



The Republic of Uganda

THE LOCAL GOVERNMENTS (PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC
ASSETS) REGULATIONS, 2006

DRAFT

STATUTORY INSTRUMENTS
2006 NO...

**THE LOCAL GOVERNMENTS (PUBLIC PROCUREMENT AND DISPOSAL
OF PUBLIC ASSETS) REGULATIONS, 2006**
(Under sub-section (1) of section 175 of the Local Governments Act, Cap 243)

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STATUTORY INSTRUMENT

2006 No.

**The Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006
(Made under section 175 of the Local Government Act, Cap 243)**

IN EXERCISE of the powers conferred upon the Minister responsible for local government by subsection 1 of section 175 of the Local Government Act, Cap.243 these Regulations are made this 27th...day of March, 2006.

PART I: PRELIMINARY

Citation

1. These Regulations may be cited as the Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006.

Application of regulations

2. (1) These Regulations shall guide and regulate Local Government Councils, Administrative Units and other entities using public funds in functions and operations relating to procurement of goods, services, works and disposal of public assets under the Local Government Act, Cap 243 and the Public Procurement and Disposal of Public Assets Act, 2003.

(2) Where there is a conflict between these regulations and any earlier Regulations, guidelines or circulars, relating to procurement and disposal for local governments, these Regulations shall prevail.

(3) Not with standing sub-regulation (1) above, where an international agreement for program support to local governments requires the use of alternative procurement and disposal procedures, the Regulations shall prevail.

Procedures on disputes as to application

3. (1) Any dispute under these regulations relating to the application of the regulations shall be submitted in writing to the Authority by the accounting officer of the Procuring and disposing entity within twenty one working days from the date the council became aware of the circumstances giving rise to the dispute.

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

(a) the full details of the Procuring and Disposing Entity

- (b) full detail of source of funding, amount of funding, any applicable legislation, document or other agreement applicable to the funding;
- (c) any other relevant information

(3) The Authority shall issue his or her decision in writing within twenty-one working days from receipt of the dispute.

(4) The decision shall indicate-

- (a) whether or not the Regulations apply to the procurement and disposal activities of which the procuring and disposing entity has complained about, giving reasons;
- (b) if the Regulations apply to only a part of the procurement and disposal activities of the procuring and disposing entity, the part to which they apply, including a clear definition of the funding, activity or expenditure, which is subject to the Regulations.

Interpretation

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

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

“Accounting officer” means an accounting officer of a Procuring and Disposing Entity.

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

“bid” means tender or an offer to provide or to acquire works, services, supplies or any combination thereof, and shall include pre-qualification where applicable;

“community” means a group of at least three people with at least a chairperson, a treasurer, and a secretary with common objectives and identity

“competent authority” means a government office, which has the mandate to perform a specified function;

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

“consultant” means a person or a firm contracted by the procuring and disposing entity to carry out consultancy service;

“contract management” means the management of contract including, but not limited

to, performance and compliance with the terms and conditions of the awarded contract by the provider and the procuring and disposing entity;

“Contracts Committee” means a contracts committee, established under section 91 of the Local Governments Act Cap 243;

“Council” means a District, City or Municipal council as defined by the Local Governments Act, Cap 243

“council asset” means any assets owned by the council, tangible or intangible, including but not limited to physical property, land, shares or proprietary rights;

“corruption practices” means the offering, giving, receiving or soliciting of anything of value to unduly influence an action in procurement or disposal process or in contract execution;

“currency point” has the same meaning as specified in the Sixth Schedule to the Local Government Act;

“effective date” means the date on which the contract comes into force;

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

“fraudulent practice” means misrepresentation of facts in order to unduly influence a procurement or disposal process or the execution of a contract to the detriment of a procuring and disposing entity and include collusive practices amongst tenderers prior to or after tender submission designed to disadvantage a procuring and disposing entity’s interest in favour of the tenderers;

“goods” includes commodities, materials, machinery, equipment and industrial plant which the supplier is required to supply to the procuring and disposing entity under a contract;

“guidelines” means directives issued by the Authority under section 97 of the act in consultation with the Minister

“micro procurement” means small procurements within the threshold as defined in the guidelines.

“Minister” means Minister responsible for Local Governments;

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

“pre-qualification” means a screening process designed to ensure that invitations to tender are confined to capable providers;

“procuring and disposing entity” means a District, City or Municipal council as defined by the Local Governments Act, Cap 243

“procurement” means acquisition by purchase, rental, lease, higher purchase, licence, tenancy, franchise or any other contractual means, of any type of works, services or supplies or any combination;

“provider” means a natural person or an incorporated body including a consultant, contractor or supplier licensed by a competent Authority to undertake business activities;

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

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

“registered provider” means firm or person who have been short listed through a screening process and is kept in records which are updated regularly to be called upon as and when need arises to tender either through competition with other short listed firms or directly or for micro-procurement sourcing;

“registration” means an annual pre tender process where tenderers for works, services and services of a routine nature are short listed;

“resident tenderer” means a tenderer registered in Uganda who is not a national tenderer;

“services” means any object of procurement or disposal other than works and supplies, that is intangible and includes professional, non professional and commercial types of services as well as supplies and works which are incidental to, but not exceeding the value of those services;

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

“statement of requirements” means a document that contains a full and complete description of the requirements that are the subject of the procurement;

“supplies” means goods, raw materials, products, equipment or objects of any kind and description in solid, liquid or gaseous form, or in the form of electricity, or intellectual and proprietary rights as well as works or services incidental to the provision of those supplies where the value of the works or services does not exceed the value of the supplies;

“tender” means offers and the terms and conditions to provide goods, services and works based on statement of requirements and specifications given by tenderer to a procuring and disposing entity in response to a specific request.

“tenderer” means a person who has submitted a tender or is in the process of putting one together

“tender document” means a written compilation of statement of requirements, specifications, conditions of contract to be used; instructions to be followed and forms to be filled to obtain a tender by a procuring and disposing entity

“tender request” means an invitation by a procuring and disposing Entity for an offer to provide goods, services and works in accordance with tender document

“tender security” means a guarantee by an approved financial institutions that when a tenderer is offered a contract and the tenderer declines to take the offer, the financial institution as a guarantor shall compensate a procuring and disposing entity of the value specified in tender documents without recourse to any other procedure.

“the contract” means the agreement entered into between the procuring and disposing entity and the supplier, tenderer, or consultant signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein;

“the contract price” means the price payable to the provider of suppliers, works, and services under the contract for the full and proper performance of its contractual obligations;

“third party procurement and disposal provider” means a provider pre-qualified by the Authority and contracted independently by a procuring and disposing entity on a competitive basis to offer procurement related services to the procuring and disposing entity.

“trade-in” means the exchange of a council assets to off-set the purchase price of another asset for the council

“user department” means any department, division, branch or section of the procuring and disposing entity, including any project unit or community groups working under the authority of the procuring and disposing entity, which initiates procurement and disposal requirements and is the user of the requirements; and includes lower local governments and any other body as may be prescribed in regulations made by the Minister;

“works” means any work associated with the construction, reconstruction, demolition, repair, or renovation of a building or structure, on the surface or underground, on and underwater, and includes the preparation, excavation, erection, assembly, installation, testing and commissioning of any plant, equipment or materials, decoration and finishing, turnkey projects, build own and operate projects, build operate and transfer projects or any arrangement of this nature, or any other form of private and public

partnerships or joint development activities, all or any of which may include management, maintenance, testing, commissioning and training; as well as supplies or services incidental to those works where the value of the incidental supplies or services does not exceed the value of the works.

PART II - THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

Exercise of Authority's functions

5. (1) In the exercise of its functions and powers under the Public Procurement and Disposal of Public Assets Authority Act, 2003 the Authority shall undertake compliance monitoring, build procurement and disposal capacity, undertake procurement audits, inspections and investigations of a procuring and disposing entity's procurement and disposal functions and shall –
- (a) analyse procurement and disposal performance data and reports from a procuring and disposing entity;
 - (b) analyse information and data received from providers;
 - (c) consider all deviations requested by a procuring and disposing entity to the use of
 - (i) the basic procurement or disposal rules or methods by the issue of deviations in accordance with these regulations;
 - (ii) the tender documents in accordance with these regulations; and
 - (iii) any provisions of these Regulations;prior to their use or issue;
 - (d) consider all requests for accreditation of an alternative procurement or disposal system;
 - (e) set training standards, competence levels certification requirements, and professional development paths in consultation with competent authorities;
 - (f) inspect and audit the procurement processes and issue an inspection or audit report to which the procuring and disposing entity shall respond within twenty one working days;
 - (g) investigate the following –
 - (i) the conduct of performance of tenderers;

- (ii) the conduct of performance of procuring and disposing entities and their subsidiary bodies;
- (iii) compliance with the use of guidelines, tender document and specifications issued by the authority;
- (iv) any breach, wrong doing, mismanagement or collusion that has been alleged, reported or proven against a procuring and disposing entity or a tenderer.

(2) Upon completion of a compliance check, inspection, audit or an investigation, the Authority shall produce a final report detailing its findings and recommendations, if any to the competent authority.

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

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

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

Issue of documentation

- 6. In consultation with the Minister, the Authority shall prepare, update and issue authorized versions of standardized tender documents, procedural forms and any other attendant documents to procuring and disposing entities.

Central data management

- 7. The Authority shall receive quarterly procurement and disposal reports and performance data from procuring and disposing entities, analyse the data, make conclusions and recommendations to the appropriate organs for improvement of the procurement and disposal functions and operations; and shall also make the information and reports available to the public on request.

Capacity building

8. The Authority shall in collaboration with the Ministry responsible for local government build procurement and disposal capacity with a view to promoting institutional and human resource development, professionalism and best practices.

Cooperation with other competent authorities

9. (1) The Authority shall cooperate and work closely with any other authority responsible for investigation and for that purpose may establish a mechanism for sharing information and methodologies with other authorities.
- (2) The competent authorities include but not limited to-
- (a) the Minister;
 - (b) the Ministry responsible for Finance
 - (c) any relevant line Ministry;
 - (d) the Inspector General of Government;
 - (e) the Auditor General;
 - (f) the Police and
 - (g) any procuring and disposing entity;

Disagreement with other competent authorities

10. (1) Where a competent authority disagrees with the findings or the recommendations of the Authority, the competent authority shall state- the findings or recommendations of the report with which it disagrees; the reasons for the disagreement; and any alternative recommendations or measures proposed.
- (2) Upon receipt of a response stating a disagreement, the Authority shall, within a period of twenty-one working days, call a meeting with the competent authority seeking to resolve the disagreement.

PART III: MINISTRY RESPONSIBLE FOR LOCAL GOVERNMENTS

Coordination, advocacy, and support supervision of Procurement Functions

11. (1) The Ministry responsible for local governments shall be responsible for the coordination and advocacy of the procurement functions of local governments' with a view to ensuring the harmonisation and implementation of national standards.
- (2) The Ministry responsible for local governments shall, in the course of execution of its co-ordination and support supervision functions, inform the Authority of any failure of a local Government to comply with these regulations.

Guidelines, manuals and other standard documentation

12. The Authority shall, in consultation with the Ministry responsible for Local Governments, issue guidelines, manuals and other standard documentation for the effective implementation of these regulations.

PART IV – LOCAL GOVERNMENTS PROCUREMENT AND DISPOSAL ORGANS

Independence of functions and powers

13. (1) The accounting officer, the contracts committee, the procurement and disposal unit, the user department and the evaluation committee of a procuring and disposing entity shall each act independently in relation to their respective functions and powers. None of the organs referred to above shall seek to influence the decisions or activities of the others, except as permitted under the Act or these Regulations.

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

(3) Where there is a disagreement between the procurement and disposal organs of the procuring and disposing entity, this disagreement shall be resolved in accordance with the procedures provided for under the Act.

Exercise of functions of the Accounting Officer

14. An accounting officer shall have the overall responsibility for the successful execution of the procurement, disposal and contract management processes in the procuring and disposing entity and shall-
 - (a) establishing a contracts committee in accordance with the Act.
 - (b) appointing the members of a contracts committee specified in the Third Schedule;
 - (c) causing to be established a Procurement and Disposal Unit staffed at an appropriate level;
 - (d) advertising bid opportunities
 - (e) communicating award decisions;
 - (f) certifying the availability of funds to support the procurement or disposal activities;

- (g) signing contracts for procurement or disposal activities on behalf of the procuring and disposing entity;
- (h) investigating complaints by providers;
- (i) submitting a copy of any complaints and reports of the findings to the Authority; and
- (j) ensuring that the implementation of the awarded contract is in accordance with the terms and conditions of the award;
- (k) certify the availability of funds prior to the commencement of any procurement activities;
- (l) implement the recommendations of the Authority;
- (m) submit all reports as required under the Act, these Regulations and as may be required by the Authority; and
- (n) submit applications to the Authority, for any deviations from procedures in the Act.
- (o) submit to the Authority providers who have failed to perform their contractual obligations

Establishment of a contracts committee

- 15.** (1) The contracts committee shall consist of five members nominated by the accounting officer from among the public officers of the procuring and disposing entity and approved by the Secretary to the Treasury.
- (2) Where practicable, the contracts committee shall seek the services of the District legal Advisor in the execution of its work.
- (3) In assessing a candidate for suitability for appointment to a contracts committee, the accounting officer shall seek to establish a balance of skills and experience among members to ensure that the contracts committee-
- (a) has a proven track record of sound judgment;
 - (b) has an appropriate level of seniority and experience in decision-making;
 - (c) includes experience in at least one recognised professional discipline;
 - (d) does not have more than two members from one department;
 - (e) includes experience in the procuring and disposing entity; and
 - (f) includes experience in public procurement and disposal.

(4) The tenure of the members of the contracts committee shall be three years and a member may be re-appointed for only one further term.

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

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

(7) The accounting officer shall appoint the head of the procurement and disposal unit of the procuring and disposing entity, to be the secretary to the contracts committee.

Termination of office or removal of a member of the contracts committee

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

- (a) for abuse of office;
- (b) for corruption;
- (c) for incompetence;
- (d) for physical or mental incapacity which renders the member incapable of performing his or her duties;
- (e) for failure to attend three consecutive scheduled meetings without reasonable grounds;
- (f) for conviction of an offence involving moral turpitude;
- (g) declared bankrupt by a court of law; or
- (h) on any other reasonable ground.

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

- (a) the structure or status of the procuring entity has changed; or
- (b) the post of an incumbent contracts committee member has changed.

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

Exercise of Powers of a contracts committee

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

- (a) approve tender documents and any addenda before issuing them to

tenderers;

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

(c) approve membership of evaluation committees and negotiation teams;

(d) approve evaluation reports for tenders;

(e) award tenders or reject tenders;

(f) receive and consider micro-procurement report;

(g) approve contract documents and amendments; and

(h) approve procurement and disposal contract final reports.

Proceedings of the contracts committee

- 18.** (1) The quorum for a meeting of the contracts committee shall be any three members.
- (2) A register of attendance for contracts committee members shall be in place and properly signed by the members present and the secretary.
- (3) A contracts committee shall consider each submission made and, based on the information contained in the forms and the supporting documents submitted, approve or reject the submission made.
- (4) Decisions of a contracts committee shall be by consensus, and where consensus cannot be achieved decisions shall be made by simple majority of the members present.
- (5) Where a vote of the contracts committee is tied, the chairperson shall not have a second or casting vote and the submission shall be rejected.
- (6) Notwithstanding the recommendations of the procurement and disposal unit, a contracts committee shall take an independent decision based on the Act, these Regulations, the guidelines and best practices, and shall act in good faith.
- (7) A contracts committee shall give in writing the reasons for rejecting a submission.
- (8) A contracts committee may co-opt an adviser to assist it in the discharge of its functions. An adviser shall not take part in the decisions of the contracts committee and shall only attend a part of a meeting which considers the matter on which the advice is required.
- (9) A contracts committee may require any member of a user department, an evaluation committee or a negotiation team to attend a contracts

committee meeting as an advisor to offer clarifications on a submission.

- (10) The adviser or observer shall sign the register of attendance however the observer or adviser to the contracts committee shall not be permitted to vote at the contracts committee meetings.

Responsibilities of the chairperson of a contracts committee

- 19.** (1) The chairperson of a contracts committee shall preside over the meetings of the committee and in his or her absence, a member elected by the members present shall preside.
- (2) The chairperson shall be responsible for—
- (a) guiding of the secretary in drawing up the agenda for any meeting;
- (b) ensuring that the performance of the contracts committee is in accordance with the legal requirements, the code of conduct and the standards established by the Authority.
- (c) ensuring that the Authority or relevant line ministry is consulted if so required especially in international tenders, large scale contracts, or expensive projects of a highly specialised nature;
- (d) ensuring that minutes of the contracts committee's meetings are signed by all members of the committee and the secretary and handed under confidential cover to each member of the committee, the accounting officer.
- (e) ensuring that quarterly summary reports of all tenders awarded are published and submitted to the Authority, the Ministry of Local Government and copies distributed to all relevant local councils in the district.
- (3) The chairperson shall ensure that order is maintained; at all meetings and the code of ethics as provided in the schedule of these regulations is signed by all members and any other persons attending a meeting using the form provided in the schedule.

Code of conduct for members of contracts committee

- 20.** (1) The members present at a meeting of a contracts committee shall –
- a) sign the code of ethical conduct for public officers provided in the Fifth Schedule to the Act before every meeting of the contracts committee;
- (b) declare any pecuniary or personal interest which may impinge or might reasonably be deemed by others to impinge on a member's impartiality in any matter requiring the contracts committee's consideration and decision and shall

leave the meeting while the matter is considered and shall not participate in the deliberations or decision-making process of the contracts committee in relation to the item or the matter in which he or she has an interest;

(2) Councillors, employees of a council, members of the contracts committee and other statutory bodies of a council are prohibited from being tenderers or providers to the council either directly or indirectly.

Relationship between contracts committees and Council

21. (1) A contracts committee shall act only on the request of a user department approved by the Accounting Officer of the council; and the council shall decide what to be procured, provided that such procurement is within the approved budget of that council.

(2) Procurement of goods, services or works shall be approved by the procuring and disposing entity at the time of approval of the budget.

(3) Records of all details of proceedings of the Contracts Committee including particulars of tenders examined and decisions reached and copies of minutes shall be sent, under confidential cover to each member of the contracts committee, the Accounting Officer, the Chief Finance Officer, Head of Internal Audit, User department, Council's Standing Committee responsible for Finance, Auditor General, Inspector General of Government, Ministry of Local government and the Authority

4) The council's standing committee responsible for finance shall review all the minutes of the contracts committee and the awards made on a quarterly basis to ensure that care is exercised by the contracts committee to safeguard the interests of the council.

Remuneration and facilitation of the contracts committee members

22. (1) The chairperson and members of a contracts committee shall be paid such remuneration and at such rates as the Minister may in consultation with the Minister responsible for Public service determine.

(2) The relevant procuring and disposing entity shall provide all the facilities that are essential for the contracts committee meetings to take place.

Establishment of procurement and disposal unit

23. (1) Every procuring and disposing entity that is mandated to have a contracts committee shall establish a procurement and disposal unit staffed at an appropriate level to be determined by the anticipated-

- (a) number of procurement and disposal requirements;
- (b) value of procurement and disposal requirements;

- (c) complexity of procurement or disposal requirements; and
- (d) range of different procurement and disposal methods to be used.

(2) The accounting officer shall inform the Authority of the membership of the procurement and disposal unit and the qualifications of its staff within a period of twenty one working days from its establishment or from any change in staff.

(3) A member of a procurement and disposal unit shall, upon his or her appointment, sign the Code of Ethical Conduct in Business provided under the First schedule to these Regulations.

Head of procurement and disposal unit to be secretary to contracts committee

24. The procurement and disposal unit shall be headed by a procurement officer appointed on full time basis who shall be the secretary of the contracts committee and shall be responsible for —

- (a) assisting the chairperson in convening meetings and preparing the agenda;
- (b) organising and providing the necessary facilities for meetings of the contracts committee;
- (c) ensuring that the agenda, submissions and any other documentation are distributed to members of the contracts committee within a reasonable time before any meeting;
- (d) recording the minutes of the meetings;
- (e) keeping all records of the contracts committee, including, but not limited to agendas, submissions and minutes;
- (f) promptly notifying the relevant officials, and in particular the procurement and disposal unit, of the decisions of the contracts committee;
- (g) co-ordinating all activities of the contracts committee, including correspondence with the Authority and other bodies;
- (h) preparing reports of the contracts committee; and
- (i) monitoring the term of membership of contracts committee members and notifying the accounting officer at least two months prior to the expiry of the term of membership.

Responsibilities of the Procurement and Disposal Unit

25. (1) The procurement and disposal unit of a procuring and disposing entity shall have the following responsibilities-

- (a) to advise user departments on individual procurement and disposal methods and practices
- (b) to ensure that submissions are made to a contracts committee on time and in the correct manner and to request additional meetings when required
- (c) to manage pre-tender meetings;
- (d) to manage tender closings and tender openings;
- (e) to manage the evaluation process;
- (f) to monitor contract management by user departments and to ensure implementation of contracts in accordance with the terms and conditions of the awarded contract; and
- (g) to report any significant departures from the terms and conditions of an awarded contract to the accounting officer and contracts committee.

(2) In the exercise of its functions under the Local Governments Act and these regulations, the procurement and disposal unit of a procuring and disposing entity shall-

- (a) advertise tender opportunities;
- (b) issue tender documents and any amendments;
- (c) make recommendations for award of contract to a contracts committee;
- (d) require reports from user departments relating to contract management.

Role of user department

26. (1) Every user department shall-

(a) prepare an annual and quarterly procurement and disposal work plan based on the approved budget, which shall be submitted to the procurement and disposal unit for implementation and may seek technical assistance, where necessary.

(b) initiate procurement and disposal requirements;

(c) Recommend Statement of Requirements to the Procurement and Disposal Unit;

(2) For each procurement or disposal requirement, heads of user department shall liaise with the procurement and disposal unit on all matters relating to that procurement or disposal requirement.

(3) A user department shall be responsible for contract management, once a contract is signed. The user department shall inform the procurement and disposal unit of the name of the official responsible for managing each contract.

(4) A user department may be represented in the evaluation committee when the evaluation committee is considering their requests.

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

(6) The user department shall report any departure from the terms and conditions of the contract to the accounting officer with a copy to the procurement and disposal unit.

Evaluation committee

27. (1) There shall be an evaluation committee for each tender consisting of technical officers and persons recommended by the procurement and disposal unit and approved by the contracts committee.

(2) The number of members of the evaluation committee shall depend on the value and complexity of the procurement requirement, but shall in all cases be a minimum of three.

(3) The members shall be of an appropriate level of seniority and experience, depending on the value and complexity of the procurement and disposal requirement.

(4) A member of the user department in a lower local government or community shall be represented on the evaluation committee, when tenders concerning the community or lower local government are being evaluated.

(5) The member of a procurement and disposal unit or a user department may be a member of an evaluation committee, where he or she has appropriate skills or experience.

(6) The evaluation committee shall include members with a relevant type of skills and experience and the skills required shall be determined by the nature of the procurement requirement, but may include -

(a) end-user representatives;

(b) procurement and contracting skills;

(c) financial management skills; or

(d) technical skills relevant to the subject of the procurement.

(7) The accounting officer of a council and the members of the contracts

committee shall not be qualified to be members of an evaluation committee.

(8) The evaluation committee shall undertake the assessment of tenders submitted, rank them and submit an evaluation report and assessment scores to the procurement and disposal unit for submission to the contracts committee.

Role of internal audit department

28. The head of internal audit department of a procuring and disposing entity, in accordance with the Local Government Act shall audit procurement and disposal procedures and payments to ensure that all goods, services and works are properly ordered, received, examined and paid for in accordance with these Regulations and the Internal audit Manual; and value for money as an objective of procurement has been achieved.

Procedure for delegation of functions

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

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

(3) A recommendation to delegate a function shall be considered by the contracts committee in the same manner as any other contracts committee decision.

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

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

(b) the functions to be delegated;

(c) any value limitations on the delegation;

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

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

(f) the commencement date of the delegation; and

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

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

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

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

Procedure for revoking delegation of functions

- 30.** (1) A delegation of functions may be revoked at any time by the accounting officer either-
- (a) at his or her own initiative; or
 - (b) following a written recommendation by the contracts committee.
- (2) A procurement and disposal unit may submit a recommendation to revoke a delegation to the contracts committee, stating the reasons for the recommendation.
- (3) A delegation of functions may be revoked-
- (a) where the circumstances prompting the delegation have changed;
 - (b) where a malpractice is alleged, proved or suspected;
 - (c) where the holder of the delegated functions is not complying with the Act, these Regulations, the guidelines, reporting requirements or any conditions of the delegation; or
 - (d) for any other justified reason.
- (4) Where an accounting officer revokes a delegation of functions at his or her own initiative, he or she shall inform the contracts committee in writing, stating the reasons for the revocation.
- (5) A delegation of functions shall be revoked through written instructions to the holder of a delegated function and shall have immediate effect unless otherwise stated.

Third party procurement and disposal

- 31.** (1) Where it is deemed that there is lack of technical capacity, and subject to guidelines and prior approval of the Authority, a procuring and disposing entity may engage third party procurement and disposal services.
- (2) a procuring and disposing entity may contract out any of the following procurement and disposal functions of a procurement and disposal unit to a third party procurement or disposal provider-
- (a) advising a user department on an individual procurement and disposal method or practice;
 - (b) recommending appropriate procurement and disposal methods;
 - c) preparing-

- (i) a statement of requirements;
 - (ii) tender documents and any clarifications or amendments;
 - (iii) contract documents; or
 - (iv) contract amendments;
- (d) receiving tenders;
- (e) coordinating tender openings; or
- (f) managing the tender evaluation process.
- (3) A procuring and disposing entity may contract out any of the following contract management functions of a user department to a third party procurement or disposal provider-
- (a) administering and managing contracts;
 - (b) reporting to the procurement and disposal unit any departure from the terms and conditions of an awarded contract;
 - (c) preparing change orders in accordance with the terms and conditions of the contract; or
 - (d) certifying invoices for payments to providers.
- (4) A procuring and disposing entity shall not contract both the procurement or disposal functions and the contract management functions to the same third party procurement and disposal provider.
- (5) The functions of the accounting officer and the contracts committee shall not be contracted out to a third party procurement or disposal provider.
- (6) Where a procuring and disposing entity contracts a third party procurement provider, it shall select the provider from among providers pre-qualified by the Authority.
- (7) The procurement process for contracting the third party procurement provider shall be in accordance with these Regulations and the guidelines.
- (8) Notwithstanding subregulation (6), where a provider pre-qualified by the Authority is not competent to provide services for a particular specialised procurement requirement, a procuring and disposing entity may identify a competent third party procurement provider and apply to the Authority to pre-qualify that provider.

PART V – PROCUREMENT PRACTICES

Procurement practices and methods

32. A procuring and disposing entity shall use any of the following procurement practices and methods:

- (a) Pre-qualification;
- (b) Registration;
- (c) Open national tendering;
- (d) Open international tendering;
- (e) Selective national tendering;
- (f) Selective international tendering;
- (g) Direct procurement;
- (h) Micro-procurement; and
- (i) Community purchase.

Choice of procurement method

- 33.** (1) The choice of a procurement method shall be in accordance with these Regulations and guidelines issued, and shall be on the basis of-
- (a) the estimated value of the requirement; or
 - (b) the circumstances pertaining to the requirement.
- (2) The estimated value of the requirement shall be the main criterion for determining the choice of procurement method.
- (3) The choice of procurement method shall be in accordance with the thresholds issued by the Authority in guidelines.
- (4) The circumstances pertaining to the requirement to be procured may be used as additional criteria in determining the choice of procurement method.

Pre-qualification

- 34.** (1) Pre-qualification may be used under open national tendering or open international tendering to obtain a shortlist of tenderers and to ensure that invitations to tender are confined to capable providers only.
- (2) Pre-qualification may be used where-
- (a) the works, services or supplies are highly complex, specialised or require detailed design or methodology;
 - (b) the costs of preparing a detailed tender would discourage competition; or

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

(3) Pre-qualification shall be open to all providers using public advertisement of a pre-qualification notice, which shall invite potential tenderers to-

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

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

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

(a) details of the scope of the procurement;

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

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

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

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

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

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

(7) Only the pre-qualified providers shall receive invitations to tender where pre-qualification is a requirement.

Registration

35. (1) A procuring and disposing entity shall establish, maintain and update a register of short-listed providers of works, services and supplies for every financial year and renew it at least at the beginning of each financial year through an open invitation. Prices of common user items may be reviewed at shorter intervals than a year.

(2) At the registration advertisement, companies shall be required to submit necessary documents that may include -

(a) business bank account where applicable;

- (b) certificate of registration or incorporation where applicable;
- (c) memorandum and articles of association where applicable;
- (d) annual tax clearance where applicable;
- (e) VAT registration where applicable;
- (f) list of owners of the firm;
- (g) list of directors of the firm;
- (h) name, address and physical location of business;
- (i) a record of current and past contracts by a provider;
- (j) annual business turn over for the last two years where applicable; and
- (k) any such documents as the contracts committee may require.

(3) An applicant whose application for registration is rejected may resubmit an application for registration as a provider the next time registration is taking place

(4) A registered provider shall inform the procuring and disposing entity of any material change in the circumstances or details relating to the registration within twenty one working days of the change and if a provider fails to notify the procuring and disposing entity of any change, the procuring and disposing entity may delete that provider from the list of registered providers and notify the provider of the fact of their de-registration.

Open national tendering

- 36.** (1) Open national tendering shall be open to all tenderers and shall be by public advertisement of a tender notice in at least one newspaper of wide national circulation.
- (2) Notwithstanding sub regulation (1), a tenderer may be selected through a pre-qualification process, following publication of a pre-qualification notice in at least one newspaper of wide national circulation.
- (3) Tender documents may be sold to a prospective tenderer at a cost agreed by the contracts committee.
- (4) A public tender opening shall be held for open national tendering.

Open international tendering

37. (1) Open international tendering may be used instead of open national tendering where competition will not be effective without foreign tenderers or where foreign tenders will increase value for money.
- (2) Nothing shall prevent a national tenderer from participating in open international tendering.
- (3) Notwithstanding sub regulation (1), a tenderer may be selected through a pre-qualification process, following publication of a pre-qualification notice in at least one newspaper of wide international circulation.
- 4) Open international tendering shall be open to all tenderers following the public advertisement of a tender notice in a publication of wide international circulation.
- (5) Tender documents may be issued to prospective tenderer at a fee, the cost of which shall be agreed upon by the Contracts Committee.
- (6) A public tender opening shall be held for open international tendering.

Selective national tendering

38. (1) Selective national tendering may be used where-
- (a) the supplies, works or services are available only from a limited number of providers; or
 - (b) there is insufficient time for an open tendering procedure in an emergency situation; or
 - (c) the estimated value of the procurement or disposal does not exceed the threshold stated in the procurement guidelines issued under these regulations.
- (2) The invitation to tender under selective national tendering shall be addressed to a limited number of potential tenderers on a short list without advertising the opportunity in a tender notice. The shortlist shall include sufficient tenderers to ensure effective and real competition.
- (3) A procuring and disposing entity shall use the following data and information in developing a shortlist for selective national tender requirements-
- (a) the Authority's register of providers;
 - (b) a procuring and disposing entity's own list of pre-qualified or registered providers; and
 - (c) any other public procuring and disposing entity's list of pre-qualified providers.
- (4) The following considerations shall be taken into account in developing a short list-
- (a) a fair and equal opportunity shall be afforded to all providers ;
 - (b) there shall be a rotation of different providers on successive shortlists;

(c) a tenderer shall not be included unless they are expected to fully satisfy the eligibility requirements;

(d) a tenderer shall not be included unless they are expected to fully satisfy the qualification requirements of competence, capacity, resources and experience required for the execution of the tender in question; and

(e) tenderers included shall not all have the same ownership or compromised business linkages.

(5) The proposed shortlist shall be recorded, with reasons for the selection of each tenderer, and submitted to the contracts committee for approval.

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

Selective international tendering

39. The selection of a tenderer under selective international tendering shall be by development of a shortlist approved by the contracts committee in accordance with these regulations.

Direct procurement

40. (1) Direct procurement or disposal is a sole source procurement or disposal method for procurement or disposal requirements where exceptional circumstances prevent the use of competition. A contracts committee shall approve a direct procurement method prior to the commencement of procurement.

(2) Direct procurement or disposal may be used-

(a) where-

(i) there is insufficient time for any other procedure such as in an emergency situation; or

(ii) the works, services or supplies are available from only one provider; or

(iii) an existing contract could be extended for additional works, services or supplies of a similar nature and no advantage could be obtained by further competition, if the prices on the extended contract are reasonable; or

(iv) additional works, services or supplies are required to be compatible with existing supplies, works or services and it is advantageous or necessary to purchase the additional works, services or supplies from the original supplier, provided the prices on the additional contract are reasonable; or

(v) it is essential or preferable to purchase additional works, services or supplies from the original supplier to ensure continuity for downstream work, including continuity in technical approach, use of experience acquired or continued professional liability, if the prices on the additional contract are reasonable;

(b) in the circumstances set out in paragraph (a) where the value of the new works, services or supplies does not exceed 15% of the value of the original or existing contract and the original or existing contract has been awarded through a competitive process.

(c) Where a contract is amended more than once, the cumulative value of all contract amendments shall not increase the total contract price by more than 25 percent of the original contract price.

(d) Where the new contract value exceeds (b) and (c) above, the procuring and disposing entity shall seek a waiver from the Authority prior to amendment.

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

(4) Financial evaluation under direct procurement shall undertake an analysis of value for money, through comparison with prices previously obtained through a competitive method or a breakdown analysis of the costs of each component, taking into account the circumstances and value of the procurement.

(5) Value for money must be demonstrated prior to award of a contract through direct procurement by the evaluation committee recommending whether-

(a) the tender should be considered for contract award, subject to any negotiations required;

(b) further competition should be obtained, where possible, in order to ensure value for money or to meet the technical or other requirements of the council; or

(c) the requirement should be cancelled or redefined.

Micro-procurement

41. (1) Micro procurement or disposal is a simple direct procurement or disposal method which shall be used for very low value procurement requirements and to achieve efficient and timely procurement where the value does not justify a competitive procedure.

(2) The selection of a provider may be conducted on a single provider basis without competition. However, a procuring and disposing entity may where practicable obtain competitive tenders for a procurement process under micro procurement.

(3) A micro procurement process shall not require-

(a) a written tender document ;

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

(c) a written tender ;

(d) a public tender opening;

- (e) a notice of best evaluated tenderer;
 - (f) a signed contract document; or
 - (g) a notice of award of contract.
- (4) An original invoice or receipt for the procurement of works, services or supplies and the price paid shall be obtained and annotated with the name of the official undertaking the procurement.
- (5) The procuring and disposing entity shall be responsible for ensuring that value for money is obtained to the extent practicable, under the micro procurement method.
- (6) An accounting officer may delegate authority to a user department to undertake micro procurement up to the maximum value specified in the guidelines or a lower limit set by the contracts committee.
- (7) Micro procurement shall be reported to the contracts committee on a monthly basis by the holder of delegated authority.
- (8) A procuring and disposing entity shall, where appropriate, use a framework contract for the frequent procurement of regularly required items.

Community purchase

- 42.** (1) A procuring and disposing entity may purchase goods, services and works using a community purchase method for community programme or projects, in accordance with thresholds that may be prescribed by the Authority in consultation with the Ministry responsible for Local Government from time to time.
- (2) An accounting officer on recommendation of the contracts committee may delegate community purchase process to a community who shall procure goods, services and works for their own programme and projects to achieve their common objectives through community purchase committee
- (3) A community may purchase through direct contracting or local shopping through display of written notice within the area, word of mouth, local media notices; and there shall be no national notice of tender opportunities.
- (4) The chairperson, treasurer and the secretary of the lower administrative unit and two other members nominated by the chairperson of contracts committee shall constitute community purchase committee with quorum of at least any three of them and decision shall be by at least any two of them.
- (5) The decision of the community purchase committee shall be displayed for public noting, it shall consist of the description and price of the purchased goods, services and works.
- (6) The secretary of any sitting of the community purchase committee shall

communicate in writing their decision to the procurement and disposal unit for recording.

(7) The community purchase committee shall resolve to request contracts committee to carry out a specific procurement on their behalf; and the contracts committee shall avail to the community purchase committee all records of the proceedings of specific procurement before contract signing and recording.

(8) For direct contracting, at least two of the community purchase committee members shall participate in the negotiation.

(9) The contracts committee may receive applications from communities and place a general procurement notice within the local area for declaring opportunities for provision of goods, services and works required.

(10) The contracts committee shall provide comparative market prices for common goods, services and works to assist community purchase committee in purchasing their requirements

(11) Contracts committee shall provide to communities a list of registered providers with description of areas of goods, services and works that each provider covers.

(12) The procurement and disposal unit of the procuring and disposing entity that has jurisdiction over the community may assist the community purchase committee in preparing their procurement plan and implementation.

PART VI – PROCUREMENT RULES

Basic public procurement and disposal principles

43. (1) A tenderer shall not be excluded from participating in public procurement and disposal on the basis of nationality, race, religion, gender or any other criterion not related to qualification, except under guidelines made under these regulations or by any other competent authority. A procuring and disposing entity that limits participation on the basis of nationality shall-

(a) obtain prior written approval of the Authority; and

(b) include the exception to nationality and the grounds relied on in the tender documents as well as in the record of that procurement or disposal process.

(2) All procurement and disposal shall be conducted in a manner that promotes transparency, accountability and fairness.

(3) All procurement and disposal shall be conducted in a manner to maximize competition and achieve value for money irrespective of the method of procurement used or the nature of the works, services or supplies to be

procured.

(4) A procuring and disposing entity shall not, except when required to do so by an order of court, disclose any information where the disclosure would-

- (a) amount to a breach of the law;
 - (b) impede law enforcement;
 - (c) prejudice legitimate commercial interests of the parties;
 - (d) inhibit fair competition; or
 - (e) in any way not be in the public interest,
- until the successful tenderer is notified of the award.

(5) All procurement and disposal shall be conducted in a manner which promotes economy, efficiency and value for money.

(6) All procurement and disposal shall be carried out in accordance with the relevant Codes of Ethics that promote the principles of impartiality, independence and integrity.

(7) A contract shall be awarded to the tenderer with the best evaluated offer ascertained on the basis of the methodology and criteria detailed in the tender documents.

(8) Tender documents shall state any limitations on the currency of tendering and payment that may apply to a procurement proceeding or resulting contract.

Publication and display of notices

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

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

- (a) a pre-qualification notice;
- (b) a tender notice;
- (c) notices of a shortlist;
- (d) a tender opening record;
- (e) a notice of best evaluated tenderer;
- (f) a notice of award of contract, for both procurement and disposal;
- (g) a quarterly report of all micro procurement transactions;
- (h) a notification of public auctions; and

- (i) a public invitation notice under disposal by public tendering.
- (3) Where a procuring and disposing entity has a website, it may post the notice on its website in addition to displaying it on the notice board.
- (4) The use of a notice board or website shall not relieve a procuring and disposing entity of its responsibility to publish a relevant notice publicly in the media or on the Authority's website where provided for in the Act or these Regulations.

Eligibility

45. (1) Participation by tenderers in public procurement and disposal shall be open on equal terms to tenderers who meet the minimum eligibility requirements that are-

- (a) a tenderer has the legal capacity to enter into a contract;
- (b) a tenderer is not-
 - (i) insolvent;
 - (ii) in receivership;
 - (iii) bankrupt; or
 - (iv) being wound up;
- (c) a tenderer's business activities have not been suspended by a competent authority
- (d) a tenderer is not the subject of legal proceedings for any of the circumstances mentioned in paragraph (b);
- (e) a tenderer has fulfilled his or her obligations to pay taxes
- (f) A tenderer does not have a conflict of interest in relation to the subject of the procurement; and
- (g) A tenderer is not subject to suspension by the Authority

(2) A procuring and disposing entity shall where applicable include the eligibility requirements in the tender documents and shall, where it deems fit, require a tenderer to provide documentary evidence to certify his or her eligibility.

(3) The documentary evidence required shall include where applicable:-

- (a) a copy of the tenderer's trading licence or equivalent;
- (b) a copy of the tenderer's certificate of registration or equivalent;

- (c) a copy of the tenderer's income tax clearance certificate or equivalent;
 - (d) a copy of the tenderer's VAT registration or its equivalent;
 - (e) a signed statement that the tenderer does not have a conflict of interest in the subject of the procurement; and
 - (f) any other relevant documents or statements which shall be stated in the tender documents.
- (4) A contracts committee shall verify the accuracy, validity and authenticity of the eligibility documents provided by a tenderer.
- (5) Verification of eligibility shall form an integral part of the preliminary examination to be met by a tenderer.
- (6) Notwithstanding subregulation (2), where eligibility has been verified as part of a pre-qualification process, the tender document shall not require documentary evidence of eligibility and verification of eligibility shall not form part of the preliminary examination.
- (7) Tender documents shall state that any tenderer whose circumstances in relation to eligibility change during a procurement or contract management process shall immediately inform the procuring and disposing entity.
- (8) Eligibility shall always be evaluated on a pass or fail basis and any tender which fails the eligibility examination shall be rejected and not evaluated further.
- (9) Notwithstanding sub regulation (8), where the omission of any documentary evidence to certify eligibility is determined to be a non-material omission, the evaluation committee may request a tenderer to submit such documentation as a clarification.

Record keeping

46. (1) The following records shall be kept by a procuring and disposing entity for inspection by the Authority or other competent authority during working hours-
- (a) a record of the procurement process;
 - (b) a record of contracts management;
 - (c) all records of the contracts committee; and
 - (d) any records of the accounting officer which relate to procurement, contracts management, disagreements with the contracts committee, investigations of complaints, or any other matter related to the Act or these Regulations.
- (2) Procurement records maintained by a procurement and disposal unit shall contain, where appropriate-

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

(3) Contract management records maintained by a user department shall include-

- (a) a copy of the signed contract document, including any signed contract amendments;
- (b) any variations or change orders issued under the contract;
- (c) post-contract documents relating to the fulfilment of contract obligations, in particular, copies of bank guarantees or payment guarantees;
- (d) minutes of any meetings related to contracts management, including contract progress or review meetings;
- (e) delivery documents evidencing delivery of supplies or completion certificates in relation to a contract for services or works under the contract;
- (f) a copy of all invoices for works, services or supplies including work papers verifying the accuracy of payments claimed and details of the actual payment authorised by a contract supervisor;
- (g) a copy of cumulative payment worksheets evidencing management of all payments made;
- (h) a copy of any claims made by the contract supervisor on behalf of the procuring and disposing entity in respect of any warranty, non-warranty, short supply, damage and other claims upon the tenderer or upon the procuring and disposing entity;
- (i) all correspondence between the procuring and disposing entity and the tenderer; and
- (j) a copy of all submissions to the contracts committee and decisions related to the contract management including, but not limited to, the approval of contract amendments.

(4) A security, negotiable document or other financial instrument received by

a procurement and disposal unit or a user department shall be deposited by the officer responsible for the procurement or contract management in a secure place under arrangements made by each procuring and disposing entity.

(5) A copy of the documents referred to in subregulation (4) shall be kept as a procurement record and shall be annotated with details of the location of the original documents and the date of receipt of the original documents.

(6) For the avoidance of doubt, the following original documents shall not be retained in a procurement or contract management record but shall be kept in a secure place-

- (a) a tender security;
 - (b) a performance security;
 - (c) an advance payment guarantee or security;
 - (d) a stage payment guarantee or security;
 - (e) a retained payment guarantee or security;
 - (f) any other payment guarantee or security;
 - (g) a bill of lading, airway bill or similar documents; and
 - (h) a power of attorney.
- (i) any other document required to be kept that is deemed of intrinsic or inherent value.

Language of communication

47. (1) English shall be the language of communication in all procurement and disposal proceedings.

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

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

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

Tender documents

48. (1) Standard tender documents, and other documents issued by the Authority and any other competent authority, may be customised for use by a procuring and disposing entity by the entry of the procuring and disposing entity's contact details such as, name and address, the addition of a logo or any other form of identification of a procuring and disposing entity.

(2) Tender documents shall have statement of requirements that define the requirement precisely and in a manner that leaves no doubt or assumption by a tenderer of the procuring and disposing entity's requirements and to determine how closely and effectively a tenderer can meet these requirements.

- (3) The description in the statement of requirements shall be prepared with a view to ensuring that the works, services or supplies are fit for the purpose for which they are being purchased and are of appropriate quality ensuring value for money.
- (4) A tender document shall have the most appropriate evaluation methodology and evaluation criteria to compare and evaluate the tenders received.
- (5) A tender document shall clearly state the type of contract to be entered into and shall contain the draft contract to be used resulting from the procurement proceedings including all the proposed contract forms and conditions applicable.
- (6) A tender document may be sold in order to recover costs but the price shall be calculated to cover only those costs related to printing, copying and distribution.
- (7) The tender documents shall state that no change in the substance of tenders including changes in price shall be sought, offered or permitted after the date and time of tender closing.
- (8) The statement of requirements in the tender document shall not be issued with reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item.
- (9) Notwithstanding subregulation (8) where a standardisation policy has been approved, the corresponding trademark, brand name, patent, design, type, specific origin, manufacturer, producer, catalogue or numbered item may be used in the statement of requirements.
- (10) Where there is no other sufficiently precise or intelligible way of characterising a requirement except by the use of a reference in subregulation (1), the description shall be used, followed by the words "or equivalent", and shall only serve as a benchmark during the evaluation process.

Tender Validity

- 49.** (1) Tender documents shall state the period within which a tender is to remain valid.
- (2) The tender validity period shall be calculated from the closing date of the tender submission and shall remain in force until the close of business on the last day of the validity period.
- (3) When determining the duration of a tender validity period, sufficient time shall be allowed to enable-

(a) the procuring and disposing entity to undertake an evaluation, post-qualification and negotiations, as appropriate;
(b) the contracts committee to adjudicate the award of contract recommendation;
(c) a tenderer to challenge the award decision before a contract is formed; and
(d) the procurement and disposal unit to prepare a letter of tender acceptance or contract document and obtain all necessary approvals prior to issue of the letter or document,
within the validity period of the tender .

(4) An extension to the initial period of a tender validity shall not normally be requested from a tenderer.

(5) Where an extension to the tender validity period becomes necessary, a tenderer shall be requested in writing, before the expiry of validity of their tender, to extend the validity for a minimum period to complete the process outlined in sub regulation (3).

(6) In extending the validity of a tender, the tenderer shall not be permitted to change the price or any other details of the tender except those conditions relating to the validity of the tender.

(7) A tenderer shall be free to refuse to extend the validity of the tender, without forfeiting his or her tender security.

Tender Security

- 50.** (1) A tender document shall state any requirement for a tender security.
- (2) The amount of a tender security shall be specified in the guidelines.
- (3) A tender security may be requested to deter irresponsible tender s and encourage tenders to fulfill the conditions of their tenders.
- (4) A procuring and disposing entity shall require a tender security to be-
- (a) in a format provided by the Authority and included in the tender documents;
- (b) in a form and from an institution that is wholly acceptable to the Bank of Uganda in accordance with the guidelines; and
- (c) valid for a period prescribed in the tender documents.
- (5) A tender security shall be released promptly by a procuring and disposing entity to an unsuccessful tenderer upon expiry of the term of the security or upon the formation of a contract with the successful tenderer.

(6) The tender security of the successful tenderer shall not be returned to the tenderer until a corresponding performance security is received, if so required by the contract.

(7) The proposed release of a tender security shall be communicated to the tenderer and returned in accordance with the tenderer's instructions.

(8) The conditions for forfeiture of a tender security shall be specified in the tender document and include the following-

(a) a tenderer withdraws its tender during the period of tender validity; or

(b) the successful tenderer fails to-

(i) accept the correction of its tender price;

(ii) sign the contract within the specified period; or

(iii) furnish the required performance security within the specified period.

List of approved providers and comparative market prices

51. (1) The procurement and disposal unit shall maintain a list of approved providers which list shall be kept under constant review by a contracts committee and renewed annually at the beginning of each financial year to remove defunct providers;

(2) Applications from providers for inclusion on the approved list shall be considered and approved by the contracts committee which may qualify or disqualify a company, firm or individual seeking to provide goods, services or works

(3) The procurement and disposal unit shall compile and maintain a list of reserve prices approved by the contracts committee, where applicable to which comparison may be made when awarding tenders.

Preference schemes

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

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

(3) A preference scheme shall

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

(b) be based only on the tender price;

- (c) apply to all competitive procurement methods;
 - (d) clearly state-
 - (i) the target group of providers and eligibility requirements; and
 - (ii) the period of the scheme and arrangements for phasing in and out;
 - (e) contain quantifiable objectives to be achieved and benchmarks to assess progress;
 - (f) compare the estimated costs of implementing the scheme against the costs of implementing the relevant procurement activities without the preference scheme; and
 - (g) be non-discriminatory in terms of the capacity, specialisation and ownership classifications of eligible providers.
- (4) Eligibility for participation in a preference scheme shall require certification by a competent authority.
- (5) The band or level of preference to be accorded to a provider shall-
- (a) be related to the percentage of a procurement activity to be undertaken as national inputs;
 - (b) be proportional to the percentage of the contract to be actually executed by a national or resident provider and a national or resident sub-contractor; and
 - (c) take into account the complexity of a procurement activity to be assigned to a national or resident tenderer in terms of technology transfer, on-the-job training; and
 - (d) be in accordance with guidelines prescribed by the Authority.
- (6) For the purpose of evaluation, comparison and ranking of tenders, the applicable percentage preference shall be added to the tenders of all tenderers not entitled to the preference or the full measure of the preference.
- (7) The preference margin shall be clearly stated in the standard tender documents.
- (8) A preference scheme shall apply in the following order-
- (a) a sole national provider or joint venture or association agreement between national provider;
 - (b) a joint venture or association agreement between a national provider and a resident provider;
 - (c) a sole resident tenderer or joint venture or association agreement between resident providers;
 - (d) a joint venture or association agreement between a national provider and a foreign providers;
 - (e) a joint venture or association agreement between a resident provider and a foreign provider; and

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

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

Reservation schemes

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

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

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

(4) A reservation scheme shall apply to-

- (a) a targeted provider of works and services, both consultancy and non-consultancy; and
- (b) a specific disadvantaged community and geographic area that is subject to conflict, calamity or neglect.

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

(6) A reservation scheme shall-

- (a) clearly state the target group of providers and eligibility requirements;
- (b) clearly state the period of the scheme and arrangements for phasing in and out;
- (c) contain quantifiable objectives to be achieved and benchmarks to assess progress;
- (d) compare the estimated costs of implementing the scheme against the costs of implementing the relevant procurement activities without the preference scheme;
- (e) be non-discriminatory in terms of the capacity, specialisation and ownership classifications of eligible providers; and
- (f) be in accordance with the guidelines issued by the Authority.

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

- (a) competition among the eligible providers; and
- (b) qualification of a provider to fully satisfy the requirements of each procurement activity.

(8) Eligibility for participation in a reservation scheme shall require certification by the competent authority.

Joint ventures, association and sub-contracting

54. (1) Unless otherwise specified in the tender document, a tenderer shall be permitted to submit tender as part of a joint venture, consortium or association and where one party is ineligible, the whole joint venture or association shall be declared ineligible.

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

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

(b) that a copy of the joint venture, consortium or association agreement may be required to be submitted as part of the tender; and shall not be substantially altered without the prior written approval of the contracts committee;

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

(3) Where sub-contracting of a procurement activity is permitted, the tender document or contract document shall state that subcontracting shall not relieve the main tenderer of any of its obligations, duties, responsibilities or liabilities under the contract and where appropriate state that approval by the client is required before entering into a subcontract, or before amending a subcontract agreement.

(a) that a subcontractor must be eligible, in the same way as the main provider; and the obligations or conditions imposed on a main provider, shall also be imposed on a sub-contractor

(b) approval by the client is required before entering into a subcontract, or before amending a subcontract agreement and that a main provider shall not impose onerous obligations or conditions on a subcontractor.

Tendering periods

55. (1) The tendering period shall start on the date the tender notice is first published in a media of wide circulation or issue of tender documents to tenderers and shall be used to allow a potential tenderer sufficient opportunity to access a tender notice and obtain the tender document prior to commencement of the tendering period.

(2) The tendering period shall be determined by taking into consideration the time required for the preparation of tenders considering the level of detail required and the complexity of tenders; the requirement for tenderers to

submit authenticated legal documents as part of their tenders and the time required to obtain such documents.

(3) Guidelines shall be issued under these regulations to guide procuring and disposing entities on the tendering period applicable for the different procurement methods.

Approval of procurement and disposal process

- 56.** A contracts committee or a holder of delegated authority shall approve-
- (a) the choice of a procurement method prior to commencement of the procurement process;
 - (b) pre-qualification documents prior to issue;
 - (c) tender documents and any amendments prior to issue;
 - (d) evaluation reports prior to post-qualification or negotiations;
 - (e) cancellation of a procurement or disposal process;
 - (f) Contract award decisions prior to publication of any notice of best evaluated tenderer or release of a contractual document;
 - (g) a letter of tender acceptance and contract documents prior to issue;
 - (h) contract amendments prior to issue; and
 - (i) termination of a contract.

Cancellation of a procurement process

- 57.** (1) A user department shall, if it deems it necessary, prepare a recommendation to a contracts committee through the procurement and disposal unit for cancellation of a procurement process and shall indicate-
- (a) the procurement reference number and subject of procurement;
 - (b) detailed reasons why cancellation is recommended;
 - (c) the status of the procurement process;
 - (d) an alternative procurement process recommended, if any; and
 - (e) any other relevant information.
- (2) Reasons for cancellation may include, but shall not be limited to-
- (a) a significant change in the technical details of the requirement;
 - (b) a significant change in the circumstances of the procurement;

- (c) the circumstances giving rise to the need have changed significantly; or
- (d) a lack of responsive tenderers.

(3) Cancellation of the tender may also be made in one or some of the lots in which a call for tender may have been divided.

(4) In all cases of cancellation of the tender procedure, the procurement and disposal unit shall inform the tenderers who are still bound by their tenders; and immediately release their tender security, and in case tenders have not yet been opened, return them to the tenderers unopened.

Automatic disqualification of a tenderer

- 58.** A tenderer who attempts to influence the contracts committee or the evaluation committee in the process of examination, clarification, evaluation and comparison of tenders, and in decisions concerning the award of the contract, shall have his or her tender automatically disqualified by a contracts committee on availability of evidence.

Due diligence test on Tenderers

- 59.** (1) A procuring and disposing entity may at any time during a procurement and disposal process carry out a due diligence test on a tenderer and shall not be confined to the pre- or post-qualification stage or the procedure or content relating to these stages.
- (2) A due diligence test may cover any area of a tenderer's operations that a contracts committee determines requires verification or checking in exercising an obligation of due care in a procurement or disposal process.
- (3) The nature and extent of the due diligence test conducted shall be determined by the nature, size and type of the potential contract, the risks associated with non performance of the tenderer and the procuring and disposing entity's existing knowledge or past association with the tenderer.

Suspension of Providers

- 60.** (1) A provider may be suspended from participating in public procurement or disposal of public assets proceedings for breaching the provisions of the Act, these Regulations and the Code of Ethics for tenderers provided in Part (b) of the First Schedule..
- (2) A recommendation to suspend a provider shall be submitted to the Authority in writing by a contracts committee or a public officer of a procuring and disposing entity may make a submission to a contracts committee regarding a recommendation to suspend a provider.

(3) A contracts committee shall consider all submissions and decide whether to submit a recommendation to the Authority to suspend a provider.

(4) A recommendation to suspend a provider shall include-

- (a) the name of the provider;
- (b) the grounds for the recommendation to suspend the provider;
- (c) details of the procurement or disposal proceedings or contract to which the recommendation relates;
- (d) documentary or other evidence supporting the recommendation; and
- (e) any other information relevant to the recommendation.

(5) A provider who is subject to a suspension recommendation, shall be permitted to submit information or evidence in his defence either in person, through presentation of witnesses, in writing, or through a representative.

(6) Upon receipt of a recommendation to suspend a provider, the Authority shall immediately -

- (a) notify the provider, giving full details of the recommendation and inviting him or her to submit information or evidence in his or her defence; and
- (b) institute an investigation.
- (c) issue its decision to the provider and contracts committee within twenty one working days after the date of receipt of the recommendation.
- (d) place the provider on its list of suspended providers and notify all procuring and disposing entities.

(7) A procuring and disposing entity shall enforce the list of suspended provider, by ensuring it does not -

- (a) award contracts to a suspended provider;
- (b) sell or issue tender documents to a suspended provider or in any other way solicit tenders from the provider; or
- (c) enter into any other dealings or communications with a suspended provider, except in respect of existing contracts placed prior to a suspension from public procurement and disposal.

(8) After the expiry of the period of a suspension, a provider may apply to the Authority, in writing, to be removed from the list of suspended providers and the Authority shall remove the provider from the list of suspended provider within fifteen working days after the application.

Deviations from applicable procurement and disposal methods and documents

61. (1) A deviation from the use of a procurement or disposal method or documents under these Regulations may be permitted by the Authority-

- (a) where exceptional requirements make it impossible, impractical or uneconomical to comply with these Regulations;

(b) where market conditions or behaviour do not allow effective application of the Act and these Regulations; or

(c) for specialised or particular requirements that are regulated or governed by harmonised international standards or practices.

(2) An application for a deviation from the use of a procurement or disposal method or document shall be submitted to the Authority in writing and shall include-

(a) a statement of the method, rule or documentation from which a deviation is required;

(b) the reasons for deviation from a procurement and disposal method, rule or documentation, including an explanation of the exceptional requirements or market conditions or the international standards or practices which regulate or govern the requirement;

(c) an explanation of the proposed alternative method or rule or a copy of the proposed alternative document, including a summary of how it differs from the standard method, rule or documentation;

(d) a statement of how a procuring and disposing entity shall ensure compliance with the intentions and standards of the public procurement and disposal principles, rules, methods or documentation as far as is practical;

(e) a statement of whether the deviation is required for a single requirement or for a number of requirements of the same class over a period of time; and

(f) any other relevant information.

(3) The Authority shall consider each application and issue its decision stating the reasons for the approval or rejection within twenty one working days after receipt of the application.

(4) A deviation from a public procurement method or document for a specified period of time may be resubmitted to the Authority for renewal and any application for renewal shall include the information in subregulation (2).

(5) Where a deviation is requested from a standard document, the Authority may, where it considers it appropriate, adopt the proposed alternative document as an additional standard document.

PART VII – PROCUREMENT PROCESS

Procurement and disposal planning

62. (1) A user department shall prepare an annual work plan for procurement based on the approved budget, which shall be submitted to the procurement and disposal unit to facilitate orderly execution of annual procurement activities.
- (2) A procurement plan shall be integrated into the annual sector expenditure programme to enhance financial predictability, accounting and control over procurement budgets.
- (3) A procurement and disposal unit shall use the combined work plan to plan, organise, forecast and schedule the procuring and disposing entity's procurement activities for the financial year.
- (4) The combined work plan for the procuring and disposing entity shall include-
- (a) a detailed breakdown of activities of works, services or supplies to be procured;
 - (b) a schedule of procurement requirements in order of priority;
 - (c) a statement of required resources supported by a schedule of the projected funding;
 - (d) a plan of the likely method of procurement for each requirement and the likely time required for each stage in the procurement cycle; and
- (5) Planning for a procurement activity shall take into account the following considerations-
- (a) aggregation of requirement to achieve lower unit costs;
 - (b) allocation of tender lots to ensure that requirements are not split up without justified reason;
 - (c) common procurement of common user items with other procuring and disposing entities;
 - (d) joint procurement with other procuring and disposing entities, where possible;
 - (e) pre-qualification to cover groups of contracts where similar works, services or supplies requiring a pre-qualification exercise are required during the financial year, or where it would facilitate shortlisting of providers;
 - (f) scheduling of available resources to process the procurement requirements of the procuring and disposing entity, in particular those relating to evaluations teams; and
 - (g) the need for framework contracts where appropriate, to the individual procurement requirements.

Aggregation of requirements

63. (1) Requirements shall be aggregated for-

- (a) all departments of a procuring and disposing entity;
 - (b) a complete financial year or other appropriate period of time; and
 - (c) any other appropriate circumstance.
- (2) The aggregation of requirements shall take into account-
- (a) the market structure for the items required;
 - (b) items which are of a similar nature and which are likely to attract the same potential tenderers;
 - (c) the optimum size and type of contract to attract the greatest and most responsive competition or the best prices;
 - (d) items which shall be subject to the same method of procurement and tendering conditions;
 - (e) items which shall be ready for tendering at the same time;
 - (f) items which shall be subject to the same conditions of contract;
 - (g) potential savings in time or transaction costs;
 - (h) the appropriate size of contract to facilitate the application of any preference and reservation schemes; and
 - (i) the optimum number and size of contracts to facilitate management and administration of contracts by the procuring and disposing entity.

Splitting of requirements

- 64.** (1) A procuring and disposing entity shall not, with the intention of avoiding a particular method of procurement or the benefits of scale, split up procurement requirements which can be procured as a single contract.
- (2) Splitting of procurement or disposal requirements, which are broadly similar or related, shall only be permitted when the split offers clear and calculable economic or technical advantages.
- (3) A procuring and disposing entity may divide requirements allocated to a single procurement process into separate lots, where it is anticipated that the award of several separate contracts would result in the best overall value for the procuring and disposing entity.

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

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

- (a) the number of lots included in the procurement process;
- (b) the nature and size of each lot;
- (c) the minimum and maximum number of lots, if any, for which a tenderer may tender ;
- (d) the proportion of each lot for which a tenderer may tender , or whether a tender shall be for complete lots; and
- (e) the method of evaluating multiple lots.

Initiation of procurement or disposal requirements and confirmation of funding

65. (1) Procurement requirements shall be documented using a requisition form that shall include-

- (a) a clear indication of the works, services or supplies required;
- (b) the estimated value of the works, services or supplies;
- (c) confirmation of availability of funding; and
- (d) the approval of the procurement requirement in accordance with subregulation (4).

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

- (a) the estimate is based on up-to-date information;
- (b) technical advice is sought, where required; and
- (c) the confirmation of availability of funding takes into account the total acquisition cost.

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

(4) Approval of procurement requirements shall be evidenced by the signature of the authorised official on the procurement requisition form.

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

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

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

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

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

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

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

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

Invitation of tenderers

66. (1) The method for selection of a tenderer to be invited to tender shall be in accordance with the procurement method and shall be either-

(a) by publication of a tender notice in at least one newspaper of wide circulation, the notice board of the procuring and disposing entity

(b) through a pre-qualification exercise;

(c) by development of a shortlist; or

(d) by selection of a sole or single tenderer.

(2) A contracts committee shall issue or sell tender documents to-

(a) a tenderer who requests the documents in the case of open tendering;

(b) the single or sole source approved by the contracts committee in the case of direct procurement; or

(c) a tenderer on the shortlist approved by the contracts committee in the case of all other methods of procurement.

(3) Where tender documents are sold, the local government shall allow a potential tenderer to inspect the tender document prior to purchasing.

(4) A procuring and disposing entity shall record the issue or sale of all tender documents and shall obtain a signed receipt or other confirmation of receipt of the documents from a tenderer to whom the documents are sold or issued.

(5) Tender documents may be sold at a rate approved by the contracts committee in order to recover costs but the price shall be calculated to cover only those costs related to printing, copying and distribution and shall not include any element of profit.

(6) Where tender documents are sold, a procuring and disposing entity shall issue signed receipts for payment to tenderers.

(7) A tender shall be rejected during the preliminary examination of tenders if it is received from a tenderer who is not listed as having bought or obtained the tender document directly from the procuring and disposing entity or is not included on the shortlist approved by the contracts committee.

Clarification and amendment of tender documents

67. (1) The tender documents shall state that a tenderer may seek clarification of the tender documents and shall state the final date, after which such clarification may not be sought; the final date shall be determined with a view to allow adequate time for all tenderers to receive and study the tender documents.

(2) Where a request for clarification is received, the procuring and disposing entity shall promptly provide a clarification in writing and the clarification response shall be copied to all tenderers who obtained the tender documents directly from the procuring and disposing entity, and shall include a description of the inquiry, but without identifying the source.

(3) At any time prior to the deadline for submission of tenders, the procuring and disposing entity may, either at its own initiative or in response to a request for clarification from a tenderer, amend the tender documents by issuing an addendum.

(4) To give a tenderer reasonable time in which to take an addendum into account in preparing a tender, the procuring and disposing entity shall, where less than one third of the tendering period remains, extend the deadline for the submission of tenders by a reasonable period; where more than one third of the tendering period remains, the procuring and disposing entity may also, at

its discretion, extend the deadline for the submission of tenders.

(5) The addendum, including any extension to the tendering period, shall be issued in writing and the same information shall be provided to all tenderers.

(6) All addenda to tender documents shall be approved by the contracts committee prior to issue to tenderers and shall be numbered sequentially.

(7) All clarifications and amendments to the tender documents shall be binding on tenderers.

Pre-tender meetings

68. (1) A procuring and disposing entity may hold pre-tender meetings to allow potential tenderers to seek clarification or access to project sites where applicable.

(2) Arrangements for a pre-tender meeting shall be included in the tender documents and where they are not included in the tender documents, information on a pre-tender meeting shall be sent to all tenderers who purchased or were issued the tender documents.

(3) Where attendance at a pre-tender meeting is compulsory for tenderers, notice to this effect shall be included in the tender document and any tender notice.

(4) A potential tenderer shall be given sufficient notice of a pre-tender meeting to offer a reasonable opportunity for him or her to attend and the notice period shall be extended under international methods of procurement.

(5) A pre-tender meeting shall allow sufficient time before the deadline for tender to enable a tenderer to take any additional information into account in preparing the tender.

(6) Minutes shall be recorded for all pre-tender meetings and copies of the minutes shall be provided to all tenderers who purchased or were issued the tender documents.

(7) A pre-tender meeting shall be managed by the procurement and disposal unit with a member of the contracts committee present, to witness the meeting.

Format and submission of tenders

69. (1) The tender documents shall contain instructions to tenderers on-

- (a) the format and documentation required in tenders;
- (b) the procedure for signing and authorising tenders; and

(c) the number of copies of tenders to be submitted which shall be one original tender marked "ORIGINAL" and a specified number of copies, each marked "COPY".

(2) Tender documents shall contain instructions on the method of tender submission, which shall either be-

(a) the one stage-single envelope method, in which a tender is submitted in one sealed envelope, which is opened on the specified date and time in a single tender opening;

(b) the one stage-two envelope method, in which a tender is submitted in an outer sealed envelope, containing two separately sealed and labelled technical and financial tenders, which are opened on different dates in separate tender openings;

(c) the two stage-two envelope method, in which-

(i) during the first stage, a tender is submitted in an outer sealed envelope, containing two separately sealed and labelled technical and financial tenders, of which only the technical tender is initially opened and evaluated; and

(ii) during the second stage, a revised technical tender and a supplementary financial tender are submitted, which are opened and evaluated together with the original financial tender; or

(d) two stage method, in which-

(i) during the first stage, a technical tender only is submitted, opened and evaluated; and

(ii) during the second stage, a revised technical tender and a financial tender are submitted, opened and evaluated together.

(2) Where the two stage methods in subregulation (1)(c) or (1)(d) are used, a tenderer shall be invited to submit tenders during the second stage, unless he or she has been declared non compliant or non responsive.

(3) The tender submission method shall be selected in accordance with the rules for each evaluation methodology and using the following as guidance-

(a) the one stage-single envelope method shall be used where all stages of the evaluation are to be conducted together and a combined technical and financial evaluation report produced;

(b) the one stage-two envelope method may be used where the detailed technical and commercial evaluation is to be conducted without reference to financial information;

(c) the two stage-two envelope method may be used where alternative technical tenders are possible and the procuring and disposing entity needs to evaluate the initial technical tenders in order to determine a single technical standard with which all tenderers are invited to conform by submitting revised technical tenders and supplementary financial tenders; and

(d) the two stage method may be used for large and complex contracts, where technically unequal tenders are likely and more than one equally acceptable technical solution is available to the procuring and disposing entity, which needs to ensure that all technical tenders conform to the same technical standard before a financial tender is prepared.

(4) The tender documents shall state that the tender shall be submitted in a plain outer envelope, securely sealed in such a manner that opening and resealing cannot be achieved undetected and shall contain instructions on the details of labelling and references to be detailed on each envelope

(5) The tender documents shall contain instructions that a tenderer may, at any time before the deadline for submission of tenders-

- (a) withdraw his or her tender;
- (b) submit a replacement tender; or
- (c) modify his or her tender by withdrawal of the original tender and submission of a replacement tender.

Receipt of tenders and tender closing

- 70.** (1) The method for receipt of tenders and closing of tenders shall be either by-
- (a) receipt of tenders in person and issue of a receipt by staff of the procurement and disposal unit; or
 - (b) use of a tender box.
- (2) Where a tender is delivered by registered mail or courier, a procuring and disposing entity shall not be held liable for risk of loss or delay in delivery.
- (3) Submission of electronic tenders shall not be permitted unless specifically authorised by the Authority.
- (4) A procurement and disposal unit shall ensure that an officer is available at the location for submission for a reasonable period of time before the deadline, to receive tenders and issue receipts.
- (5) The procurement and disposal unit shall maintain a record of all tenders received and shall issue a signed receipt for each tender received, stating the date and time received.
- (6) Tendering shall be closed at the precise time and date of the closing deadline.
- (7) A tender that arrives at the location of submission after the deadline for submission of tenders shall not be accepted. Any tender received after the deadline for submission of tenders shall be declared late, labelled as such, and

returned unopened to the tenderer and any late tender which is not labelled with the tenderer's name shall be left unopened and destroyed.

(8) The tender closing process shall be managed by the procurement and disposal unit and shall be witnessed by a representative of the contracts committee; all of whom shall sign the attendance register to confirm that tendering was closed at the precise time and date of the deadline.

(9) Immediately after the tender closing process, the tenders received shall be moved to the location of the tender opening and where the tender opening is not immediately after the tender closing, the tenders received shall be moved to a secure location.

Opening of tenders

71. (1) Opening of tenders by open and selective tendering shall take place in a public session under the authority of the head procurement and disposal unit chairperson contracts committee or designated representative or members shall elect from amongst those present a chairperson.

(2) The tender box in which tenders are kept shall be unlocked at the appointed time and venue stipulated in the tender documents in the presence of the members of the contracts committee, and the tenderers or their representatives who wish to attend.

(3) The tenderers' names, total amount of each tender; the written notifications of tender modifications and withdrawals where applicable, and such other details as the contracts committee may consider appropriate shall be announced.

(4) In the case of a separate tender price envelope, the announcement shall include the fact that no price envelope has been opened and the envelopes marked with the words "Tender Price" in accordance with the rules for separate tender price, shall be opened only after the technical evaluation.

(5) The procurement and disposal unit shall record the number of unopened envelopes in the tender box.

(6) The tender opening records shall include –

(a) name of tender;

(b) tender price;

(c) tender guarantee, source and amount;

(d) alternative tenders if any;

(e) information on discounts offered by tenders;

- (f) and any other relevant information
- (7) Every tender shall be stamped and signed by the chairperson of bid opening and the secretary.
- (8) All bids opened shall be stamped on key pages with the procuring and disposing entity's stamp and signed or initialled by the chairperson of the opening.
- (9) The chairperson of the opening shall determine the key pages to be stamped and initialled, but these shall always include the typed pages of the bid that are unique to the bid, including the bid form or bid submission sheet and all pages containing financial information.
- (10) The tender opening shall be recorded and any person who attends or participates in a tender opening shall sign a register to indicate his or her attendance.
- (11) After all tenders have been opened, read out and recorded, the record of the opening shall be signed by the chairperson and countersigned by the secretary; copies of the record shall be made available to a tenderer's representative upon request, and on payment of a prescribed fee.
- (12) The record of the tender opening shall be posted on the procuring and disposing entity's notice board and shall be displayed within two working days of opening and displayed for ten working days.
- (13) The opened tenders shall be taken immediately to a secure location where they shall be kept until the evaluation begins.

Evaluation procedures

- 72. (1) An evaluation shall be conducted by an evaluation committee, which shall report to the contracts committee through the procurement and disposal unit..
- (2) The membership of the evaluation committee shall be recommended by the procurement and disposal unit, and approved by the contracts committee.
- (3) A member of a procurement and disposal unit or a user department may be a member of an evaluation committee, where he or she has appropriate skills or experience. However, In order to maintain independence of functions and powers, a member of a contracts committee shall not be a member of an evaluation committee.
- (4) A member of the evaluation committee may be external to the procuring and disposing entity, where the required skills or experience are not available within the procuring and disposing entity, or where there is a conflict of interest.

(5) A member of an evaluation committee shall sign the Code of Ethical Conduct in Business provided in the First schedule declaring that he or she does not have a conflict of interest in the procurement requirement.

(6) The chairperson of the evaluation committee shall supervise and coordinate team members during the evaluation process, but shall not direct members in decisions relating to the evaluation or canvas them on any issue for a specific outcome.

(7) Minutes of all meetings shall be signed by all members of the evaluation committee to confirm that the minutes are an accurate and complete record of each meeting and shall be kept as part of the procurement record; the minutes shall form an annex to the evaluation report

(8) A decision of the evaluation committee shall be by unanimity, except where individual scores or marks are required in accordance with the evaluation methodology.

(9) Notwithstanding subregulation (8), where the evaluation committee is unable to reach a unanimous decision, the findings and recommendations of the majority shall be stated in the evaluation report. The evaluation report shall also state any disagreements, including the reasons, the discussions held on the issue and the names of those holding alternative views.

(10) The evaluation report shall be signed by all members of the evaluation committee.

Compliance and responsiveness of tenders

73. (1) A procuring and disposing entity's determination of a tender's compliance and responsiveness shall be based on the contents of the tender itself.

(2) A substantially compliant and responsive tender shall be one that conforms to all the instructions, requirements, terms and conditions of the tender documents without material deviation, or omission.

(3) If a tender is not substantially compliant and responsive to the tender documents, it shall be rejected by the procuring and disposing entity and may not subsequently be made compliant or responsive by the tenderer by correction of the material deviation, or omission.

(4) Where a tender is substantially compliant and responsive, the procuring and disposing entity may waive, clarify or correct any non-conformity or omission in the tender that does not constitute a material deviation.

(5) Where a tender is to be evaluated on a pass or fail basis, any tender which is determined to be substantially compliant and responsive in accordance with subregulation (2) shall be determined to have passed.

Clarifications with tenderers

- 74.** (1) The evaluation committee may request the clarification of information or the submission of documentation from a tenderer, which relate to-
- (a) nonconformity or omission, which are not material; or
 - (b) the correction of arithmetic errors.
- (2) A clarification shall not seek and the tenderer shall not be permitted to-
- (a) alter or amend the tender price except to correct errors;
 - (b) change the substance of the terms and conditions of the tender ; or
 - (c) substantially alter anything which forms a crucial or deciding factor in the evaluation of the tender .
- (3) A request for clarification, including the correction of arithmetic errors, shall be addressed to a tenderer in writing by the Procuring and disposing entity
- 4) A request for clarification shall be signed and sent to a tenderer by the chairperson of the evaluation committee and all requests for clarifications shall be copied to all tenderers for information purposes only and noted in the evaluation report.
- (5) A tenderer shall be instructed to respond to clarifications in writing within a specified time.
- (6) The head of the procurement and disposal unit shall ensure that all responses are promptly forwarded to the chairperson of the evaluation committee.
- (7) Failure of a tenderer to respond to a request for clarification may result in the rejection of its tender.
- (8)) For the avoidance of doubt requests for clarification shall not be permitted to become negotiations which shall only be carried out by the negotiation team after the determination of the best evaluated tender , but before an award decision is made.

Material and non-material deviation

- 75.** (1) A material deviation or omission is one that-
- (a) affects in any substantial way the scope, quality, or performance of the works, services or supplies specified in the tender documents;
 - (b) would limit in any substantial way, inconsistent with the tender documents, the procuring and disposing entity's rights or the tenderer's obligations under any resulting contract; or

(c) if corrected would unfairly affect the competitive position of other tenderers presenting substantially responsive and compliant tenders.

(2) A material deviation shall result in the rejection of the tender.

(3) A non-material deviation or omission is one that-

(a) affects the scope, quality, or performance of the works, services or supplies specified in the tender document in only a minor way, which is acceptable to the procuring and disposing entity;

(b) would limit the procuring and disposing entity's rights or the tenderer's obligations under any resulting contract in only a minor way, which is acceptable to the procuring and disposing entity; and

(c) would not unfairly affect the competitive position of other tenderers presenting substantially responsive and compliant tenders if corrected.

(4) A non-material deviation may be waived, clarified by the tenderer or corrected by the procuring and disposing entity.

(5) The classification of a deviation, reservation or omission as material or non-material shall be determined by the objectives and requirements of the individual procurement requirement, as stated in the tender document.

(6) In classifying a deviation or omission as material or non-material, the procuring and disposing entity shall consider whether the impact on key factors, such as cost, risk, time and quality are major or minor and the following guidance shall apply-

(a) material deviation, or omission shall include-

(i) unacceptable time schedules, where it is stated in the tender document that time is of the essence;

(ii) unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; and

(iii) unacceptable counter-proposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty; and

(b) a non-material deviation, reservation or omission shall include-

(i) minor differences in time schedules, where time is not of the essence;

(ii) the omission of minor items;

(iii) arithmetic errors;

(iv) alternative technical details, such as design, materials, workmanship,

specifications, standards or methodologies, which are substantially responsive to the statement of requirements and acceptable to the procuring and disposing entity; and

(v) minor amendments to contract terms and conditions, which are acceptable to the procuring and disposing entity.

(7) The classification of a deviation, reservation or omission as material or non-material shall be consistently applied to all tenders.

Stages of evaluation

76. An evaluation shall be conducted in three sequential stages-

(a) a preliminary examination to determine the eligibility of a tenderer and the administrative compliance of tenders received;

(b) a detailed evaluation to determine the commercial and technical responsiveness of the eligible and compliant tenders; and

(c) a financial comparison to compare costs of the eligible, compliant, responsive tenders received and determine the best evaluated tender.

Preliminary evaluation of tenders

77. (1) A preliminary examination shall be conducted to determine-

(a) whether a tenderer is eligible; and

(b) the administrative compliance of a tender to the basic instructions and requirements of the tender document that may include but are not limited to-

(i) submission of a tender security, if required, in the correct form and amount;

(ii) submission of the correct number of copies of the tender;

(iii) submission of the tender in the required format;

(iv) signature and authorisation of tenders in accordance with the instructions in the tender document;

(v) signature of curriculum vitae, if required;

(vi) correct tender validity; and

(vii) submission of any additional documentation or samples required.

(2) Eligibility shall be determined in accordance with these regulation.

(3) Eligibility and administrative compliance shall be determined on a pass or fail basis and a tender which is not eligible or substantially compliant shall be rejected.

(4) Only tenders that pass the preliminary examination shall be considered further.

Detailed evaluation of tenders

78. (1) A detailed evaluation shall be conducted to assess-

(a) the commercial responsiveness of a tender to the terms and conditions of the tender document; and

(b) the technical responsiveness of tenders to the statement of requirements or the relative quality of tenders received.

(2) The detailed evaluation shall only be conducted on a tender that is determined to be eligible and compliant during the preliminary examination.

(3) The detailed evaluation shall compare the details of the tender received with the terms, conditions and criteria stated in the tender documents; the detailed evaluation shall not be based on any terms, conditions or criteria that was not included in the tender document.

(4) The method of detailed evaluation shall be in accordance with the methodology selected and the tender document and may use-

(a) an assessment of whether the tender conforms to all the terms and conditions of the tender document, including the statement of requirements, without material deviation or reservation;

(b) a pass or fail system against a minimum technical standard detailed in the statement of requirements to determine whether a tender is substantially responsive to the minimum standard required;

(c) a merit point system, with a variable number of points awarded to each tender for set criteria out of a maximum number of points stated in the statement of requirements to obtain a total score indicating the relative quality of each tender; or

(d) a combination of paragraphs (a), (b) and (c).

(5) Any tender which is not substantially responsive to the minimum standard or does not reach any minimum score required shall be rejected and not evaluated further.

Evaluation methodologies

79. (1) The evaluation committee shall use one of the following evaluation methodologies in accordance with guidelines issued under these regulations-

(a) Quality and Cost Based Selection, (QCBS),

- (b) Quality Based Selection, (QBS),
- (c) Fixed Budget Selection, (FBS),
- (d) Least Cost Selection, (LCS), or
- (e) Technical compliance selection, (TCS).

(2) A procuring and disposing entity shall choose the evaluation methodology that best suits the procurement requirement.

(3) Notwithstanding subregulation (2), evaluation under direct procurement shall always use Technical Compliance Selection.

(4) A procuring and disposing entity shall seek the consent of the Authority to use any other evaluation methodology.

Financial comparison of tenders

80. (1) A financial comparison shall be conducted to examine and compare financial tenders and determine the best evaluated tender.

(2) The financial comparison shall only be conducted on a tender that is-

(a) eligible and administratively compliant; and

(b) substantially, commercially and technically responsive or meet the required minimum technical standard or score.

(3) The financial comparison shall-

(a) determine the tender price;

(b) correct any arithmetic errors in the tenders;

(c) apply any non-conditional discounts offered in a tender;

(d) determine whether the financial tenders are complete, costing any missing items and adding them to the original tender price.

(e) make adjustments for any non-material nonconformities or omissions;

(f) convert all tenders to a single evaluation currency for purposes of comparison if required;

(g) apply any margin of preference in accordance with the procedure specified in the tender documents;

(h) determine the total evaluated price of each tender;

(i) award a financial score or rank tenders, in accordance with the evaluation methodology selected; and

(j) determine which is the best evaluated tender in accordance with the methodology and criteria in the tender document.

(4) Where a conditional discount has been offered, it shall be incorporated in a further financial comparison prior to determining the best evaluated tender.

(5) A financial tender shall be determined to be complete if the price has been included for all items required and included in the corresponding technical tender and unless otherwise stated in the tender document, any missing items shall be costed using the highest price from the other tenders, and added to the original tender price.

(6) The tender document shall state the evaluation currency and the date and source of the exchange rates to be used for conversion to a single currency.

(7) Unless otherwise indicated in the tender documents, an alternative bid shall not be considered.

Evaluation report

81. (1) An evaluation report shall be prepared for each evaluation and submitted to the contracts committee for approval.

(2) The evaluation report shall be signed by all member of the evaluation committee.

(3) Where a tender is submitted using the one stage-one envelope tender submission method, a combined evaluation report shall be prepared and submitted to the contracts committee after completion of the evaluation.

(4) Where a tender is submitted using the one stage-two envelope, two stage-two envelope or two stage tender submission method-

(a) a technical evaluation report shall be prepared and submitted to the contracts committee after completion of the detailed evaluation and shall be approved prior to inviting or opening a financial tender as applicable; and

(b) a financial evaluation report shall be prepared and submitted to the contracts committee after completion of the financial comparison.

(5) An evaluation report shall contain reasons for the rejection of any tender and details of any non-material deviations accepted and the way in which they have been quantified and taken into account in the financial comparison.

(6) A technical evaluation report shall contain recommendations on which a tenderer should proceed to the financial comparison.

(7) A combined and financial evaluation report shall contain recommendations on-

- (a) the best evaluated tenderer and the evaluated price;
- (b) whether the recommended tenderer should be subject to post-qualification;
- (c) whether negotiations should be held with the recommended tenderer; and
- (d) the price of the proposed contract, subject to any changes following negotiations.

Post qualification

82. 1) Where appropriate, a post-qualification may be undertaken to determine whether the best evaluated tenderer has the capability and resources to effectively carry out the contract.

(2) The criteria for post-qualification shall be set out in the tender document and may include-

- (a) experience on similar contracts in the country, region or internationally;
- (b) performance on similar contracts in the country, region or internationally;
- (c) capability with respect to equipment, and manufacturing or construction facilities;
- (d) qualifications and experience of personnel;
- (e) financial capability to perform the proposed contract;
- (f) facilities or representation at or near the location for performance of the contract;
- (g) available capacity to undertake the assignment;
- (h) litigation record; or
- (i) any other relevant criteria.

(3) A procuring and disposing entity may seek independent references from a tenderer and the results of reference checks may be used in determining award of contract.

(4) The criteria for post-qualification shall be limited to that which is necessary for performance of the intended contract and shall not be unduly restrictive.

(5) Post-qualification shall be undertaken for the best evaluated tenderer only and shall be recorded.

(6) Where the best evaluated tenderer does not meet the qualification criteria (a) the tender shall be rejected; and

(b) a post-qualification shall be undertaken for the next best evaluated tenderer.

(7) Approval shall be obtained from the contracts committee prior to rejecting any tender or undertaking an additional post-qualification on any other tenderer.

(8) Where a tenderer has been pre-qualified, a full post-qualification is not required, but the pre-qualification information submitted shall be verified and an award may be denied to the best evaluated tenderer if he or she is judged to no longer meet the pre-qualification requirements and criteria.

(9) In particular, the procuring and disposing entity shall consider-

(a) any material change in circumstances since submission of the pre-qualification information; and

(b) any information which has become available since the pre-qualification submission, which, in the procuring and disposing entity's judgment, materially affects the capacity of the tenderer to perform the contract.

Procedure for negotiations

83.(1) The membership of a negotiation team shall be recommended by the procurement and disposal unit and the membership shall be approved by the contracts committee.

(2) Negotiations may be undertaken under any method of procurement, in accordance with these regulations.

(3) Where a competitive procurement method is used, negotiations may relate to-

(a) a minor alteration to the technical details of the statement of requirements;
(b) reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the tender documents;

(c) a minor amendment to the special conditions of contract;

(d) finalising the payment arrangements;

(e) mobilisation arrangements;

(f) agreeing final delivery or works schedules to accommodate any changes required by the procuring and disposing entity;

(g) the proposed methodology or staffing;

- (h) inputs required from the procuring and disposing entity; or
 - (i) clarifying details that were not apparent or could not be finalised at the time of tendering.
- (4) Negotiations under competitive procurement methods shall not be conducted-
- (a) to substantially change the technical quality or details of the requirement, including the tasks or responsibilities of the tenderer;
 - (b) to materially alter the terms and conditions of contract stated in the tender documents;
 - (c) primarily for the purposes of reducing prices; or
 - (d) to substantially alter anything which formed a crucial or deciding factor in the evaluation of the tender.
- (5) Notwithstanding subregulations (2) and (3), where a competitive procurement method was used, but only a single tender was received, negotiations may relate to any aspects of the tender in accordance with these regulations .
- (6) Where direct procurement is used, or the evaluation methodology is Quality Based Selection, negotiations may relate to-
- (a) alterations to the technical details of the statement of requirements;
 - (b) reduction of scope or quantities for budgetary reasons, where the reduction is in excess of any provided for in the tender documents;
 - (c) amendments to the special conditions of contract;
 - (d) finalising the payment terms and arrangements;
 - (e) mobilisation arrangements;
 - (f) agreeing final delivery or works schedules;
 - (g) the proposed methodology or staffing;
 - (h) inputs required from the procuring and disposing entity;
 - (i) clarifying details that were not apparent or could not be finalised at the time of tendering; or
 - (j) the total tender price and its constituent costs to obtain value for money.
- (7) Negotiations with a tenderer are not permitted until after the contracts committee has approved the evaluation committee's recommendation-
- (a) of the best evaluated tenderer and the need to hold negotiations in the case of competitive methods of procurement; or
 - (b) that the single or sole tenderer should be considered for contract award, subject to negotiations in the case of direct procurement.
- (8) Negotiations shall only be held with the best evaluated tenderer.
- (9) The negotiation team shall submit a recommendation to the contracts committee to either proceed with contract award to the recommended tenderer, incorporating the agreements reached during negotiations, revise the negotiation objectives and hold further negotiations or terminate the negotiations and reject the tenderer.
- (10) Where a negotiation team recommends rejection of the tenderer, it may also, where appropriate, recommend inviting the next ranked tenderer for negotiations in the case of competitive methods of procurement or a new tenderer to submit a tender in the case of direct procurement.

- (11) The contracts committee may-
- (a) approve the recommendations;
 - (b) request further negotiations on specific points;
 - (c) reject the recommendations with reasons; or
 - (d) cancel the negotiations in their entirety.

(12) The results of any approved negotiation shall be specified in any letter of tender acceptance and incorporated into the contract document.

(13) Where negotiations are commenced with the next ranked tenderer or a new tender is invited, the procuring and disposing entity shall not reopen earlier negotiations; and the original tenderer shall be informed of the reasons for termination of the negotiations.

Award of contract decision by contracts committee

- 84.** (1) A procurement and disposal unit shall submit a recommendation for award of a contract to the contracts committee after completion of the evaluation process and any post-qualification and negotiation process.
- (2) The contracts committee shall consider the recommendation in the same way as any other submission to the contracts committee.
- (3) Approval of a recommendation by a contracts committee shall be an award of contract decision.
- (4) For the purpose of these Regulations, an award of contract decision by the contracts committee shall not amount to a contract binding a procuring and disposing entity to a tenderer.

Public notice of best evaluated tenderer

- 85.** (1) A procuring and disposing entity shall, within five days of the decision of the contracts committee to award a contract, display a notice of best evaluated tenderer.
- (2) A notice of best evaluated tenderer shall not amount to a contract.
- (3) A notice of best evaluated tenderer shall be displayed on a procuring and disposing entity's notice board and may be posted on the Authority's website.
- (4) A notice of best evaluated tenderer shall be published for a minimum of-
- (a) ten working days prior to contract award in the case of open or restricted tendering; and

(b) ten working days prior to contract award, in the case of quotations and proposals procurement or direct procurement.

(5) A notice of best evaluated tenderer shall, at the time it is displayed in accordance with subregulation (6), be sent to all tenderers who participated in the procurement.

(6) Where a decision to award a contract is changed after the publication of a notice of best evaluated tenderer, a new notice of best evaluated tenderer shall be displayed, in accordance with this regulation, prior to contract award or placement.

(7) This regulation shall not apply to micro procurement and procurement in emergency circumstances, irrespective of the procurement method used.

Procedure for contract award

86. (1) The tender documents shall state the procedure for award of contract, which shall be-

(a) by issue of a letter of tender acceptance

(b) by placement of a written contract document

(2) A contract document, purchase order, letter of tender acceptance or other communication in any form conveying acceptance of a tender that binds a procuring and disposing entity to a contract with the tenderer, shall not be issued prior to-

(a) an award of a contract decision by the contracts committee;

(b) the display of a notice of best evaluated tenderer ;

(c) the elapse of the period of the notice of best evaluated tenderer ;

(d) confirmation by an accounting officer that the procurement is not subject to any administrative review;

(e) commitment of the full amount of the funding for the period of the proposed contract; and

(f) approval by all relevant agencies, including, the Attorney General.

(3) A contract award shall, except for an award under micro procurement, be displayed within two working days of the contract award, on a procuring and disposing entity's notice board and may be post it on the Authority's website.

(4) The Accounting Officer shall communicate the award decision.

(5) After a placement of the contract with the successful tenderer, the unsuccessful tenderers shall be notified of the award by the Procuring and Disposing Entity and their tenders shall be rejected by a procuring and disposing entity.

Commitment of funds

87. (1) A procuring and disposing entity shall not enter into a contract until the accounting officer or an officer with delegated authority confirms in writing that the required funds have been committed for the proposed contract, except where-

(a) payment to a provider is to be effected in a proceeding financial year;

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

(c) the Secretary to the Treasury has issued written instructions confirming that the required funding shall be made available in accordance with a specified schedule of payment.

(2) Where payment to a provider spans more than one year, an accounting officer shall make financial provision for the payment, in the budgets submitted to the Secretary to the Treasury, for the duration of the contract.

(3) In respect of framework contracts, the accounting officer shall ensure that-

(a) the minimum payment guaranteed to the tenderer is committed prior to the award of contract;

(b) sufficient funds are budgeted for in a financial year to cover the full cumulative costs of all call off orders anticipated for the year; and

(c) the funds required for each call off order are committed prior to its release.

(4) Where the Secretary to the Treasury confirms that the required funds shall be available, the accounting officer shall make the necessary adjustments to the current and future budgets and comply with any other instructions issued by the Secretary to the Treasury.

(5) An accounting officer shall ensure that the total acquisition cost of a procurement is committed prior to contract placement.

(6) The total acquisition cost shall include-

(a) the total contract price;

(b) contingencies, such as anticipated contract variations or permitted

exchange rate fluctuations; and

(c) other incidental costs, not included in the contract price, but for which a procuring and disposing entity shall be liable, such as local clearance, inland delivery and import taxes or duties.

(7) A procuring and disposing entity shall, for a contract for supplies using FOB delivery terms, ensure that additional costs are included in the total acquisition cost committed prior to contract placement, where the procuring and disposing entity is liable for payment of the costs.

(8) The additional costs referred to in subregulation (7) shall include-

(a) freight costs;

(b) local clearance and delivery costs;

(c) insurance costs;

(d) taxes, duties and levies due on importation;

(e) inspection costs; or

(f) any other costs,

in the total acquisition cost prior to contract placement.

Preparation and contents of contract

88. (1) A contract form shall be in accordance with the form in the tender document, which shall be the appropriate standard document issued by the Authority, and modified during drafting.

(2) A contract document shall-

(a) clearly identify the obligations of each party;

(b) correlate all payments by a procuring and disposing entity with the corresponding input, obligation or deliverables by a provider, in a specific identifiable and measurable manner;

(c) minimise risk for a procuring and disposing entity;

(d) maximise value for money for the procuring and disposing entity;

(e) be fair and equitable to the parties;

(f) provide effective supervision arrangements, where required;

(g) provide adequate monitoring and cost control measures, where required; and

(h) include adequate and clear delivery, acceptance and handover or commissioning arrangements, where required.

(3) A contract signatory shall initial all pages of a contract.

(4) At least three originals of the contract shall be produced and a procuring and disposing entity and a provider shall each get an original signed by both parties.

Contract effectiveness

89. (1) Contract effectiveness shall be as specified in the contract but may depend upon the fulfillment of one or more conditions which may include, but are not limited to receipt by-

(a) a procuring and disposing entity of a performance security;

(b) a procuring and disposing entity of an advance payment guarantee;

(c) a provider of an advance payment; or

(d) a provider of an acceptable letter of credit.

(2) A procuring and disposing entity shall promptly fulfill all its obligations relating to contract effectiveness.

(3) Where a tenderer-

(a) fails or refuses to sign a contract without due cause;

(b) fails to provide the required performance security within the specified time; or

(c) fails to fulfill any other condition of contract effectiveness,

the procuring and disposing entity shall proceed to award a contract to the next best evaluated tenderer from among the remaining tenderers.

PART VIII– CONTRACT MANAGEMENT

Types of contract

90. (1) A procuring and disposing Entity shall use any of the following types of contracts, in accordance with the provisions of these regulations-

- (a) Lump sum;
- (b) Time-based;
- (c) Admeasurement;
- (d) Framework;
- (e) Percentage;
- (f) Cost reimbursable;
- (g) Target price;
- (h) Retainer;
- (i) Contingency or success fee;
- (j) A combination of any of these types of contracts; and
- (k) Petty contract.

(2) A contracts committee shall select the contract type which is most appropriate to the procurement requirements, most advantageous and which offers an equitable contract to the provider. The type of contract to be used shall be specified in the tender document.

- (3) The choice of a contract type shall take into account -
- (a) the nature of the procurement requirements;
 - (b) the need for effective competition;
 - (c) the need to minimise risk for a procuring and disposing entity;
 - (d) the need to maximise value for money for a procuring and disposing entity;
 - (e) the likelihood of any delays or unforeseen circumstances requiring contract extensions, or variations of change of orders; and
 - (f) the need for effective contract management and cost control.

Lump sum contract

- 91.** (1) A lump sum contract shall be used where the content, duration and outputs of the procurement are well defined.
- (2) A lump sum contract may include interim or stage payments
- (3) Payment for a lump sum contract shall be linked to clearly specified outputs or deliverables

Time-based contract

- 92.** (1) A time-based contract shall be used where the scope and duration of the procurement requirements is difficult to define.
- (2) Payment for a time-based contract shall be based on agreed hourly, daily, weekly, or monthly fees for either nominated personnel or a certain type or grade of personnel and reimbursable items using either actual expenses or agreed unit prices.
- (3) Payment rates for personnel may include salary, social costs, overhead, fee or profit and, special allowances.

- (4) Reimbursable items may include-
- (a) subsistence, such as per diem or housing;
 - (b) transport, which may be international or local;
 - (c) monies for mobilisation and demobilisation;
 - (d) services and equipment such as vehicles, office equipment, furniture and supplies;
 - (e) office rent;
 - (f) insurance;
 - (g) printing of documents;
 - (h) surveys;
 - (i) training, if it is a major component of the assignment; and
 - (j) any other appropriate items.
- (5) A time-based contract shall include a maximum amount of total payments to be made which may include a contingency allowance for unforeseen work and duration.
- (6) A time-based contract may include interim or stage payments
- (7) A contract supervisor shall closely monitor the progress of a time-based contract and that the payments claimed by the provider are appropriate and in accordance with the contract terms.

Admeasurement contract

- 93.** (1) An admeasurement contract means a re-measurement, unit rate or bill of quantities contract and shall be used for works-
- (a) which are not well defined;
 - (b) which are likely to change in quantity or specification; or
 - (c) where difficult or unforeseen site conditions, such as hidden foundation problems, are likely.
- (2) Works shall be split into various items and the quantity of each item needed to complete the assignment shall be estimated and indicated in a tender document.
- (3) A Tenderer shall price each work item by indicating a unit rate for each item in the bill of quantities.

(4) The initial total contract price shall be calculated by multiplying the unit rate by the estimated quantity to give a total for each item, and then calculating the sum of the line item totals.

(5) The actual work done shall be measured during the performance of the contract and shall be finally reconciled upon completion of the contract.

(6) Payment shall only be made for the final contract price, which shall be the total of the actual quantity of work performed.

(7) An admeasurement contract may include fixed prices or price adjustment

(8) An admeasurement contract may include interim or stage payments

Framework contract

94. (1) A framework contract is a schedule of rates or indefinite delivery contract and shall be used-

(a) where a requirement is needed "on call", but where the quantity and timing of the requirement cannot be defined in advance; or

(b) to reduce procurement costs or lead times for a requirement which is needed repeatedly or continuously over a period of time by having them available on a "call off" basis.

(2) A tenderer shall indicate the unit rate for each item.

(3) A procuring and disposing entity shall indicate the estimated quantity or value where this is possible or necessary to obtain competitive tenders, but shall not make a commitment to purchase the full quantity or value.

(4) Notwithstanding sub regulation (3), a procuring and disposing entity may make a commitment to purchase a minimum quantity or value or to purchase all similar requirements from a successful tenderer, where this is necessary or preferable to obtain competitive prices.

(5) A framework contract shall state the arrangements for obtaining specific requirements during the period of the contract, using placement of "call-off" or delivery orders where appropriate.

(6) Payment shall be made on the basis of the works, services or supplies actually delivered or performed.

(7) A framework contract may include fixed prices or price adjustment in accordance with these regulations.

Percentage-based contract

95. (1) A percentage-based contract shall be used where it is appropriate to relate the fee paid directly to the estimated or actual cost of the subject of the contract.
- (2) A percentage-based contract shall clearly define the total cost from which the percentage is to be calculated.
- (3) A tenderer shall be required to indicate his or her fee rate as a percentage of the total cost of the requirement.
- (4) A percentage contract may include-
- (a) a fixed target cost;
 - (b) minimum or maximum fees;
 - (c) sliding scales of fees, related to the value of the subject of the contract; or
 - (d) incentive fees, related to any savings made through economic design, discounts obtained, cost reductions or similar fees.

Cost reimbursable contract

96. (1) A cost reimbursable contract shall be used-
- (a) for emergency works, where there is insufficient time to fully calculate the costs involved; or
 - (b) for high-risk works, where it is more economical for the procuring and disposing entity to bear the risk of price variations than to pay a provider to accept the risk or where a provider will not accept the risk.
- (2) A procuring and disposing entity shall pay a provider-
- (a) for the actual cost of the works, as evidenced by receipts and other appropriate documentation; and
 - (b) a fee or profit to be agreed upon and as specified in the contract.

Target price contract

97. (1) A target price contract may be used instead of a cost reimbursable contract where a target price can be agreed and cost savings may be achieved by offering an incentive payment to the provider for any cost savings below the target price.
- (2) A procuring and disposing entity shall pay a provider for the actual cost of the works, as evidenced by receipts and other appropriate documentation and a fee, profit or agreed percentage of any cost savings below the target price.

Retainer contract

98. (1) A retainer contract is used to retain a provider to provide services over a prescribed period of time, without defining the level and actual amount of services required.
- (2) Payment for a retainer contract may include a flat fee-
- (a) which represents the total payment due, irrespective of the level and amount of services provided during the prescribed period; or
 - (b) as a retainer for the prescribed period plus a pre-agreed unit rate for

services provided.

Contingency or success fee contract

- 99.** (1) A contingency or success fee contract is used to link a provider's fee to an achieved objective to provide an incentive to the successful completion of a particular task, event or action.
- (2) Payment for a contingency or success fee, may be a-
- (a) pre-agreed amount linked to the successful completion of a target or event;
 - (b) percentage of a predetermined amount or proceeds; or
 - (c) a basic flat rate, which is not linked to the successful completion of a particular task, event or action.
- (3) A contingency or success fee contract shall describe the nature of the success to which a success fee shall be applicable and the timescale in which the task, event or action shall be achieved.

Other contracting arrangement

- 100.** (1) Where a procuring and disposing entity wishes to use another type of contract or contracting arrangement, including, acquisition by rental, lease, hire purchase, license, tenancy or franchise, it shall seek guidance from the Authority or other competent authorities on the applicable procurement procedures and documents.
- (2) Where a project is to be financed or partially financed under a Build Own Operate (BOO), Build Own Transfer (BOT), Build Own Operate Transfer (BOOT), Public Private Partnership (PPP) or similar type of private sector arrangement, a procuring and disposing entity shall seek guidance from the Authority or other competent authorities on the applicable procurement procedures and documents.
- (3) The applicable procurement procedures shall be in accordance with the basic procurement principles of public procurement in the Act and these Regulations.
- (4) The Authority may, issue guidelines for private sector contracting arrangements.

Petty Contracts

- 101.** (1) A petty contract is a minor contract for works, services or transportation excluding supply of goods or works, carried out by casual workers or organised groups of such workers; but shall include contracts such as trench-digging, road works, tree-planting, drain-clearing, ferrying, and other similar contracts but cleaning of wards and general maintenance of hospitals shall be considered as major works requiring proper tender procedures.

(2) A contract which includes the supply of goods or materials shall require a Local Purchase Order.

(3) Details of petty contracts of works under this section shall be authorised by the head of department and recorded on petty contract vouchers.

(4) Each head of department shall maintain a register of petty contracts indicating the full details of petty contracts awarded and payments made and each payment shall be supported by a petty contract voucher, signed by the technical officer supervising the work, and countersigned by the head of department.

(5) The amount involved for paying a petty contractor at any one time shall not exceed the amount as specified in the guidelines

(6) These are under the micro procurement method.

Performance security

102. (1) A performance security may be requested to protect against non performance of a contract.

(2) Tender documents shall state the requirement for a performance security.

(3) A performance security shall be in a form and from an institution that is wholly acceptable to the Bank of Uganda and valid for a period prescribed in the tender documents.

(4) Where a tenderer is required to provide a performance security, a tender security from that tenderer shall not be released until a satisfactory performance security is received by a procuring and disposing entity.

(5) A performance security shall not be released by the accounting officer until all the providers's obligations which are subject to the performance security have been fulfilled.

(6) A performance security may cover warranty obligations if stated in the tender documents or negotiated at contract preparation.

(7) A proposed release of a performance security shall be communicated to the provider and returned in accordance with the provider's instructions.

Vigilance necessary over contract payments

103. (1) Every head of department shall ensure that officers involved with the administration of payments to contractors closely follow the provisions of

these Regulations, and exercise due vigilance at all times, and that no irregular payments are made to contractors.

(2) Where the Accounting Officer is satisfied that a contracts committee or the evaluation committee or both did not follow proper procedures and as a result caused loss to the procuring and disposing entity, the Accounting Officer shall take necessary action against the contracts committee or committee members including recovery of losses suffered by the procuring and disposing entity

(3) A standing committee responsible for finance shall on quarterly basis review all the minutes and reports of the contracts committee and the awards made on quarterly basis to ensure that care has been taken to safeguard the interest of the procuring and disposing entity

Performance control

104. The user departments shall be responsible for performance control of the providers to ensure that—

(a) supplies, works and services are actually delivered in accordance with the technical specifications laid down in the contract;

(b) general and special conditions of time and place of delivery; payments; accountability; reporting, and others are being strictly followed in accordance with Local Governments Act and any regulations.

(c) immediate and appropriate action is taken in the case of breach of contract.

Role of the supervisor

105. (1) The supervisor shall be employed by the procuring and disposing entity as its agent responsible for monitoring the progress and execution of the contract and shall generally act on behalf of the procuring and disposing entity and the supervisor may be the relevant head of division or a technical officer appointed by the head of department, depending on the size and nature of the contract.

(2) The accounting officer may constitute a steering committee in the case of a large-scale, cross-sectoral contract involving contractors, suppliers and consultants.

(3) Depending on the size and nature of the contract and other special conditions, the supervisor may be employed under a separate service contract, especially on large-scale works contracts funded by donor agencies.

(4) The supervisor shall not be a party to the contract, and shall not have power to relieve the contractor of any of his or her obligations except as expressly provided for in the contract, and the supervisor shall be required to

act impartially between the contracting authority and the contractor, and to apply the contract in a fair and a neutral manner.

(5) The supervisor shall be responsible amongst others for—

- (a) the day-to-day technical supervision of the contract;
- (b) keeping a works register of the progress of the works; and
- (c) inspecting and testing components and materials before incorporation in the works; and may refuse the contractor's request for extensions of the period of performance of the contract, order variations to the works and decide on suspension of the works if that power has been delegated to the supervisor by the contracting authority.

(6) The supervisor shall be required to consult with his or her superiors, before making decisions on certain specific matters having financial implications, as in cases of extension of the period of performance, variations and claims for additional payment, or decisions that may affect objectives or standards set by the procuring and disposing entity.

(7) All instructions and orders issued by the supervisor or his or her representative to the contractor shall be in writing in the form of an administrative order.

(8) The role and responsibilities of the supervisor and his or her representative shall be specified in the contract or in a separate document attached to the contract document.

Performance Certification

106. (1) In deciding the payments to the contractor or the consultant, the supervisor shall assess the work which the contractor or consultant has done, and the measurement shall depend on the type of contract.

(2) For lump-sum contracts, payments of such contracts shall be worked out on the basis of the percentage of the project executed as per payment schedule in the contract.

(3) For unit-price contracts applying to works contracts, the quantities of work actually done shall be priced at the rates mentioned in the contract and payment shall be based on the measurement of work actually carried out and the value of plant and materials on site.

Contract certificates

107. (1) Where final contract payments are made the procuring and disposing entity shall issue certificate of contract performance and proof of quality of performance.

- (2) Where contract payments are made by instalments, a certificate shall be prepared for each instalment, showing the sum being certified, and the cumulative total payments and any deductions made and the certificate shall be signed by the supervisor and counter-signed by the head of department or his or her senior delegate.

Preliminary technical acceptance

- 108.** Where the contractor considers that certain items are ready for preliminary technical acceptance, the contractor shall request the supervisor to carry out the necessary inspections and tests and if the supervisor finds them satisfactory, he or she will issue a certificate stating that the items meet the requirements for preliminary technical acceptance laid down in the contract.

Provisional acceptance

- 109.** (1) Partial provisional acceptance refers to the acceptance on a provisional basis of parts or sections of the works, which have been substantially completed and can be used as independent units.

- (2) The contractor shall be required to initiate the process of provisional acceptance of the works and after receipt of the contractors application, the supervisor shall, within thirty days, either issue the certificate of provisional acceptance, with a copy to the contracts committee and the accounting officer, or reject the application.

- (3) If the supervisor fails to issue the certificate of provisional acceptance or to reject the contractor's application within the thirty days, the supervisor shall be deemed to have issued the certificate on the last day of that period.

- (4) Upon provisional acceptance of the works, the contractor shall dismantle and remove from the site all the remaining equipment, temporary structures, litter or obstructions and materials which are no longer required and restore the site to the condition specified in the contract.

- (5) The obligation of the contractor to leave the site in proper condition is of utmost importance as it carries both cost and environmental consequences, for that matter, particular attention shall be paid not only to the completed works and its vicinity, but also to any quarries, borrow pits, buildings, water resources, and other relevant matter or thing which were put at the disposal of the contractor by the contracting authority.

Approval of Works Contracts

- 110.** (1) A final acceptance certificate shall be issued within thirty days after the expiration of the latest maintenance period or as soon as the works have been completed and defects or damage have been rectified if that completion or

rectification did not take place before the end of the latest maintenance period.

(2) Any responsibility of the contractor beyond this period must be stated in the contract.

(3) A copy of the final acceptance certificate shall be sent to the contracts committee and the accounting officer.

(4) Once the contractor has received the final acceptance certificate, the contractor shall return to the supervisor all contract documents and the retention sum or retention guarantee shall be released to the contractor within ninety days of final acceptance, and the contractor shall submit to the supervisor a draft final statement of account within ninety days of the issue of the final acceptance certificate.

(5) The performance guarantee shall be released after the signed final statement of account has been issued.

Approval of supply contracts

111. (1) The supplier shall be required to provide supplies which conform to the technical specifications laid down in the contract and the supervisor or other relevant technical officer acting on behalf of the council shall ensure through inspection and testing that the quality and quantity of supplies is in accordance with the specifications.

(2) The supplier may, within fifteen days from the date on which the supplier expects the supplies will be complete, give notice to the supervisor applying for the certificate and the contracting authority shall respond within thirty days of receipt of the notice.

(3) A contract supervisor shall respond to the supplier's application either by issuing a certificate or rejecting the application and in the case of rejection, reasons shall be stated to give the supplier the opportunity to make good the deficiency and apply for a certificate again or appeal to accounting officer.

(4) The contract may provide that once a provisional certificate has been given, a warranty period is provided in the contract.

(5) Where a contract provides for a warranty period, the contracting authority shall issue a final acceptance certificate at the end of that period, provided the supervisor is satisfied that the supplier completed his or her obligations which shall be thirty days after the latest warranty period.

(6) If the contract does not provide for a warranty period, no provisional acceptance shall take place and only a final acceptance certificate shall be issued.

(7) Once the final acceptance certificate has been issued, the retention sum or guarantee shall be released to the supplier within ninety days of final acceptance, and the supplier shall submit to the contracting authority a draft final statement of account within sixty days of the issue of the final acceptance certificate and the performance guarantee, if any, shall be released only after the signed final statement of account has been issued.

Approval of service contracts

112. (1) The consultant shall submit reports on the progress and completion of the services and such reports shall be essential for approval by the contracting authority of the consultants' services and shall be made a condition for payments.

(2) The specific description of deliverables, the numbers of reports; frequency and time limits for submitting the reports shall be specified in the contract.

(3) If the accounting officer does not approve the deliverables, the reason for the rejection shall be stated, including a stipulation of a period for making the necessary amendments.

(4) Interim payments shall be made at regular intervals, depending on the nature and duration of the contract and the final payment shall be made after the approval of the final report and issuance of a final statement by the contracting authority.

Contract pricing terms and conditions

113. (1) A contracts committee shall place a contract based on fixed and firm prices for a procurement requirement that is to be completed within a specific payment terms and conditions.

(2) Notwithstanding sub-regulation (1), a procuring and disposing entity may place a contract with price adjustment provisions for a procurement requirement

(3) A price adjustment provision may be included in a contract where it is more economical for a procuring and disposing entity to accept the inflation risk than to pay an additional cost for the supplier to accept the risk.

(4) Where a price adjustment provision is included, the method for calculating adjustments, and any restrictions or conditions on adjustments, shall be clearly stated in the contract.

(5) A price adjustment shall be calculated using a predefined formula, which shall separate the total price into components, such as labour, equipment, materials, and fuel, adjusted by price indices specified for each component.

(6) Where the payment currency is different from the source of the input and corresponding index, a correction factor shall also be applied in the formula, to avoid incorrect adjustment.

(7) The formula, price indices, correction factors and base date for application

shall be clearly stated in the tender documents and in the contract.

(8) The formula and price indices shall be appropriate to the type of procurement and source of the inputs and shall use industry standards wherever possible.

(9) Where no industry standard or other appropriate formula is available, a contracts committee shall seek guidance from the Authority or other competent authorities.

Contract payment terms

114. (1) Contracts shall specify the payment terms that shall apply to a contract and these shall include-

- (a) payment method;
- (b) payment structure;
- (c) payment documents;
- (d) payment period; and
- (e) payment currency.

(2) The method of payment shall be comprehensively defined in a contract and a council shall state in the tender documents and the resulting contract, the structure of the payment to be made.

Contract payment structure

115. (1) A payment structure and amount of payment for each procurement requirement shall be determined by best practices.

(2) A payment structure may include-

- (a) advance payments;
- (b) stage payments, which shall be linked to specific deliverables or milestones and which may be stated in percentage terms of the defined amount or in specific amounts;
- (c) Regular interim payments, which shall be based on general progress or the work performed and may relate to a specified time period or a measurement of work performed; or
- (d) a retained payment, which shall be linked to a specific contract event, such as installation or warranty.

(3) Except where best practices or market forces dictate, a procuring and disposing entity shall not enter into a contract which requires an advance payment

(4) Where an advance payment is consistent with best practices, an advance payment security shall be required and the requirement for a payment security shall be stated in the contract documents

(5) An advance payment shall be recovered from subsequent payments made

to a provider, which shall be subject to a percentage deduction equal to the percentage paid as advance payment.

(6) An advance payment may be made for-

- (a) Mobilisation or start up costs for the provision of works or services; or
- (b) The provision of supplies, such as items that have to be specially or custom manufactured.

(7) Where best practices dictate, a procuring and disposing entity may enter into a contract in which an interim or stage payment is permitted.

(8) Where an interim or stage payment is permitted, it shall comply with the following conditions-

- (a) The payment shall be linked to specific and verifiable deliverables, contract event, time period, or work, which should be stated in the contract;
- (b) Individual payments shall not exceed the cost or value of the deliverable, period or work to which it is linked; and

(9) Where a procuring and disposing entity has determined that a retained payment is appropriate, the contract shall state-

- (a) The percentage or amount of the total contract value to be retained;
- (b) The period or the event at which the retention is to be released; and
- (c) The documents that shall prove or certify the period or event in paragraph (b).

Contract payment security

116. (1) No payment shall be made to a provider under a contract for works, services or supplies, without receipt of the deliverables specified in the contract.

(2) Notwithstanding sub-regulation (1) above, payment may be made to a provider prior to receipt of deliverables where an appropriate payment security is obtained.

(3) Payment may require the provision of a payment security if, during the delivery of the works, services or supplies, risk or title remains with the provider.

(4) A payment security shall-

- (a) Be in a format provided by the Authority which shall be included in the tender documents;
- (b) Be in a form and from an institution that is wholly acceptable to the Bank of Uganda in accordance with the guidelines;
- (c) Be valid for a prescribed period beyond the expected final transaction date of a contract or expected release date; and

- (d) Where appropriate, allow for the progressive reduction of the secured sum, where a successive payment is released against the secured sum.
- (5) The period in sub regulation (4)(c) shall be determined taking into account the circumstances of a procurement requirement and the likelihood of extensions or delays to the final completion date.
- (6) The validity period for a payment security for procurement for works shall be for three to six months after the final expected transaction date.
- (7) The validity period for a payment security for procurement of services or supplies shall be for one to three months after the final expected transaction date.
- (8) A payment security shall be released promptly by a procuring and disposing entity upon expiry of the term of the security or upon reduction of the secured sum to zero, whichever ever comes later.
- (9) The proposed release of a payment security shall be communicated to a provider and returned in accordance with the provider's instructions.

Payment documents

- 117.** (1) A procuring and disposing entity shall clearly state in the contract documents, the documents against which each payment shall be made.
- (2) A payment document may include a document certifying or proving-
- (a) The delivery or receipt of goods, works or services in accordance with the terms of the contract;
 - (b) The content of the consignments delivered;
 - (c) The insurance coverage of the delivered items;
 - (d) The successful inspection of the delivered items;
 - (e) The origin or eligibility of the delivered items;
 - (f) Payment of costs specified in a contract, such as duties, levies or taxes that may be due and payable by a provider on the delivered items;
 - (g) The acceptance of installation or commissioning of the delivered items by a user;
 - (h) The receipt or acceptance of reports, manuals, guides, or other documents;
 - (i) The actual time period worked;
 - (j) The actual works, supplies or services completed;
 - (k) The payment of sums due to sub-contractors; or
 - (l) The actual sums paid for reimbursable costs, such as air tickets.
- (3) A payment request from a provider shall require an original invoice from the provider certifying the payment due.
- (4) Payment for any sum of money due under a contract may only be made in the name of a provider stated in a contract through recognised banking

channels and practices.

(5) No payment shall be made to any person other than a provider, unless the provider requests and confirms in writing the details of the recipient of a payment.

(6) The period for payment shall be within thirty days from certification of invoices, except where this is varied in the special conditions of contract.

(7) Where a payment request is accurate and in accordance with the terms of a contract, a procuring and disposing entity shall certify it for payment and make payment in accordance with the terms and conditions of the contract.

Rejecting Payment request

118. (1) Where a payment request contains errors or discrepancies or is supported by incorrect or incomplete documentation or is not in accordance with the terms of a contract the payment request shall not be certified but it shall be returned to a provider, specifying the reasons for the rejection.

(2) A provider whose payment request is rejected shall be entitled to present a new or amended payment request, which shall be treated as the original payment request.

(3) Where a procuring and disposing entity queries any part of a payment invoice from a provider, that query shall not delay payment of the unchallenged portion of the invoice to the provider.

Contract management structure

119. (1) After a contract has been placed, contract management, except the capacity to amend or terminate, shall pass from accounting officer to a user department.

(2) A user department shall nominate an existing member of staff with appropriate skills and experience, or who is supervised by a member of staff with appropriate skills and experience, as a contract supervisor and inform the accounting officer in writing and copy to internal audit department, secretary contracts committee and any other relevant stakeholders informing them of the designated contract supervisor, who shall take full responsibility.

(3) Upon receipt of a copy of the contract, a contract supervisor shall prepare a contract implementation plan, and forward a copy to the head of the user department, secretary contracts committee, internal audit department and accounting officer for monitoring purposes.

(4) Where a user department has any reservations or difficulties with the terms or conditions of the contract, they shall be discussed and resolved with the accounting officer and relevant personnel.

- (5) A user department shall report to the accounting officer-
- (a) Any departure from the terms and conditions of a contract; and
 - (b) Any alterations to the conditions of a contract, either before or during the course of implementation, that in effect could have impacted on the evaluation and rankings of the tender and the choice of the provider.
- (6) A user department may nominate a member of staff of another user department as contract supervisor, where appropriate.
- (7) A contract of high value or which is complex or forms part of a larger project, may be assigned to a contract management team, which shall have the same responsibilities as a contract supervisor.
- (8) A contract may be managed by a body or person external to a procuring and disposing entity, provided the user department supervises the external contract supervisor.
- (9) A contract supervisor shall-
- (a) Manage the obligations and duties of the procuring and disposing entity specified in the contract; and
 - (b) Ensure that the provider performs the contract in accordance with the terms and conditions specified in the contract and a procuring and disposing entity's requirements.
- (10) The functions of the contract supervisor are-
- (a) To ensure that-
 - (i) A provider meets all performance or delivery obligations in accordance with the terms and conditions of a contract;
 - (ii) A provider submits all required documentation in accordance with the terms and conditions of a contract;
 - (iii) a procuring and disposing entity meets all payment and other obligations in accordance with the terms and conditions of a contract;
 - (iv) There is adequate cost, quality and time control where appropriate;
 - (v) There is compliance with the provisions of the Act, these regulations, the guidelines and best practices;
 - (vi) All contract obligations are complete prior to closure of the contract file; and
 - (vii) All contract management records are kept and archived as required;
 - (b) To issue any required variations or change orders, in accordance with the terms and conditions of a contract;
 - (c) To provide full details of a required contract amendment to the procurement and disposal unit and to obtain a contracts committee approval prior to issue of any amendment;
 - (d) To manage handover or acceptance procedures;
 - (e) to provide full details of any proposed termination of a contract to a

procurement and disposal unit and to obtain the approval of the contracts committee prior to termination; and
(f) to submit reports on the progress or completion of a contract as required by a procurement and disposal unit or an accounting officer.

Contract variation or change order

120. (1) A contract variation or change order is a change to the price, completion date or statement of requirements of a contract, which is provided for in the contract to facilitate adaptations to unanticipated events or changes in requirements.

(2) A contract variation or change order may be issued with the approval of the contracts committee.

(3) Notwithstanding sub regulation (2), any additional funding required for a variation or change order shall first be committed.

(4) A contract may be varied in accordance with a compensation event or the issue of a variation, change order or similar document, as provided in the contract.

(5) A variation or change order shall be in accordance with the terms and conditions of a contract and shall be authorised by a competent officer.

(6) A contract, which provides for a variation or change order shall include a limit on a variation or change order which shall not be exceeded without a contract amendment.

(7) A competent officer, for purposes of this regulation, shall be defined in the contract

(8) An amendment to a contract refers to a change in the terms and conditions of an awarded contract.

(9) Where a contract is amended in order to change the original terms and conditions, the amendment to the contract shall be prepared by the procurement and disposal unit.

(10) A contract amendment shall not be issued to a provider prior to-

- (a) Obtaining approval from a contracts committee;
- (b) Commitment of the full amount of funding of the amended contract price over the required period of the revised contract; and
- (c) Obtaining approval from other concerned bodies including the Attorney General, after obtaining the approval of a contracts committee.

(11) A contract amendment for additional quantities of the same items shall use the same or lower unit prices as the original contract.

(12) No individual contract amendment shall increase the total contract price by more than fifteen percent of the original contract price without the prior approval of the Authority.

(13) Where a contract is amended more than once, the cumulative value of all contract amendments shall not increase the total contract price by more than 25 percent of the original contract price without the prior approval of the Authority.

(14) Where the contract supervisor believes that a contract should be terminated, the contract supervisor shall submit a recommendation for termination to the accounting officer with a copy of the contract to a contracts committee.

(15) A recommendation for termination of a contract shall state-

- (a) The name of a provider and the procurement reference number;
- (b) Reasons for the termination;
- (c) The actions taken to avoid termination, where applicable;
- (d) The contractual grounds for the termination;
- (e) The costs, if any, resulting from the termination; and
- (f) Any other relevant information.

(16) No contract shall be terminated prior to obtaining the approval of a contracts committee.

Contracts register

- 121.** The procurement and disposal unit shall keep records of all contracts placed by a procuring and disposing entity.

PART IX: DISPOSAL OF COUNCIL ASSETS

Procedure for disposal

- 122.** (1) Disposal of council assets, including assets identified by a board of survey, shall be carried out in accordance with the Act, these Regulations and the guidelines.

(2) The accounting officer shall appoint a board of survey to verify, the assets of the council to be boarded off.

(3) A council shall maintain a record of its disposal proceedings and contract management for a period of seven years from the date of a decision to terminate a disposal activity or the date of completion of a disposal activity, whichever comes first.

(4) Where a contract is on going or is challenged, the records shall be kept for one additional year after the completion of the contract or the settlement of the dispute, whichever comes earlier.

(5) Records of disposal of a council asset shall contain the following documents, where appropriate-

(a) a request to initiate disposal proceedings, including a report of a board of survey;

(b) a copy of an invitation notice, if any;

(c) Copies of tender documents, their amendments or clarifications and any additional information such as an auctioneer's catalogue or general descriptive literature;

(d) A report of inspection of the assets by a potential provider a record of the tender openings;

(f) A copy of all tenderers evaluated, clarifications requested and responses received;

(g) The evaluation report, if any;

(h) Minutes of meetings on the disposal, including negotiation proceedings;

(i) a copy of a letter of tender acceptance to a successful tenderer, if any;

(j) The contract, if any;

(k) All documents related to contracts management, including records of receipts of payment and handing over certificates;

(l) A copy of the update to the procuring and disposing entity's asset register;

(m) All correspondence between a procuring and disposing entity and a provider, an auctioneer or a third party disposal agent; and

(n) a copy of all submissions to the contracts committee and all decisions related to the disposal, including, the choice of disposal method, approval of tender request documents, approval of an evaluation report, approval of negotiations, contract award decision, approval of contract documents and any decision to suspend or cancel disposal proceedings.

(6) The accounting officer shall ensure that the assets of a council are reviewed on an annual basis, to identify those which are obsolete and should be subject to disposal.

(7) Assets to be disposed of shall be grouped in contracts or lots in a manner which attracts maximum possible competition.

(8) Where an asset is to be disposed of through a public auction, a council shall maximise the number of assets to be disposed of at a time in order to reduce the administration and transaction costs.

(9) A procuring and disposing entity and another procuring and disposing entity may pool assets for purposes of common disposal.

(10) A user department responsible for the management of materials shall initiate the disposal process for assets under its management following the recommendation of a board of survey.

(11) A procuring and disposing entity shall obtain a valuation of an asset prior to the commencement of any disposal proceedings. The valuations shall be confidential and the identity and recommendations of each valuer shall not be revealed to the other.

(12) Notwithstanding subregulation (11), no valuation of an asset shall be required where the cost of the valuation is likely to be in excess of the money expected to be realised through the disposal process.

(13) A disposal requirement shall include a clear indication of the assets to be disposed of and the approval to commence disposal proceedings for the specified assets.

(14) Approval to commence disposal proceedings shall be done by the contracts committee board on the written recommendation of the procurement and disposal unit.

(15) Tender documents shall include-

- (a) a description of the asset to be disposed of;
- (b) a statement that the asset is sold on an "as is, where is" basis or an alternative basis for sale;
- (c) the location of the asset and arrangements for a potential provider to inspect the asset;
- (d) The requirement for a tender security;
- (e) The deadline, location and method for submission of a tender;
- (f) The arrangements for a public tender opening;
- (g) Qualification requirements to be met by a tenderer;
- (h) The method for evaluating tenders and awarding a contract;
- (i) Conditions of sale;
- (j) The payment procedure and handing over arrangements;
- (k) A statement confirming that the risk and cost of dismantling and removing an asset shall be the responsibility of a successful tenderer, or any other arrangements; and
- (l) Details of any reservations scheme in operation.

(16) Notwithstanding subregulation (15), a procuring and disposing entity shall give a full and accurate description of an asset to be disposed of.

(17) The description of an asset shall, where appropriate, address the risk and cost of dismantling and removing the asset upon completion of the disposal proceedings.

(18) A warranty shall not be offered on an asset to be disposed of, except where the increase in price received for the assets is likely to be greater than any costs associated with providing the warranty.

(19) Tenderers shall be solicited through-

- (a) A public invitation notice or notification of auction;
- (b) Tender documents;

- (c) A non-public invitation notice;
- (d) Discussions with another procuring and disposing entity;(e) inclusion in a tender document for a procurement requirement, as a trade-in;
- (f) Discussions with a third party responsible for conversion, reclassification or destruction; or
- (g) A combination of the methods in paragraphs (a), (b), (c), (d), (e) and (f).

(20) Advertising and tendering periods shall be based on-

- (a) The need to allow sufficient time for a potential tenderer to inspect an asset prior to tendering;
- (b) The time needed to obtain written tender documents;
- (c) The level of detail required in a written tender; and (d) the time required for preparation and submission of a written tender.

(21) A procuring and disposing entity shall offer a reasonable opportunity to potential tenderers, to inspect an asset before the date or deadline for tendering.

(22) Arrangements for the inspection of the assets shall be included in the invitation notice or tender documents, where appropriate.

Methods for disposal

123. (1) A procuring and disposing entity shall select one of the following disposal methods in accordance with the provision of these regulations –

- (a) Public auction;
- (b) Public tendering;
- (c) Sale to public officers;
- (d) Direct negotiations;
- (e) Trade-in;
- (f) Transfer to another procuring and disposing entity;
- (g) Conversion or classification of assets into another form; or
- (h) Destruction of assets.
- (i) Donation

(2) A procuring and disposing entity shall take into account the following factors in selecting a disposal method-

- (a) The potential market value of the asset;
- (b) The volume of the asset, whether one-off or bulk;
- (c) The location of the asset;
- (d) Restrictions on export or end-users;
- (e) National security and public interest issues;

- (f) Health and safety issues;
- (g) Legal or human rights issues;
- (h) Environmental considerations;
- (j) the trade-in value of the asset; and
- (i) The possibility of transferring the asset to another procuring and disposing entity.

(3) To promote probity, fairness and competition, a procuring and disposing entity shall not dispose of a council asset outside of a public process where an open and competitive process may be successful.

Public auction

124. (1) A tender for a public auction shall be solicited through the publication and display of a notification of public auction

(2) The period between the publication of the notification of public auction and the date of the auction shall be at least ten working days to allow sufficient time for potential tenderers to inspect the asset.

(3) No formal tender document shall be issued for a public auction and any information, including an auctioneer's catalogue, shall be used for information purposes only.

(4) Tendering shall be oral and the procedure for tendering shall be specified by the auctioneer in accordance with auction practice.

(5) There shall be no minimum tendering period.

(6) A tender shall be presented orally and a tender shall be evaluated on the basis of price only.

(7) Negotiations shall not be permitted.

(8) A contract shall be awarded to the tenderer offering the highest price as determined by the auctioneer and the successful tender shall be declared at the auction.

(9) A contract shall be awarded orally to the successful tenderer by the auctioneer and the successful tender shall be announced at the auction.

(10) A successful tenderer shall pay at least fifty percent of the contract price immediately after award of contract, and the balance shall be paid within five working days of award of contract.

(11) Where a tenderer fails to make payment, as specified, the contract shall

be terminated and the award given to the next best tenderer

(12) A contracts committee shall appoint a registered and licensed auctioneer to conduct the disposal process on its behalf when undertaking a disposal by public auction.

(13) An auctioneer shall be appointed using the appropriate procurement method for services and the procurement of auctioneer services shall take into account-

- (a) the auctioneer's commission rates;
- (b) the location of an auctioneer and cost of transportation of the asset to be disposed of;
- (c) an auctioneer's facilities;
- (d) an auctioneer's ability to achieve optimum returns;
- (e) past performance and integrity of an auctioneer;
- (f) viability of the auctioneer's businesses; and
- (g) the provision of a performance security in the format and form required by a procuring and disposing entity.

(14) The appointment of an auctioneer shall be confirmed by a written contract, which shall include-

- (a) the payment terms and commission rate and any other fees payable to an auctioneer;
- (b) the method and timing for payment of proceeds to a procuring and disposing entity;
- (c) responsibility for and payment of transport costs, and costs for any assets returned unsold;
- (d) the period within which an auction shall be held;
- (e) the information and conditions of sale to be included in the notification of public auction, an auctioneer's catalogue or any other similar document;
- (f) the documentation required by a procuring and disposing entity for each individual sale, such as a copy of receipts for payment and handing over certificates; and
- (g) the details of any performance security to be lodged with a procuring and disposing entity upon commencement of the contract.

(15) A procuring and disposing entity shall be issued with a receipt by the auctioneer for any asset delivered to or collected by an auctioneer.

(16) A public auction may be used where-

- (a) there are no conditions of end-user or export restrictions attached to the sale; or
- (b) there is a large number of assets to be disposed of in one location and where an on site auction is arranged to avoid transport costs.

Public tendering

125. (1) Public tendering may be used-

- (a) for high-value or unusual assets
- (b) for assets located in remote areas;
- (c) for assets that are geographically dispersed;
- (d) for assets with end-user or export restrictions attached to their sale;
- (e) where conditions need to be attached to the sale of the asset; or
- (f) where post-tender negotiations may be required.

(2) A tender shall be solicited by the publication and display of a public invitation notice, indicating that an interested tenderer may obtain the tender document from a procuring and disposing entity..

(3) An advertisement for public tendering shall be for at least four working days.

(4) A tender document shall be drafted in accordance with the same requirement under procurement.

(5) The minimum tendering period shall be ten working days.

(6) A procuring and disposing entity shall request for a written sealed tender from a tenderer.

(7) Evaluation based on a price methodology or any other criteria shall be the preferred evaluation methodology for public tendering.

(8) Post-tender negotiations may be undertaken.

(9) Contract award shall be by a decision of a contracts committee, in response to a recommendation from an evaluation committee through the accounting officer.

(10) Contract placement shall be by issue of a contract to a successful tenderer.

(11) A notice of award of contract shall be displayed on a procuring and disposing entity's public notice board

Sale to public officers

126. (1) Disposal may be by sale to a public officer-

- (a) where there is no likely benefit or financial advantage to a procuring and disposing entity, in using any other disposal method;
- (b) where the assets for disposal are a small number of low value items as determined in a guideline and are unlikely to attract public interest;

- (c) where the personal use of disposal assets would directly benefit the performance of a public officer in the execution of his or her duties within a procuring and disposing entity; or
- (d) in remote locations, where any other method of disposal would be difficult.

(2) A public officer shall not be permitted to participate in any disposal process as a tenderer, except under the sale to public officers' method.

(3) A public officer involved in initiating the disposal process, valuations or managing the disposal process shall not participate as a tenderer.

(4) Assets shall not be grouped in lots, but sold as separate items, except where-

- (a) a group of items is of a very low value;
- (b) a group of items form a natural set; or
- (c) the items would have no value or a lower value if sold separately.

(5) A tender shall be solicited by the publication of a non-public invitation notice, indicating that a public officer interested in tendering may obtain the tender documents from a procurement and disposal unit or accounting officer.

(6) A non-public invitation notice shall be displayed on the public notice board for at least five working days.

(7) The tendering period for sale to public officers shall be ten working days.

(8) A procuring and disposing entity shall request for written sealed tenders from a public officer.

(9) Evaluation for sale to a public officer shall be based on price only.

(10) A post-tender negotiation shall not be permitted.

(11) Contract award shall be by a decision of a contracts committee in response to a recommendation from the evaluation committee through the accounting officer.

(12) Contract placement shall be by issue of a contract to the successful tenderer.

(13) The procuring and disposing entity internal audit department shall maintain a register of all sales to public officers, which shall include for each contract at least-

- (a) the name of the public officer;
- (b) the date of the disposal contract;
- (c) the type of asset sold; and

(d) any other relevant information.

Direct negotiation

127. (1) Direct negotiations may be used where-

(a) national security, public interest, legal or human rights issues or environmental considerations are served by selling to a particular company, group or individual;

(b) a potential buyer is a tenant, occupier or user of an asset at the time the decision to dispose of the asset is made, and it is reasonable to give that person first option to buy the asset at a market rate; or

(c) an asset is located on a potential buyer's premises on a hire or free-use basis and it is reasonable to give that person first option to buy the asset at a market rate.

(2) A contracts committee shall approve the use of direct negotiations disposal method prior to the commencement of disposal proceedings.

(3) A valuation shall be obtained where an asset is to be disposed of through direct negotiations.

(4) Tenders shall be solicited through the issue of written tender documents,

(5) A procuring and disposing entity shall require a tenderer to submit a written sealed tender.

(6) Evaluation based on price only shall be the preferred evaluation methodology for direct negotiations.

(7) Evaluation based on price and other factors may be used and Post-tender negotiations may be undertaken

(8) Contract award shall be by a decision of the contracts committee, in response to a recommendation from an evaluation committee through the accounting officer.

(9) Contract placement shall be by issue of a contract.

(10) A notice of award of contract shall be displayed on the public notice board.

Trade-in

128. (1) Trade-in may be used where the trade-in of assets to offset the purchase price of new items provides a convenient, economic and efficient way of upgrading equipment.

- (2) Notwithstanding sub regulation (1), trade-in shall not be used where it prevents the operation of open and fair competition or where it reduces the value for money in a disposal process.
- (3) Trade-in shall not be used where factors other than price have to be taken into account in the disposal process.
- (4) A valuation shall always be obtained where an asset is to be disposed of using trade-in.
- (5) Under trade-in, the disposal process shall be an integral part of the procurement process and shall follow the procurement rules, practices and process in accordance with these regulations.
- (6) The estimated trade-in value shall not be deducted from the estimated value of the procurement in selecting the appropriate disposal method.
- (7) Approval shall be obtained from a contracts committee to include a trade-in requirement as a procurement requirement prior to the commencement of the procurement proceedings.
- (8) A tender document and a tender notice shall clearly state that the procurement involves a trade-in arrangement.
- (9) Advertisement of the trade-in, issue of tender documents, the tendering period and receipt and opening of tenders shall be in accordance with the relevant procurement rules.
- (10) Evaluation shall follow the appropriate methodology for a procurement requirement.
- (11) The trade-in value offered for an asset shall be included in the financial comparison only in the manner stated in the tender documents.
- (12) The way in which trade-in offers have been evaluated shall be clearly stated in the evaluation report.
- (13) Negotiations may be permitted in accordance with the relevant rules on procurement.
- (14) Award of contract shall be in accordance with the relevant rules on procurement.
- (15) Responsibility for management of procurement contract and a disposal element shall be clearly defined and where different public officers are responsible for each element, they shall work together as and when appropriate.

Transfer to another procuring and disposal entity

- 129.** (1) Transfer to any other procuring and disposing entity may be used where the other procuring and disposing entity shall make further use of the asset and the cost of the asset shall be agreed between the two procuring and disposing entities.
- (2) Where disposal is by transfer to another procuring and disposing entity, the arrangements for the transfer shall be discussed and agreed between the procuring and disposing entity.
- (3) The agreement in sub regulation (2) shall include-
- (a) the cost to be paid by the recipient procuring and disposing entity, which cost may be omitted if it is uneconomic to charge for the asset;
 - (b) any subsidiary or linked assets to be included in or excluded from a transfer;
 - (c) the date for the transfer;
 - (d) responsibility for transporting an asset;
 - (e) the hand-over procedure and any documentation to be transferred;
 - (f) the mechanism and date for payment of any cost; and
 - (g) responsibility for any legal obligations linked to an asset.
- (4) The arrangements for the transfer shall be confirmed in writing and shall be approved and signed by the accounting officers of the procuring and disposing entity.
- (5) A recipient procuring and disposing entity shall issue an authorised receipt for the asset.

Conversion into another asset

- 130.** (1) Conversion or classification of an asset into any other form may be used-
- (a) on grounds of national security or public interest, legal or human rights issues or environment considerations; or
 - (b) Where the asset has no residual value in its current form, but where some sale value can be obtained through conversion or classification into any other form.
- (2) Where conversion or classification into another form is used, a procuring and disposing entity shall identify a competent authority or an appropriate tenderer to undertake the conversion or classification.
- (3) Approval shall be obtained from contracts committee, prior to the commencement of the disposal proceedings
- (4) Documentary evidence of the conversion or classification shall be

obtained from a competent authority or tenderer and shall be kept as part of the record of disposal proceedings.

Destruction

131. (1) Destruction of an asset shall be the least favoured method of disposal, but may be used-

(a) On grounds of national security or public interest, health and safety, legal or human rights issues or environment considerations; or

(b) where the asset has no residual value and it cannot be transferred to any other procuring and disposing entity or converted or classified into another form with any value.

(2) Where destruction of assets is used, a procuring and disposing entity shall either undertake the destruction itself or identify a competent authority or an appropriate tenderer to undertake the destruction.

(3) Approval shall be obtained from contracts committee, prior to the destruction being undertaken

(4) The method of destruction shall be appropriate to-

(a) the asset being disposed of; and

(b) the circumstances giving rise to the destruction, including national security or public interest, health and safety and legal or human rights issues or environment considerations.

(5) A signed certificate of destruction shall be obtained from a procuring and disposing entity's officer in-charge, competent authority or tenderer and shall be kept as part of the record of disposal proceedings.

(6) Where a procuring and disposing entity needs to dispose of perishable items using the destruction of assets method on a regular basis, the contracts committee may give a running approval to conduct all such disposals without further submissions to it.

Donation

132. (1) Anybody can apply to the accounting officer requesting for donation of an asset and the accounting officer shall reply to the person acknowledging the application and advising the person to wait for decisions of the contracts committee.

(2) The application shall be in writing giving details covering -

(a) Name of the applicant;

- (b) Details of the asset;
 - (c) to whom it should be donated;
 - (d) Declaration that the donation is not to the applicant personal benefits;
 - (e) Benefits from the donation to the council; and
 - (d) Benefits to the recipients of the donation.
- (3) The accounting officer shall present the application to the procurement and disposal unit for onward submission to the contracts committee.
- (4) The contracts committee shall make a decision on the application and the recommendation shall be forwarded to the accounting officer.
- (5) The accounting officer shall communicate the decision to the applicant and any other concerned party.
- (6) The accounting officer will then arrange for the handover in the presence of Internal Audit or his or her authorized representative and the public, after fourteen days of displaying a public notice.

Evaluation of tenders for disposal

- 133.** (1) Evaluation of a tender shall be based on price only, or based on price and other factors.
- (2) Evaluation of tenders based on price only shall be the preferred evaluation methodology.
- (3) Other factors may be taken into consideration in the evaluation of tenders, where-
- (a) there are end-user restrictions;
 - (b) there are export restrictions; or
 - (c) there is a need to attach conditions to a sale.
- (4) The other factors referred to in sub regulation (3) include-
- (a) nationality, under a reservation scheme;
 - (b) environmental impact;
 - (c) risks or conditions associated with health and safety, legal or human rights issues, national security or public interest;
 - (d) the need to maintain an asset within Uganda or within a given region;
 - (e) the need to maintain an asset in working order or to maintain accessibility for the public; or
 - (f) any other performance conditions and means of monitoring compliance with such conditions.
- (5) Where the highest-priced tender has been submitted by more than one tenderer, a procuring and disposing entity shall invite the tenderers who

submitted identically priced tenders to submit a revised tender.

(6) No tenderer, other than those who submitted the identical highest priced tender, shall be permitted to submit a revised tender or participate in the re-tendering procedure in any way.

(7) A revised tender shall only contain a revised price and a tenderer shall not be permitted to change the terms and conditions, technical details, documentation or any other aspects of their original tender, in any way.

(8) A revised tender shall be written and sealed and submitted in the same way as the original tender.

(9) A tenderer shall be given a reasonable period of time prior to the deadline for submission of their revised tender.

(10) Where evaluation is based on price only and it is reasonable to conduct and conclude the evaluation immediately in the presence of a tenderer at a public tender opening, a procuring and disposing entity may, if the tenderer agrees, conduct the re-tendering procedure immediately.

(11) Where the re-tendering procedure is conducted immediately, a tenderer shall be given access to a private location in which to discuss and prepare the revised tender and the tenderer shall be provided with all reasonable assistance, such as writing and sealing materials, calculators and access to a telephone.

(12) The tender opening procedure for the revised tender shall be the same as that for the original tender.

(13) Evaluation shall be conducted in the same manner as the original valuation, except that the price contained in the revised tender shall replace the original price.

(14) Where identical highest priced tenders are received during a re-tendering process, further re-tendering shall be held in accordance with this regulation.

(15) Where it is subsequently discovered that an error was made in the original evaluation, including, an arithmetic error or application of an exchange rate, and that as a result tenderers had not submitted identical highest priced tenders, the re-tendering procedure shall be declared null and void and the revised tenders shall not be considered.

(16) Where re-tendering fails, the whole process shall be cancelled and re-tendered.

(17) Where the evaluation is based on price only, a contract shall be awarded to the tenderer with the highest price.

- (18) Where written tenders are received, the valuation committee shall –
- (a) correct any arithmetic errors
 - (b) convert the tenders to a common currency; and
 - (c) compare the tender price with the value of an asset or reserve price, where appropriate.
- (19) Contract award shall be recommended to the best evaluated price, and who meets the eligibility requirements and passes the evaluation criteria, subject to any reservations in regard to the valuation or reserve price.
- (20) Where a tender is oral under the public auction method, no evaluation committee or evaluation report shall be required but minutes of the proceedings shall be required.
- (21) Notwithstanding sub regulation (20), the name of the successful tenderer and the contract price shall be reported to a contracts committee

Negotiations

- 134.** (1) Under public tendering, negotiations may relate to the conditions of sale, where evaluation is based on factors other than price, and shall not relate to the price of the tender.
- (2) Under direct negotiations, negotiations may relate to the conditions of sale, where evaluation is based on factors other than price or the price of the tender.
- (3) Negotiations shall be held after a contracts committee has approved the evaluation committee's recommendation of the best evaluated tenderer and the need to hold negotiations in the case of a public tenderer, or that the single tenderer should be considered for contract award, subject to negotiations in the case of direct negotiations.
- (4) Negotiations shall only be held with the best evaluated tenderer.
- (5) An evaluation committee shall prepare a negotiations plan.
- (6) A negotiations plan shall specify the issues to be negotiated and the objectives to be achieved and where possible shall quantify the objectives and set maximum and minimum negotiating parameters for a negotiation team.
- (7) A contracts committee shall approve the negotiations plan and the membership of the negotiation team, prior to any negotiations taking place.
- (8) A negotiation team shall not commit a council to any proposed arrangements or agreements, but shall seek the approval of the contracts committee prior to confirming any agreement reached.
- (9) A negotiation team shall produce minutes of the meeting with a tenderer

and shall obtain a tenderer's written agreement that the minutes are a true and accurate record of the negotiations held.

(10) A negotiation team shall report to the Contracts committee the results of the negotiations and state whether the objectives of the negotiations plan have been achieved and shall submit minutes of the meeting.

(11) A negotiation team shall submit a recommendation to a contracts committee to either proceed with contract award to the recommended tenderer, incorporating the agreements reached during negotiations, revise the negotiation objectives and hold further negotiations or terminate the negotiations and reject a tenderer.

(12) Where a negotiation team recommends rejection of the tenderer, it may also, where appropriate, recommend the invitation of the next ranked tenderer for negotiations in the case of public tendering or a new tenderer to submit a tender in the case of direct negotiations.

(13) A contracts committee may-

- (a) approve the recommendations;
- (b) request further negotiations on a specific point;
- (c) reject the recommendations with reasons; or
- (d) cancel the negotiations, in their entirety.

(14) The results of approved negotiations shall be incorporated into the contract.

(15) Where negotiations are commenced with the next ranked tenderer or where a new tender is invited, the procuring and disposing entity shall not reopen earlier negotiations and an original tenderer shall be informed of the reasons for termination of the negotiations.

(16) Where the best evaluated tender is less than the reserve price, a contracts committee in consultation with the accounting officer may-

- (a) Obtain a further valuation from an independent source;
- (b) Negotiate the price with a tenderer, under direct negotiations only;
- (c) Arrange for new tenders to be submitted;
- (d) Use an alternative method of disposal, which is likely to obtain a higher price; or
- (e) Sell the asset at the reduced price.

(17) In deciding on the appropriate action, a contracts committee and an accounting officer shall take into consideration the difference between the best evaluated tender and the valuation or reserve price, the likely costs of the possible action and the possibility of collusion between tenderers.

Contracts of disposal.

- 135.** (1) Award of a contract shall be by either a declaration of the successful tenderer at the time of tendering in the case of public auction or a decision of a contracts committee for any other method of disposal.
- (2) Where contract award is by a decision of a contracts committee, contract placement shall be by the issue of a contract to the successful tenderer.
- (3) The contract shall be as specified in the tender document
- (4) Communication by letter, fax, telex, email or any other form that would bind a procuring and disposing entity to a contract with a buyer, shall not be permitted prior to approval of the award of contract by a contracts committee.
- (5) The contract shall contain-
- (a) the price to be paid by the successful tenderer;
 - (b) any subsidiary or linked assets to be included in or excluded from the sale;
 - (c) the date for delivery or collection of the asset;
 - (d) responsibility for transporting the asset;
 - (e) the hand-over procedure and any documentation to be transferred;
 - (f) the mechanism and date for payment of the contract price; and
 - (g) the person responsible for any legal obligations linked to the asset.
- (6) A contract award, with the exception of that under public auction, shall be displayed within one working day of the contract award, on the procuring and disposing entity's notice board
- (7) A contract supervisor shall-
- (a) Obtain payment from a successful tenderer;
 - (b) Issue a receipt for a payment;
 - (c) Credit a payment to the appropriate account;
 - (d) Hand over an asset and all the appropriate documents to a successful tenderer;
 - (e) Obtain a receipt for the asset from a provider;
 - (f) Complete and record all hand-over requirements;
 - (g) Manage any outstanding legal obligation of a procuring and disposing entity;
 - (h) Update a procuring and disposing entity's asset register;
 - (i) Ensure that the Act, these Regulations and the guidelines are complied with; and
 - (j) Submit an appropriate report to the contracts committee or any other body.
- (8) A third party disposal agent or auctioneer may be contracted to undertake any of the functions listed in sub regulation (7).

(9) A contract with a third party disposal agent or auctioneer shall clearly state the functions to be undertaken by a third party disposal agent or auctioneer.

(10) Where a third party disposal agent or auctioneer is responsible for obtaining payment from a buyer, a contract with a third party shall clearly state that the proceeds of the disposal shall be transferred to a procuring and disposing entity within a period of five working days from the date of receipt of the funds.

(11) Where a third party disposal agent or auctioneer is contracted to undertake any of the functions in sub regulation (7), a contract supervisor shall-

(a) Cross check all documents including receipts for assets delivered to a third party disposal agent or auctioneer, record of assets sold, record of payments made by a successful tenderer and hand-over documents and follow up and resolve any discrepancies in the documents;

(b) ensure that the proceeds are received in the correct amount within five working days after the date of receipt by a third party disposal agent or auctioneer and are credited to the appropriate account; and

(c) ensure that payment for the services of a third party disposal agent or auctioneer is made on time or that the payment is deducted from the proceeds received.

(12) Where a tenderer fails to make payment in accordance with the terms and conditions of a contract, the contract may be terminated and formed with the next best tenderer, where that tenderer is known.

PART X: ADMINISTRATIVE REVIEW PROCESS

Grounds for administrative review

136. (1) A tenderer may seek administrative review for any omission or breach of the Act, these Regulations, the guidelines, the provisions of tender document or best practices, by a procuring and disposing entity..

(2) Where a procurement requirement is subject to administrative review by procuring and disposing entity or Authority a contract document, purchase order, letter of tender acceptance or other communication in any form conveying acceptance of a tender, that binds a procuring and disposing entity, shall not be issued prior to completion of the administrative review process.

Time limitation on administrative review

137. A tenderer shall submit an application for administrative review within ten working days of the date of display of the award on public notice.

Submission of application for administrative review

- 138.** (1) Any application for administrative review shall be submitted in writing to an accounting officer.
- (2) The application for administrative review shall include-
- (a) details of the procurement or disposal requirement to which the complaint relates;
 - (b) details of the rule or provision which has been breached or omitted;
 - (c) an explanation of how the rule or provision has been breached or omitted, including the dates and name of the responsible public officer, where known;
 - (d) documentary or other evidence supporting the complaint where available; and
 - (e) any other information relevant to the complaint.
- (3) The application for administrative review shall be accompanied by payment of a prescribed fee in accordance with guidelines to be issued by the Authority.

Administrative review by an accounting officer

- 139.** (1) Upon receipt of an application for administrative review, an accounting officer shall immediately suspend the procurement or disposal proceedings where a continuation of the proceedings might result in an incorrect contract award decision or a worsening of any damage already done.
- (2) The accounting officer shall immediately on receipt, constitute a committee of three persons with the requisite technical expertise on the subject of the complaint, to review and advise on the complaints.
- (3) The committee shall institute an investigation to consider-
- (a) the information and evidence contained in the application;
 - (b) the information in the records kept by secretary contracts committee;
 - (c) information provided by staff of council
 - (d) information provided by other tenderers; and
 - (e) any other relevant information.
- (4) The committee shall submit its recommendation to the accounting officer.
- (5) Based on the report, the accounting officer shall advise the complainant in writing within fifteen working days after receipt of the application and the recommendation shall indicate-
- (a) whether there is merit in the complaint;

- (b) the reasons for the recommendation; and
- (c) any corrective measures to be taken.

(6) The accounting officer shall submit a copy of the report to the Authority. .

Administrative review by the Authority

140. (1) A Tenderer may submit an application for administrative review to the Authority where the accounting officer does not issue a report within fifteen working days or the tenderer is not satisfied with the decision of the accounting officer on the complaint.

(2) An application to the Authority for administrative review shall be submitted within ten working days after the date of the decision by an accounting officer or the date by which an accounting officer should have issued a decision.

(3) The application to the Authority for administrative review shall include –

- (a) a copy of the original application to an accounting officer and the supporting documents;
- (b) a copy of relevant correspondence to and from an accounting officer;
- (c) a statement by the tenderer that an accounting officer failed to issue a decision and the relevant dates, where applicable; and
- (d) an explanation of why the tenderer is not satisfied with the decision of the accounting officer, where applicable.

(4) Upon receipt of an application, the Authority shall immediately –

- (a) give notice of the application to an accounting officer;
- (b) instruct accounting officer to suspend any further action on the procurement or disposal requirement, where the Authority considers a suspension necessary;
- (c) notify all tenderers of the application and invite them to submit any relevant information prior to a given deadline; and
- (d) institute an investigation.

(5) In investigating the application for administrative review, the Authority shall consider the following, where appropriate-

- (a) the information and evidence contained in the application;
- (b) the information in the records kept by a secretary contracts committee;

(c) information provided by staff of a procuring and disposing entity

(d) information provided by the other tenderers; and

(e) any other relevant information.

(6) The Authority shall issue its decision in writing within twenty-one working days after receipt of the application.

(7) The decision of the Authority shall indicate-

(a) whether the application was upheld or rejected;

(b) the reasons for its decision; and

(c) any corrective measures to be taken.

PART XI: MISCELLANEOUS

Revocation of regulations

141. Part IX of the Local Governments Financial and Accounting Regulations, 1998 is revoked.

Application of other regulations

142. A procuring and disposing entity shall apply the provisions of other relevant local governments' regulations in their functions and operations as long as they are not in conflict with these regulations.

FIRST SCHEDULE
CODE OF ETHICAL CONDUCT FOR PUBLIC OFFICERS

Part A:

Ethical principles

1. (1) Employees shall not use their authority of office for personal gain and shall seek to uphold and enhance the reputation of a Local Government by-

a) Maintaining an impeccable standard of integrity in all business relationships both inside and outside the council in which they are employed.

b) Fostering the highest possible standards of competence;

c) Optimising the use of resources for which they are responsible to provide the maximum benefit of Uganda; and

d) Complying both with the letter and the spirit of –

(i) The laws of Uganda and regulatory guidance;

(ii) Accepted business practices in commercial markets; and

(iii) Contractual conditions

Conflict of interest

2) Employees shall reveal any personal interest that may impinge or might reasonably be deemed by others to impinge on a member's business dealings.

Confidentiality and accuracy of information

3) (1) Employees shall respect the confidentiality of information received in the course of business dealings and shall never use such information for personal gain

2) Information given by Members of contracts committee in the course of the business dealings shall be true and fair and not designed to mislead

Competitions

4) Employees shall avoid any business arrangement and that might prevent the effective operation of fair competition

Business gifts

5) Employees shall not accept business gifts from current or potential Council suppliers unless such gifts are of very intrinsic value such as a calendar or pen

Hospitality

6) Employees shall refrain from any business hospitality that might be viewed by others as having an influence in making a council business decision as a result of accepting that hospitality

Restrictiveness

7) A member of the Authority, a secretary of the contracts committee or expert contracted to deliver specific services shall not use to his or her

I hereby declare that I have read the Code of Ethical Conduct for Public Officers and

that I will execute my responsibilities with regard to procurement and disposal in accordance with this code.

Signature..... Name.....

Position..... Date.....

PART B:

CODE OF ETHICAL CONDUCT FOR TENDERERS AND PROVIDERS

1. Ethical Principles

Tenderers and Providers shall at all times-

- (a) maintain integrity and independence in their professional judgement and conduct;
- (b) comply with both the letter and the spirit of
 - (i) the laws of Uganda; and
 - (ii) any contract awarded.
- (c) avoid associations with businesses and organisations which are in conflict with this code.

2. Standards

Tenderers and Providers shall-

- (a) strive to provide works, services and supplies of high quality and accept full responsibility for all works, services or supplies provided.
- (b) comply with the professional standards of their industry or of any professional body of which they are members.

3. Conflict of Interest

Tenderers and Providers shall not accept contracts which would constitute a conflict of interest with, any prior or current contract with any procuring and disposing entity. Tenderers and Providers shall disclose to all concerned parties those conflicts of interest that cannot reasonably be avoided or escaped.

4. Confidentiality and Accuracy of Information

- (1) Information given by Tenderers and Providers in the course of procurement processes or the performance of contracts shall be true, fair and not designed to mislead.
- (2) Providers shall respect the confidentiality of information received in the course of performance of a contract and shall not use such information for personal gain.

5. Gifts and Hospitality

Tenderers and Providers shall not offer gifts or hospitality directly or indirectly, to staff of a procuring and disposing entity that might be viewed by others as having an influence on a government procurement decision.

6. Inducements

- (1) Tenderers and Providers shall not offer or give anything of value to influence the action of a public official in the procurement process or in contract execution.
- (2) Tenderers and Providers shall not ask a public official to do anything which is inconsistent with the Act, Regulations, Guidelines or the Code of Ethical Conduct in Business.

7. Fraudulent Practices

Tenderers and Providers shall not-

- (a) collude with other businesses and organisations with the intention of depriving a procuring and disposing entity of the benefits of free and open competition;
- (b) enter into business arrangements that might prevent the effective operation of fair competition;
- (c) engage in deceptive financial practices, such as bribery, double billing or other improper financial practices;
- (d) misrepresent facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring and Disposing Entity.

I hereby declare that I have read the Code of Ethical Conduct in Business and that I will execute my responsibilities with regard to procurement and disposal in Accordance with this code.

Signature..... Name.....

Position..... Date.....

SECOND SCHEDULE: TENDER; DISPOSAL AND CONTRACT NUMBERING

TENDER NUMBERING

The Procurement and Disposal Unit shall ensure that all procurements are numbered and registered in the Registry for procurement at the initiation of the tendering process or as reported for micro-procurement.

The procurement numbering shall be as follows: A/B/C/D/E/F/Pr.

- A: Standardised abbreviation of the council's name
- B: Abbreviation for goods (Gd) or Services (Sv) or Works (Wk) as the case may be
- C: Abbreviation for type of procurement that should be specified in two character
- D: Month of initiation of the procurement process in two character
- E: Year of initiation of the procurement process in two character
- F: Annual (Financial Year) Serial Number in four character
- Pr: Abbreviation for procurement

DISPOSAL NUMBERING

The Procurement and Disposal Unit shall ensure that all disposals are numbered and registered in the Registry for disposal at the initiation of the disposing process.

The Disposal numbering shall be as follows: G/H/I/J/K/L/Dis.

- G: Abbreviation of the council
- H: Abbreviation for the asset as the case may be in two character
- I: Abbreviation for type of disposal that should be specified in two character
- J: Month of initiation of the disposal process in two character
- K: Year of initiation of the disposal process in two character
- L: Annual (Financial Year) Serial Number in four character
- Dis: Abbreviation for Disposal

CONTRACT NUMBERING

The Procurement and Disposal Unit shall ensure that all contracts are numbered and registered in the Registry for contract as the contract is signed.

The Contract numbering shall be as follows: M/N/O/P/Q/R/Con.

- M: Abbreviation of the council
- N: Abbreviation for the type of contract as the case may be in two character
- O: Abbreviation for goods (Gd) or Services (Sv) or Works (Wk) as the case may be
- P: Month of contract signing in two character
- Q: Year of contract signing in two character
- R: Annual (Financial Year) Serial Number in four character
- Con: Abbreviation for Contract

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Prof. Tarsis Bazana Kabwegyere
Minister of Local Governments