

CHAPTER 22:14
PROCUREMENT ACT

Act 2/1999, 22/2001 (s. 4).

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AN ACT to establish a State Procurement Board and to provide for its functions; to make provision for the procurement of goods, construction work and services by the State, statutory bodies and other persons; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement: 1st August, 2001.]

PART I

PRELIMINARY

1 Short title and date of commencement

This Act may be cited as the Procurement Act [*Chapter 22:14*].

2 Interpretation

(1) In this Act—

“building” includes any man-made structure whatsoever or any part thereof, whether above or below the ground;

“chairman”, in relation to the State Procurement Board, means the chairman of the Board appointed in terms of subsection (1) of section *six*;

“conduct” includes any act or omission;

“construction work” means all work associated with the construction, reconstruction, demolition, repair or renovation of any building or infrastructure, and includes—

(a) site preparation, excavation work, the installation of equipment or materials, decoration and finishing; and

(b) incidental services such as drilling, mapping, photography and environmental and seismic investigation, where—

(i) the services are provided pursuant to the procurement contract; and

(ii) the value of the services does not exceed that of the construction work itself;

“goods” means things of every kind and description, including— (a)

raw materials, products and equipment; and

(b) things in solid, liquid or gaseous form; and

(c) electricity; and

(d) immovable property; and

(e) services incidental to the supply of goods, where the value of the services does not exceed that of the goods themselves;

“member” means the chairman or any other member of the State Procurement Board;

“Minister” means the Vice-President or Minister to whom the President may, from time to time, assign the administration of this Act;

“procurement” means the acquisition by any means of goods, construction work or services;

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

“procurement regulations” means regulations made in terms of subsection (1) of section *thirty-three*;

“procuring entity” means—

(a) the State Procurement Board, to the extent that it conducts procurement proceedings on behalf of any person referred to in paragraph (b) or (c) of this definition; or

(b) any—

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

(ii) statutory body; that engages in procurement; or

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

“services” means any object of procurement other than goods or construction work;

“State Procurement Board” means the State Procurement Board established by section *four*;

“statutory body” means a body corporate established directly by or under any enactment for special purposes specified in that enactment, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister, any other statutory body or by a Commission established by the Constitution;

“supplier” means an actual or potential party to a procurement contract with a procuring entity;

“vice-chairman”, in relation to the State Procurement Board, means the person designated as vice-chairman in terms of subsection (1) of section *thirteen*.

(2) The Minister may, by statutory instrument, declare any local authority or other person to be a procuring entity for the purposes of this Act:

Provided that the Minister shall not make any such declaration in relation to—

(a) a local authority, except with the consent of the Minister responsible for local government; or

(b) a person, other than a body corporate wholly owned or controlled by the State, without that person’s consent.

3 Application of Act

(1) This Act shall apply to procurement by all procuring entities except— (a) such classes of procurement; or

(b) such procuring entities or classes of procuring entities; as may be specified by the President by statutory instrument.

(2) Nothing in subsection (1) shall be construed as preventing a person who engages in procurement to which this Act does not apply from requiring suppliers to conform with all or any of the provisions of this Act in the course of the procurement proceedings.

PART II

STATEPROCUREMENT BOARD

4 Establishment of State Procurement Board

There is hereby established a board to be known as the State Procurement Board, which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of doing all things that bodies corporate may do by law.

5 Functions of State Procurement Board

(1) Subject to this Act, the functions of the State Procurement Board shall be—

(a) to conduct procurement on behalf of procuring entities, where the procurement is of a class prescribed in procurement regulations; and

(b) to supervise procurement proceedings conducted by procuring entities, in order to ensure proper compliance with this Act; and

(c) to initiate investigations in terms of section *forty-six* and take action pursuant thereon in terms of section *forty-seven*; and

(d) to perform any other function that is conferred or imposed on the State Procurement Board by or in terms of this Act or any other law.

(2) Except as otherwise provided in this Act, the State Procurement Board shall not be subject to the direction or control of any person or authority in the exercise of its functions under this Act.

6 Composition of State Procurement Board

(1) The State Procurement Board shall consist of a chairman and not fewer than seven nor more than ten other members appointed, subject to this section and section *seven*, by the President.

(2) Members shall be chosen for their ability and experience in administration or their professional qualifications or their suitability otherwise for appointment:

Provided that at least one of the members shall be a person who has held a post or posts of a senior grade in the Public Service for periods which in the aggregate amount to at least three years, and at least three members shall be appointed from a list submitted by recognised chambers of business, industry, commerce and other professional bodies.

(3) Members shall be appointed after consultation with the Public Service Commission.

(4) The Minister shall ensure that the appointment of every member is notified in the *Gazette*.

7 Disqualifications for membership of State Procurement Board

(1) A person shall not be appointed as a member, and no person shall be qualified to hold office as a member, if—

- (a) he is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or
- (b) he has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
- (c) he has made an assignment to or arrangement or composition with his creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (d) he has been sentenced—
 - (i) in Zimbabwe, in respect of an offence; or
 - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;

to a term of imprisonment of not less than six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon; or (e) he has been convicted—

- (i) in Zimbabwe, of an offence under this Act or of an offence involving dishonesty; or
- (ii) outside Zimbabwe, in respect of any conduct which, if committed in Zimbabwe, would have constituted an offence involving dishonesty;

and sentenced to a fine of any amount or to a term of imprisonment of any duration, whether or not any part of the sentence has been suspended, and has not received a free pardon.

(2) A person who is—

- (a) a member of Parliament; or
- (b) a member of two or more other statutory bodies; shall not be appointed as a member of the State Procurement Board nor shall he be qualified to hold office as a member.

(3) For the purposes of paragraph (b) of subsection (2), a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

(4) Any person who, knowing that he is disqualified in terms of this section to hold office as a member—

- (a) attends any meeting of the State Procurement Board as a member; or
- (b) performs any other act as a member; shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

8 Terms of office and conditions of service of members

(1) A member shall hold office for such period, not exceeding three years, as the President may fix at the time of his appointment.

(2) On the expiry of the period for which a member has been appointed he shall continue to hold office until he has been re-appointed or his successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subsection for more than six months.

(3) A person who ceases to be a member shall be eligible for re-appointment.

(4) Members shall hold office on such conditions as the President may fix.

9 Limitation on right of chairman to engage in other occupations or business; disclosure of business interests and assets by other members

(1) During his term of office, the chairman shall not engage in any other occupation, service or employment for remuneration, unless the President has consented to his engaging in it:

Provided that the chairman shall be entitled to engage in an occupation, service or employment for which he is entitled only to payment by way of travelling and subsistence allowances and out-of-pocket expenses.

(2) Before any member, including the chairman, performs any function as a member, he shall disclose in writing to the President the full extent of—

(a) every occupation, service or employment which he or his spouse engages in for remuneration; and (b) all assets held by him or his spouse, in excess of such value as the President may specify.

(3) As soon as possible after he or his spouse—

- (a) commences any occupation, service or employment for remuneration; or
- (b) acquires any asset in excess of such value as the President may have specified in terms of paragraph (b) of subsection (2); a member shall disclose that fact in writing to the President.

10 Vacation of office by members

- (1) A member shall vacate his office and his office shall become vacant—
 - (a) one month after the date he gives notice in writing to the President, through the Minister, of his intention to resign his office or after the expiry of such other period of notice as he and the Minister may agree; or
 - (b) on the date he begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine—
 - (i) in Zimbabwe, in respect of an offence; or
 - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;

or

- (c) if he becomes disqualified in terms of section *seven* to hold office as a member; or (d) if he is required in terms of subsection (2) or (3) to vacate his office as a member.
- (2) The President may require a member to vacate his office if—
 - (a) the member has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or
 - (b) the member has failed to comply with any condition of his office fixed in terms of section *eight*; or
 - (c) the member is mentally or physically incapable of efficiently performing his duties as a member; or
 - (d) the member contravenes section *nine* or *seventeen*; or
 - (e) the member or his spouse engages in any occupation, service or employment, or holds any asset, which in the President's opinion is inconsistent with his duties as a member.

(3) The President, on the recommendation of the State Procurement Board, may require a member to vacate his office if the President is satisfied that the member has been absent without the consent of the chairman of the Board from three consecutive meetings of the Board, of which he has been given at least seven days' notice, and that there was no just cause for the member's absence.

11 Suspension of members

(1) The President may suspend from office a member against whom criminal proceedings are instituted for an offence involving dishonesty and, whilst that member is so suspended, he shall not carry out any duties or be entitled to any remuneration or allowances as a member.

(2) The President may suspend a member from office if the President has reasonable grounds to believe that the member's office has become vacant in terms of subsection (1) of section *ten* but the member has not relinquished his office.

12 Filling of vacancies on State Procurement Board

On the death of, or the vacation of office by, a member, the President may appoint a person to fill the vacancy:

Provided that, if the number of members is fewer than the minimum number of members specified in section *six*, the President shall appoint a person to fill the vacancy within three months after being notified of the vacancy.

13 Vice-chairman of State Procurement Board

(1) The President shall designate one of the members, other than the chairman, to be the vice-chairman of the State Procurement Board.

(2) The vice-chairman may at any time, by written notice to the President, resign his office as vice-chairman.

(3) Within three months after being notified of a vacancy in the office of vice-chairman, the President shall designate a member to fill the vacancy.

(4) The vice-chairman shall perform the functions of the chairman whenever the chairman is unable to perform them.

14 Meetings and procedure of State Procurement Board

(1) Subject to this Act, the State Procurement Board shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit.

(2) The chairman may himself at any time and shall, at the request in writing of not fewer than two members, convene a special meeting of the State Procurement Board, which meeting shall be convened for a date not sooner than seven days or later than thirty days after receipt of such request.

(3) The chairman or, in his absence, the vice-chairman shall preside at meetings of the State Procurement Board.

(4) A majority of members shall form a quorum at any meeting of the State Procurement Board.

(5) All acts, matters or things authorized or required to be done by the State Procurement Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(6) Subject to section *seventeen*, at all meetings of the State Procurement Board each member present shall have one vote on each question before the Board: Provided that—

- (i) in the event of an equality of votes, the chairman or person presiding shall have a casting vote in addition to his deliberative vote;
- (ii) no member shall take part in the consideration or discussion of, or vote on, any question before the Board which relates to his vacation of office as a member.

(7) Any proposal circulated among all members of the State Procurement Board and agreed to by a majority of them shall have the same effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that any such proposal be placed before the State Procurement Board, this subsection shall not apply to the proposal.

(8) With the approval of the Minister, the State Procurement Board may co-opt any person to the Board, but a co-opted person shall have no vote in any decision by the Board.

15 Principal officer and staff of State Procurement Board

(1) The State Procurement Board may employ, on such terms and conditions as it may fix with the approval of the Minister—

- (a) a principal officer; and
- (b) such other members of staff as may be necessary for the proper exercise of the Board's functions.

(2) Subject to any directions given to him by the State Procurement Board, the principal officer of the Board shall be responsible for controlling and supervising the Board's staff.

(3) The State Procurement Board may engage persons otherwise than as employees, to perform services of a specialised, technical or professional nature for the Board.

(4) Any remuneration, allowances, pensions and other benefits to which the persons referred to in subsection (1) or (2) are entitled shall be chargeable to the funds of the State Procurement Board.

(5) Notwithstanding subsection (1), if the State Procurement Board so requests and the Public Service Commission so permits, the Minister may assign members of the Public Service employed in his Ministry to perform all or any of the functions of the principal officer and members of staff referred to in that subsection.

16 Committees of State Procurement Board

(1) For the better exercise of its functions, the State Procurement Board may establish one or more committees in which, with the consent of the Minister, it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a committee shall not prevent the State Procurement Board from itself exercising that function, and the Board may amend or rescind any decision of the committee in the exercise of that function.

(2) On the establishment of a committee the State Procurement Board may appoint to the committee persons who are not members of the Board.

(3) The chairman of the State Procurement Board or of a committee may at any reasonable time and place convene a meeting of that committee.

(4) The procedure of each committee shall be as fixed from time to time by the State Procurement Board.

(5) Subject to this section, subsections (2) to (7) of section *fourteen* shall apply, *mutatis mutandis*, to committees and their members as they apply to the Board and its members.

17 Members of State Procurement Board and committees to disclose certain connections and interests

(1) In this section—

“relative”, in relation to a member of the State Procurement Board or a committee of the Board, means the member's spouse, child, parent, brother or sister.

(2) If a member of the State Procurement Board or of a committee of the Board, or a relative of such a member—

- (a) is a supplier who is participating or has participated in any procurement proceedings that are being considered by the State Procurement Board or by any committee of the Board, whether on appeal or otherwise; or
- (b) knowingly acquires or holds a direct or indirect pecuniary interest in a supplier that is participating or has participated in any procurement proceedings referred to in paragraph (a); or
- (c) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interests coming or appearing to come into conflict with his functions as a member; the member shall forthwith disclose the fact to the State Procurement Board or the committee, as the case may be.

(3) A member referred to in subsection (2) shall take no part in the consideration or discussion of, or vote on, any question before the State Procurement Board or the committee, as the case may be, which relates to any procurement proceedings, property, right or interest referred to in that subsection.

(4) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

18 Minutes of proceedings of State Procurement Board and of committees

(1) The State Procurement Board shall cause minutes of all proceedings of and decisions taken at any meeting of the Board or of a committee of the Board to be entered in books kept for the purpose.

(2) The State Procurement Board shall without delay send the Comptroller and Auditor-General a copy of all minutes referred to in subsection (1).

(3) Any minutes referred to in subsection (1) which purport to be signed, with the authority of the State Procurement Board or the committee concerned, as the case may be, by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting, shall be accepted for all purposes as *prima facie* proof of the proceedings of and decisions taken at that meeting.

19 Remuneration and allowances of members of State Procurement Board and of committees

(1) Members of the State Procurement Board and of committees of the Board shall be paid from the Board's funds—

- (a) such remuneration, if any, as the President may fix for members of the Board or members of committees, as the case may be, generally; and
- (b) such allowances, if any, as the President may fix to meet any reasonable expenses incurred by the member in connection with the business of the State Procurement Board or the committee, as the case may be.

(2) The remuneration payable to a member of the State Procurement Board shall not be reduced during his tenure of office.

20 Directions to State Procurement Board

(1) The President may give general written directions of policy to the State Procurement Board and the Board shall take all necessary steps to comply with them.

(2) If the State Procurement Board has failed to carry out any duty imposed upon it by or under this Act or any other law, the Minister may, in writing, direct the Board to take such action as he considers necessary to rectify the matter within such time as he may specify:

Provided that before doing so, the Minister shall give the Board an opportunity to make any representations it may wish to make in the matter.

(3) If the State Procurement Board fails to take action in accordance with a direction in terms of subsection (2) within the time specified by the Minister, the Minister may take appropriate action on behalf of the Board to rectify the matter.

(4) The State Procurement Board shall report to Parliament the nature and substance of every direction given to it, together with any comments the Board may wish to make thereon, either by means of a special report submitted in terms of section *twenty-one* or in its annual report submitted in terms of that section.

(5) The President or the Minister, as the case may be, shall ensure that the substance of any direction given to the State Procurement Board in terms of subsection (1) or (2) is published in the *Gazette* within thirty days after the direction was given.

21 Reports of State Procurement Board

(1) The State Procurement Board—

- (a) shall, as soon as possible after the 31st December in each year, submit to the Minister an annual report upon matters the Board has dealt with during the previous year; and
- (b) shall submit to the Minister a special report where the procurement cost exceeds one *per centum* of the current year's national budget;
- (c) may at any time submit to the Minister a special report on any matter upon which the Board considers it desirable to report;
- (d) shall submit to the Minister a monthly report specifying the instances in which tenders have been invited and those in which a procurement contract has been concluded.

(2) The Minister shall lay before Parliament on one of the fourteen days on which Parliament next sits after the report is received by him—

- (a) the annual report submitted to him in terms of paragraph (a) of subsection (1); and
- (b) any special report submitted to him in terms of paragraph (b) or (c) of subsection (1) which the State Procurement Board has requested be laid before Parliament.

22 Delegation of functions by State Procurement Board

(1) Without derogation from any other law, with the consent of the Minister the State Procurement Board may delegate any of its functions to— (a) any of its members; or

(b) any member of its staff referred to in section *fifteen*

(2) A delegation in terms of subsection (1)—

- (a) may be absolute or conditional and may be withdrawn or amended at any time; and
- (b) shall not prevent the State Procurement Board from itself exercising the function concerned or from amending or rescinding any decision of the delegate in the exercise of that function.

23 Validity of decisions and acts of State Procurement Board

No decision made or act done by or under the authority of the State Procurement Board shall be invalid solely because there were one or more vacancies on the Board when the decision was taken or the act was done or authorized, as the case may be.

PART III

FINANCIAL PROVISIONS

24 Funds of State Procurement Board

The funds of the State Procurement Board shall consist of—

- (a) moneys payable to the Board from moneys appropriated for the purpose by Act of Parliament; and (b) any other moneys that may vest in or accrue to Board, whether in terms of this Act or otherwise.

25 Investment of moneys not immediately required by State Procurement Board

Moneys not immediately required by the State Procurement Board may be invested in such manner as the Minister, acting on the advice of the Minister responsible for finance, may approve.

26 Financial year of State Procurement Board

The financial year of the State Procurement Board shall be the period of twelve months ending on the 31st December in each year.

27 Accounts of State Procurement Board

(1) The State Procurement Board shall ensure that proper accounts and other records relating to such accounts are kept in respect of all its activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) As soon as possible after the end of each financial year, the State Procurement Board shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as the Minister may direct.

28 Audit of State Procurement Board's accounts

(1) The accounts of the State Procurement Board shall be audited by the Comptroller and Auditor-General, who for the purpose shall have all the functions conferred on him by sections 8 and 9 of the Audit and Exchequer Act [*Chapter 22:03*] as though the assets of the Board were public moneys and the members, employees and agents of the Board were officers as defined in that Act.

(2) Any member, employee or agent of the State Procurement Board who—

- (a) fails or refuses to provide the Comptroller and Auditor-General with any explanation or information required by him for the purpose of an audit in terms of subsection (1); or
- (b) hinders or obstructs the Comptroller and Auditor-General in the conduct of an audit in terms of subsection (1); shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(3) Notwithstanding subsection (1), the Comptroller and Auditor-General may appoint a suitably qualified person to audit the accounts of the State Procurement Board and, if he does so□

- (a) subsections (1) and (2) shall apply in respect of the person so appointed as if he were the Comptroller and Auditor-General; and
- (b) any expenses incurred by the person so appointed in carrying out his audit shall be met from the funds of the State Procurement Board.

29 Internal auditor

Section 19 of the Audit and Exchequer Act [*Chapter 22:03*] shall apply, *mutatis mutandis*, to the appointment of an internal auditor to the State Procurement Board in all respects as if the Board were a department of the Ministry for which the Minister is responsible.

PART IV

PROCUREMENT PROCEEDINGS

30 Form of procurement proceedings

(1) Except as otherwise provided in this Act, the procurement of□

- (a) goods or construction work by a procuring entity shall be done by means of tendering proceedings in accordance with section *thirty-one*;
- (b) services by a procuring entity shall be done by a method which complies with section *thirty-two*.

(2) Where in accordance with this Act a procuring entity adopts a method of procurement other than one specified in subsection (1), the procuring entity shall include in the record of its proceedings a statement of the grounds and circumstances on which it relied to justify the adoption of that method.

31 Tendering proceedings

- (1) Subject to this Act, in any tendering proceedings conducted by a procuring entity—
 - (a) the invitation to suppliers to tender shall be published—
 - (i) in the *Gazette*, where the procuring entity is the State; and
 - (ii) in a newspaper circulating in the area in which the procuring entity has jurisdiction or carries on business, where the procuring entity is not the State; and
 - (iii) in a newspaper of wide international circulation or in a relevant trade or technical or professional journal of wide international circulation, where tenders are invited from suppliers who are not nationals or residents of Zimbabwe;
 - (b) the invitation to suppliers to tender shall contain the following information—
 - (i) the procuring entity's name and address; and
 - (ii) a comprehensive description of the goods to be supplied or, as the case may be, of the construction work to be effected; and
 - (iii) the time within which the goods are to be supplied or, as the case may be, the construction work is to be completed; and
 - (iv) the criteria by which, subject to section *thirty-four*, suppliers will be evaluated; and
 - (v) the manner in which solicitation documents may be obtained and their price; and
 - (vi) the deadline for the submission of tenders and the place where they are to be submitted; and
 - (vii) such other information as may be prescribed in procurement regulations;
 - (c) an invitation to prequalify shall be published in the manner prescribed in paragraph (a) and shall contain the information referred to in subparagraphs (i) to (iv) of paragraph (b), together with the following information—
 - (i) the manner in which prequalification documents may be obtained and their price; and
 - (ii) the deadline for the submission of prequalification documents and the place where they are to be submitted; and
 - (iii) such other information as may be prescribed in procurement regulations;
 - (d) the price charged for solicitation documents and any prequalification documents shall not exceed the cost of printing them and providing them to suppliers;
 - (e) solicitation documents shall contain comprehensive information as to—
 - (i) the nature, quantity and quality of the goods or construction work required; and
 - (ii) the manner and time in which tenders are to be prepared and submitted; and
 - (iii) the criteria and procedures by which the successful tender will be determined; and
 - (iv) the manner in which the tender price is to be formulated and expressed; and (v) any tender security required; and
 - (vi) the date, time and place for the opening of tenders and the procedure to be followed at such opening; and
 - (vii) any right on the part of the procuring entity to reject all tenders;
 - (viii) such other information as may be prescribed;
 - (f) any modification of a solicitation document shall be communicated without delay to all suppliers who have received the document;
 - (g) any extension of the deadline within which tenders must be submitted shall be communicated without delay to all suppliers who have received solicitation documents;
 - (h) tenders shall be submitted in writing and sealed in an envelope or other container so that they cannot be read before the time fixed for the opening of all tenders;
 - (i) before the time fixed for the opening of all tenders, the procuring entity shall take all necessary steps to ensure that the contents of any tender is not disclosed to any other supplier;
 - (j) any tender that is submitted after the deadline for their submission, or any extension of that deadline, shall not be opened and shall be returned to the supplier concerned;
 - (k) if suppliers are required to provide security as a condition of their submitting tenders, the requirement shall apply equally to all suppliers;
 - (l) all suppliers that have submitted tenders shall be permitted to witness the opening of the tenders and shall have the right to be informed of the price and other salient terms of each tender opened;
 - (m) the procuring entity shall accept whichever valid tender offers the lowest price, unless other criteria are specified in the solicitation documents, in which event those criteria shall be followed;
 - (n) no negotiations shall take place between the procuring entity and a supplier with respect to a tender submitted by the supplier;
 - (o) if any formalities need to be complied with before a procurement contract is concluded, the successful tenderer shall be given due notice of those formalities.

(2) Subject to subsection (1), a procuring entity shall conduct its tendering proceedings in accordance with procurement regulations or, in regard to any matter that is not prescribed in such regulations or this Act, in accordance with such procedure as the procuring entity may fix:

Provided that any procedure so fixed shall be such as to ensure that all suppliers are treated fairly and impartially and shall be communicated without delay to all suppliers concerned.

32 Procedure for procurement of services

(1) Subject to this Act, in any proceedings for the procurement of a service by a procuring entity—

- (a) a notice requesting suppliers to submit proposals for the provision of the service shall be published—
 - (i) in the *Gazette*, where the procuring entity is the State; and
 - (ii) in a newspaper circulating in the area in which the procuring entity has jurisdiction or carries on business, where the procuring entity is not the State; and
 - (iii) in a newspaper of wide international circulation or in a relevant trade or technical or professional journal of wide international circulation, where proposals are invited from suppliers who are not nationals or residents of Zimbabwe;
- (b) the notice referred to in paragraph (a) shall contain at least the following information—
 - (i) the procuring entity's name and address; and
 - (ii) a brief description of the service to be procured; and
 - (iii) how to obtain documents giving details of the service to be procured and the manner in which the successful supplier is to be selected;
- (c) the documents referred to in subparagraph (iii) of paragraph (b) shall contain the following information—
 - (i) a comprehensive description of the service to be supplied and, where applicable, the time when it is to be provided; and
 - (ii) the criteria and procedures by which, subject to section *thirty-four*, the qualifications of suppliers will be evaluated; and
 - (iii) the information or evidence, if any, which suppliers must provide to prove their qualifications; and
 - (iv) the deadline for the submission of proposals and the place where they are to be submitted; and
 - (v) the criteria and procedures by which the successful proposal will be ascertained; and
 - (vi) any right on the part of the procuring entity to reject all proposals received; and
 - (vii) the terms and conditions of the procurement contract, to the extent that they are known to the procuring entity; and
 - (viii) such other information as may be prescribed in procurement regulations;
- (d) an invitation to prequalify shall be published in the manner prescribed in paragraph (a) and shall contain the information referred to in subparagraphs (i), (ii), (iii), (v) and (vi) of paragraph (c), together with the following information—
 - (i) the manner in which prequalification documents may be obtained and their price; and
 - (ii) the deadline for the submission of prequalification documents and the place where they are to be submitted; and
 - (iii) such other information as may be prescribed in procurement regulations;
- (e) the price charged for the documents referred to in paragraphs (c) and (d) shall not exceed the cost of printing them and providing them to suppliers;
- (f) any extension of the deadline within which proposals must be submitted shall be communicated without delay to all suppliers who have received the documents referred to in subparagraph (iii) of paragraph (b);
- (g) any proposal that is submitted after the deadline for their submission, or any extension of that deadline, shall not be considered and shall be returned to the supplier concerned;
- (h) if suppliers are required to provide security as a condition of their submitting proposals, the requirement shall apply equally to all suppliers;
- (i) the procuring entity shall treat all proposals submitted in such a manner as to avoid the disclosure of their contents to competing suppliers;
- (j) the procuring entity shall evaluate all proposals that have been validly submitted in accordance with the procedures and criteria specified in the documents referred to in subparagraph (iii) of paragraph (b);
- (k) if any formalities need to be complied with before a procurement contract is concluded, the successful supplier shall be given due notice of those formalities.

(2) Subject to subsection (1), a procuring entity shall conduct all proceedings for the procurement of a service in accordance with procurement regulations or, in regard to any matter that is not prescribed in such regulations or this Act, in accordance with such procedure as the procuring entity may fix:

Provided that any procedure so fixed shall be such as to ensure that all suppliers are treated fairly and impartially and shall be communicated without delay to all suppliers concerned.

33 Procurement regulations

(1) Subject to this Act, the Minister, after consultation with the Minister responsible for finance and the State Procurement Board, may make regulations providing for all matters relating to procurement by procuring entities.

(2) Procurement regulations may provide for—

- (a) methods of procurement that may be adopted by procuring entities instead of or in addition to the methods specified in section *thirty*;
- (b) classes of procurement in which any of the provisions of sections *thirty-one* and *thirty-two* may be dispensed with or applied subject to modification;
- (c) subject to sections *thirty-four* and *forty*, the qualifications that suppliers must possess in order to participate in procurement proceedings;
- (d) the procedure to be adopted by procuring entities and suppliers, and the manner in which they shall conduct themselves, in procurement proceedings;
- (e) information to be provided to suppliers in procurement proceedings;
- (f) alterations that suppliers may be permitted to make to their tenders, bids or proposals or to any documents submitted by them in any procurement proceedings;
- (g) the evaluation, comparison and acceptance of tenders, bids or proposals made by suppliers;
- (h) measures to ensure that tenders, bids or proposals submitted by suppliers are not disclosed to other suppliers;
- (i) circumstances in which suppliers may be debarred from participating in, or continuing to participate in, any procurement proceedings;
- (j) fees, deposits and charges payable by suppliers and other persons in respect of procurement proceedings and anything done by the State Procurement Board in terms of this Act;
- (k) the monitoring and supervision by the State Procurement Board of the performance of parties to procurement contracts;
- (l) circumstances in which the provisions of the regulations may be departed from or waived.

(3) Procurement regulations may prescribe requirements by reference to the UNCITRAL Model Law on Procurement of Goods, Construction and Services adopted by the United Nations Commission on International Trade Law at its twenty-sixth session in 1993.

(4) Procurement regulations shall not have effect until they have been published in the *Gazette*.

34 Eligibility of suppliers

(1) Subject to this section, a procuring entity may require suppliers, before they participate in procurement proceedings, to satisfy the procuring entity as to all or any of the following matters—

- (a) that they possess the necessary professional and technical qualifications and competence, financial resources, equipment, facilities, personnel and experience to perform the procurement contract;
- (b) that they have the legal capacity to enter into the procurement contract;
- (c) that they are not insolvent, in liquidation or under judicial management under the law of any country, and that proceedings have not been instituted in any country for their sequestration or winding up or for placing them under judicial management;
- (d) that they have paid all taxes, duties and rates for which they are liable in Zimbabwe, together with any contributions or payments due under the National Social Security Authority Act [*Chapter 17:04*];
- (e) that they are not ineligible to participate in procurement proceedings in terms of section *forty-one*;
- (f) that neither they nor, in the case of a body corporate, any of their directors or officers have in the preceding ten years—
 - (i) been convicted in any country of an offence by whatever name called relating to—
 - A. the conduct of their profession or business; or
 - B. the making of a false statement as to their qualifications to enter into a procurement contract;

or

- (ii) been disqualified in any country from taking part in procurement proceedings as a result of any conduct referred to in subparagraph A or B of subparagraph (i).

(2) Subject to this section, a procuring entity may restrict participation in procurement proceedings to persons who are citizens of or ordinarily resident in Zimbabwe:

Provided that a procuring entity shall not impose any such restriction except to the extent that it is authorised to do so by procurement regulations.

(3) Any requirement in terms of subsection (1) or (2) shall—

- (a) apply equally to all suppliers for the procurement contract concerned; and
- (b) be set out in any documents by which tenders, bids or proposals in relation to the procurement contract are sought.

(4) A procuring entity shall impose no criterion or requirement with respect to the qualifications of suppliers other than those provided for in this section, and shall not impose different criteria or requirements for different suppliers.

(5) A procuring entity shall evaluate the qualifications of suppliers according to the criteria or requirements set out in the documents by which tenders, bids or proposals in relation to the procurement contract are sought, and according to no other criteria.

(6) This section shall not be construed as affecting any right a procuring entity may have under procurement regulations to debar a supplier from participating in procurement proceedings on account of any act or omission on the supplier's part in connection with those proceedings.

35 Record of procurement proceedings

(1) A procuring entity shall keep a record of its procurement proceedings, which record shall contain—

(a) a brief description of the goods, construction work or services sought to be procured; and (b) the names and addresses of—

(i) suppliers that participated in prequalification proceedings; and

(ii) suppliers that submitted tenders, bids or proposals in relation to the procurement contract; and information relating to the qualifications, or lack of qualifications, of those suppliers; and

(c) the price, or the basis for determining the price, and a summary of the other principal terms and conditions of each tender, bid or proposal that was submitted in relation to the procurement contract; and

(d) the name and address of the supplier with whom the procurement contract was entered into, and the contract price; and

(e) a summary of the procuring entity's evaluation and comparison of the tenders, bids or proposals that were submitted in relation to the procurement contract; and

(f) such other information and particulars as may be prescribed in procurement regulations.

(2) Except as may otherwise be provided in procurement regulations, a procuring entity shall, on request, disclose—

(a) to any person, that part of the record of its procurement proceedings that contains the information referred to in paragraphs (a) and (b) of subsection (1); and

(b) to any supplier who submitted a tender, bid or proposal in the procurement proceedings concerned, that part of the record of the proceedings that contains the information referred to in paragraphs (c) to (f) of subsection (1).

36 Public access to regulations, etc.

(1) A procuring entity shall ensure that, whenever it engages in procurement—

(a) a copy of any procurement regulations which apply to the procurement proceedings; and

(b) where the regulations referred to in paragraph (a) refer to the UNCITRAL Model Law specified in subsection (3) of section *thirty-three*, a copy of that Model Law; and

(c) a copy of any direction issued in terms of section *forty-two* and applicable to the procurement proceedings concerned; and

(d) copies of any other documents regulating the procedure in the procurement proceedings or the qualifications of suppliers therein; are available for public inspection at all reasonable times during business hours at the offices of the procuring entity.

(2) A procuring entity shall either—

(a) provide any interested party, for a reasonable charge, with a copy of any document referred to in subsection (1); or

(b) permit any interested party, at his own expense, to make a copy of any document referred to in subsection (1).

37 Suppliers to permit access to their books and accounts

(1) It shall be a condition of every procurement contract concluded with the State or any statutory body after the date of commencement of this Act that—

(a) the supplier shall permit the State Procurement Board, or any person authorised in writing by the Board, at all reasonable times to inspect the supplier's books and accounts relating to the contract; and

(b) if the State Procurement Board so directs, the supplier shall permit the Comptroller and Auditor-General, or a person who is registered as a public auditor under the Public Accountants and Auditors Act [*Chapter 27:12*] and nominated by the Comptroller and Auditor-General, to audit the supplier's accounts relating to the contract.

(2) The cost of any audit referred to in paragraph (b) of subsection (1) shall be met from the funds of the State Procurement Board.

38 Non-liability of procuring entity where all tenders are rejected

Where a procuring entity, before accepting any tender, bid or proposal, rejects all the tenders, bids or proposals that were submitted in any procurement proceedings, the procuring entity shall incur no liability towards the suppliers that submitted those tenders, bids or proposals.

39 Effect of bribery, fraud or collusion by supplier

- (1) If a procuring entity is satisfied that a supplier, or any employee or agent of a supplier—
 - (a) in contravention of section 3 of the Prevention of Corruption Act [*Chapter 9:16*], has given, agreed to give or offered any consideration to an employee or agent of the procuring entity in connection with any procurement proceedings; or
 - (b) has knowingly misrepresented any material fact in a tender, bid or proposal submitted in any procurement proceedings; or
 - (c) has entered or attempted to enter into a collusive agreement or arrangement, whether enforceable or not, with any other supplier whereby the prices quoted in their respective tenders, bids or proposals are or would be, as the case may be, higher than would have been the case had there been no collusion between the suppliers concerned; the procuring entity shall reject any tender, bid or proposal the supplier may have submitted in connection with those proceedings.
- (2) If, after a procurement contract has been concluded with a supplier, it is proved that the supplier, or an employee or agent of the supplier—
 - (a) in contravention of section 3 of the Prevention of Corruption Act [*Chapter 9:16*], gave, agreed to give or offered any consideration to an employee or agent of the procuring entity in connection with the preceding procurement proceedings; or
 - (b) knowingly misrepresented a material fact in a tender, bid or proposal submitted in the preceding procurement proceedings; or
 - (c) entered or attempted to enter into a collusive agreement or arrangement, whether enforceable or not, with any other supplier whereby the prices quoted in their respective tenders, bids or proposals were or would have been, as the case may be, higher than would have been the case had there been no collusion between the suppliers concerned; the procurement contract shall be void as between the procuring entity and the supplier.

40 Effect of failure to disclose interest by member of State Procurement Board or committee thereof

Without derogation from subsection (4) of section *seventeen*, if the State Procurement Board or a committee of the Board is conducting procurement proceedings on behalf of a procuring entity and a member of the Board or the committee, as the case may be, contravenes subsection (2) or (3) of that section by—

- (a) failing to disclose any relationship or interest he or a relative of his may have in a supplier in those proceedings; or
- (b) taking part in the consideration or discussion of, or voting on, any question before the Board in proceedings such as are referred to in paragraph (a); any procurement contract concluded between the procuring entity and the supplier concerned shall be void.

41 State Procurement Board may declare supplier ineligible to be awarded State contract

- (1) Subject to this section, if the State Procurement Board is satisfied that—
 - (a) any supplier has been convicted of contravening section *forty-eight* or any provision of the Prevention of Corruption Act [*Chapter 9:16*] in respect of procurement proceedings in which the State or a statutory body was the procuring entity; or
 - (b) any procurement contract between a supplier and the State or a statutory body has been cancelled or otherwise terminated on account of fraud on the part of the supplier;

the State Procurement Board may declare the supplier to be ineligible to participate in procurement proceedings with the State or any statutory body for such period as the Board may specify, which period shall not exceed three years.

(2) Before making a declaration in terms of subsection (1), the State Procurement Board shall notify the supplier concerned that it is contemplating making the declaration and shall ensure that the supplier is given an adequate opportunity to make representations in the matter.

(3) The State Procurement Board shall ensure that all Ministries and departments of the State, all statutory bodies and the supplier concerned are notified without delay of the terms of any declaration the Board has made in terms of subsection (1).

(4) The State Procurement Board, on good cause shown, may at any time amend or revoke a declaration made in terms of subsection (1).

(5) During the period that a declaration in terms of subsection (1) is in effect, no tender, bid or proposal submitted by the supplier concerned in any procurement proceedings conducted by the State or any statutory body shall be considered, and any procurement contract concluded between the supplier and the State or a statutory body shall be void.

42 Directions to procuring entities by State Procurement Board

(1) Subject to this Act, the State Procurement Board may issue written directions to any procuring entity providing, in relation to any particular procurement proceedings or class thereof, for any of the matters for which procurement regulations may be made.

(2) In the event of any inconsistency between a direction issued in terms of subsection (1) and any provision of procurement regulations, the regulations shall prevail.

(3) A procuring entity shall take all necessary steps to comply with a direction issued to it in terms of subsection (1) and shall inform all suppliers in the procurement proceedings concerned of the terms of the direction.

PART V

APPEALS

43 Appeal to Administrative Court

(1) Subject to this section, any person who is aggrieved by a decision of the State Procurement Board or any procuring entity—

(a) in any procurement proceedings; or

(b) in terms of section *forty-one*; may appeal against that decision to the Administrative Court.

(2) An appeal in terms of subsection (1) shall be noted by lodging a written notice of appeal with the Registrar of the Administrative Court and the principal officer of the State Procurement Board within twenty days from the date on which the appellant was notified of the decision that is the subject of the appeal.

(3) In an appeal in terms of subsection (1), the Administrative Court may confirm, vary or set aside the decision appealed against or give such other decision as in its opinion the State Procurement Board ought to have given, and may make such order as to costs as it thinks fit.

(4) The Administrative Court Act [*Chapter 7:01*] shall apply in relation to the composition, procedure and powers of the Administrative Court in an appeal in terms of subsection (1).

44 Suspension of procurement proceedings pending appeal

(1) Subject to this section, where an appeal has been noted in terms of section *forty-three*—

(a) the procurement proceedings concerned shall be suspended for a period of seven days from the date on which the appeal was noted; and

(b) the operation of the procurement contract concerned shall be suspended for a period of seven days from the date on which the appeal was noted, where the contract entered into force before or during that period.

(2) The noting of an appeal in terms of section *forty-three* shall not have the effect referred to in subsection (1) if—

(a) the Administrative Court considers that the appeal is frivolous or vexatious or is noted solely to delay the procurement proceedings or the operation of the procurement contract concerned, and directs that the noting of the appeal shall not suspend the proceedings or the operation of the contract, as the case may be; or

(b) the procuring entity concerned certifies in writing that urgent public interest considerations require the procurement to proceed.

(3) A certificate in terms of paragraph (b) of subsection (2) shall be included in the record of the procurement proceedings concerned kept in terms of section *thirty-five*.

(4) The period during which procurement proceedings or the operation of a procurement contract are suspended in terms of subsection (1) may be extended by a president of the Administrative Court.

PART VI

GENERAL

45 State Procurement Board may require information

Every procuring entity shall provide the State Procurement Board with such information as the Board may in writing require regarding procurement engaged in by the procuring entity.

46 Investigations by State Procurement Board

(1) In this section—

“investigator” means a person appointed in terms of subsection (2) to conduct an investigation under this section.

(2) If the State Procurement Board considers that such an investigation is necessary or desirable for the purpose of preventing, investigating or detecting a contravention of this Act or any other law, the Board may appoint a person to conduct an investigation into any matter related to the conduct of any procurement proceedings by a procuring entity or the conclusion or operation of any procurement contract.

(3) For the purpose of an investigation in terms of subsection (2), an investigator shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to an investigation in terms of subsection (2) and to any person summoned to give or giving evidence at that investigation.

(4) In addition to the powers referred to in subsection (3), an investigator may, for the purposes of an investigation in terms of subsection (2)—

- (a) at any time during normal office hours, without previous notice, enter any premises of the procuring entity concerned or of any supplier in the procurement proceedings concerned;
- (b) require any officer, employee or agent of the procuring entity or supplier referred to in paragraph (a) to produce any books, records, accounts or documents;
- (c) search any premises referred to in paragraph (a) for any books, records, accounts or documents;
- (d) examine and make extracts from and copies of any books, records, accounts or documents of the procuring entity or supplier referred to in paragraph (a);
- (e) remove any books, records, accounts or documents of the procuring entity or supplier referred to in paragraph (a), for so long as may be necessary for the purpose of examining them or making extracts from or copies of them:

Provided that the investigator shall give a full receipt for any such books, records, accounts or document so removed;

- (f) require any officer, employee or agent of the procuring entity or supplier referred to in paragraph (a)—
 - (i) to explain any entry in any books, records, accounts or documents;
 - (ii) to provide the investigator with such information concerning the management or activities of the procuring entity or supplier as the supervisor may reasonably require.

(5) The powers of entry and search conferred by subsection (4) shall not be exercised except with the consent of the procuring entity or supplier concerned or of the person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise those powers for the prevention, investigation or detection of an offence or for the obtaining of evidence relating to an offence.

(6) Any person who, without just cause, hinders or obstructs an investigator in the exercise of his functions under this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

47 Procedure on completion of investigation

(1) On completion of an investigation in terms of section *forty-six* an investigator shall— (a) forward a copy of his report thereon to the State Procurement Board; and

(b) send a summary of his findings and recommendations to the procuring entity and to any supplier whose conduct was the subject of the investigation.

(2) If, after considering an investigator's report sent to it in terms of subsection (6), the State Procurement Board is satisfied that there has been a contravention of this Act or any other law in relation to any procurement proceedings or procurement contract, the State Procurement Board may take such action as in its opinion is necessary to rectify the contravention, including— (a) annulment of the procurement proceedings;

(b) cancellation of the procurement contract;

(c) condonation of the contravention;

(d) ratification of anything done in relation to the proceedings;

(e) a declaration in terms of section *forty-one*; and, notwithstanding any other law, the proceedings or contract concerned shall be annulled, cancelled or have effect, as the case may be, accordingly.

(3) Before taking any action in terms of subsection (2) which may adversely affect the rights or property of any person, the State Procurement Board shall afford that person an adequate opportunity to make representations in the matter.

48 Offences relating to procurement

If any supplier, or any person acting or purporting to act on behalf of a supplier—

(a) knowingly misrepresents any material fact in a tender, bid or proposal submitted in any procurement proceedings; or

(b) enters or attempts to enter into a collusive agreement or arrangement, whether enforceable or not, with any other supplier whereby the prices quoted in their respective tenders, bids or proposals are or would be, as the case may be, higher than would have been the case had there been no collusion between the suppliers concerned; he shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

49 Application of Act to BOOT or BOT contracts

(1) In this section □

“BOOT or BOT contract” means a contract or other arrangement under which a person undertakes to construct an item of infrastructure for the State, a local authority or a statutory body in consideration for the right to operate or control it for a specified period, after which period he will transfer or restore ownership or control to the State, the local authority or the statutory body concerned.

(2) The Act shall apply, *mutatis mutandis*, in respect of BOOT or BOT contracts as if they were procurement contracts, and for that purpose□

- (a) every person who enters or offers to enter into such a contract with the State or a local authority or statutory body shall be deemed to be a supplier; and
- (b) the State or a local authority or statutory body shall be deemed to be a procuring entity in regard to any such contract which it enters into or seeks to enter into.

50 Savings

(1) In this section—

“former board” means the Government tender board constituted pursuant to instructions issued by the Treasury under section 18 of the Audit and Exchequer Act [*Chapter 22:03*].

(2) Anything made, done or commenced by the former board which, immediately before the date of commencement of this Act, had or was capable of acquiring legal effect shall continue to have or to be capable of acquiring, as the case may be, the same effect as if it had been made, done or commenced, as the case may be, by the State Procurement Board in terms of this Act.