices


- The Notice Clause in the Contract defines how notices should be made, where they may be made, and when notices are deemed to have been received by the addressee. The Clause further prescribes the circumstances under which a notice will be required.
- Any Notices to be issued to a contractor shall be made in writing, and shall be signed by a person duly authorized to provide such notice, in accordance with the terms and conditions stated in the contract.
- A Procuring Entity must consult its Legal Advisors prior to the issuance of any Notice.

12.15 The Procurement Record

- 1) PPAD Regulation 21 provides for what constitutes a procurement record to be kept by a Procuring Entity. All procurement records shall, where appropriate contain the following documents:
 - a) Request to initiate procurement proceedings;
 - b) A copy of the published advert or shortlist;
 - c) Prequalification and bidding documents and any amendments or clarifications thereto;
 - d) Records of bid openings;
 - e) Copies of records of all bids evaluated and any responses on requests for clarification;
 - f) An evaluation report;
 - g) A contract document;
 - h) All documents related to the management of the contract, including, but not limited to contract performance reports, payment records, warranties, bank guarantees, and any claims made on the contract;
 - i) Minutes of any meetings related to the procurement, including minutes of any negotiation meetings held prior to the signing of the contract
 - j) All correspondence between the Procuring Entity and the Contractor (s)

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- k) All submissions to the Board or its Committees;
- l) All decisions of the Board related to the procurement, including, but not limited to –
 - i) The choice of a procurement method or procedure,
 - ii) The approval of bidding documents,
 - iii) The approval of evaluation reports,
 - iv) The contract award,
 - v) The approval of contract documents and contract amendments, and
 - vi) Record of any decision or discussions to suspend or terminate the procurement process
- 2. A Procuring Entity shall maintain records of procurement for the periods specified in the National Archives Act.

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Chapter 13. Complaints and Offences

13.1 Introduction

- 1) A complaint means a written objection, submitted by one or more of the suppliers (the complainant), regarding a solicitation, contract award or proposed contract award for goods, works or services and contractor registration.
- 2) If there is evidence of inappropriate behaviour and indiscretions actions by individuals or firms involving procurement and / or disposal activities, then an appeal can be made. Complaints may be lodged with the appropriate bodies (PPAD Act Sections 53 and 103).
- 3) It is important to note that there is a difference between types of complaints:
 - a) Complaints on the management or content of offers, tenders, bids, contracts (by either a Procuring Entity or a Contractor)
 - b) Complaints about the personal behaviour of Procuring Entity officials or staff of the Bidders / Contractors.

13.2 Right to review


- 1) Any supplier, contractor or complainant that claims to have suffered, or that may incur loss or injury, due to a breach of a duty imposed on them by the Procuring Entity on the provisions of this manual, may seek review.
- 2) The following matters shall not be subject to review (PPAD Regulation 77 (2)):
 - a) Selection of a method of procurement;
 - b) Choice of selection of an evaluation procedure for the selected procurement method;
 - c) Decision by the Board or its Committee to reject all bids.
 - d) Refusal by the Procuring Entity to respond to an unsolicited offer of an interest to bid.

13.3 Report of the Complaint

- 1) The complaint must be received in a written form and should contain the following information:
 - a) Company name, address, contact person name, telephone number, fax number, email address;
 - b) The nature of the problem and if applicable, identifying the part of the regulation that are believed to have been broken;
 - c) Description of the background leading to the problem, statement of breach of Tender/Contract, relevant dates and times, Tender/Contract reference number;
 - d) If known, what part of the Procurement Act or Regulations has been broken;
 - e) The supporting and provable facts;
 - f) The Procuring Entity's representative, originally contacted to review the problem and the results of those discussions;
 - g) Listed in detail, the action that is requested.
- 2) Prior to formally presenting a written complaint, suppliers are strongly encouraged to contact the Procuring Entity to discuss its concerns. It has often been found that there are minor errors, omissions or other inadvertent actions that can be clarified and corrected, to the satisfaction of the complainant.

13.4 Suspension of Procurement Proceedings

- 1) Upon receipt of a complaint the procurement proceedings relating to that particular procurement activity shall be immediately suspended by the Board, through the concerned Procuring Entity

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(PPAD Regulations 78 (3) and 79).


- 2) The period of suspension shall not exceed 60 days (Regulation 79 (3)).

13.5 Investigation by the Board

- 1) The Board, if it believes there has been an alleged wrongdoing, breach, mismanagement, or received a report, or a complaint, verbally or in writing shall consider if an investigation is necessary, or desirable, for the purpose of preventing, investigating or detecting a contravention of the PPAD Act 52, or Regulations, or this Operations Manual. As the case may be, the allegation may be against any entity of the Government, or any Contractor, or against any entity outside of Government which has been a beneficiary of a Government contribution for the procurement or disposal activity,
- 2) For the purposes of such an investigation, the Board shall appoint an investigation team or a Committee of enquiry to conduct an investigation into any matter related to the conduct of any procurement proceedings by a Procuring Entity, or a Contractor, or an alleged conclusion, or operation of any procurement contract.
- 3) The appointed investigation team /committee may at any time during normal office hours, and with advance notice may enter any premises of the Procuring Entity concerned, or of any Bidder, Supplier, Contractor, or Consultants in the procurement proceedings concerned;
- 4) Require any Officer, employee or agent of the Procuring Entity or Bidder, Supplier, Contractor, or Consultants to produce any books, records, accounts or documents;
- 5) Search any premises under investigation for any books, records, accounts or documents;
- 6) Examine and make extracts from and copies of any books, records, accounts or documents of the Procuring Entity, Bidder, Supplier, Contractor, or Consultants;
- 7) Remove any books, records, accounts, documents, computer equipment including storage media, of the Procuring Entity, Bidder, Supplier, Contractor, or Consultants, for so long as may be necessary for the purpose of examining them, or making extracts from, or copies of them; provided that the investigator shall give a full receipt for any such books, records, accounts, or documents so removed;
- 8) Require any Officer, employee or agent of the Procuring Entity, or Bidder, Supplier, Contractor, or Consultants;
 - a) To explain any entry of any books, records, accounts, correspondence or documents; including entries in computer equipment and storage media
 - b) To provide the investigator with such information concerning the Management, or activities of the Procuring Entity, or bidder as may be reasonably required.

13.6 Procedures on Completion of Investigation

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

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13.7 Arbitration


- 1) Parties to a procurement contract may agree to seek a remedy to arbitration under the existing arbitration system, whether or not arbitration was provided for under the tender document, or the resultant contract.
- 2) A reference to mediation shall not be construed as taking away the accountability of the High Court to resolve expeditiously, any complaint brought up to it for resolution.

13.8 Offences Relating to Procurement

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


13.9 Complaints Review Procedure

- 1) To address the complaints of aggrieved bidders and other stakeholders, a means for lodging complaints/appeals on officials who do not follow the prescribed procedures have been provided for in section 54 of the PPAD Act of 2001.
- 2) An aggrieved party wishing to lodge a complaint to the Board, its Committees or the PE shall follow the procedure below:
 - a) Submit the complaint in writing for the attention of the Board Secretary/ Chairperson of the Ministerial Tender Committee (MTC) or the District Administration Tender Committee

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(DATC) as soon as possible but within fourteen (14) days of becoming aware of your complaint.

- b) If the complaint is submitted to the Board after fourteen (14) days mentioned above, it will not be considered by the Board/ MTC/DATC.
 - c) Where a complaint is lodged with the MTC/DATC or the Procuring Entity (PE), such a complaint may be submitted to the Board for review/appeal and not to the Independent Complaints Review Committee (ICRC).
 - d) All queries/ complaints lodged with the Board should be addressed to the Secretary of the Board and those lodged with the MTC or the DATC should be addressed to the MTC/DATC Chairperson.
 - e) Where clarification is sought in respect of a floating tender, such queries must be directed to the contact person specified in the Tender Notice within the time specified in the Tender Notice.
 - f) Any other queries must be directed either to the Board Secretary, the Chairperson of the MTC/DATC or the PE.
 - g) The Complaint must be submitted in writing either to the Secretary of the Board or to the MTC/DATC Chairperson and where there is a claim for monetary loss, provide supporting evidence together with the written complaint.
 - h) The Board will consider the complaint within fourteen (14) days of submission and communicate its decision in writing within five (5) days of its decision.
 - i) Where the complaint is not resolved by mutual agreement between the complainant and the Board, the Secretary of the Board shall, within 14 days after the submission of the complaint, issue a written decision of the Board to refer the matter to the Independent Complaints Review Committee (PPAD Regulation 78 (6)). The decision shall:
 - j) State the reasons for the decision to refer the matter to the Independent Complaints Review Committee
 - k) State the grounds upon which the Board denies liability if such liability is denied
 - l) A Supplier, Contractor or Consultant is entitled to seek review and may submit the complaint to the Independent Complaints Review Committee within 7 days, if the complaint cannot be resolved with the Board, and if the complaint is upheld, in whole or in part, indicate the corrective measures that are to be taken.
 - m) If the complainant is not satisfied with the decision of the Board, the complaint (dispute) may be referred to the (ICRC) within fourteen (14) days after the decision of the Board.
 - n) If not satisfied with the decision of the ICRC, the dispute may be escalated to the courts of law. The ICRC charges are as follows:
 - When lodging a complaint to the ICRC, a lodging fee of P250 shall be paid.
 - A complaint fee equal to one (1%) percent of the estimated tender value is paid when you lodge a complaint.
 - The complaint fee shall not be less than P1, 500. or more than P350, 000.
 - All files containing documents on the case are made available for public inspection at the fee of P50.
- 3) **Pre-award** complaints/queries should be addressed to the PE and where the bidder is aggrieved with the decision of the PE, such complains should be escalated to the Board within fourteen (14)

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days of the decision of the PE. Any query lodged with either the MTC/ DATC/PE must be copied to the Board Secretary.

- 4) **Post- award** complaints/queries should be escalated to the Board within fourteen (14) days of the decision of the MTC/DATC.

13.10 Dismissal of Complaint

A complaint **may** be dismissed without further consideration where:

- a) It is frivolous in nature, or no evidence is produced, or it is invalid;
- b) Is considered quite inappropriate for consideration (has no grounds);
- c) The complainant did not participate in the competitive process;
- d) Is lodged after the allowed time limit;
- e) Is the result of a previously and properly applied ruling by the Board.


13.11 Suspension of contracts under implementation

- a) It is important to note that where a contract has been concluded following an award of a tender and implementation of a contract has commenced, such a contract shall not be suspended by the Board.
- b) The bidder however has the right to escalate the complaint to the ICRC.
- c) The ICRC has the power to suspend contracts already under implementation provided there is evidence that continued implementation of such a contract will cause substantial loss to public revenue or that it will be prejudicial to the public interest.

Chapter 14 Code of Ethics / Code of Behaviour

14.01 Statement on Purchasing Policy

- 1) It is the policy of the Public Procurement and Asset Disposal Board (PPADB) to promote and balance the objectives of protecting the integrity of the Government of Botswana and the expenditure of funds provided by the Botswana Consolidated Fund (BCF), by prescribing essential standards of ethical conduct, without creating unnecessary obstacles to providing an efficient and effective public service.
- 2) Those persons who provide any input, in whatsoever form or contribution, in part or in full, and have been or will be, involved in the process of selecting supplier(s), directly or indirectly, for the provision of services, goods, equipment, projects, works, consultancy or other such requirements, which are obtained from monies obtained from the Botswana Consolidated Fund (BCF), or are legally required to follow the Public Procurement Law and practises of Botswana, will be obliged to conduct themselves in the following manner.

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14.2 Principles

i) Expected behaviour

- 1) Where there is any element or suspicion of behaviour, which seems inappropriate or raises any ethical concerns, at any stage in the course of a procurement action, then any person(s) who observes or acquires knowledge of such a behaviour, is required to immediately report that concern to a senior colleague or superior, or report such behaviour to the Public Procurement and Asset Disposal Board (PPADB) or any appropriate oversight body. The Board will ensure that the identity of such an individual is protected and is not disclosed so as not to compromise the investigation process or the safety and/or security of the whistleblower.

ii) Level of authority

- 1) Every person will ensure that they will not use their authority or position, in any organisation, for personal gain, in whatsoever form.

iii) Purchasing decisions

- 1) Purchasing decisions should be made on reasonable assessments of availability, suitability, quality, service, lowest cost or most economically cost, technical specifications, integrity, objectivity, and free from any personal considerations or benefit.

iv) Integrity

- 1) Procuring entity officials and contractors maintain an unimpeachable standard of integrity in all their private and professional business relationships and work activities, both inside and outside the organisations in which they are employed.

v) Highest standards


- 1) Will continually foster the highest possible standards of professional competence amongst those for whom they are responsible and with their associates. Additionally it is the duty of all officers involved in procurement, to enhance their own knowledge, technically, legally and commercially and to continually improve the status and standing of the procurement profession.

vi) Use of resources

- 1) It is incumbent upon all persons to optimise the use of all the resources for which they are responsible to provide, so as to maximise the benefit to their employing organisation or on behalf of an organisation for which they so provide.

vii) Maintenance of Procurement Records

- 1) All records, documents and information created or received in the course of procurement activity should be retained within the populated records and no disposition should take place without assurance that the records, documents and information are no longer needed, that no work is outstanding and that no litigation or investigation is current or pending which requires records as evidence.

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viii) Law of Botswana

- 1) All persons involved in Procurement activities whether they are Contractors, Civil Servants or seconded experts will be expected to comply both with the letter and the spirit of the law(s) of Botswana, inter-governmental agreements and International law(s) and procurement standards as may be set by the PPADB.

14.3 Guidance

ix) Declaration of Interest

- 1) Where there may be any personal, financial interest, directly or indirectly, either through business, family or friends or through other associations, which may influence or might reasonably be seen by others to influence that persons judgement and impartiality, in any matter relevant to his or her duties, then that interest and nature thereof, should be clearly declared to superiors, before any action or further action is taken in the procurement process. The person(s) concerned should sign the declaration form. (See also section 4 below).
- 2) Person declaring direct or indirect personal interest should recuse themselves from taking part in any deliberation pertaining to the procurement activity under consideration.

x) Gratuities and kickbacks


- 1) It is an offence under the CEC Act to bribe or attempt to bribe any official or former official, directly or indirectly, in what so ever position or to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any procurement requirement or a contract or subcontract, or to any solicitation or proposal that may be pending or in process.

xi) Confidentiality and accuracy of information

- 1) The confidentiality of information received in the course of duty should be respected and should never be shared with unauthorised persons or used for any personal gain (PPAD Act Section 90). Also any information given in the course of duty should be true and fair and never designed to mislead participants or colleagues, in any part of the procurement process.

xii) Fair Competition

- 1) Every effort should be made to create an equal and fair competition between Suppliers. The Suppliers should be confident that the Tender process, the specification, its evaluation are strictly controlled and the process conducted openly and transparently.
- 2) Suppliers/ contractors are prohibited from participating in the practice of multiple bidding which distorts competition and creates uneven playing field for other contractors.
- 3) Any supplier found to have submitted more than one bid shall be disqualified from further evaluation and will be referred to the Competition Authority for further and appropriate action.

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xiii) Contractual Obligations


- 1) Contracts are legally binding agreements between the parties and therefore care needs to be taken at all stages, of the contract implementation to ensure compliance with all clauses of the contract. No changes may be made by either party, without the express agreement in writing, of both parties. Additionally, special attention needs to be taken, where potential changes may cause cost increases to previously committed funds.

xiv) Business gifts

- 1) Subject to applicable Government Policy / Guidelines on the Declaration of Gifts, public officers are prohibited from soliciting or accepting any gifts from companies or persons having dealings with the employee's Ministry or Department, whether directly or indirectly. Employees are required to declare any gifts received to his/her supervisor and seek direction as to how to handle such gift. The supervisor is allowed to exercise his/her discretion to decide on the best method of disposal of that gift.
- 2) Any gifts, other than items of very small intrinsic value, such as end of year promotional pens, diaries or calendars, should not be accepted without declaration to the Accounting Officer or Supervisor.
- 3) Where a gift cannot be declined it must be brought to the attention of a supervising official and entered into a register.
- 4) Failure to declare gifts or abide by any condition set forth under any applicable Policy / Guideline constitutes an offence in terms of the Public Service Act and the Corruption and Economic Crime Act, and may result in the institution of disciplinary action against the affected employee(s).

xv) Acceptance or Rejection of Offers

- 1) Factors to be considered if offered a gift, or an offer of hospitality:
 - a) The motive of the donor (is the gift a token of appreciation, or a bribe);
 - b) The type of gift, or the nature of the hospitality;
 - c) Value of the gift, or the hospitality;
 - d) Manner in which the offer is made, i.e. openly or clandestinely;
 - e) Were conditions attached?
 - f) What impression the gift or hospitality will make on superiors, colleagues, subordinates;
 - g) What would be the employer's reaction, if the acceptance of the offer were brought to the attention of the senior management?
 - h) Whether the employee can honestly be satisfied that the gift will not influence their objectivity in dealing with suppliers;
 - i) Take into account the human inclination to think the worst.
- 2) What may be acceptable:
 - a) Minor hospitality in the provision of courteous food, biscuits/cake, soft drinks, etc.
 - b) If the individual does not have transport, then at the end of visit, the organisation providing local transport to the nearest connecting transportation centre.
- 3) What is not acceptable:
 - a) Free tickets to sports meetings, theatre, art galleries, entertainment venues or similar;
 - b) Paid weekends away, free travel or air flight tickets, holidays, accommodation in Hotels etc.
 - c) A paid per diem, payment of any travel costs, either in or out of the country;
 - d) Offers of employment for the individual, family, friends, associates;
 - e) Assistance or gain, in what so ever form, to family, friends, or business associates.

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- 4) In the interests of the reputation and good standing of the Employer, all forms of gifts, or hospitality, should be strictly avoided, or if necessary to accept such gift, to be declared.

14.4 Use of Assets


- 1) The practise of using public funded property in the form of assets, vehicles, equipment, services or taking advantage of official contracts of the organisation, for own or others use, should be discouraged and avoided. If there is a valid reason for allowing such an action, then the action may only be undertaken with the approval of the Accounting Officer or Head of the Organisation. Should there be any consumables items used during the personal use, then the cost of the consumables used, must be paid for by the individual concerned.

14.5 Allocation of cost or expenses

- 1) All costs and expenses occurring, whether directly or indirectly, and associated either with hospitality or any part of the procurement process, a site or works inspection, an overnight stay in a hotel, airfares or transport costs, preparation of models or drawings, equipment preparation, testing or test parts, are to be paid solely by the Government organisations or contracting authorities responsible for creating those costs and expenses.

14.6 Conflicts of interest

- 1) Individuals shall at all times act in a manner which is consistent with their responsibilities to their position and shall exercise particular care that there is no detrimental effect to their organisation, which results from conflicts between their interests and those of the organisation.
- 2) For the purposes of this statement, an individual is considered to have a conflict of interest where there may be a personal, social, financial or technical interest, and/or when the individual, or any of his close family or associates:
- Has an existing or potential financial or other interest which impairs or might appear to impair the individual's independence of judgment in the discharge of responsibilities to the organisation; or
 - May receive a material, financial or other benefit from knowledge of information which is of a confidential nature;
 - The '*family*' of an individual includes his or her spouse, parents, siblings, son or daughter and other relatives of the employee or member of a public body. For purposes of this clause, "*family*" includes a paramour..
 - An '*associate*' of an individual includes any person, trust, organisation, or enterprise, in or with which the individual or any member of his or her family:
 - Is a director, officer, employee, member, partner, or trustee; or
 - Has a financial interest that enables him/ her, acting alone, or in conjunction with others, to exercise control, or influence policy significantly; or
 - Is currently involved in, or previously had a technical input, either as a member of the procuring entity, as an individual, or as an employee of a company;
 - A social interest;
 - Has any other material association, directly or indirectly.
- 3) If an individual believes that he or she may have a conflict of interest, the individual shall promptly and fully disclose the conflict to the Authorising Officer, or the Chairperson of a Tender Adjudication Committee, or Tender Evaluation Committee, or any Tender Committee of the Procuring Entity. The person shall refrain from participating in any way in the matter to which the

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conflict relates, until the conflict question has been resolved. If involved in such a committee, the individual should recuse themselves from the committee.

14.7 Commitment to the Highest Ethical Standards


- 1) It is a serious breach of the public trust to undermine the public purchasing process by directing purchases to certain favoured vendors, or to tamper with the competitive bidding process, whether it's done for kickbacks, friendship or any other reason. Misuse of purchasing power by an organisation or by an individual carries civil and/or criminal penalties. Such action will also result in the inclusion of persons and organisations in the delisting register of the PPADB or in the case of a civil servant the punishment stipulated by law.
- 2) Potential Suppliers for any purchase order or contract are required to certify that they will not attempt to influence or intimidate any employee(s), at any point in the procurement process. Contracts documents or terms should contain a clause stating that any effort to influence an employee to violate the standards of the Code of Ethics will constitute sufficient grounds to void the contract. In addition such behaviour could lead to criminal or civil action being taken against the contractor through the courts of law.

14.8 Relationships with Suppliers

- 1) All qualified or pre-qualified Suppliers should be given equal opportunity to compete for business.
- 2) Public employees or representatives must discharge their duties impartially, so as to assure fair competitive and access to governmental procurement by responsible Suppliers. Moreover, they should conduct themselves in such a manner as to foster public confidence in their personal integrity.
- 3) Efforts should be made to maintain positive and professional relations with all Suppliers. Business should be conducted in good faith and disputes resolved quickly and equitably.
- 4) Suppliers undertaking any business and at whatever stage, should also be held to standards promoting sound and ethical business practices as detailed in this Chapter.


14.9 Developing the Supplier Market Place in Botswana


- 1) Provision of practical help and advice may be advanced by:
 - a) Advising Suppliers how to purchase more efficiently and economically, those items used by the organisation;
 - b) Advice accompanied by providing details of annual consumptions levels and the type of products purchased;
 - c) Assistance with finding other small competitive customers to prevent too great a reliance on a single large company and possible monopolistic practises;
 - d) Debriefing unsuccessful bidders and advising on possible areas of improvement;
 - e) Providing advice and assistance with specifications, design and production;
 - f) Provision of advice and help with regard to training and preparing tender documentation.
- 2) Purchasing Policy:
 - a) Applying reservation and preferential schemes in order to ensure empowerment of local suppliers;
 - b) Aid Supplier development;
 - c) Measurement of supplier performance and the provision of constructive feedback;
 - d) Keeping under constant scrutiny, all purchasing procedures and specific areas such as

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stock and inventory control arrangements, to discourage unnecessary procurement of supplies and excessive stockholdings.

- 3) Monitoring Supplier Practices:
 - a) Dealing only with suppliers that have high ethical standards, are business registered and pay taxes to the Botswana Government Authorities;
 - b) Ensuring that suppliers are aware and consider environmental or 'green' policy or sustainable procurement where and when this is appropriate;
 - c) Encouraging suppliers to adopt a responsible attitude to various community groups, e.g. through corporate social responsibility.
- 4) Paying invoices on time:
 - a) Ensure all payments are promptly paid. Late payments may cause the company to experience serious cash flow problems;
 - b) Ensuring that both the finance and purchasing departments are aware of these policies and adhere to them;
 - c) Ensure that complaints are dealt with in a timely manner.
- 5) Clear definitions and social responsibility:
 - a) The preparation of an environmental and health policy statement and ensuring that everyone responsible for purchasing is familiar with it;
 - b) Ensuring that factors such as the scope for waste minimisation and the potential for recycling opportunities are taken into consideration in purchasing decisions;
 - c) Preparing purchasing guidelines which set out clear performance requirements for the procurement of all goods and services;
- 6) Incorporating environmental and health and safety performance requirements into purchasing specifications, especially in relation to:
 - a) Maximum energy efficiency;
 - b) Minimum dependence on production and use of toxic chemicals and other pollutants;
 - c) Minimum dependence on non-renewable natural resources;
 - d) Maximum use of products based on recycled materials and minimum use of unnecessary packaging and other superfluous material;
 - e) Adoption of HIV prevention and treatment policies including non-discrimination of victims.
 - f) Ensuring that these guidelines are incorporated into all standard contract conditions for the purchasing of goods and services;
 - g) Requiring providers of contract services, e.g. cleaning, catering and transportation, to carry out their operations to high standards of environmental performance.
- 7) Citizen Business Enterprise:
 - a) All Contracting Authorities and/or Public Enterprises, Local Authorities, other Government organisations or departments involved in the spending of BCF, have a responsibility to ensure that business suppliers, in the local communities, are given the opportunity to participate in all purchase orders or tenders being sought with monies being made available through the BCF;
 - b) There is an enormous capacity for influence and for the public good. Therefore special efforts are needed to increase the level of participation by local business enterprises;
 - c) The local business communities need to be confident that they will be treated in a fair and open manner and be offered, either through the citizen preference schemes equal opportunities, to participate in public tenders and purchasing activities. It is essential to eliminate any barriers that might impede their participation.

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Chapter 15. Suspension and Delisting, Penalty Clauses and Breach of Contract

15.1 Suspension and Delisting and Penalty clauses


- 1) Procurement Entities are expected to take action in all instances where the quality of the service expected, the type of materials provided, delays or value for money has not been provided. Suspension and Delisting and Penalty clauses should be included in all tender/contract documents.

15.2 Conditions for possible Delisting or Suspension

- 1) A Supplier, Contractor or Consultant may be considered for possible suspension or delisting by PPADB if it fails to deliver its contractual obligations or fails to comply with PPADB Code of Conduct for Contractors.
- 2) The complaints definitions may range from, but are not limited to:
 - a) Falsification of documents
 - b) Falsification of information
 - c) Substitution of goods or materials
 - d) Provides defective materials/services
 - e) Late deliveries in provision of materials
 - f) Late deliveries in provision of construction projects or hand-over times
 - g) Failure to complete the contract in full (only part completion)
 - h) Uncooperative behaviour
 - i) Breaks or fails to implement any social regulations or other domestic legislation as may be prescribed under the contract
 - j) Fails in the obligation to provide a '*Duty of Care*'
 - k) Conviction under the CEC Act or any other applicable law
- 3) The Procuring Entity may, without prejudice to any other remedy for breach of contract, give appropriate notice in writing of the default and may terminate the contract in part or in full.
- 4) When a delay in delivery causes the Procuring Entity to procure goods at an increased cost, then the difference in the price of the goods will be charged to the Contractor. (This clause should be included in all contracts).

15.3 Consideration of Complaint

- 1) Procuring entities or any person with a financial or contractual interest in the contract awarded by the Board, or its Committees may submit a complaint of any incidence of non-compliance with the terms of the awarded contract or the PPADB Code of Conduct, by a contractor who is party to such contract.
- 2) Where such a complaint is submitted to the Board the complaint shall contain:
 - a) A full description of the tender or the contract entered into with the service provider or supplier;
 - b) A history of the alleged failure(s) supported by facts and details;
 - c) The steps taken by the procuring entity to enforce the terms of the contract, and the corrective measures taken by the contractor or service provider or supplier, if any;
 - d) Any loss or harm suffered by the procuring entity as a result of such improper conduct.
- 3) The Board shall forward a complaint properly lodged before it to the Suspension and Delisting Disciplinary Committee for a detailed investigation to be carried out and recommendation for appropriate action to be taken against the contractor made to the Board.

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15.4 The Suspension and Delisting Disciplinary Committee

- 1) The procedure for consideration of complaints is laid out in the Suspension and Delisting Regulations (as amended) of 2012.
 - a) On receipt of a complaint the Suspension and Delisting Disciplinary Committee shall cause an investigation into the circumstances of the complaint.
 - b) The Committee may seek the advice of experts where necessary, and may call the Contractor under investigation to a formal hearing.
 - c) The Contractor shall not, at such hearing, have the right to be represented by Counsel, but shall have the right to present testimony and make written representations in response to the allegations made against it.
 - d) The committee shall conclude its investigations and forward its recommendation(s) to the Board, not later than 30 days of receipt of the complaint.
- 2) A recommendation submitted to the Board shall include the appropriate action and/or measures to be taken against the Contractor, and the reasons for such action, and the recommended period of suspension or delisting.
- 3) A contractor who disputes such action taken by the Board may exercise his/her right to seek administrative review in accordance with the PPAD Act and Regulations.

15.5 Suspension and Delisting Register


- 1) The Board shall maintain an up to date register of all suspended or delisted contractors which shall be available to the public for inspection.
- 2) It shall not be allowed for an organisation or person, that has been suspended or delisted by the PPADB and their name entered into the register and on the PPADB website to still be able to obtain contracts in another procuring entity or in another name. Such a contract shall remain an invalid contract.
- 3) The PPADB will keep a master list of such names and the period of suspension or delisting in the register and publish the names on its Website.
- 4) The Procuring Entity will inform the PPADB of the details of any such violation of a suspension and delisting order and advise the Board of any action taken.

15.6 Suspension or Delisting Duration

- 1) The offending contractor/ company/ shareholders/ directors/ senior management or any other person acting in key operational positions will remain on the register for the stated period, whereupon, having reached the end of such a period, they will be removed from the list.
- 2) Company directors \who have been made subject to a suspension or delisting penalty, will be subject to the penalty, in spite of the fact that the person(s) have joined an existing contractor, or incorporated a new company (PPAD Act Sections 1225 and 126).

15.7 Resolution of Disputes

- 1) When there is a dispute and where it is possible to do so, it should be the objective of both parties to the contract to try to resolve the differences in a timely and amicable manner, in accordance with the terms of the contract.
- 2) Allowances have to be made, when a supplier who has generally provided good value and services, but has failed on one single occasion. It is not generally considered a cause for a formal complaint, however each case is to be considered on its own merits.

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15.8 Penalty clause (liquidating damages)

- 1) A penalty clause for liquidated damages will, where appropriate be included in all contracts.
- 2) The Procuring Entity may penalise a Supplier or Contractor a fixed sum for each day of late delivery as stated in the contract documents. The sum per day or week will be determined on a case by case basis and will be applied up to a maximum sum of 15 % of the contract value. When a level of 15 % of the contract value is reached, the contract is deemed to have been breached and the Procuring Entity may consider its right to cancelling the contract (see termination guidelines in this manual).
- 3) The Procuring Entity may lodge a report for possible suspension of such a contractor.

15.9 Offences

- 1) It is an offence for any person, or supplier, or organisation, including civil servants, to directly or indirectly attempt to influence, to try to solicit, to accept any benefit, or to try to bribe any official or company employee, to take any action to intimidate or threaten, to harm or to make an agreement, to prevent or restrict competition or to attempt any retaliation against a person, to attempt any collusion or to provide false or misleading information that effects the outcome of a contract award.
- 2) Civil servants or commercial employees of Suppliers who become aware of such problems are required to report such activities to the Accounting Officer of the Procuring Entity, or the Chairperson of the PPADB
- 3) Depending upon the severity of the problem, the Accounting Officer and/or the PPADB will forward such reports to the Directorate on Corruption and Economic Crime and Competition Authority, Botswana Police Service, or such relevant oversight authority for investigation by such competent authority.



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Chapter 16. Appendices: Tools and templates

Annex 1- Procurement plan template

NAME OF MINISTRY:			NAME OF PERSON(S) RESPONSIBLE FOR PROCUREMENT:							
DEPARTMENT:										
Category of procurement (Services/ Supplies/ Works):										
Description of procurement activity	Method of Procurement (ICB, ODB, Restricted, QPP, Direct)	Cost Estimate (P)	Anticipated dates							
			Submission of tender documents to PPADB/ MTC/ DATC for vetting	Issuing of Invitation To Tender by PPADB/ MTC/ DATC	Closing date for tenders	Evaluation/ Completion by PE	Submission of Evaluation Reports to PPADB/ MTC/ DATC for adjudication and award	Award Decision by PPADB/MTC	Contract signature and contract placement	Commencement of procurement activity
SERVICES										
SUPPLIES										
WORKS										



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TOTAL										

Prepared by:	Checked by:	Approved by (AO) :
Signature:		
Date:		

*a separate sheet must be filled in for works, services and supplies

- Glossary/Index:
- ICB: International Competitive Bidding
 - NCB: National Competitive Bidding
 - Selective: Selective Tendering
 - Direct: Direct Procurement (Appointment)
 - PE: Procuring Entity (Ministry/Department)
 - QPP: Quotations Proposals Procurement

Disclaimer: Planned procurement may be subject to revision or cancellation by the Procuring Entity (PEs) as may be necessary. The information in this Annual Procurement Plan is provided for planning purposes and to alert the bidding community of opportunities during the financial year. It does not represent an Invitation to tender or a bid notice.



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TA Transfer of Assets
DA Destruction of Assets

CC Conversion or Classification

Approval by Accounting Officer:

Name: Signature: Date:

Annex 3 – Procurement Plan Monitoring Template

SERVICES											
Nos	Description of procurement activity	Method of Procurement		Value (P)		Submission of tender documents for vetting		Date of Award/ Rejection Decision		Contractor	Project status [Comments]
		Planned	Actual	Cost Estimate	Contract Price	Planned	Actual	Planned	Actual		
Sub-Totals											
% executed											
SUPPLIES											
Nos	Description of procurement activity	Method of Procurement		Value (P)		Submission of tender documents for vetting		Date of Award/ Rejection Decision		Contractor	Project status [Comments]
		Planned	Actual	Cost Estimate	Contract Price	Planned	Actual	Planned	Actual		



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Sub-Totals											
% executed											
WORKS											
Nos	Description of procurement activity	Method of Procurement		Value (P)		Submission of tender documents for vetting		Date of Award/Rejection Decision		Contractor	Project status [Comments]
		Planned	Actual	Cost Estimate	Contract Price	Planned	Actual	Planned	Actual		
Sub-Totals											
% executed											
ACTIVITIES NOT IN THE PLAN											
Nos	Description of procurement activity	Method of Procurement	Value (P)	Submission of tender documents for vetting	Date of Award/Rejection Decision	Contractor	Project status [Comments]				
		Actual	Contract Price	Actual	Actual						
Subtotal											
Grand total											
% unplanned											



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Annex 4 - Disposal Reporting Template

Financial Year:					Adjudicating Body:							
Tender No's	Approval Date	Disposing Entity	Asset Description	Total no. of Assets	Total Reserve Value	Disposal Proceeds Received (P)	No. Assets Disposed	Remaining Assets no.	Remaining Assets no.	Plan of Action for Remaining Assets	End of Activity Report Submitted [Yes/ No]	Comments
Totals												



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Annex 5 - Micro Procurement Reporting Template

PERIOD (Month and Financial Year):						PERSON(S) RESPONSIBLE FOR PROCUREMENT			
MINISTRY :						Name			
DEPARTMENT/ DIVISION:						Contacts (tel & email)			
Description of procurement activity	No. of Quotations sourced?	Government Purchase Order No.	Invoice/Receipt No.	Date of Award	Contract Value (P)	Name of Contractor	Delivery Date	Name of Official who procured	Comments
SERVICES									
SUPPLIES									
WORKS									


PPAD Regulation 60

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Annex 5 – End of Activity Report Template[∞]

1. CONTRACT DETAILS:			
Ministry	Department	Contract Title	
Contract Tender Number	Activity Typeⁱ	Contract Typeⁱⁱ	
Contractorⁱⁱⁱ	Contract Award Date	Additional or supplementary Awards^{iv}	
Contract Original Description^v			
Contract Final Description^{vi}			
Purchase or Work Order Number^{vii}	Purchase or Work Order Date^{viii}	Estimated Contract Cost or Revenue	Original Contract Award Amount^{ix}
Final Contract Amount	Contract Begin Date	Expected Contract End Date	Contract End Date
2. PERFORMANCE DETAILS			

[∞] This form may be reproduced electronically in order to capture as much information as possible while retaining the format.

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Performance Indicators^x	Performance Achievement^{xi}	Sources of Variation^{xii}
Performance Record^{xiii}	Corrective Measures Taken^{xiv}	Further Action Recommendation^{xv}
Other Comments		
Signature	Name	Designation
Date		
3. PPADB OFFICIAL USE ONLY		
PPADB Report Analysis	Further Action	
PPADB Decision		

ⁱ Indicate whether the submission is for original or additional work;

ⁱⁱ Works/Supplies/Services;

ⁱⁱⁱ Where several contractors are involved such as supplies complete separate forms for each contractor;

^{iv} Indicate whether there are any additional awards and complete a separate forms for each;

^v Description of works/supplies/services with milestones;

^{vi} Description of works/supplies/services with milestones;

^{vii} Note that where separate orders were issued separate forms should be completed;

^{viii} Note that where separate orders were issued separate forms should be completed;


^{ix} Amount could be cost in the case of procurement or revenue in the case of disposal;

^x Specifications/Terms of reference/Performance evaluation criteria;

^{xi} Extent of achievement against Performance Indicators;

^{xii} Explanation for deviations from contract performance indicators;

^{xiii} Excellent/Satisfactory/Needs attention/Poor (Poor means the contractor may be black-listed);

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^{xiv} Action taken by department and attach copies of correspondences;

^{xv} Recommendation by the Department

This manual was approved by:

Designation	Name	Signature
Executive Chairperson	Bridget P. John	