Southern African Development Community Secretariat

Procurement Policy

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Preamble

(1) This Policy outlines the regulatory framework which will govern the procurement system of the SADC Secretariat and its decentralized structures. It incorporates the relevant provisions of the SADC Secretariat's Financial Regulation which governs this Policy.

(2) The provision of this Policy shall enter into force not earlier than 1st of April 2012 or any other date approved by the Council of Ministers.

(3) From date of entry into force of the provisions of this Policy any previous decisions of the Council of Ministers concerning procurement rules and procedures of the SADC Secretariat that conflict with this Policy shall be rendered null and void.

(4) The interpretation of the provisions of this Policy shall rest with the Executive Secretary.

CHAPTER I. GENERAL PROVISIONS

Article 1. Procurement principles

(1) The SADC Secretariat's principles that shall govern all procurement processes of the organization are the following:

(a) Maximizing economy and efficiency in procurement to achieve value for money;

(b) Fostering and promoting competition by encouraging participation in procurement proceedings by economic operators regardless of nationality.

(c) Promoting transparency, accountability and Ethical Standards among stakeholders in following the SADC Secretariat Procurement Policy.

(d) Providing for the fair and equitable treatment of all economic operators to promote the integrity of, and fairness and public confidence in the procurement process;

(2) Any procurement procedures and regulation that are in conflict with these principles shall be declared null and void.

Article 2. Scope of application

(1) This Policy shall apply to all procurement contracts financed by SADC Secretariat, except as otherwise provided by paragraph (2) of this article.

(2) The Policy does not apply to:

(a) subject to Article 4 of this Policy, any contracts for which a prior derogation from this Policy has been obtained from the Council of Ministers;

(b) public utilities services: water, electricity, gas, and waste disposal;

(c) public transportation for persons (including railway and water transportation but excluding transport by air or car rentals);

(d) landline communication services (if the landline communication provider is a national

monopoly);

(e) national postal services: stamps, telex, registered mail, etc ;

(f) acquisition of land, buildings or similar facilities;

(g) acquisition of services or goods through contest of ideas (i.e.: artistic services of any kind, artworks and other assimilated goods and services);

(h) direct acquisition (by SADC Secretariat) of commodities through the stock exchange mechanism;

(i) employment contracts of any nature: part time, temporary or permanent duration;

(j) procurement of any employment benefit related services (health insurance, pension fund, rental of house, etc);

(k) education services other than training like services;

(l) banking services (exceptfinancial services); and

(m) petty cash transactions (e.g.: car fuel, parking tickets and toll fees, visa fees, passport fees, fees for various licenses, fiscal and judicial charges or any purchase of services and good which are defined in the SADC Secretariat Financial Regulation as petty cash transactions).

(3) The SADC Secretariat shall adopt specific procedures for the acquisition of the services, goods and works which are exempt from this Policy in pursuant of paragraph (2) above.

Article 3. Definitions and Glossary of Terms

For the purposes of this Policy:

(1) "Accounting Officer" refers to the Executive Secretary's overall responsibility on financial administration of SADC resources. The Accounting Officer may appoint/ or delegate to, one or more deputy Accounting Officers to discharge functions on matters of financial administration in place of the Accounting Officer.

(2) "Addendum" means the document through which significant modification to the terms and conditions of a contract are introduced.

(3) "Automated Procurement Computerized System" it is a procurement method using a completely electronic process for purchasing commonly used and readily available general services, goods and works, limited in duration and open throughout its validity to any economic operator who satisfies the selection criteria and has submitted a bid that has been found compliant. The description and conditions of application of this method is to be found in the Article 28 of this Policy.

(4) "Board of Auditors" means the body of External Auditors established as per the requirement of Article 29 of the Treaty.

(5) "Bidding Documents" means the dossier containing all the documents needed to prepare and properly submit a bid.

(6) "Bid" means a written and/or formal offer to supply goods, perform services or execute works for an agreed price.

(7) "Bid security" means a security provided by the economic operator to the Procuring Entity to secure the fulfilment of any obligation referred to in Article 36 (1) (f) and includes such arrangements as bank guarantees, surety bonds, stand-by letters of credit, cheques on which a bank is primarily liable, cash deposits, promissory notes and bills of exchange.

(8) "Bidder" means an economic operator submitting an offer; willing to conclude a contract with the Procuring Entity.

(9) "Council of Ministers" is the governing body of the SADC Secretariat, established by Article 9 of the Treaty.

(10) "Conflict of interest", in the context of this Policy, means that an economic operator shall not be allowed to get engaged in any procurement process for delivery of any kind of services, goods or works that would be in conflict with their prior or current obligations to other clients, or that may place them in the position of being unable to carry out the contract in the best interest of the SADC Secretariat and of the Procuring Entity.

(11) "Contractor" means an economic operator entering into a contract with the Procuring Entity following a procurement procedure. This term shall apply irrespective of the category of procurement (i.e.: services, goods or works) which is subject of the contract.

(12) "Database of Approved Suppliers" means SADC Secretariat database of prequalified economic operators which are invited by the Procuring Entity to submit bids, proposals and/or quotations, under the conditions of Local and International Restricted Bidding procurement methods.

(13) "Economic operator" means, according to the context, any natural or legal person or public entity or joint venture/consortium of such persons and/or bodies wishing or entering into a contract with the SADC Secretariat following a procurement procedure.

(14) "Executive Secretary" means the Chief Executive Officer of SADC appointed under Article 10 (7) of the Treaty.

(15) "Force Majeure", in the context of this Policy, means an exceptional event or circumstance:

(1) which is beyond SADC Secretariat/Procuring Entity control;

(2) could not reasonably have provided against before occurrence;

(3) not substantially attributable to SADC Secretariat/Procuring Entity; and

(4) which, having arisen, SADC Secretariat/ Procuring Entity could not have reasonably avoided or overcome.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (1) to (4) above are satisfied:

i. war, hostilities (whether war be declared or not), invasion, act of foreign enemies,

ii. rebellion, terrorism, sabotage by persons other than the SADC Secretariat/ Procuring Entity personnel, revolution, insurrection, military or usurped power, or civil war,

iii. riot, commotion, disorder, strike or lockout by persons other than the SADC Secretariat/ Procuring Entity,

iv. munitions of war, explosive materials, ionising radiation or contamination by radio-activity, explosives, radiation or radio-activity, and

v. natural catastrophes such as floods, earthquake, hurricane, typhoon or volcanic activity.

(16) "Fraud and Corruption", in the context of this Policy, means one or more of the following instances:

i. "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

ii. "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefits or to avoid an obligation;

iii. "collusive practices" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

iv. "coercive practices" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

v. "obstructive practice"

(v.1) deliberately destroying, falsifying, altering or concealing material evidence to the investigation or making false statements to investigators in order to materially impede the SADC Secretariat, governmental or independent investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(v.2) acts intended to materially impede the exercise of the SADC Secretariat or governmental or inspection and audit rights.

(17) "Framework Contract" is an agreement between the Procuring Entity and several contractors, with the purpose to establish the terms governing specific contracts which may be awarded during a given period, mainly concerned with the duration, subject, price, implementation rules and quantities.

(18) "General Services" refers to services bid and contracted on the basis of performance of a measurable physical output. They are, but not limited to: transport services, accommodation services, printing, editing, broadcasting, cleaning services, security services, insurance services, medical services, manufacture or conditioning of goods, communication services, renting or leasing of property or equipment, installation, commissioning, operation and maintenance of facilities or plant, surveys, exploratory drilling, aerial photography, satellite imagery, or any other similar type of services not assimilated to "Consulting Services". Unless the specific circumstances require transportation, insurance, installation, commissioning, training, and maintenance services associated to procurement of goods to be purchased separately from the main goods, such services shall be incorporated as requirements in the goods and be considered goods.

(19) "Goods" means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves; (the enacting State may include additional categories of goods).

(20) "International Restricted Bidding" is the basic form of application of the Restricted Bidding procurement method. The description and conditions of application of this method is to be found in the Article 23 of this Policy

(21) "Limited Bidding" is a variation of Restricted Bidding whereby the list of companies to be invited to submit bids is not determined by prequalification but through market research. The description and conditions of application of this method is to be found in the Article 24 of this Policy.

(22) "Local Restrictive Bidding" is a variation of the Restrictive Bidding be applied for procurement of non recurrent services, goods and works of small value (threshold to be set in the procurement regulations) and of non repetitive nature where by the invitations are send only to the economic operators included in the SADC Secretariat Database of Approved Suppliers. The description and conditions of application of this method is to be found in the Article 23 of this Policy.

(23) "Open Bidding" is a procurement method for acquisition of goods and services which involves an open invitation to submit a bid in competitive bidding process to all interested economic operators. The description and conditions of application of this method is to be found in the Article 22 of this Policy

(24) "Procurement" means the legal acquisition by any means of goods, works or services required to satisfy the needs of the SADC Secretariat.

(25) "Procurement contract" means a contract between the Procuring Entity and an economic operator resulting from procurement proceedings.

(26) "Procurement method" means the procedures through which the Procuring Entity purchase services, goods and works.

(27) "Procurement Procedure under Multiple Framework Contracts" is a simplified competitive procurement procedure to be used for acquisition of simplified or routine services, standardized or "off the shelf" goods and simple or low value works contracts of repetitive nature, required by the Procuring Entity on a recurrent basis, and when it is difficult to foresee the exact quantities and the time when they are needed, from contractors with which the Procuring Entity signs a framework contract. The description and conditions of application of this method is to be found in the Article 25 of this Policy.

(28) "Procuring Entity" means the SADC Secretariat designated Accounting Officer represented by the specialized unit in charge of the procurement activities of the organization, or any decentralized structure of the organization or procurement agent employed by the SADC Secretariat to act on its behalf.

(29) "Regional Restrictive Bidding" it is a variation of the Restrictive Bidding be applied for procurement of non recurrent services, goods and works of small value (threshold to be set in the procurement regulations) and of non repetitive nature where by the invitations are send only to the economic operators included in the SADC Secretariat Database of Approved Suppliers. The description and conditions of application of this method is to be found in the Article 23 of this Policy.

(30) "Regional Preference" means an evaluation method through which the Procurement Entity grants bidders that are offering services, goods and work manufactures in the SADC Countries an evaluation advantage over the bidders offering similar services, goods and work manufactures outside the SADC Countries. More details are to be found in Article 16 of this Policy.

(31) "Restrictive Bidding" it is a procurement method for acquisition of goods and services where by only all economic operators satisfying the eligibility and qualification criteria may submit a bid. The description and conditions of application of this method is to be found in the Article 23 of this Policy.

(32) "SADC" means Southern African Development Community and its institutions established by the Treaty.

(33) "SADC Secretariat" means the principal executive institution of SADC responsible for, amongst others, the strategic planning and management of SADC programmes, implementation of decisions of SADC policy organs and institutions, such as, Summit, Council and the Troikas.\

(34) "Services" means a wide variety of services such as advisory services; research/investigation, management; engineering; construction supervision; design and architectural services, training/training like education services, audit, financial (other than banking operation); legal and procurement services. Includes also feasibility studies, social and environmental studies; identification, preparation, and implementation of projects services, etc or any other services in which the "human factor" is determinant for the output of the contract. By extension, the operational costs of implementation of the project, including research, organization or participation in workshops. Used in a plural, "services" refers to both consulting services and general services.

(35) "Single Source procedure" is an exceptional procurement method through which the SADC Secretariat purchase services, goods and works form a single supplier. The description and conditions of application of this method is to be found in the Article 26 of this Policy.

(36) "Solicitation Document" means the documents issued by the SADC Secretariat to inform potential bidders about its procurement requirements. It includes Bidding Documents, Request for Proposal, Request for Quotations, Request for Services and Request for Expression of Interest, etc.

(37) "Tender Committees" means the Committee appointed by the Executive Secretary and entrusted with the authority and responsibility to take executive decision in relation to all procurement processes financed by the SADC Secretariat.

(38) "Treaty" means the treaty establishing SADC, as Amended.

(39) "Threshold" in the context of this Policy, means a monetary value of the estimated procurement contract which is set for separating the conditions of applications of the various procurement methods.

(40) "Variation order" means simplified form of addendum through which minor modifications to the terms and conditions of a contract are introduced or through which administrative instructions are given to the contractor.

(41) "Works" means all work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or construction, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to works such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the procurement contract, if the value of those services does not exceed that of the works itself.

Article 4. Application of the Procurement Policy in relation to International obligations of the SADC Secretariat

(1) To the extent that this Policy conflicts with an obligation of the SADC Secretariat under or arising out of any:

(a) Treaty or other form of agreement to which the SADC Secretariat is a party,

(b) Agreement entered into by the SADC Secretariat with an intergovernmental international financing institution or international donor, or

(c) Agreement between the SADC Secretariat and any Member State of the SADC,

the requirements of the treaty or agreement shall prevail; but in all other respects, the procurement shall be governed by this Policy.

Article 5. Procurement regulations

(1) To fulfil the objectives and to carry out the provisions of this Policy, the SADC Secretariat shall have procurement guidelines, standardized procurement documents and any other operational implementation rules, hereafter called procurement regulations, align to this Policy.

(2) Whenever a conflict between this Policy and the procurement regulations occur, the provision of this Policy shall take precedence over the procurement regulations.

(3) Subject to Articles 1 and 2 of this Policy and paragraph (2) above, the Procuring Entity shall follow the procurement regulations developed for the purpose of the implementation of this Policy.

(4) The Executive Secretary of the SADC Secretariat is authorized to promulgate the procurement regulations for the implementation of this Policy and approve any of their subsequent modifications.

Article 6. Conduct of Procurement Officials

(1) The Procuring Entity and/or the SADC Secretariat staff engaged in the procurement activities such as but not limited to: requisitioning, planning, preparing, and conducting procurement proceedings, and administering the implementation of procurement contracts, or authorizing or effecting payments under the contracts shall:

(a) discharge their duties impartially so as to assure fair competitive access to procurement by bidders;

(b) always act in the SADC Secretariat's and or the Procuring Entity's interest, and in accordance with the objectives and procedures set forth in this policy and the subsequent SADC Secretariat Regulations;

(c) at all times avoid conflicts of interest, and the appearance of impropriety, in carrying out their duties and conducting themselves, and shall not interfere in the work of internal oversight bodies, and

(d) not commit or abet corrupt or fraudulent practices, including the solicitation or acceptance of improper inducements.

(2) If a Procuring Entity and/or the SADC Secretariat staff engaged in the procurement activities benefits any pecuniary interest, direct or indirect, in any matter to be determined by him/her or any committee to which he/she is a member, he/she is required to declare the interest in accordance with the procedures set forth in the regulations, and is required to recuse himself from acting in any way in that matter and is required not to take part in the consideration or discussion of, or vote on any question with respect to the matter.

Article 7 . Fraud, Corruption and Conflict of Interest

(1) The SADC Secretariat requires that the procurement processes and the award of contracts shall be free of fraud, corruption and conflict of interest:

Without limitation, economic operators shall not be hired under the circumstances set forth below, which constitute conflict of interest:

(i) Conflict between consulting activities and procurement of goods, works or services(consulting or general). A supplier or a contractor that has been engaged by the Procuring Entity to provide goods, works, or services for the organization, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a bidder or a contractor hired to provide consulting services

for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or general services resulting from or directly related to the contractor's consulting services for such preparation or implementation.

(ii) Conflict among consulting assignments: Neither, economic operators (including their personnel and sub-consultants) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the bidder or contractor. For instance, a contractor assisting the Procuring Entity to implement a project shall not be engaged to prepare an independent assessment for the implementation of the same project, or contractors hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.

(iii) Relationship with the Procuring Entity's staff: economic operators (including their personnel and sub-contractors) having business or family relationship with a member of the Procuring Entity's staff directly or indirectly involved in any part of: (i) the preparation of the Terms of References or Technical Specification of a contract, (ii) the selection process for such contract, or (iii) the supervision of the contract, may not be awarded the contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Procuring Entity throughout the selection process and the execution of the contract.

Article 8. Conduct of Economic Operators

(1) Economic operators in relation with the Procuring Entity, are required to act in a professional, objective and impartial manner in the mutual interest of the two parties.

(2) Any attempt by an economic operator to obtain confidential information, enter into unlawful agreements with competitors or influence, or try to, the members of the evaluation committee or the Procuring Entity or the SADC Secretariat staff during the process of examining, clarifying, evaluating and comparing bids, applications or proposals will lead to the rejection of its candidacy, proposal or bid.

(3) A contractor and its staff or any other economic operator associated or linked with the contractor shall not, even on an ancillary or subcontracting basis, bid or be allowed to provide services, goods or works if this will raise a conflict of interest as defined in the Article 7 of this Policy.

(4) When putting forward a bid or application the economic operator or individual shall declare that it is not affected by any potential conflict of interest, and that has no relationship with other bidders, applicants, the Procuring Entity or the SADC Secretariat staff or contractors involved in the same procurement process. Should such a situation arise during the performance of the contract, the contractor shall immediately inform the Procuring Entity.

(5) Civil servants or other officials of the public administration of any SADC country, regardless of their administrative situation, shall not be engaged as experts by bidders or contractors and/or neither be employed as individual consultants by the Procuring Entity or the SADC Secretariat.

(6) The contractor shall at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It may not commit or compromise the Procuring Entity or the SADC Secretariat in any way without its prior and written consent.

(7) For the duration of the contract, the contractor and its staff shall respect human rights and undertake not to offend the political, cultural and religious morals of the beneficiary state. In particular and in accordance with the legal basic act concerned, the contractor shall respect core labour standards as defined in the relevant International Labour Organization conventions (such as the Conventions on freedom of association and collective bargaining; Elimination of forced and compulsory labour; Abolition of child labour).

(8) The contractor may not accept any payment connected with the contract other than that provided for therein. The contractor and its staff shall not exercise any activity or receive any advantage inconsistent with their obligations to the Procuring Entity or the SADC Secretariat as laid down in their contract with the organization.

(9) The contractor and its staff are bound to maintain confidentiality for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the contractor during the performance of the contract are confidential and remain property of the Procuring Entity.

(10) The contractor shall refrain from any relationship likely to compromise its independence or of its staff. If the contractor ceases to be independent, the Procuring Entity or the SADC Secretariat may, regardless of any damage claims, terminate the contract without further notice and without the contractor having any right to claim for compensation.

(11) All bidding documents and contracts for works, goods and services shall include a clause stipulating that bidders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are: (i) commissions not stated in the main contract or in the subcontracts stemming from the main contract, (ii) commissions not paid in return for any actual and legitimate service, (iii) commissions remitted to a tax haven; (iv) commissions paid to a recipient who is not clearly identified; (v) commissions paid to a company having every appearance of being a "shell company", or (vi) commissions paid for lobbyist services.

(12) The contractor shall make an undertaking to supply on request to the Procuring Entity or the SADC Secretariat and any relevant national authority or investigator representing the Procuring Entity or the SADC Secretariat with all the supporting documents relating to the conditions of the contract's execution. The Procuring Entity or the SADC Secretariat may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected or unusual commercial expenses.

(13) Contractors found to have paid unusual commercial expenses on projects funded by the Procuring Entity or the SADC Secretariat are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving Procuring Entity funds.

Article 9. Language

(1) All the information pertaining to the procurement processes including but not limited to procurement policy and regulation, procurement notices, solicitation documents, procurement plans, etc shall be advertised by the SADC Secretariat/ Procuring Entity in all three official languages of the SADC Secretariat (i.e.: English, French and Portuguese).

(2) However, for practical reasons, the Procuring Entity shall be allowed to conduct the procurement activities in only one of the three languages, widely used for commercial transaction in the host country.

(3) Similarly, in relation with the Procuring Entity, the economic operators shall have the right to communicate in only one of the official language of the SADC Secretariat. In such case, the SADC Secretariat shall have the obligation to translate such communication into the language in which the procurement activity is conducted.

Article 10. Form of communications

(1) Subject to other provisions of this Policy and any requirement of form specified by the Procuring Entity when first soliciting the participation of economic operators in the procurement proceedings, documents, notifications, decisions and other communications referred to in this Policy to be submitted by the Procuring Entity or administrative authority to a economic operator or by a economic operator to the Procuring Entity shall be in a written form that provides a record of the content of the communication (mail, email and facsimile).

(2) Subject to provisions in the Procurement Regulations, communications between economic operators and the Procuring Entity, may be made by a means of communication that does not provide a record of the content of the communication provided that, immediately thereafter, confirmation of the communication is given to the recipient of the communication in a form which provides a record of the confirmation.

(3) The Procuring Entity shall not discriminate against or among economic operators on the basis of the form in which they transmit or receive documents, notifications, decisions or other communications, provided that the transmitter shall in each instance be responsible for the confidentiality, completeness, integrity and timeliness of the data and the document being transmitted.

Article 11. Disclosure of procurement related information

(1) The text of this Policy, procurement regulations and all administrative rulings and directives of general application in connection with procurement covered by this Policy, and all amendments thereof, shall be promptly made accessible to the public and systematically maintained.

(2) The SADC Secretariat shall develop and maintain a dedicated web page to advertise all procurement opportunities as well as any subsequent solicitation document related to these procurement opportunities, as specified in the procurement regulations.

(3) All the procurement subject to open bidding or international restricted bidding procedure shall be advertised as specified as specified in the procurement regulations.

(4) With the exceptions specified in the paragraph (6) of this Article, all the contact award notices, irrespective of the procurement method used or the value of the awarded contract, shall be also published on the SADC Secretariat website, as specified in the procurement regulations.

(5) The period for which the procurement information referred to in paragraph (1), (2) and (3) above be made accessible to the public shall be for a minimum of seven (7) years from the date of releasing the procurement information to the public.

(6) This disclosure referred to paragraph (1) – (5) may be restricted in the case of defence or security related procurement to the extent that such procurement is determined to be of a sensitive nature, in accordance with the schedule of items eligible for such special treatment as set forth in the Guidelines.

Article 12. Procurement Planning

(1) The Procuring Entity and/or The SADC Secretariat shall develop annual procurement plans,

aligned to the business plans and the budget provision of the organization, with a view to achieving maximum value for expenditures and the other objectives set forth in this Policy.

(2) The specific procedures and the role and responsibilities of various departments in the elaboration of the procurement plans shall be detailed in the SADC Secretariat procurement regulations.

(3) The procurement plan shall present information about contracts SADC Secretariat expects to launch or sign in a fiscal year.

(4) At minimum, the procurement plan shall contain the following information:

(i) A brief description of the contracts;
(ii) The estimated value of the contracts;
(iii) The category of procurement;
(iv) The procurement method;
(v) Number of lots;
(vi) The main milestones in the procurement methods and the estimated dates when they are expected to be attained;
(vii) The estimated date when the contracts are expected to be signed; and
(viii) The duration of the contracts.

(5) The procurement plans shall be subject to annual review and be updated as and when required.

(6) The Procuring Entity shall advertise the procurement plan on the SADC Secretariat's website.

Article 13. Rules concerning description of goods, works or services

(1) Any specifications, plans, drawings and designs setting forth the technical or quality characteristics of the goods, works or services to be procured, and requirements concerning testing and test methods, packaging, marking or labelling or conformity certification, and symbols and terminology, or description of services, that may create obstacles to participation, including obstacles based on nationality, of economic operators in the procurement process shall not be included or used in the, solicitation documents..

(2) To the extent possible, any specifications, plans, drawings, designs and requirements or descriptions of goods, works or services shall be based on the relevant objective technical and quality characteristics of the goods, works or services to be procured. There shall be no requirement of or reference to a particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, works or services to be procured and provided that words such as "or equivalent" are included.

(3) (a) International standards for describing the features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, works or services to be procured shall be used, where available, in formulating any specifications, plans, drawings and designs to be included in the solicitation documents;

(b) Due regard shall be given for the use of standardized trade terms, where available, in formulating the terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings and in formulating other relevant aspects of the solicitation documents .

Article 14. Participation by economic operators

(1) Unless they fall under the exceptions specified in the paragraph 2, economic operators are permitted to participate in procurement process for award of SADC Secretariat procurement contracts without regard to their nationality or form of association.

(2) The following economic operators are not allowed to participate in procurement process for award of SADC Secretariat procurement contracts:

a) Economic operators or goods manufactured in certain countries may be excluded if, (i) as a matter of law or official regulation, the SADC Countries prohibits commercial relations with those countries, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the SADC Countries prohibits any import of goods from, or payments to, a particular country, person, or entity from those countries,

b) Government-owned enterprises and organizations, unless it can be clearly established that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the government,

c) Political or religious organizations, and

d) Economic operators banned, pursuant to Article 7 and 8.

Article 15. Eligibility and qualifications of economic operators

(1) Unless otherwise specified in the solicitation documents, participation in the invitations to tender and in award of contracts shall be open on equal terms to:

(a) Natural persons, companies or firms, or associations or public or semi -public agencies.

(b) Cooperative societies and other legal persons governed by public or private law.

(c) Joint ventures, consortium or association of firms.

(2) Economic operators shall not be eligible for the award of contracts where:

(a) They are bankrupt;

(b) Payments to them have been suspended in accordance with the judgment of a court of law other than a judgment declaring bankruptcy and resulting, in accordance with their national laws in the total or partial loss of the right to administer and dispose of their property;

(c) Legal proceedings have been instituted against them involving an order suspending payments and which may result, in accordance with their national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of their property;

(d) They have been convicted, by a final judgment, of any crime or offence concerning their professional conduct;

(e) They are guilty of serious misrepresentation with regard to information required for participation in an invitation to tender;

(f)They have been sanctioned by SADC Secretariat pursuant to the Article 48 paragraph (3) letter b;

(3) To be eligible for participation in invitation to tender and award of contracts bidders/applicants shall provide evidence satisfactory to the Procuring Entity of their eligibility under this Policy, proof of compliance with the necessary legal, technical and financial requirements and of their capability and adequacy of resources to carry out the contract effectively.

Article 16. Regional Preference

(1) The Procuring Entity may grant a margin of preference in the evaluation of bids under open bidding and international restricted bidding procedures to bids offering service, goods and works manufactured in the SADC countries, when compared to bids offering services, goods and works manufactured elsewhere.

(2) In such cases, bidding documents shall clearly indicate the preference to be granted to domestic manufactured services, goods and works and the information required to establish the eligibility of a bid for such preference.

(3) The nationality of the economic operator shall not be a condition for determination of such eligibility.

(4) This Preference clause shall not apply to procurement funded in whole or in part by a cooperating partner, in which case, eligibility and participation shall be governed by the relevant binding cooperating policy instrument.

(5) The specific methodology for the application of the regional preference will be specified in the procurement regulations.

Article 17. Rules concerning documentary evidence provided by economic operators

(1) If the Procuring Entity requires certification of documentary evidence provided by economic operators to demonstrate their qualifications in procurement process, the Procuring Entity shall not impose any requirements as to the certification of the documentary evidence other than those provided for in the laws of SADC Countries relating to the certification of documents of the type in question.

Article 18. Rejection of all bids, proposals, offers or quotations

(6) Subject to procedures specified in the SADC Secretariat procurement regulations and/or in solicitation documents, the Procuring Entity may reject all applications, bids, proposals, offers or quotations at any time prior to the acceptance of an application, bid, proposal, offer or quotation. The Procuring Entity shall upon request communicate to any economic operator that submitted an application, bid, proposal, offer or quotation, the grounds for its rejection of all applications, bids, proposals, offers or quotations, but is not required to justify those grounds.

(7) The Procuring Entity shall incur no liability, solely by virtue of its invoking paragraph (1) of this article, towards economic operators that have submitted applications, bids, proposals, offers or quotations.

(8) Notice of the rejection of all applications, bids, proposals, offers or quotations shall be given promptly to all economic operators that submitted applications, bids, proposals, offers or quotations.

Article 19. Cancellation of procurement processes

(1) The Procuring Entity may, before the contract is signed, abandon the procurement exercise and cancel the procurement procedure without the applicants or bidders being entitled to claim any compensation. If the procedure is divided into lots, a single lot may be cancelled. Cancellation may occur when:

(a) the bidding procedure has been unsuccessful, i.e. no qualitatively or financially worthwhile bids have been received or there is no response at all;

(b) the economic or technical data for the contract have been fundamentally altered;

(c) exceptional circumstances or Force Majeure render the normal performance of the contract impossible;

(d) all technically compliant bids/ applications substantially exceed the available financial resources; and

(e) there have been noted flaws in the application of procurement procedures..

(2) If a procurement procedure is cancelled, all applicants/bidders shall be notified in writing of the reasons for the cancellation at the earliest time. In such instance, a cancellation notice shall be published on the SADC Secretariat website.

(3) Under no circumstances shall the Procuring Entity be liable for any damages whatsoever including, without limitation, damages for loss of profits in any way connected with the cancellation of a procurement process, even if the Procuring Entity has been advised of the possibility of damages. The publication of a procurement notice does not commit the Procuring Entity to award the contract announced or accept any application or bid received.

Article 20. Record of procurement process

(1) The Procuring Entity shall maintain a record of the procurement process containing, at a minimum, the following information:

(a) A brief description of the goods, works or services to be procured, or of the procurement need for which the Procuring Entity requested proposals or offers;

(b) The complete solicitation documents sent to the economic operators including the qualification, evaluation and award criteria and the approval of these documents by relevant authority;

(c) The requests for clarification of the prequalification or solicitation documents, the responses thereto, as well any modification of those documents;

(d) The names and addresses of economic operators that submitted bids, proposals, offers or quotations, and the name and address of the economic operator with whom the procurement contract is entered into and the contract price;

(e) Information relative to the qualifications, or lack thereof, of economic operators that submitted bids, proposals, offers or quotations;

(f) The price, or the basis for determining the price, and a summary of the other principal terms and conditions of each bid, proposal, offer or quotation and of the procurement contract, where these are known to the Procuring Entity;

(g) The records of the evaluation and comparison of bids, proposals, offers or quotations and the approval of these documents by the relevant authority;

(h) If all bids, proposals, offers or quotations were rejected pursuant to Article 18, a statement to that effect and the grounds therefore, in accordance with Article 18 (1);

(i) If the procurement process is cancelled pursuant to Article 19, a statement to that effect and the grounds therefore, in accordance with Article 19 (2);

(j) If, in procurement process involving methods of procurement other than bidding, those process did not result in a procurement contract, a statement to that effect and of the grounds therefore;

(k) The information required by Article 7, if a bid, proposal, offer or quotation was rejected pursuant to that provision.

(2) Subject to Article 38(11), the portion of the record referred to in subparagraphs (a) to (c) of paragraph (1) of this article shall, on request, be made available to any person after a bid, proposal, offer or quotation, as the case may be, has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.

(3) Subject to Article 38(11), the portion of the record referred to in subparagraphs (d) to (k), of paragraph (1) of this article shall, on request, be made available to economic operators that submitted bids, proposals, offers or quotations, or applied for prequalification, after a bid, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract. Disclosure of the portion of the record referred to in subparagraphs (d) to (g), may be ordered at an earlier stage by a competent court. However, except when ordered to do so by a competent court, and subject to the conditions of such an order, the Procuring Entity shall not disclose:

(a) Information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition;

(b) Information relating to the examination, evaluation and comparison of bids, proposals, offers or quotations, and bid, proposal, offer or quotation prices, other than the summary referred to in paragraph (1) (f).

(4) The Procuring Entity shall not be liable to economic operators for damages owing solely to a failure to maintain a record of the procurement proceedings in accordance with the present article.

CHAPTER II. METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE

Article 21. Methods of procurement and thresholds

(1) The Procuring Entity shall engage in procurement of services, goods or works only by means of procurement methods pursuant to Articles 22, 23, 24, 25, 26, 27 and 28.

(2) Unless duly justified by specific circumstance, the competitive procurement methods described in the Articles 22 and 23 shall be the preferred methods used for the award of the SADC Secretariat financed procurement contracts.

(3) The thresholds for application of each method shall be defined in the procurement regulations.

(4) The detailed description on how the methods are implemented shall be indicated in the procurement regulations.

(5) Subject to the approval of the Executive Secretary, the application of these methods may be waived in the case of defense or security-related procurement to the extent that such procurement is determined to be of a sensitive nature, in accordance with the schedule of items eligible for such special treatment set forth in the procurement regulations.

Article 22. Open Bidding

(1) This shall be the preferred method to be used for procurement of common general services, goods and works.

(2) The open procedure involves an open invitation to submit a bid in competitive bidding process to all interested economic operators.

(3) Under the open procedure, any economic operator wishing to bid for the advertised contract receives, upon request, the Bidding Documents (which may have to be paid for), in accordance with the procedures laid down in the procurement notice. No short listing or other form of pre-selection shall be conducted in the application of this method.

(4) An economic operator and its affiliates, shall submit only one bid for the same contract on its own or as member of a joint venture/consortium. For this purpose affiliates are defined as: any legal entity (i.e.: the group of companies, firms, associations, etc) where the economic operator or any of the major shareholders in the economic operator owns at least twenty percent (20%) of the shares or the share capital. For the same purpose, major shareholder shall be defines as: any legal or physical person which owns no less than twenty percent (20%) of the shares or the share capital of the economic operator. If an economic operator deliberately or inadvertently submits more than one application per contract, it shall be automatically disqualified from any SADC Secretariat procurement processes for a period indicated in the SADC Secretariat's procurement regulations.

(5) All bids received are examined by conducting a comparison of technical and financial proposal against the evaluation and award criteria.

(6) For the bid recommended to be awarded the contract, an additional assessment of the bidder compliance with the post qualification criteria shall be conducted.

(7) The contract shall be awarded to the bidder whose bid, after the application of the evaluation and award criteria, was recommended for the award of the contract, if it satisfies the post qualification criteria.

Article 23. Restricted Bidding

(1) This is a competitive procurement procedure.

(2) In a restricted procedure, all economic operators may be asked to take part but only applicants satisfying the eligibility and qualification criteria may submit a bid.

(3) Under the restricted procedure, the first stage of the procedures is the prequalification. During the prequalification, the Procuring Entity issues an Invitation for Prequalification open to all the interested economic operators. The Invitation for Prequalification shall indicate the eligibility and qualification to be mandatorily fulfilled by an economic operator to be shortlisted for participating in the bidding procedure. The purpose of the prequalification is to draw up a shortlist of applicants based on compliance of the bidders with the evaluation and qualification criteria before launching the bidding procedure. The selection procedure, where the long list (all applicants responding to the published notice) is reduced to a

shortlist, consists in examining the responses to the requirements established in the procurement notice.

(4) An economic operator and its affiliates, shall submit only one application for the same contract on its own or as member of a joint venture/consortium. For this purpose affiliates are defined as: any legal entity (i.e.: the group of companies, firms, associations, etc) where the economic operator or any of the major shareholders in the economic operator owns at least twenty percent (20%) of the shares or the share capital. For the same purpose, major shareholder shall be defines as: any legal or physical person which owns no less than twenty percent (20%) of the shares or the share capital of the economic operator. If an economic operator deliberately or inadvertently submits more than one application per contract, it shall be automatically disqualified from any SADC Secretariat procurement processes for a period indicated in the SADC Secretariat's procurement regulations.

(5) A successful prequalification entails that a minimum of four (4) economic operators are shortlisted. Should the minimum number of qualified economic operators be not attained; the prequalification process shall be declared unsuccessful and cancelled.

(6) The prequalification process shall be re-launched only after the conditions leading to the failure of the previous prequalification have been identified and corrected.

(7) In the second stage of the restricted procedure, the Procuring Entity invites and sends the shortlisted applicants the Invitation to Bid and the Bidding Documents free of charge. In order to ensure fair competition, bids shall be submitted by the same economic operator or consortium shortlisted that has submitted the application form. No change whatsoever in the identity or composition of the bidder shall be permitted unless the Procuring Entity has given its prior approval in writing. A situation where such approval could be given is e.g. where a merger has taken place between a shortlisted applicant/member of a consortium with another company and where the new company is found to meet the eligibility and qualification criteria and does not raise any conflict of interest or unfair competition. Once the bids have been evaluated, the successful bidder is selected by applying the evaluation and award criteria stated in the bidding document.

(8) The restricted bidding procedure shall have the following methods for applications:

a) ***International Restricted Bidding***: The method shall be applied to procurement of consulting services and to procurement of large and/or complex general services, goods and works. By extension, this method shall be used for establishing framework contractors. The application of the method shall follow the requirement stated in the paragraph (1) to (7) of this Article.

b) ***Regional Restricted Bidding:*** The method shall be applied for procurement of non recurrent services, goods and works of small value (threshold to be set in the procurement regulations) and of non repetitive nature. The method entails that only economic operators from the SADC Secretariat Database of Approved Suppliers from the Regional Sections will be invited to submit bids, proposals or quotations.

c) ***Local Restricted Bidding:*** The method shall be applied for procurement of non recurrent services, goods and works of small value (threshold to be set in the procurement regulations). The method entails that only economic operators from the SADC Secretariat Database of Approved Suppliers from the Local Sections will be invited to submit bids, proposals or quotations.

Article 24. Limited Bidding

(1) The Limited Biddingmethod is essentially the Restricted Bidding method with the exception that the shortlist is established by the Procuring Entity without prequalification or open

advertisement.

(2) Under this method, the Procuring Entity restricts the issue of bidding documents to a limited number of specified economic operators when:

a) the goods, works, or services required are of a specialised nature or can be obtained from a limited number of specialised economic operators or reputable sources, all of whom are known to the Procuring Entity; or

b) the time and cost of considering a large number of bids is disproportionate to the value of the procurement; or

c) there is an urgent need for the goods, works or services such that there would be insufficient time for the Procuring Entity to engage in open bidding, provided that the circumstances giving rise to the urgency could not have been foreseen by the Procuring Entity and have not been caused by dilatory conduct on its part.

(3) This method shall only be deployed with prior approval of the Procuring Entity within and if it has been fully demonstrated that any of the conditions as laid out in section 1 (a) – (c) of this article have been met.

(4) Under this method, for the procurement process to be considered successful, the shortlist shall consist of a minimum two (2) economic operators and the Procuring Entity shall receive at least two (2) responsive bids/quotations/proposals.

(5) The lowest evaluated bid shall be subjected to a post qualification.

Article 25. Procurement Procedure under Multiple Framework Contracts

(1) Procurement under the Multiple Framework Contract is a simplified competitive procurement procedure to be used for acquisition of simplified or routine services, standardized or "off the shelf" goods and simple or low value works contracts of repetitive nature, required by the Procuring Entity on a recurrent basis, and when it is difficult to foresee the exact quantities and the time when they are needed.

(2) A Multiple Framework Contract is an agreement between the Procuring Entity and several contractors, with the purpose to establish the terms governing specific contracts which may be awarded during a given period, mainly concerned with the duration, subject, price, implementation rules and quantities.

(3) The Multiple Framework Contract takes the form of separate contracts with a number of economic operators but concluded in identical terms, specifically: same general conditions, terms of delivery, maximum unit prices, type of services, goods and works to be delivered and the maximum cumulative contract value.

(4) Multiple Framework Contracts are separated into lots. A lot can only cover a specific group of recurrent services, goods and works. For example, the lot covering travel agent services shall not include the supply of stationeries, or the lot covering the supply of office equipment or office furniture shall not contain the supply of IT equipment, etc.

(5) In a rapidly changing market economy, the duration of such contracts shall not exceed two (2) calendar years.

(6) The value of the each Multiple Framework Contract shall be determined based on the estimated annual value of specific group of recurrent services, goods and works needed by the organization as reflected in the specific annual budgetary allocation.

(7) The procurement method to award Multiple Framework Contracts shall be similar to the restricted procedure, but the contract will be awarded to not less than four (4) and up to ten(10) economic operators, based on their ranks obtained during the evaluation process.

(8) The Procuring Entity may not make undue use of framework contracts or use them in such a way that the purpose or effect is to prevent, restrict or distort competition.

(9) The total sum drawn upon a Multiple Framework Contract shall not exceed the total value of said contract.

Article 26. Single Source procedure

(1) This is an exceptional non-competitive procurement method that can only be used under the following conditions, irrespective of the estimated value of the contract:

a) where, for reasons of exceptional circumstances that the Procuring Entity could not have foreseen and that can in no way be attributed to them, the time limits for the competitive procedures cannot be met. The circumstances invoked to justify extreme urgency shall in no way be attributable to the any department or staff of The Procuring Entity. For purposes of this clause, exceptional circumstances situations shall be one of the following situations:-

   i) Where there is likely to be injury or loss of life;

   ii) Where there is likely to be damage to property; or

   iii) Where there is a situation arising from "Force Majeure", as defined in Article 3(m).

b) where, for technical reasons, or reasons involving the protection of exclusive rights/proprietary goods, services, the contract can be awarded only to a particular economic operator;

c) where, pursuant to Article 45, existing contracts are amended for:

   (i) complementary services not included in the main contract but which, due to unforeseen circumstances, have become necessary to perform the contract, provided that the complementary services are technically and economically inseparable from the main contract, without bringing serious inconveniences for the Procuring Entity additional services consisting of the repetition of similar services entrusted to the contractor furnishing the services under the initial contract, provided that a procurement notice has been published for the initial contract and that the possibility of using the negotiated procedure for further services for the project as well as the estimated cost, were clearly indicated in the Bidding Documents or the Terms of Reference for the initial contract.

(ii) additional deliveries by the original contractor intended either as a partial replacement of normal goods or installations or as the extension of existing contracts for goods or works, where a change of contractor would oblige the Procuring Entity to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance.

(iii) additional works not included in the initial contract which due to unforeseen circumstances, became necessary for carrying out the works described therein and have been awarded to the contractor already carrying out the work: a) where such works cannot be technically or economically separated from the main contract without serious inconvenience to the beneficiary; and b) where such works, although separable from the performance of the original contract, are strictly necessary to its completion.

Article 27. Selection of Individual Consultants

(1) Individual Consultants are employed on assignments where:

a. teams of experts are not required,

b. no additional outside (home office) professional support is required, and

c. when the experience and professional qualifications of the individual are the main requirement.

(2) The Procuring Entity shall not misuse this method of selection for an assignment normally carried out through an employment contract. Similarly, the method shall not be used for artificially splitting a consulting service assignment.

(3) The use of this procurement method is not limited by the estimated value of the contract. However, the duration of the contract awarded through this method shall not exceed two (2) years and no Individual Consultant shall be awarded more than two (2) successive individual consultant contracts for the same consulting services.

(4) There shall be no qualification criteria used under this procurement method.

(5) The award criteria applicable to Individual Consultants shall be based on the highest score by the evaluated Individual Consultant who has submitted a financial offer within the available budget.

(6) Only natural persons/individuals are eligible to submit application under this procurement method.

Article 28. Automated Procurement Computerized System

(1) The Automated Procurement Computerized System is a completely electronic process for purchasing commonly used and readily available general services, goods and works, limited in duration and open throughout its validity to any economic operator who satisfies the selection criteria and has submitted a bid that has been found compliant. No specific threshold applies.

(2) The system shall not be used for procurement of consulting services - firms or individual consultants - and for any other general services, goods and works when the technical specifications cannot be precisely defined or where the evaluation criteria is based on the merit points system.

(3) For each individual contract, the Procuring Entity publishes a procurement notice and invites all the suppliers admitted to the system in accordance with the above paragraph. The contract shall be awarded to the technically compliant bid having the lowest price.

(4) This method shall be used only when the IT system to allow such method is in place and only if it is economically feasible to maintain such a system.

(5) Procuring Entity may also use electronic systems permitting bidders to submit bids by electronic means, provided the SADC Secretariat is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and authenticity of bids submitted, uses an electronic signature system or equivalent to keep bidders bound to their bids, and only allows bids to be opened with due simultaneous electronic authorization of the bidder and the Procuring Entity

CHAPTER III. PROCUREMENT PROCEEDINGS

SECTION I. BIDDING PROCEEDINGS

Article 29. Invitation to bid and access to bidding documents

(1) When the open procedure is used, all interested economic operators shall have unrestricted access to the bidding documents.

(2) In the case of restricted tendering, only the shortlisted economic operators are entitled to receive invitation to bid and the bidding documents and be invited to submit a bid.

(3) As in (2), when the shortlisted economic operator is a joint venture or consortium, the composition of the joint venture or consortium shall not be changed after prequalification or during the implementation of a contract awarded to the joint venture or consortium without prior approval of the Procuring Entity.

(4) The Procuring Entity shall approve the change in the composition of the joint venture or consortium composition only if the modification: (i) is supported by solid and objective arguments, (ii) does not alter the competition, (iii) is not generating a conflict, and (iv) is not invalidating the criteria and conditions in place when the joint venture or consortium was prequalified or awarded the contract.

(5) The invitation to bid shall contain, at a minimum, the following information:

(a) The name and address of the Procuring Entity;

(b) The nature, the location and main requirements for the services to be provided; or the nature and quantity, and place of delivery of the goods to be supplied, or the nature and location of the works to be effected;

(c) The maximum contract value;

(d) The procurement method used and a reference to the applicable procurement policies and rules;

(e) The names and the composition of the shortlisted economic operators;

(f) The means of obtaining the biding documents and the place from which they may be obtained and;

(g) The place, deadline and the procedures for the submission of bids.

(h) The amount of bid security, if required.

(i) Details of how further information or clarifications can be obtained.

(6) As far as possible the bidding documents shall be distributed to economic operators in electronic version, free of charge. However, in the situation when electronic version is not a recommended mean of distribution, and when the cost of reproduction and distribution of the bidding documents is high, the Procuring Entity may ask the economic operators to pay for having access to the hard copy bidding documents. In such case, the price that the Procuring Entity may charge for the bidding documents shall reflect only the cost of printing them and delivering them to the economic operators.

(7) When bid documents are distributed in hard copies, all economic operators who choose to be sent the documents shall be charged the cost of making the documents available to them.

Article 30. Contents of bidding documents

(1) The bidding documents shall include, but not limited to the following information:

(a) Invitation to bid;

(b) Instruction to bidders for preparing the bid including the standard forms which the bidder needs to fill in;

(c) Instruction to bidders explaining the evaluation processes and the evaluation and award criteria;

(d) The detailed description of the contract technical requirements (in a form of Technical Specifications or Terms of References)

(e) The General and Specific Conditions of Contract

(f) The draft contract (including the contract annexes)

Article 31. Evaluation and award criteria

(1) Evaluation criteria are meant to determine the compliance of the services, goods and works offered by the bidders with the Procuring Entity requirements stated in the Terms of References or Technical Specifications.

(2) Award criteria shall describe the methodology which will establish the successful bid among those passing the evaluation criteria. Usually there are two types of award criteria as follows:

(a) price, in this case the contract is awarded to the bidder which, while satisfying the eligibility, qualification and evaluation criteria, quotes the lowest price;

(b) quality and cost (i.e. the most economically advantageous bid). This award criterion entails that the successful bid is determined by applying a formula including the evaluation points and the offered price.

(3) When defining the evaluation and award criteria, the Procuring Entity shall ensure that these are precise, non-discriminatory and not prejudicial to fair competition.

(4) The evaluation and award criteria shall not be changed during the evaluation process.

Article 32. Contract technical requirements

(1) The contractual technical requirements shall be set in Technical Specifications[1] (for procurement of general services, goods and works) and in Terms of References (for consultancy services). These documents shall set out the requirements and/or objectives in respect of the provision of services, supplies or works, specifying, where relevant, the methods and resources to be used and/or results to be achieved.

(2) Precise and clear specifications are prerequisite for bidders to respond realistically and competitively to the requirements. Hence, technical requirements shall provide all the necessary information to allow a bidder to easily identify all the Procuring Entity needs and determine the cost of such needs.

(3) The economy, efficiency and fairness in procurement processes shall always be considered when drafting the technical requirements.

(4) Unless the negotiated procedure procurement method is used, the technical requirements shall be prepared to permit the widest possible competition, and at the same time, make a clear statement of the required standards of workmanship to be provided, standards of supplies and performance of the general services, goods and works to be procured.

(5) For goods and works, the technical requirements should indicate that all supplies be new, unused, and of the most recent or current models, and they have to incorporate all recent improvements in design and materials. Moreover, any reference to brand names, catalogue numbers or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words "or substantially equivalent".

Article 33. Clarifications and modifications of bidding documents

(1) An economic operator may request a clarification of the bidding documents from the Procuring Entity. The Procuring Entity shall respond to any request by an economic operator for clarification of the bidding documents that is received by the Procuring Entity within a reasonable time prior to the deadline for the submission of applications. The Procuring Entity shall respond within a reasonable time so as to enable the economic operator to make a timely submission of its bid and shall, without identifying the source of the request, communicate the clarification to all economic operators to which the Procuring Entity has provided the bidding documents.

(2) At any time prior to the deadline for submission of bids, the Procuring Entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a shortlisted economic operator, modify the bidding documents by issuing an addendum. The addendum shall be communicated promptly to all shortlisted economic operators to which the Procuring Entity has provided the solicitation documents and shall be binding on those economic operators.

(3) If the Procuring Entity convenes a clarification meeting of economic operators, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the bidding documents, and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all economic operators to which the Procuring Entity provided the bidding documents, so as to enable them to take the minutes into account in preparing their bids.

(4) The cost and expenses related to attending clarification and/or Site meetings shall be borne by the economic operator.

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[1]The technical specifications shall be inclusive of any Bill of Quantities, Drawings and other similar attachments that provided information of the nature of general services, goods and works)

Article 34. Submission of bids

(1) The Procuring Entity shall fix the place for, and a specific date and time as the deadline for, the submission of bids.

(2) If, pursuant to Article 33, the Procuring Entity issues a clarification or modification of the bidding documents, or if a meeting of economic operators is held, it shall, prior to the deadline for the submission of bids, extend the deadline if necessary to afford economic operators reasonable time to take the clarification or modification, or the minutes of the meeting, into account in their bids.

(3) The Procuring Entity may, in its absolute discretion, prior to the deadline for the submission of bids, extend the deadline if it is not possible for one or more economic operators to submit their bids by the deadline owing to any circumstance beyond their control.

(4) Notice of any extension of the deadline shall be given promptly to each shortlisted economic operator to which the Procuring Entity provided the solicitation documents.

(5) (a) Subject to subparagraph (b) and (c), a bid shall be submitted in writing, signed and in sealed envelopes;

(b) when quality and cost award criteria is applied, the Procuring Entity shall employ the principle of double envelop system, whereby the technical proposal shall be separated from the financial proposal.

(c) Without prejudice to the right of a economic operator to submit a bid in the form referred to in subparagraph (a), a bid may alternatively be submitted in any other form specified in the solicitation documents that provides a record of the content of the bid and at least a similar degree of authenticity, security and confidentiality;

(d) The Procuring Entity shall, on request, provide to the economic operator a receipt showing the date and time when its bid was received.

(6) A bid received by the Procuring Entity after the deadline for the submission of bids shall not be opened and shall be returned to the economic operator that submitted it. Similarly, pursuant to paragraph (5) (b), unopened financial proposal shall be returned to the bidders who did not qualify following the technical evaluation

Article 35. Period of effectiveness of bids; modification and withdrawal of bids

(1) Bids shall be in effect during the period of time specified in the bidding documents.

(2) (a) Prior to the expiry of the period of effectiveness of bids, the Procuring Entity may request bidders to extend the period for an additional specified period of time. A bidder may refuse the request without forfeiting its bid security, and the effectiveness of its bid will terminate upon the expiry of the un-extended period of effectiveness;

(b) Bidders that agree to an extension of the period of effectiveness of their bids shall extend or procure an extension of the period of effectiveness of bid securities provided by them or provide new bid securities to cover the extended period of effectiveness of their bids. A bidder whose bid security is not extended, or that has not provided a new bid security, is considered to have refused the request to extend the period of effectiveness of its bid.

(3) Unless otherwise stipulated in the bidding documents, an economic operator may modify or withdraw its bid prior to the deadline for the submission of bids without forfeiting its bid security. The modification or notice of withdrawal is effective if it is received by the Procuring Entity prior to the deadline for the submission of bids.

Article 36. Bid securities

(1) When the Procuring Entity requires shortlisted economic operators submitting bids to provide a bid security:

(a) The requirement shall apply to all such economic operators;

(b) The bidding documents shall stipulate that the issuer of the bid security and the confirmer, if any, of the bid security, as well as the form and terms of the bid security, shall be acceptable to the Procuring Entity;

(c) Notwithstanding the provisions of subparagraph (b) of this paragraph, a bid security shall not be rejected by the Procuring Entity on the grounds that the bid security was not issued by an issuer accepted by the Procuring Entity unless such issuer was clearly identified in the bidding document as unacceptable issuer;

(d) Prior to submitting a bid, an economic operator may request the Procuring Entity to confirm the acceptability of a proposed issuer of a bid security, or of a proposed confirmer, if required; the Procuring Entity shall respond promptly to such a request;

(e) Confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the Procuring Entity from rejecting the bid security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or otherwise lacks creditworthiness;

(f) The Procuring Entity shall specify in the bidding documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required bid security; any requirement that refers directly or indirectly to conduct by the shortlisted economic operator submitting the bid shall not relate to conduct other than:

(i) Withdrawal or modification of the bid after the deadline for submission of bids, or before the deadline if so stipulated in the bidding documents;

(ii) Failure to sign the procurement contract if required by the Procuring Entity to do so;

(iii) Failure to provide a required security for the performance of the contract after the bid has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the bidding documents.

(2) The Procuring Entity shall make no claim to the amount of the bid security, and shall promptly return, or procure the return of, the bid security document, after whichever of the following that occurs earliest:

(a) The expiry of the bid security;

(b) The entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the bidding documents;

(c) The termination of the bidding process without the entry into force of a procurement contract;

(d) The withdrawal of the bid prior to the deadline for the submission of bids, unless the bidding documents stipulate that no such withdrawal is permitted.

Article 37. Opening of bids

(1) Bids shall be opened at the time specified in the bidding documents as the deadline for the submission of bids, or at the deadline specified in any extension of the deadline, at the place and in accordance with the procedures specified in the bidding documents.

(2) All economic operators that have submitted bids, or their representatives, shall be permitted by the Procuring Entity to be present at the opening of bids.

(3) When open procedures is employed by the Procuring Entity, the name and address of each economic operator whose bid is opened and the bid price shall be announced to those persons present at the opening of bids, communicated on request to economic operators that have submitted bids but that are not present or represented at the opening of bids, and recorded immediately in the record of the bidding process required by Article 20.

(4) When quality and cost award criteria is employed in a restricted procurement procedure, only the technical proposal of the short listed economic operator shall be open in the presence of their representatives. The name and address of each economic operator whose bid is opened shall be announced to those persons present at the opening of bids, communicated to all economic operators that have submitted bids. The financial proposals shall not be open at the bid opening but kept unopened, in a safe place until, in accordance with the procedures specified in the SADC Secretariat procurement procedures and in the solicitation documents the conditions for opening the financial proposal are satisfied. The financial proposal opening shall also be carried out in the presences of the representatives of economic operators whose technical proposal were found responsive. As the financial opening the Procuring Entity shall disclose for each economic operators whose financial proposals were opened, the name, the results of the evaluation of their technical offer, and the value of their financial proposal. Such information shall be recorded immediately in the record of the biding proceedings required by Article 20 and communicated to all economic operators who participated.

Article 38. Examination, evaluation and comparison of bids

(1) The assessment of the bid shall be conducted by an officially appointed Evaluation Committee who shall have the required competences necessary to give an informed opinion on the submitted application.

(2) The Evaluation Committee shall have a minimum number of three evaluators. The Evaluation Committee shall always be an odd number consisting of a Chairperson and a Secretary. The Chairperson will be the only authorised representative of the Evaluation Committee entitled to communicate with third parties in relation with the decisions of the Evaluation Committee.

(3) The main role of the Chairperson and the Secretary is to ensure that all members of the Evaluation Committee are observing the principles of this Policy, while the voting members are entrusted with the responsibility of evaluation the bids and issue recommendation for award of the contract.

(4) The Evaluation Committee shall be independent and impartial and all members shall have equal rights. All members of the Evaluation Committee shall be individually and collectively responsible for observing the principles of this Policy.

(5) The members of Evaluation Committee shall sign statement of impartiality and confidentiality acknowledging that they are not in the conflict of interest position and that will not disclose any information to economic operators or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided in Article 11.

(6) The Procuring Entity may appoint non-voting members to the Evaluation Committee, called Observers, to observe the way the evaluation proceedings are conducted by the Evaluation Committee. The Observers shall be subject to the same obligation about the impartiality and confidentiality as the members of the Evaluation Committee and there shall be forbidden to interfere in the evaluation process.

(7) (a) The Procuring Entity may ask economic operators for clarifications of their bids in order to assist in the examination, evaluation and comparison of bids. No change in a matter of substance in the bid, including changes in price and changes aimed at making an unresponsive bid responsive, shall be sought, offered or permitted;

(c) Notwithstanding subparagraph (a) of this paragraph, the Procuring Entity shall correct purely arithmetical errors that are discovered during the examination of bids. The Procuring Entity shall give prompt notice of any such correction to the economic operator that submitted the bid, for concurrence and acceptance.

(8) (a) Subject to subparagraph (b) of this paragraph, the Procuring Entity may regard a bid as responsive only if it conforms to all requirements set forth in the bidding documents;

(b) The Procuring Entity may regard a bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bidding documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the bid. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation and comparison of bids.

(9) The Procuring Entity shall not accept a bid:

(a) If the bid is not responsive technically and financially; or

(b) If the economic operator that submitted the bid does not accept a correction of an arithmetical error made pursuant to paragraph (5) (b) of this article.

(10) (a) The Procuring Entity shall evaluate and compare the bids that have been accepted in order to ascertain the successful bid, as defined in subparagraph (b) of this paragraph, in accordance with the procedures and criteria set forth in the bidding documents. No criterion shall be used that has not been set forth in the bidding documents;

(b) The successful bid shall be:

(i) The responsive bid with the lowest evaluated bid price or

(ii) If the Procuring Entity has so stipulated in the bidding documents, the lowest evaluated bid ascertained on the basis of criteria specified in the bidding documents.

(11) Whether or not it has engaged in prequalification proceedings pursuant to Article 41, the Procuring Entity shall require the economic operator submitting the bid that has been found to be the successful bid pursuant to paragraph (8) (b) of this article to demonstrate again its qualifications in accordance with criteria and procedures conforming to the provisions of Article 15. The criteria and procedures to be used for such further demonstration shall be set forth in the bidding documents. Where prequalification proceedings have been engaged in, the criteria shall be the same as those used in the prequalification proceedings.

(12) If the economic operator submitting the successful bid is requested to demonstrate again its qualifications in accordance with paragraph (5) of this article but fails to do so, the Procuring Entity shall reject that bid and shall select a successful bid, in accordance with paragraph (8) of this article, from among the remaining bids, subject to the right of the Procuring Entity, in accordance with Article 19 (1), to reject all remaining bids.

(13) Information relating to the examination, clarification, evaluation and comparison of bids shall not be disclosed to economic operators or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided in Article 11.

Article 39. Prohibition of negotiations with bidders

(1) In the procurement of goods, works and routine services, no negotiations whatsoever may be held with bidders as to the substance or prices of their tenders.

(2) In procurement of consultancy services, after the appropriate tender committee has approved the award recommendations, the procuring entity shall promptly invite the selected consultant to negotiate, in order to finalize the terms of the contract based on the model contract on one hand and the consultant's proposal on the other hand.

(3) The areas for negotiations and the detailed procedure for contract negotiations, in the procurement of consultancy services, shall be as prescribed in the procurement regulations.

Article 40. Acceptance of bid and entry into force of procurement contract

(1) Subject to Articles 18 and 38, the bid that has been ascertained to be the successful bid pursuant to Article 38 (8) (b) shall be accepted. Notice of acceptance of the bid shall be given promptly to the economic operator submitting the bid.

(2) (a) Notwithstanding the provisions of paragraph (4) of this article, the solicitation documents may require the economic operator whose bid has been accepted to sign a written procurement contract conforming to the bid. In such cases, the Procuring Entity and the economic operator shall sign the procurement contract within a reasonable period of time after the notice referred to in paragraph (1) of this article is dispatched to the economic operator;

(b) Subject to paragraph (3) of this article, where a written procurement contract is required to be signed pursuant to subparagraph (a) of this paragraph, the procurement contract enters into force when the contract is signed by the economic operator and by the Procuring Entity. Between the time when the notice referred to in paragraph (1) of this article is dispatched to the economic operator and the entry into force of the procurement contract, neither the Procuring Entity nor the economic operator shall take any action that interferes with the entry into force of the procurement contract or with its performance.

(3) Where the bidding documents stipulate that the procurement contract is subject to approval by a higher authority with the Procuring Entity organization, the procurement contract shall not enter into force before the approval is given. The bidding documents shall specify the estimated period of time following dispatch of the notice of acceptance of the bid that will be required to obtain the approval. A failure to obtain the approval within the time specified in the bidding documents shall not extend the period of effectiveness of bids specified in the bidding documents pursuant to Article 36 (1) or the period of effectiveness of bid securities that may be required pursuant to Article 37 (1).

(4) Except as provided in paragraphs (2) (b) and (3) of this article, a procurement contract in accordance with the terms and conditions of the accepted bid enters into force when the notice referred to in paragraph (1) of this article is dispatched to the economic operator that submitted the bid, provided that it is dispatched while the bid is in force. The notice is dispatched when it is properly addressed or otherwise directed and transmitted to the economic operator, or conveyed to an appropriate authority for transmission to the economic operator, by a mode authorized by Article 10.

(5) If the economic operator whose bid has been accepted fails to sign a written procurement contract, if required to do so, or fails to provide any required security for the performance of the contract, the Procuring Entity shall select a successful bid in accordance with Article 38(4) from among the remaining bids that are in force, subject to the right of the Procuring Entity, in accordance with Article 18 (1), to reject all remaining bids. The notice provided for in paragraph (1) of this article shall be given to the economic operator that submitted that bid.

(6) Upon the entry into force of the procurement contract and, if required, the provision by the economic operator of a security for the performance of the contract, notice of the procurement contract shall be given to other economic operators, specifying the name and address of the economic operator that has entered into the contract both units and total contract price.

SECTION II. PREQUALIFICATION PROCEEDINGS

Article 41. Prequalification Processes

(1) The Procuring Entity may engage in prequalification process with a view towards identifying, prior to the submission of bids, proposals or offers in procurement processes economic operators that are eligible and qualified. The provisions of Article 15 shall apply to prequalification proceedings.

(2) If the Procuring Entity engages in prequalification processes it shall provide a set of prequalification documents to each economic operator that requests them in accordance with the invitation to prequalify and that pays the price, if any, charged for those documents. The price that the Procuring Entity may charge for the prequalification documents shall reflect only the cost of printing them and providing them to economic operators.

(3) The Procuring Entity shall solicit applications to prequalify by issuing an invitation to prequalify published on the SADC Secretariat website and in at least one newspaper of wide circulation in each of the SADC Countries.

(4) The prequalification documents shall include, at a minimum the following information:

(a) Instructions for preparing the application including the standard forms which the applicant needs to fill in;

(b) The criteria and procedures, in conformity with the provisions of Article 15, relative to the evaluation of the eligibility and qualifications of economic operators

(c) The requirements as to documentary evidence or other information that shall be submitted by economic operators to demonstrate their eligibility and qualifications;

(d) A brief description of the scope of the contract;

(e) The language, in which application shall be prepared;

(f) The manner, place and deadline for the submission of application;

(g) The means by which, economic operators may seek clarifications of the solicitation documents;

(h) The period of time during which application shall remain valid;

(i) The place, date and time for the opening of applications;

(j) References to the SADC Secretariat procurement policy and regulations which applies to the respective procurement proceedings;

(k) The name, functional title and address of one or more officers or employees of the Procuring Entity who are authorized to communicate directly with and to receive communications directly from economic operators in connection with the procurement proceedings, without the intervention of an intermediary;

(l) The reference to the procurement policy and regulation which allows the economic operator to appeal a procurement decision;

(m) The Procuring Entity reserves the right to reject all bids pursuant to Article 18 or to cancel the procurement processes pursuant to Article 19, a statement to that effect;

(n) Any other requirements that may be established by the Procuring Entity in conformity with this Policy and the procurement regulations relating to the preparation and submission of applications to prequalify and to the prequalification proceedings.

(5) The Procuring Entity shall respond to any request by an economic operator for clarification of the prequalification documents that is received by the Procuring Entity within a reasonable time prior to the deadline for the submission of applications to prequalify. The response by the Procuring Entity shall be given within a reasonable time so as to enable the economic operator to make a timely submission of its application to prequalify. The response to any request that might reasonably be expected to be of interest to other economic operators shall, without identifying the source of the request, be communicated to all economic operators to which the Procuring Entity provided the prequalification documents.

(6) The economic operators are allowed to seek clarifications with regards to the prequalification documents, prior to deadline for submission of application.

(7) The Procuring Entity is allowed to modify prequalification documents prior to de deadline for submission of application, provided that all interested economic operators are informed with sufficient time in advance to allow them to incorporate these changes into their applications.

(8) The assessment of the application shall be conducted by an officially appointed Evaluation Committee who shall have the required competences necessary to give an informed opinion on the submitted application. The Evaluation Committee shall be independent and impartial and all voting members shall have equal rights. All members of the Evaluation Committee shall be individually and collectively responsible for observing the principles of this Policy.

(9) The assessment shall be conducted in accordance with the procedures set in the prequalification documents and against the eligibility and qualification criteria already announced in the invitation to prequalification. No deviation from the pre-disclosed procedures and criteria are allowed to be made during the assessment of the applications.

(10) The assessment shall determine the sort list of economic operators, satisfying the eligibility and the qualification criteria, which shall be further invited to participate in the bidding proceedings.

(11) The result of the assessment shall be documented in a report which shall be signed by all members of the Evaluation Committee.

(12) The report will be subject to approval of the authorised representative of the Procuring Entity.

(13) The Procuring Entity shall promptly notify each economic operator submitting an application to prequalify whether or not it has been prequalified and shall make available to any member of the general public, upon request, the names of all economic operators that have been prequalified. Only economic operators that have been prequalified are entitled to participate further in the procurement proceedings.

(14) The Procuring Entity shall communicate to unsuccessful economic operator the reasons leading their exclusion from the short list.

(15) When prequalification is used, prior to contract award, the Procuring Entity shall require the economic operator recommended for the award of a SADC Secretariat financed contract, to demonstrate again its eligibility and qualifications in accordance with the same criteria used to prequalify the economic operator. The Procuring Entity shall disqualify any economic operator that fails to demonstrate again its eligibility and qualifications if requested to do so. The Procuring Entity shall promptly notify

each economic operator requested to demonstrate again its eligibility qualifications as to whether or not the economic operator has done so to the satisfaction of the Procuring Entity.

CHAPTER IV. PROCEDURES FOR REVIEW OF PROCUREMENT DECISIONS

Article 42. Right to appeal a procurement decision

(1) Subject to paragraph (2) of this article, any economic operator that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the Procuring Entity by this Policy and any other SADC Secretariat procurement regulations developed for the implementation of this Policy, may appeal the procurement decision in accordance with the procedures stipulated in the Article 42 of this Policy.

(2) The following shall not be subject to the review provided for in paragraph (1) of this article:

(a) The selection of a method of procurement pursuant to Articles 22 to 28;

(b) The choice of a qualification and eligibility criteria pursuant to Article 15, if they have not been contested prior to submission of an application;

(c) A decision by the Procuring Entity under Article 18 to reject all bids, proposals, offers or quotations;

(d) The contractual requirements (as specified in the Terms or Reference or Technical Specifications) if they have not been contested prior to the submission of the application or the bid;

(e) The content of the SADC Secretariat standard solicitation documents (including the general terms of the contracts, purchase orders, templates, etc).

Article 43. Procedures for handling appeals

(1) SADC Secretariat shall develop procedures for handling procurement appeals that are fair, clear and transparent.

(2) The procedures to be followed by economic operators in appealing a procurement decision as well as the proceedings for handling the appeals shall be detailed in the SADC Secretariat procurement regulations.

CHAPTER V. ADMINISTRATIVE PROVISIONS

Article 44. Procurement implementation structure

(1) To implement the provision of this Policy, the SADC Secretariat shall set up an appropriate procurement implementation structure that promotes:

(a) accountability of the Procuring Entity's staff engaged in procurement activities, by defining clear role and responsibilities among the staff and organizational structures involved in the procurement activities;

(b) separation of attribution between various department and functions within the Procuring Entity organization, by ensuring that procurement responsibilities are cascaded among various structures with the organization

(c) quality control over the procurement activities, by ensuring that all procurement documents sent for approval are subject to ex-ante control

(d) absence of conflict of interest, by ensuring that the structure has adequate checks and balances and no payer is in the same time referee; and

(e) efficiency in the implementation of procurement activities, by ensuring that the implementation structure will not require unnecessary resources and/or promote redundant processes that are costly or/and time consuming for the organization.

Article 45. Modifying contracts

(1) Contracts may be subject to modification during implementation of a contract provided that the following principles are observed:

(a) Contract modifications shall be formalized through an administrative order or an addendum to the contract in accordance with the provisions of the General Conditions of the Contract and accepted by contracting parties.

(b) No modification to the contract may alter the award conditions prevailing at the time the contract was awarded.

(c) Any modification of the contract value shall not exceed an aggregate amount of up to twenty five percent (25%).

(d) Any modification of the duration of the contract shall not exceed an aggregate of maximum hundred percent (100%) the duration of the initial contract.

(e) All modification shall be signed by contacting parties prior to the expiration of the contract.

(2) The procedures for initiating and approving any modification of the contract shall be detailed in the subsequent SADC Secretariat procurement regulations.

Article 46. Monitoring and Auditing of Procurement Activities

(1) The SADC Secretariat shall conduct regularly through its dedicated structure the Monitoring and Evaluation of the procurement activities financed by the SADC Secretariat, including the contractor performance.

(2) The Monitoring and Evaluation reports shall be presented at least once per year to the Executive Secretary and upon request to the Council of Ministers

(3) In addition the SADC Secretariat shall also conduct regular internal audits of the procurement process.

(4) Procurement activities for contracts financed by the SADC Secretariat shall be subject to annual auditing by the Board of Auditors to ensure that funds are expended for their intended purpose, and with a view to maximizing value received by the SADC Secretariat and or the Procuring Entity, ensuring that proper and accountable systems are in place and adhered to, and identifying any weaknesses in procurement.

(5) The Board of Auditors' procurement audit reports shall be presented annually to the Council of Ministers for their information and endorsement.

(6) All the SADC Secretariat and/or the Procuring Entity staff involved in procurement processes shall provide full cooperation and disclosure to these auditors, evaluator and any other authorities conducting audits and/or monitoring and evaluation reviews, in accordance with this policy and other SADC Secretariat policies.

Article 47. Review of the Procurement Policy

(1) The SADC Secretariat may review regularly this Procurement Policy to adjust it to the evolving economic, political, social, cultural and technological environment in which The SADC Secretariat operates.

(2) Any modification shall be subject to prior approval of the Council of Ministers.

(3) No modification of this Policy shall apply retroactively.

Article 48. Sanctions

(1) Any infringement of the provision of this Policy by the Procuring Entity and or by the SADC Secretariat staff caused by misconduct or gross negligence shall be sanctioned by the Procuring Entity and/or by the SADC Secretariat in accordance with disciplinary sanctions foreseen by the SADC Secretariat's Regulations applicable to personnel and, subject to paragraph (2) of this article, initiate the legal civil or penal proceedings (as the case may be) to recuperate the damage caused by the action of the responsible staff.

(2) The SADC Secretariat shall only initiate the legal civil or penal proceedings for recuperating damages caused by a sanctioned staff if it fails to reach an amicable agreement to settle the dispute and if the cost is economically justified.

(3) When the economic operator is found in one of the situations described in Article 7 and 8 above, the SADC Secretariat and/or the Procuring Entity shall take the following measures against the economic operator:

a. reject its bid;

b. declare the bidder/the contractor, including its affiliates, ineligible for the award of a SADC Secretariat contract, either indefinitely or for a stated period of time as defined in the procurement regulations;

c. cancel or terminate any on-going contract with the bidder/the contractor;

d. request the relevant national authorities to conduct a joint investigation with the SADC Secretariat to inspect or carry out audits of the bidder/the contractor' accounting records and financial statements in connection with the contract in question for which it was found guilty of engaging in corrupt, fraudulent, collusive, coercive, or obstructive practices;

e. forfeit the bid or performance securities of the bidder/the contractor;

f. suspend any payments due to the bidder/the contractor, under the contract in question or any other contract the bidder/the contractor might have with the organization, until the extent of damage caused by its engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the SADC Secretariat's contract are determined and recovered, and

g. sue the bidder/the contractor to recover the damages caused by its engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question, if they are not fully recovered by the securities and the payments otherwise due to the bidder/the contractor.