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IT is hereby notified that the Minister, after consultation with the Minister responsible for Finance and Economic Development and the State Procurement Board has, in terms of section 33 of the Procurement Act [Chapter 22:14], made the following regulations:--

PART I

PRELIMINARY

Title

1. These regulations may be cited as the Procurement Regulations, 2002.

Interpretation

2. In these regulations—

"Accounting officer" means head of the procuring entity.

"Board" means the State Procurement Board.

"procuring entity" means any—

(a) Ministry, department or other division of the Government; or

(b) statutory body other than one specified in terms of subsection (1) of section 3 of the Act; or

(c) local authority or other person declared in terms of subsection (2) of section (2) of section 2 of the Act to be a procuring entity;

which conducts procurement on behalf of Government with the supervision of the State Procurement Board;

"procurement contract" means contract between a procuring entity and a supplier which results from procurement proceedings;

"Principal Officer" means the principal officer of the State Procurement Board appointed in terms of section 15 of the Act;

"tender security" means a security provided to the procuring entity to secure the fulfilment of any obligation by the contractor.

Exercise of powers and duties by procuring entities in terms of these regulations

3. Whenever any power is to be exercised or duty is to be performed by a procuring entity in terms of these regulations such power shall be exercised or duty performed—

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1 Amended S.I. 126 of 2015
(a) in a case of where the procuring entity is a Ministry, department or other division of the Government, the accounting officer for that Ministry, department or division prescribed in terms of the Audit and Exchequer Regulations, 1998, as amended or replaced from time to time;

(b) in a case of where the procuring entity is a statutory body or local authority, the accounting officer of that entity; or by an officer to whom such power has been specifically delegated by the accounting officer.

PART II

INVITATION OF TENDERS

Procurement process that require prior review by the State Procurement Board

4. (1) Subject to section 5, where a procuring entity requires the supply of goods, construction works or services the value of which exceeds $500,000.00, the procuring entities shall invite formal tenders after the review by the State Procurement Board in accordance with procedures for—

(a) formal tenders set out in section 8; or

(b) approved list tenders set out in section 25.

(2) Subject to section 5, where a procuring entity requires the supply of goods, construction works or services the value of which exceeds $10,000.00 but does not exceed $500,000, the procuring entity shall seek tenders in accordance with the procedure for informal tenders set out in section 6.

Supplies not required to be tendered for by the State Procurement Board

5. (1) Where a procuring entity requires the supply of goods, construction works or services the value of which equals or is less than US$10,000, the procuring entity may dispense with the requirement of seeking tenders if the procuring entity considers that the public interest will not benefit from tender procedure but, in such cases, the procuring entity shall obtain at least 3 competitive quotations from reputable suppliers.

(2) Repealed.

(3) Where a procuring entity considers that it would not be in the public interest to call for tenders for a particular supply of goods, construction works or services in terms of section 4, such supply may, subject to subsection (5), be purchased without calling for tenders.

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2 Amended S.I. 126 of 2015
3 Amended S.I. 126 of 2015
4 Values for construction works informal tender Limit is from $10 000.00 to $2 000 000.00
(4) Before purchasing any supply in terms of subsection (3), a procuring entity shall obtain the approval of—

(a) Repealed.

(b) Repealed.

(5) Where an approval to procure supplies in terms of subsection (4) is denied, the procuring entity shall follow normal tender procedures.

(6) Quotations shall be sourced by telephone or email and a notice shall be put on the notice board or website for prospective suppliers to view, when received all quotations shall be in sealed envelopes that shall be opened in the presence of a member of the tender committee at the expiry of the submission period.

Informal tender procedure

6. (1) Where any supply or service is being arranged in terms of these regulations by informal tender, the procuring entity shall invite tenders or letters of quotations from likely tenderers through newspaper advertisements.

(2) The informal tenders or letters of quotation shall be entered on a comparative schedule prepared by the accounting officer showing detailed reasons for accepting or rejecting each tender or quotation.

(3) The accounting officer shall record his decision on the comparative schedule which shall be retained by the department for audit purposes and a copy shall be transmitted to the Board.

Limited Tender Procedures

7. (1) Special Informal and Formal tenders shall be invited by the procuring entity after prior approval by the Board and;

(2) Special-formal tenders and Informal tenders may be invited only in the following cases—

(a) urgent requirements where time does not permit the invitation of tenders by advertisement in the Government Gazette:

Provided that the authority of the Chairman has been obtained; and

(b) supplies and services of local interest only; and

(c) requirements of a proprietary nature and where names of likely suppliers are known; and

(d) formal and informal tenders to which there has been no response and where it is necessary to re-invite tenders; and

(e) services which in the opinion of the Board are of specialist nature; and
(f) services which in the opinion of the Board concern national security.

Formal tender procedure

8. (1) In the case of supplies or services subject to formal tenders, the Accounting Officer shall call for tenders, subject to review by the State Procurement Board stating the place and the latest day and time up to which tenders will be received.

(2) All notice of formal tender shall be published by the Accounting Officer in the Government Gazette and in such national newspapers as the Board may deem expedient.

(3) The Accounting Officer shall prepare a tender advertisement with the following details—
   (a) a concise description of the supplies or services required;
   (b) the designation and full postal address of the officer from whom tender documents and further particulars are obtainable;
   (c) the proposed fee payable for the tender documents;
   (d) suggested closing date for receipt of tenders by the Board; and
   (e) the names of newspapers in which it is suggested that the tender should be advertised.

Closing date for tenders

9. (1) Tenders shall, unless otherwise approved by the Board, be made returnable not less than 15 days for Informal Tenders and not less than 30 days for formal tenders (including public holidays) after the date of publication of the advertisement:

Provided that in cases of emergency, a shorter period shall be approved by the Board.

(2) The closing date advertised in the original notice inviting tenders may be extended whenever it is so desirable and the Accounting Officer shall immediately inform the Principal Officer in writing and keep a record of the reasons for such extension that shall be included in the Procurement Report and:

(3) Any extension of any period by the Accounting Officer in terms of this section shall not be deemed to authorise any similar future departure on the part of the tenderer from the prescribed or advertised periods.

Cost of advertising tenders

10. Procuring entities shall be responsible for the costs of advertising tenders.
Information to be included in tender documents

11. (1) Tender documents shall be subject to the following conditions or be accompanied by the following information as the case may be—

(a) the lowest evaluated tender or the most economically advantageous tender to specification shall be accepted;

(b) unless special circumstances require a longer or to be fixed, offers or bids shall be valid for a minimum of 30 working days from the closing date for the receipt of tenders;

(c) tenders will not be considered unless they comply fully with the specifications of suppliers in line with the Act;

(d) tenderers shall be at liberty to tender for one or more items;

(e) the country of origin and/or manufacture must be stated and where applicable, proof of agency and proof of local after sales service of the tenderer shall be stated;

(f) local tenderers must be registered with the Zimbabwe Revenue Authority;

(g) that tenderers should quote unit prices carriage, insurance and freight (CIF) indicating—

(i) foreign currency and local currency components;
(ii) total prices with sales tax shown separately;
(iii) exchange rates applicable, discounts, premiums or any other charges;

(h) the profile for would be tenderers relevant to the tender submitted;

(i) the neutral specifications that achieve economy and efficiency;

(j) requirements for a bid bond or bid security or guarantee;

(k) whether or not bidders conference is required;

(l) certified financial statements demonstrating capacity to perform the contract or credible proof of source of funding to perform the contract;

(m) all entries to be typed or written in ink with a signed summary sheet of company documents submitted in the tender that detail the serial numbers and dates of issue of the documents where applicable.
(2) Not less than three copies of all tender documents shall be submitted by the tenderer and the original shall be clearly marked.

PART III

OPENING OF FORMAL TENDERS

Opening of received tenders

12. (1) Tenders received shall be opened by the Executives as assigned by the Principal Officer and tenderers or their authorised representatives, at the expiry of the time advertised.

(2) Each tender and all priced annexures shall be authenticated with the signature and name of the opening officer and the date of opening.

(3) The Board, tenderer and procuring entity shall each retain an authenticated copy of the tendering documents after opening.

Tenders received either open or without relative tender number

13. Tenders received either open or without the relative tender number on the cover shall, after the tender reference has been ascertained, be sealed and a note shall be made on the envelope stating—

(a) the date and time of receipt; and
(b) the relative tender number; and
(c) the condition in which the tender was received; and
(d) the name and signature of the officer concerned.

PART IV

COMPARISON OF TENDER AND PREFERENCES

Procurement committees

14. (1) There shall be a procurement committee conversant with procurement law for each procuring entity selected by the accounting officer and headed by him or his delegated representative.

(2) The procurement committee shall be responsible for the procurement of goods and services in line with the Procurement Act.

(3) The Accounting Officer shall keep a record of the procurement committee members for audit purposes.

(4) The Accounting Officer shall establish, when required, tender adjudication committees conversant with the Act to draft tender requirements, evaluate tenders and submit recommendations to the procurement committee.

Tenders to be forwarded to head of procuring entity
15. (1) The Accounting Officer shall within 15 days of closing date, forward, for review by the Board, decisions for formal tenders before the contract is awarded.

16. The Accounting officer shall submit for review by the State procurement board, a report with the following details with reference to the tender document:
   a) List of suppliers that bought the tender document; and
   b) List of suppliers that submitted the tender document include address and directors detail; and
   c) Detailed evaluation of supplier capabilities and commercial requirements showing detailed reasons for qualification and disqualification; and
   d) Detailed evaluation of technical requirements showing detailed reasons for qualification and disqualification; and
   e) Reasons for the award of the tender whether it is lowest bidder to specification or most economically advantageous tender.

Rejecting tenders

17. Repealed

Reasons for accepting specific tenders

18. Repealed

Evaluating tenders

19. (1) In evaluating tenders, the procuring entity shall assess the tenderer’s compliance with commercial and technical requirements of the tender.

   (2) When procuring entities evaluates tenders in terms of subsection (1), it shall consider the following factors:
      a) Compliance with commercial requirements of the tender; and
      b) Compliance with technical requirements of the tender; and
      c) Lowest cost to specification or most economically advantageous tender.

   (3) Suppliers in procurement proceedings may be requested to clarify information with regards to subsection (2) and no adjustments or additions or subtractions to the already submitted offer shall be accepted.

Preference of local contractors and suppliers

20. (1) When a comparative schedule of tenders for contracts is being prepared, locally based contractors and suppliers should be allowed a ten per centum preference on purchase price or contract price, over foreign contractors.

   (2) When a comparative schedule of tenders for contracts is being prepared, previously economically disadvantaged contractors should be allowed a ten per centum preference on purchase price or contract price, over external contractors.
The Board shall review the Accounting Officer's recommendations and issue an opinion based on the facts presented, the opinion does not exonerate the Accounting Officer from mis-procurement when additional information contrary or in addition to initial presentation are received.

Advising tender results

22. (1) The procuring entity shall copy the Board the award letter to successful bidder(s)
(2) The successful tenderer shall be notified promptly in writing by the Accounting Officer of the tender acceptance.
(3) Unsuccessful tenderers shall be advised in writing, of the name of the successful tenderer and the amount of his tender by the Accounting Officer.

PART V
PROCEDURE WHEN NO TENDERS ARE RECEIVED

Procedure when no tenders are received

23. When no tenders are received in response to a tender invitation or when no tender can be recommended for acceptance, the procuring entity shall report to the Board whether it recommends—
(a) postponement of further action for the time being; or
(b) invitation of fresh formal tender; or
(c) invitation of special-formal or informal tenders; or
(d) making the best arrangements for the supply or service without inviting tenders and on receiving the Board's decision, the procuring entity shall act accordingly.

PART VI

SPECIFICATIONS AND SAMPLES

Specifications or samples to be available at advertised centres

24. (1) The Accounting Officer shall supply adequate specifications and/or samples at the centres advertised in the tender notice for inspection by intending tenderers.
(2) Any samples required by the Accounting Officer in connection with a tender shall be furnished by the tenderer at his own risk and cost.
(3) The procuring entity shall not be obliged to keep or purchase the samples.
(4) Where samples are destroyed or damaged in the process of testing or examination, the Accounting Officer shall not be responsible.
Registration of suppliers by the State Procurement Board

25. (1) The Board may compile a list of registered suppliers in respect of specific articles and services for use on competitive bidding where a category exists, which list shall be published in the Gazette.

(2) Before framing a list in terms of subsection (1) the Board shall publish a notice in the Government Gazette inviting tenderers to submit applications for inclusion on the list.

(3) The Board may add or remove from the list any firm or person whom the Board considers no longer suitable to undertake Government contracts.

(4) The Accounting Officer may request the Board’s authority to limit participation of informal and formal tenders to registered suppliers.

(5) All tenders submitted in terms of subsection (4) shall be processed in accordance with these regulations and the Board shall register all local manufacturers after a due process in consultation with the Ministry of Industry and Commerce and Ministry of youth, Indigenisation and Economic Empowerment and preference shall be given to local manufacturers as directed by the Board.

PART VII
CONTRACTS, SECURITIES AND DELIVERIES

Contract not to be varied without approval

26. (1) In a contract for a fixed supply or service, the quantity of the supply or the extent of the service shall not be varied without the review by the Board.

(2) All written contracts shall contain provision for the cost of any stamp duty payable to be met entirely by the contractors.

(3) All statutory adjustments to the contract shall be processed by the Accounting Officer without a review by the Board.

Tender security

27. (1) When security has to be provided by successful tenderers, it shall be in the form of a guarantee by a bank or approved negotiable securities or otherwise in the form of a cash deposit with the procuring entity.

(2) Any security furnished in terms of the subsection (1) shall represent ten per centum of the value of the contract unless otherwise decided by the Board.

Deliveries to be inspected

28. Deliveries of supplies shall be systematically inspected, sampled and tested by the procuring entity and shall not be accepted unless they comply with the specifications.
29.A (1) the Accounting Officer shall submit to the State Procurement Board before the end of each year, a procurement plan that shall be review(ed) quarterly by the procuring entity providing a list of planned expenditure for the year detailing the nature of goods, services and construction work required; estimated cost; schedules of when required and the procurement method that shall be applied.

(2) The Accounting Officer shall with exception to emergencies procure goods, services and construction in line with procurement plan submitted and where it is deem a different procurement plan is required. The Accounting officer shall keep a record of reasons for diverting from the original procurement plan.

(3) The Accounting Officer shall procure goods services and construction work in line with the budget, all solicitation documents submitted for approval shall be accompanied by budget information drawn from the procurement plan.

(4) the Accounting officer shall report quarterly

(a) the details of purchases awarded using competitive quotations with details of the names of companies invited, the amounts quoted and reasons for accepting or rejecting the quotations; and

(b) details of purchases awarded using informal tenders including names of companies that participated, the amounts quoted and reasons for accepting the bid; and

(c) progress reports on the awards of informal tenders with details on the performance of the contracts; and

(d) progress reports on the awards of formal tenders and limited tenders with details on the performance of the contract(s)

Names of prospective tenderers not to be disclosed

30. No member of the public shall be furnished with the names of prospective tenderers or persons who have applied for a or have taken out tender documents.

Standard terms and conditions

31. (1) In drafting procurement contracts, the procuring entity shall include any of the terms and conditions set out in the First Schedule that may be applicable to the procurement.

(2) Procurement contracts shall be subject to monitoring by the Board.

 Unsatisfactory work or conduct by contractors

32. If the Board is satisfied that--

(a) the execution of a Government contract by a contractor has been unsatisfactory; or

(b) a contractor has offered any consideration to any officer in the service of Government in relation to procurement proceedings; or
(c) a contractor has acted in a fraudulent manner or in bad faith in relation to any contract with the Government.

the Board may in a case referred in paragraph (a), or shall, in a case referred to in paragraph (b) or (c), direct that no tender from that person shall be considered for a period of at least five years.

Reference to International Trade Law


List of enterprises deemed procuring entities

34. For purpose of these regulations, public enterprises listed in the Second Schedule shall constitute procuring entities.

Offences

35. Any person who contravenes any provisions of these regulations shall be guilty of an offence
FIRST SCHEDULE (section 31)

GENERAL CONDITIONS OF CONTRACT

1. Definitions—

1.1 In this Contract, the following terms shall be interpreted as indicated:

(a) "The Contract" means the agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein;

(b) "The Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations;

(c) "The Goods" means things of every kind and description, including—

(i) raw materials, products and equipment; and
(ii) things in solid, liquid or gaseous form; and
(iii) electricity; and
(iv) immovable property; and
(v) services, incidental to the supply of goods, where the value of services does not exceed that of the goods themselves;

(d) "Services" means ancillary to the supply of the goods such as transportation and insurance;

(e) "The Purchaser" means the Organisation purchasing the goods;

(f) "The Supplier" means the Organisation supplying the goods under this Contract.

2. Application--

2.1 These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

3. Country of Origin—

3.1 For purposes of this clause "origin" means the place where the goods are mined, produced or manufactured.

3.2 The origin of goods and services is distinct from the nationality of the Supplier

4. Standards--

4.1 The goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

5. Patent Rights--
The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark or industrial design rights arising from use of the goods or any part thereof in the Purchaser's country.

6. Performance Security--

6.1 Within fourteen (14) days after the supplier's receipt of notification of award of the contract, the Supplier shall furnish performance security to the Purchaser in the amount specified in the Special Conditions of Contract and in the form specified in Section X.

6.2. The Performance Security shall be denominated in the currency of the Contract or in a freely convertible currency acceptable to the Purchaser, and shall be in the form of a bank guaranteed or irrevocable Letter of Credit, issued by a bank located in the Purchaser's country or abroad acceptable to the Purchaser, and in the form provided in the Bidding Documents or another form acceptable to the Purchaser.

6.3. The Performance Security will be discharged by the Purchaser and returned to the Supplier not later than ninety (90) days following the date of arrival of final instalment of goods at the discharge port/point.

7. Inspection and Tests--

7.1 The Purchaser or its representative shall, at its own expense, have the right to inspect and/or to test the goods to confirm their conformity to the Contract. The Special Conditions of Contract and/or the Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing of the identity of any representatives retained for these purposes within 21 days after award of Contract.

7.2 The Purchaser's right to inspect, test and, where necessary, reject the goods after the goods' arrival in the Purchaser's country shall in no way be limited or waived by reason of the goods having previously been inspected, tested and passed by the Purchaser or its representative prior to the goods' shipment from the country of origin.

8. Packing--

8.1 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract and, subject to Clause 15, in any subsequent instructions issued by the Purchaser.

9. Delivery and Transfer of Risk--

9.1 Delivery of the goods shall be made by the Supplier in accordance with the terms specified by the Purchaser in its Schedule of Requirements and the Special Conditions of Contract.
9.2 For purposes of the Contract, "FOB", "CFR", "CIF" and other trade terms used to describe the obligations of the parties have the meanings assigned to them by the current edition of the International Rules for the Interpretation of the Trade Terms (INCOTERMS) published by the International Chamber of Commerce (ICC), Paris.

10. Insurance--

10.1 The goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the Special Conditions of Contract.

10.2 Where delivery of the goods is required by the Purchaser on a CIF basis, the Supplier shall arrange and pay for marine insurance, naming the Purchaser as the beneficiary. Where delivery is on an FOB or CFR basis, marine insurance shall be the responsibility of the Purchaser.

11. Transportation--

11.1 Where the Supplier is required under the Contract to deliver the goods FOB, transport of the goods, up to and including the point of putting the goods on board the vessel at the specified port of loading, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

11.2 Where the Supplier is required under the Contract to deliver the goods CFR or CIF, or to a specified destination within the Purchaser's country, transport of the goods to the port or discharge or such other point in the country of destination as shall be specified in the Contract shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

11.3 Where the Supplier is required to effect delivery under any other terms, the Supplier shall be required to meet all transport and storage expenses until delivery.

11.4 In all of the above cases, transportation of the goods after delivery, shall be the responsibility of the Purchaser.

11.5 Where the Supplier is required under the Contract to deliver the goods CIF or CFR, no further restriction shall be placed on the choice of the ocean carrier. Where the Supplier is required under the Contract—

(i) to deliver the goods FOB, and

(ii) to arrange on behalf and at the expense of the Purchaser for ocean transportation on specified conference vessels or on national flag carriers of the Purchaser's country, the Supplier may arrange for such transportation on alternative carriers if
the specified conference vessels or national flag carriers are not available to transport the goods within the time period(s) specified in the Contract.

12. Warranty—

12.1 The Supplier warrants that all the goods supplied under the Contract shall fully comply with the specifications laid down in the Contract.

12.2 The warranty shall remain valid for ninety (90) days after the goods, or any portion thereof as the case may be, have been delivered to the final destination indicated in the Contract.

12.3 The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty.

12.4 Upon receipt of such notice, the Supplier shall, with all reasonable speed, replace the defective goods without costs to the Purchaser. The Supplier will be entitled to remove, at his own risk and cost, the defective goods.

12.5 If the Supplier, having been notified, fails to take remedial action within forty-five (45) days from date of receipt of notice, the Purchaser may proceed to take such action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

13. Payment—

13.1 The method and conditions of payment to be made to the Supplier under the Contract shall be specified in the Special Conditions of Contract.

13.2 Payment will be made in the currency or currencies in which the Contract price has been stated in the Supplier's bid.

14. Prices—

14.1 Prices charged by the Supplier for goods delivered under the Contract shall not vary from the prices quoted by the Supplier in its bid.

15. Change Orders—

15.1 Where the Purchaser desires to make changes in the Contract terms such as:

(a) schedule of deliveries;
(b) place of delivery;

(c) product/packing specifications;

(d) or pay other item;

he shall notify the Supplier in writing as soon as possible. The Supplier shall assert his claims for adjustment of price/time schedule within thirty (30) days of receipt of the above notice, and an equitable adjustment shall be made by agreement between the Purchaser and Supplier, and the Contract accordingly amended.

16. Contract Amendments--

16.1 Subject to Clause 15.1, no variation in or modification of the terms of the Contract shall be made, except by written amendment signed by the parties.

17. Assignment--

17.1 The Supplier shall not assign, in whole or in part, its obligations to perform under the Contract, except with the Purchaser's prior written consent.

18. Delays in the Supplier's Performance--

18.1 Delivery of the goods shall be made by the Supplier in accordance with the time schedule specified by the Purchaser in the Contract.

18.2 An unexcused delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to any or all of the following sanctions: forfeiture of its performance security, imposition of liquidated damages, and/or termination of the Contract for default.

18.3 If at any time during performance of the Contract, the Supplier should encounter conditions impeding timely delivery of the goods, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may, at its discretion, extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

19. Liquidated Damages

Subject to Clause 21, if the Supplier fails to deliver any or all of the goods within the time period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to 0.5% of the contract price of the delayed goods for each week of delay until actual
delivery, up to a maximum deduction of 10 per cent of the delayed goods Contract Price. Once the maximum is reached, the Purchaser may consider termination of the Contract.

20. Termination for Default

20.1 The Purchaser may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, terminate the Contract in whole or in part:

(a) if the Supplier fails to deliver any or all of the goods within the time period(s) specified in the Contract, or any extension thereof granted by the Purchaser pursuant to Clause 18; or

(b) if the Supplier fails to perform any other obligations(s) under the Contract.

20.2 In the event the Purchaser terminates the Contract in whole or in part to paragraph 20.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, goods similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar goods. However, the Supplier shall continue performance of the Contract to the extent not terminated.

21. Force Majeure--

21.1 For purposes of this Contract, Force Majeure means an event beyond the control of the parties to the Contract and not involving either party's fault or negligence and not foreseeable.

21.2 If, at any time during the existence of the Contract, either party is unable to perform in whole or part of any obligation under this Contract because of such events which include, but are not restricted to, acts of God, acts of Government in its sovereign capacity, war, revolutions, hostility, civil commotions, strikes, fires, floods, epidemics, quarantine restrictions, freight embargoes, explosions, then the date of fulfilment of Contract shall be postponed during the period when such circumstances are operative.

21.3 The party which is unable to perform its obligations under the present Contract shall, within fifteen (15) days of occurrence of the Force Majeure event, inform the other party with suitable documentary evidence. Non-availability of raw materials from regular sources shall not be an excuse for the Supplier for not performing its obligations under this clause.

21.4 Any waiver/extension of time in respect of the delivery/acceptance of any instalment or part of the goods shall not be deemed to be a waiver/extension of time in respect of the remaining deliveries.

21.5 If such inability to perform continues for a period of more than three (3) months, each party shall have the right to be released from further performance of the Contract, in which case, neither party shall have the
right to claim damages from the other. All prior performance shall be subject to Contract terms.

21.6 Notwithstanding the provisions of Clauses 18, 19, and 20, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages or termination if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of Force Majeure.

22. Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving written notice to the Supplier, without compensation to the Supplier, if the Supplier becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter the Purchaser.

23. Resolution of Disputes--

23.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

23.2 If, after thirty (3) days from the commencement of such informal negotiations, the Purchaser and the Supplier have been unable to resolve amicably a Contract dispute, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the Special Conditions of Contract.

24. Government Language—

The Contract shall be written in the language of the bid, as specified by the Purchaser in the Instructions to Bidders. Subject to Clause 25, that language version of the Contract shall govern its interpretation. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in that same language.

25. Applicable Law—

The Contract shall be interpreted in accordance with the laws of the Purchaser's country.

26. Notices—

Any notice given by one party to the other pursuant to the Contract shall be sent in writing or by telegram or telex/cable and confirmed in writing to the address specified for that purpose in the Special Conditions of Contract.

26.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

27. Taxes and Duties—
A foreign Supplier shall be entirely responsible for all taxes, stamp duties, licence fees, and other such levies imposed outside the Purchaser's country.

SPECIAL CONDITIONS OF CONTRACT

TABLE OF CLAUSES

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1. The following Special Conditions of Contract shall supplement the General Conditions of the Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. The corresponding clause number of the General Conditions is indicated in parentheses.

2. Definitions (Clause 1)—

2.1—

(a) The Purchaser is (Name of Purchaser)
(b) The Supplier (Name of Supplier)

3. Country of Origin (Clause 3)—

Any country from which the goods are mined, produced or manufactured.

4. Performance Security (Clause 5)—

4.1 The Performance Security will be as follows—

(i) where the Contract value is US$10 million (or equivalent) or less - 10 per cent. of the contract value;

(ii) where the Contract value exceeds US$10 million (or equivalent) US$1 million (or equivalent) or 5 per cent. of the Contract value, whichever is greater.
4.2 The validity of Performance Security shall be for ninety (90) days after the scheduled arrival of the final instalment of goods at the discharge port/point. The Supplier shall promptly extend the validity suitably to cover agreed extensions of the Contract and delivery schedule.

5. Inspection and Tests (Clause 6) --

5.1 The Supplier shall notify the Purchaser or his representative in writing or by telex, at least ten (10) days prior to availability of goods for inspection prior to each shipment.

5.2 Notwithstanding anything stated elsewhere, the Purchaser or his representative have the right to conduct the inspection and tests on the premises of the Supplier/Producer or elsewhere at any stage during production and thereafter prior to the transportation and placement of the goods on the vessel. The Supplier shall provide all reasonable facilities for the conduct of such inspection and tests at no additional costs to the Purchaser.

5.3 Inspection and analysis shall be made in any case before loading, and the goods shall not be shipped, unless a satisfactory inspection report is obtained by the Supplier from the Purchaser or his representative.

5.4 Should any inspected or tested goods fail to conform to the specifications specified in the Contract, the Purchaser or his representative may reject them, and this decision shall be binding on the Supplier, who will replace the goods to meet contractual specifications with no cost to the Purchaser.

5.5 Where the Supplier contests the validity of the rejection (of product or packing) by the Purchaser or his representative, a sample drawn jointly by the Supplier and Purchaser or his representative and authenticated by both, shall be forwarded for umpire analysis to an independent agency mutually agreed by the Purchaser and Supplier. The umpire's finding, which shall be promptly obtained, shall be final and binding on both parties. The cost of umpire analysis shall be borne by the losing party.

5.6 The following inspection procedures and tests are required by the Purchaser:

6. Delivery and Documents (Clause 8) --

6.1 Immediately on sailing of a vessel, the Supplier shall advise the Purchaser (and wherever necessary, the insurance Company) by telex or cable of the following details:
(i) Name of vessel;
(ii) Contract number;
(iii) Date and time of sailing from load port;
(iv) Quantity of goods on board;
(v) (Approximate) value of goods;
(vi) Bills of lading numbers;
(vii) Expected time of arrival at port of discharge.

6.2. The Supplier shall also dispatch to the Purchaser one set of the following documents by first class airmail or courier service and another set through the Master of the vessel—

(i) One negotiable copy of clean bill of lading showing consignee by name;
(ii) two copies of commercial invoice;
(iii) certificate of origin;
(iv) certificate of inspection by purchaser’s inspection agency prior to shipment.

6.3 For purposes of payment for the goods shipped, the Supplier shall present to the bank, at which the Letter of Credit has been established, the following documents:

(i) one negotiable copy of the clean bill of lading with ……..
   Non-negotiable copies (marked freight prepaid in CFR and CIF Contracts);
(ii) certified commercial invoice with ………… copies;
(iii) original copy of the Certificate of origin with …………..
   copies;
(iv) original copy of the Certificate of inspection furnished to Suppliers by Purchaser’s Inspection Agency with ………….. copies;
(v) original copy of the Certificate of weight issued by the port authority/licensed authority with ………….. copies;
(vi) Original copy of Manufacturer’s warranty of analysis with …………………………… copies;
(vii) Insurance Certificate (where applicable ……………………… CIF Contracts);
(viii) Stowage plan in ………………… copies;
(ix) Copy of telex/cable sent to Purchaser by Supplier on sailing of vessel;
One identical set of the above documents (as copies) shall be mailed by the Supplier to the Purchaser immediately after presentation to the above-mentioned bank for payment.

7. Insurance (Clause 9)

7.1 The marine insurance shall be in an amount equal to 110 percent of the CIF value of the goods from "warehouse to warehouse" on an "All Risks" basis, including War Risks and Strike clauses.

8. Payment (Clause 12)--

One hundred (100) per cent, of the Contract price of the goods delivered shall be paid through an irrevocable Letter of Credit established in favour of the Supplier in a bank of his choice on submission of the documents specified in Clause 6.3 above. The Letter of Credit shall be opened immediately after signing of the Contract, and shall be valid to cover the scheduled shipments and shall permit partial payments.

9. Resolution of Disputes (Clause 22)—

The dispute resolution mechanism to be applied pursuant to Clause 22 of the General Conditions shall be as follows—

(a) in the case of a dispute between the Purchaser and a supplier which is a national of the Purchaser's country, the dispute shall be referred to adjudication/arbitration in accordance with the laws of the Purchaser's country; and

(b) in the case of a dispute between the Purchaser and a foreign Supplier, the dispute shall be settled by arbitration in accordance with the provisions of the UNCITRAL Arbitration Rules.

10. Notices (Clause 25)—

For the purpose of all notice, the following shall be the address of the Purchaser and Supplier.

Purchaser (Mailing Address/Telex/Cable No.)

Supplier (To be filled in at the time of Contract signature.)

(Mailing Address/Telex/Cable No.)
SECOND SCHEDULE (SECTION 36)

LOCAL AUTHORITIES

1. City of Harare
2. City of Bulawayo
3. City of Gweru
4. City of Mutare
5. City of Kwekwe
6. Municipality of Masvingo
7. City of Kadoma
8. Municipality of Gwanda
9. Municipality of Victoria Falls
10. Municipality of Chitungwiza
11. Municipality of Marondera
12. Municipality of Kariba
13. Municipality of Chinhoyi
14. Municipality of Chegutu
15. Municipality of Redcliff
16. Municipality of Bindura
17. Shurugwi Town Council
18. Zvishavane Town Council
19. Karoi Town Council
20. Rusape Town Council
21. Hwange Local Board
22. Ruwa Local Board
23. Chiredzi Town Council
24. Plumtree Town Council
25. Norton Town Council
26. Chirundu Local Board
27. Epworth Local Board

RURAL DISTRICT COUNCILS

1. Beitbridge Rural District Council
2. Bikita Rural District Council
3. Bindura Rural District Council
4. Binga Rural District Council
5. Bubi Rural District Council
6. Buhera Rural District Council
7. Bulilimamangwe Rural District Council
8. Chaminuka Rural District Council
9. Chegutu Rural District Council
10. Chikomba Rural District Council
11. Chimanimani Rural District Council
12. Chipinge Rural District Council
13. Chirumanzu Rural District Council
14. Chiredzi Rural District Council
15. Chivi Rural District Council
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SECOND SCHEDULE (SECTION 34)

PUBLIC ENTERPRISES

1. Agribank
2. Agricultural & Rural Development Corporation (ARDA)
3. Air Zimbabwe
4. Broadcasting Authority of Zimbabwe
5. Caps Holdings (Pvt) Ltd
6. Central Mechanical Equipment Department
7. Cold Storage Company (CSC)
8. District Development Fund
9. Electoral Supervisory Commission
10. Export Processing Zone
11. Forestry Commission
12. Grain Marketing Board (GMB)
13. Industry and Trade Competition Commission
14. Medicines Control Authority of Zimbabwe
15. Minerals Marketing Corporation of Zimbabwe
17. National Archives of Zimbabwe
18. National Arts Council of Zimbabwe
19. National Blood Transfusion Service
20. National Gallery of Zimbabwe
21. National Investment Trust (NIT)
22. National Library and Documentation Service
23. National Museums and Monuments
24. National Oil Company of Zimbabwe (Noczim)
25. National Parks and Wildlife Management Authority
26. National Railways of Zimbabwe (NRZ)
27. National Social Security Authority (NSSA)
28. NATPHARM
29. Net*One
30. Peoples’ Own Savings Bank (POSB)
31. POTRAZ (Post and Telecommunication Regulation Authority of Zimbabwe)
32. Privatisation Agency of Zimbabwe
33. Research Council of Zimbabwe
34. Reserve Bank of Zimbabwe (RBZ)
35. Roasting Plant – Kwekwe
36. Rural Electrification Agency
37. SIRDC
38. Small Enterprises Development Corporation
39. Sports and Recreation Commission
40. State Hospitals
41. State Lotteries
42. State Procurement Board
43. State Roads Fund
44. State Universities and Colleges
45. Tel*One
47. The Pig Industry Board (PIB)
48. Tobacco Growers Trust
49. Tobacco Marketing Board (TMB)
50. Tobacco Research Board (TRB)
51. Urban Development Corporation (UNCORP)
52. Zimbabwe Broadcasting Corporation (ZBC)
53. Zimbabwe Defence Industry (ZDI)
54. Zimbabwe Development Corporation (ZDC)
    Zimglass
    Chemplex Corporation
    GW Industrial Minerals
    Motec Holdings
    Dyno Nobel

55. Industrial Development Corporation (IDC)
56. Zimbabwe Electricity Supply Authority (ZESA)
57. Zimbabwe Industrial Development Corporation
58. Zimbabwe Institute of Public Administration & Management
59. Zimbabwe Investment Centre (ZIC)
60. Zimbabwe Iron and Steel Company (ZISCO)
61. Zimbabwe Manpower Development Fund
62. Zimbabwe Mining Development Corporation
63. Zimbabwe National Planning Council
64. Zimbabwe National Water Authority (ZINWA)
65. Zimbabwe Revenue Authority
66. Zimbabwe Tourism Development Corporation
67. Zimbabwe United Passenger Company (ZUPCO)
68. Zimpost
69. Zimbabwe Schools Examination Council (ZIMSEC)
70. Zimtrade
IT is hereby notified that the Vice President, after consultation with the Minister of Finance and Economic Development, has, in terms of Section 33 of the Procurement Act [Chapter 22:14] (Act No. 2 of 1999), made the following regulations:-

1. These regulations may be cited as the Procurement (Amendment) Regulations, 2003 (No. 1)
2. The Procurement Regulations, 2002, published in Statutory Instrument 171 of 2002 (hereinafter called "the principal regulations"), are amended in Section 4-
   (a) in subsection (1) by the deletion of "$10 000 000" and the substitution of "$30 000 000",
   (b) in subsection (2) by the deletion of "$2 000 000" and "$10 000 000" and the substitution of "$6 000 000" and "$30 000 000" respectively.
3. Section 5 of the principal regulations is amended-
   (a) in subsection (1) by the deletion of "$2 000 000" and the substitution of "$6 000 000",
   (b) in subsection (2) by the deletion of "$10 000 000" and the substitution of "$30 000 000",
   (c) in subsection (4)-
      (i) in paragraph (a) by the deletion of "$2 000 000" and the substitution of "$10 000 000",
      (ii) in paragraph (b) by the deletion of "$2 000 000" and "$10 000 000" and the substitution of "$10 000 000" and "$30 000 000" respectively.
Procurement (Amendment) Regulations, 2003 (No. 2)

IT is hereby notified that the Vice President, after consultation with the Minister of Finance and Economic Development, has, in terms of Section 33 of the Procurement Act [Chapter 22:14] (Act No. 2 of 1999), made the following regulations:

4. These regulations may be cited as the Procurement (Amendment) Regulations, 2003 (No. 2).

5. The Procurement Regulations, 2002, published in Statutory Instrument 171 of 2002 (hereinafter called "the principal regulations"), are amended in Section 4-

   (a) in subsection (1) by the deletion of "$10 000 000" and the substitution of "$200 000 000",
   (b) in subsection (2) by the deletion of "$2 000 000" and "$10 000 000" and the substitution of "$40 000 000" and "$200 000 000" respectively.

6. Section 5 of the principal regulations is amended-

   (a) in subsection (1) by the deletion of "$2 000 000" and the substitution of "$40 000 000",
   (b) in subsection (2) by the deletion of "$10 000 000" and the substitution of "$200 000 000".