

**Statutory instrument 171 of 2002**

**Procurement Regulations, 2002**

*SIs 171/2002, 22/2004, 56/2006, 190/2006, 255/2006, 75/2007, 135/2007, 173/207, 205/2007, 24/2008, 70A/2008, 93/2008, 119B/2008, 161/2008*

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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

#### *1. Title*

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

#### *2. Interpretation*

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 the Act to be a procuring entity;

on whose behalf the State Procurement Board conducts procurement proceedings;

“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.

#### *3. Exercise of powers and duties by procuring entities in terms of these regulations*

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—

- (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

#### *4. Supplies required to be tendered for by State Procurement Board*

(1) Subject to section 5, where a procuring entity requires the supply of goods, construction works or services the value of which exceeds the higher of \$500 000 000 000,00 (five hundred trillion), or US\$50 000 or equivalent the State Procurement Board shall invite tenders for such supply in accordance with the procedure for—

- (a) formal tenders set out in section 8; or
- (b) approved list tenders set out in section 25.

[Subsection amended by s.i. 161 of 2008.]

(2) Subject to section 5, where a procuring entity requires the supply of goods, construction works or services the value of which—

- (a) exceeds the higher of the following figures—
  - (i) \$100 000 000 000 000,00 (one hundred trillion dollars); or
  - (ii) US\$10 000,00 or equivalent; but
- (b) does not exceed the higher of the following figures—
  - (i) \$500 000 000 000 000 000,00 (five hundred trillion dollars); or (ii) US\$50 000,00 or equivalent.

[Subsection substituted by s.i. 161 of 2008.]

#### **5. Supplies not required to be tendered for by State Procurement Board**

(1) Where a procuring entity requires the supply of goods, construction works or services the value of which equals or is less than the higher of the following figures— (i) \$100 000 000 000 000,00 (one hundred trillion dollars); or

(ii) US\$10 000 or equivalent; 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 suppliers.

[Subsection amended by s.i. 161 of 2008.]

(2) The purchase of second-hand goods by private treaty or at public auction sales may be authorised by the accounting officer of the procuring entity concerned where the estimated value of the goods does not exceed the higher of the following figures—

- (i) \$500 000 000 000 000,00 (five hundred trillion dollars); or (ii) US\$50 000,00.

[Subsection amended by s.i. 161 of 2008.]

(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.

(4) Before purchasing any supply in terms of subsection (3), a procuring entity shall obtain the approval of—

- (a) State Procurement Board, where the estimated value of the supply exceeds the higher of the following figures—
  - (i) \$500 000 000 000 000,00 (five hundred trillion dollars); or
  - (ii) US\$50 000,00 or equivalent;

[Subsection amended by s.i. 161 of 2008.]

(b) the chairman of the State Procurement Board in consultation with at least three members of the Board where the estimated value of the supply exceeds the higher of the following figures—

- (i) \$100 000 000 000 000,00 (one hundred trillion dollars); or
- (ii) US\$10 000,00 or equivalent; but does not exceed the higher of the following figures—
  - (i) \$500 000 000 000 000 000,00 (five hundred trillion dollars); or
  - (ii) US\$50 000,00 or equivalent; respectively; and, in any case of a purchase referred to in subsection (4), the procuring entity concerned shall clearly and fully state in writing to the Board or the Chairman, as the case may be, the reasons why it would not be in the public interest to call for tenders for the supply in question.

[Subsection amended by s.i. 161 of 2008.]

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

(6) Issues attended to by the Chairman shall be brought to the attention of the Board at the next Board meeting.

#### **6. Informal tender procedure**

(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.

(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.

#### **7. Special-formal tender procedure**

(1) Special-formal tenders may, subject to prior approval by the Board or, in the case referred to in paragraph (a) of subsection (2), the Chairman, be invited by a procuring entity or by the Principal Officer in accordance with such instructions as may be issued by the Board from time to time.

(2) Special-formal 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 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.

#### ***8. Formal tender procedure***

(1) In the case of supplies or services subject to formal tender, the Principal Officer shall call for tenders, stating the place and the latest day and time up to which tenders will be received.

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

(3) To enable the Principal Officer to prepare the tender advertisement, the procuring entity shall supply 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.

#### ***9. Closing date for tenders***

(1) Tenders shall, unless otherwise approved by the Board, be made returnable not more than 30 days (including public holidays) after the date of publication of the advertisement:

Provided that in cases of emergency, a shorter period may be authorised by the Chairman.

(2) The closing date advertised in the original notice inviting tenders may be extended whenever it is so desirable but the Board shall be furnished in writing with full reasons for the desired extension.

(3) Any extension of any period by the Chairman or the Board 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.

#### ***10. Costs of advertising tenders***

Procuring entities shall be responsible for the costs of advertising tenders.

#### ***11. Information to be included in tender documents***

(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 to specification shall be accepted;
- (b) unless special circumstances require a longer or shorter period to be fixed, offers must hold good for 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;
- (d) tenderers shall be at liberty to tender for one or more items;
- (e) the country of origin and/or manufacture must be stated;
- (f) tenderers must be registered with the Zimbabwe Revenue Authority; (g) that tenderers should quote unit prices 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;
- (i) the broad evaluation criteria;
- (j) requirements for a bid bond or bid security or guarantee;
- (k) whether or not bidders conference is required;
- (l) certified financial statements;
- (m) all entries to be typed or written in ink.

(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**

### ***12. Opening of received tenders***

- (1) Tenders received shall be opened by the Principal Officer in the presence of the Chairman or such other person delegated by the Chairman 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.

### ***13. Tenders received either open or without tender number***

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**

### ***14. Procurement committees***

- (1) There shall be a procurement committee 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.
- (3) The accounting officer shall advise the Board of the composition of the procurement committee and furnish the Board with their specimen signatures.

### ***15. Tenders to be forwarded to head of procuring entity***

- (1) All tenders after being opened and listed shall be forwarded to the head of the procuring entity by the Board.
- (2) The head of procuring entity shall return the documents to the Principal Officer with such recommendations as he desires to make for the consideration and decision of the Board within 15 working days from the date of receiving such documents.

### ***16. Documents to be attached to the tenders by the head of procuring entity***

The head of procuring entity shall attach to the tender documents the following— (a) a comparative schedule, in triplicate, of the tenders received, showing prices; (b) a summary, in triplicate, of recommendations, showing items, quantities and suppliers' prices; (c) a statement as to the sufficiency of any security and guarantees required; and (d) a note on any points in respect of which the conditions of tender have not been complied with.

### ***17. Rejection of tenders***

When rejecting tenders full reasons for rejecting the tender shall be furnished to the Board.

### ***18. Reasons for accepting specific tenders***

The reasons for recommending acceptance of a specific tender shall be stated.

### ***19. Evaluating tenders***

- (1) In evaluating tenders, the procuring entity shall assess the tenderer's capability to perform the contract satisfactorily.
- (2) When a procuring entity evaluates tenderers in terms of subsection (1), it may consider the following factors—
  - (a) capability to supply; and
  - (b) personnel capabilities; and
  - (c) equipment capabilities; and
  - (d) financial position; and (e) litigation history.
- (3) Suppliers in procurement proceedings may be requested to supply information with regard to factors outlined in subsection (2).

### ***20. Preference of local contractors and suppliers***

- (1) When a comparative schedule of tenders for contracts is being prepared, locally based contractors and suppliers should be allowed a 10 *per centum* preference on purchase price or contract price, over external contractors.

(2) When a comparative schedule of tenders for contracts is being prepared, previously economically disadvantaged contractors should be allowed a 10 *per centum* preference on purchase price or contract price, over other classes of contractors.

### **21. Board to direct which tender to accept**

The Board, after considering the procuring entity's recommendations shall direct which tender is to be accepted.

### **22. Advising tender results**

(1) The procuring entity shall be advised of the Board's decision within 10 working days after sending the recommendations to the Board to enable it to enter into the necessary formal procuring contract with the successful tenderer.

(2) The successful tenderer shall be notified promptly in writing, by the Board 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 Board.

## **PART V**

### **PROCEDURE WHEN NO TENDERS ARE RECEIVED**

### **23. Procedure when no tenders are received**

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**

### **24. Specifications or samples to be available at advertised centres**

(1) The Board 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 Board 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 Board shall not be responsible.

### **25. List of approved tenderers**

(1) The Board may compile a list of approved tenderers in respect of specific articles and services, 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 Board may invite all tenderers in the approved list to submit special-formal tenders or informal tenders instead of calling for formal tenders.

(5) All tenders submitted in terms of subsection (4) shall be processed in accordance with these regulations.

## **PART VII**

### **CONTRACTS, SECURITIES AND DELIVERIES**

### **26. Contract not to be varied without approval**

(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 approval of the Board.

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

### **27. Tender security**

(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 10 *per centum* of the value of the contract unless otherwise decided by the Board.

### ***28. Deliveries to be inspected***

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.

## **PART VIII**

### **GENERAL**

### ***29. Procuring entities not to anticipate tender acceptance***

Procuring entities shall not anticipate the acceptance of tenders and no orders shall be placed until proper authority has been issued.

### ***30. Names of prospective tenderers not to be disclosed***

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

### ***31. Standard terms and conditions***

(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.

### ***32. Unsatisfactory work or conduct by contractors***

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.

### ***33. Reference to International Trade Law***

The State Procurement Board may take into consideration the provisions of the UNCITRAL Model Law on Procurement of Goods and Construction adopted by the United Nations Commission on International Trade Law in 1993. when inviting and adjudicating tenders.

### ***34. List of enterprises deemed procuring entities***

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

### ***35. Offences***

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. Inspections 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 of 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 [the] 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 any 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 obligation(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 to 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 (30) 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. Governing 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

- 26.1 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, license fees, and other such levies imposed outside the Purchaser's country.

# SPECIAL CONDITIONS OF CONTRACT

## TABLE OF CLAUSES

| <i>Item number</i> | <i>Topic</i>                       |
|--------------------|------------------------------------|
| 2.                 | Definitions (Clause 1)             |
| 3.                 | Country of Origin (Clause 3)       |
| 4.                 | Performance Security (Clause 5)    |
| 5.                 | Inspection and Tests (Clause 6)    |
| 6.                 | Delivery and Documents (Clause 8)  |
| 7.                 | Insurance (Clause 9)               |
| 8.                 | Payment (Clause 12)                |
| 9.                 | Resolution of Disputes (Clause 22) |
| 10.                | Notices (Clause 25)                |

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 is (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 cost 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:
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**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 notices, 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 34)**

**PUBLIC ENTERPRISES**

1. Agribank
2. Agricultural & Rural Development Corporation (ARDA)
3. Air Zimbabwe
4. Broadcasting Authority of Zimbabwe
5. Central Mechanical Equipment Department
6. Cold Storage Company (CSC)
7. District Development Fund
8. Electoral Supervisory Commission
9. Export Processing Zone
10. Forestry Commission
11. Grain Marketing Board (GMB)
12. Industry and Trade Competition Commission
13. Medicines Control Authority of Zimbabwe
14. Minerals Marketing Corporation of Zimbabwe
15. National AIDS Council of Zimbabwe
16. National Archives of Zimbabwe
17. National Arts Council of Zimbabwe
18. National Blood Transfusion Services
19. National Gallery of Zimbabwe
20. National Investment Trust (NIT)
21. National Library and Documentation Service
22. National Museums and Monuments
23. National Oil Company of Zimbabwe (Noczim)
24. National Parks and Wildlife Management Authority
25. National Railways of Zimbabwe (NRZ)
26. National Social Security Authority (NSSA)
27. NATPHARM
28. Net\*One
29. Peoples' Own Savings Bank (POSB)
30. POTRAZ (Post and Telecommunication Regulation Authority of Zimbabwe)
31. Privatisation Agency of Zimbabwe
32. Research Council of Zimbabwe
33. Reserve Bank of Zimbabwe (RBZ)
34. Roasting Plant — Kwekwe
35. Rural Electrification Agency
36. SIDRC
37. Small Enterprises Development Corporation
38. Sports and Recreation Commission
39. State Hospitals
40. State Lotteries
41. State Procurement Board
42. State Roads Fund
43. State Universities and Colleges
44. Tel\*One
45. The Pig Industry Board (PIB)

46. Tobacco Growers Trust
47. Tobacco Marketing Board (TMB)
48. Tobacco Research Board (TRB)
49. Urban Development Corporation (UDCORP)
50. Zimbabwe Broadcasting Corporation (ZBC)
51. Zimbabwe Defence Industry (ZDI)
52. Industrial Development Corporation (IDC)
53. Zimbabwe Electricity Supply Authority (ZESA)
54. Zimbabwe Industrial Development Corporation
55. Zimbabwe Institute of Public Administration & Management (ZIPAM)
56. Zimbabwe Investment Centre (ZIC)
57. Zimbabwe Iron and Steel Company (ZISCO)
58. Zimbabwe Manpower Development Fund
59. Zimbabwe Mining Development Corporation
60. Zimbabwe National Planning Council
61. Zimbabwe National Water Authority (ZINWA)
62. Zimbabwe Revenue Authority
63. Zimbabwe Tourist Development Corporation
64. Zimbabwe United Passenger Company (ZUPCO)
65. Zimpost
66. Zimbabwe Schools Examination Council (Zimsec)
67. Zimtrade