



# SOUTHERN AFRICAN DEVELOPMENT COMMUNITY SECRETARIAT

SADC Guidelines for Procurement and Grants

Of 1<sup>st</sup> January 2017

**As amended on 20<sup>th</sup> November 2020**

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## Glossary of Terms

**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.

“**Addendum**” means the document through which significant modification to the terms and conditions of a document or contract are introduced.

“**Administrative Order**” means any instruction issued in writing by the Supervisor of a works contract or the Project Manager of a Service or Goods contract to the Contractor regarding the execution of the contract.

“**Advance Payment Guarantee**”: means a precautionary measure by which contracting authority requires a Contractor, upon signature of a SADC Secretariat contract, to provide a guarantee to cover for the amount received by Contractor as an advance payment under the contract.

“**Ancillary services**” means all related services which the Contractor is required to implement in a contract for Goods in addition to the delivery of the supplies procured. Where they are necessary they are specified in the contract and may include for example services such as installation, unloading, testing, commissioning, provision of expertise, supervision, maintenance, repair, training and other such obligations connected with the goods to be provided.

“**Assessor**” means an independent individual expert with an in-depth knowledge of the issues covered by a grant programme who is engaged by a Contracting Authority to carry out a detailed written assessment of a grant application using the published evaluation grids. He/she cannot be member of the Evaluation Committee but may attend its meetings as observer.

“**Beneficiary**” or “**grantee**” means any natural or legal person who receives a Grant.

“**Best value for money**” means “most economically advantageous offer”.

“**Bill of quantities**” means the document containing an itemized breakdown of the works to be carried out in a unit price contract, indicating a quantity for each item and the corresponding unit price.

“**Budget breakdown**” means the schedule which breaks down the contract value according to the different items or services, stating out fee rate, unit prices and lump sums per item provided.

“**E-Procurement**” means a dedicated system permitting bidders to submit bids by electronic means.

“**Board of Auditors**” means the body of External Auditors established as per the requirement of Article 29 of the Treaty.

“**Bidding Documents**” means the file containing all the documents needed to prepare and properly submit a bid.

“**Bid**” means a written and formal offer to supply goods, works or services for an agreed price.

“**Bid security**” means a security provided by the bidder that he would accept and sign the contract in case he is awarded it. In case he does not, the bid security is forfeited.

“**Bidder**” means an economic operator submitting a bid, proposal or quotation; willing to conclude a contract with the Procuring Entity.

“**Calls for proposals**” means a public invitation by the Contracting Authority, addressed to clearly identified categories of applicant, to propose operations to be awarded with Grants.

“**Candidate**” means any legal person that has sought an invitation to take part in a restricted or negotiated procedure.

**“Commercial warranty”** means the warranty the manufacturer provides for a defined period that the supplies will be free from structural defects due to substandard material or workmanship, under conditions of normal commercial use and service. The commercial warranty should not be confused with the warranty period of the contract.

**“Contracting Authority”** means the entity signing the contract. It might be the Procuring Entity or a different entity, especially in cases of secondary procurement.

**“Contract”** means an agreement between the Contracting Authority and an economic operator resulting from the application of the appropriate and approved procurement procedures or proceedings, and shall be concluded in the pursuance of the a bid award decision or one of its committee.

**“Contractor”** means any natural or legal person or public entity or consortium of such persons and/or bodies selected at the end of the procedure for the award of the contract.

**“Consortium”** means a grouping of eligible natural and legal persons or public entities which submits a tender or a grant application, under a tender procedure or in response to a Call for Proposals. It may be a permanent, legally established grouping or a grouping which has been constituted informally for a specific tender procedure or Call for Proposals. All members of a consortium (i.e., the leader and all other partners) are jointly and severally liable to the Contracting Authority.

**“Contribution in kind”** means provision of goods or services to the grant beneficiary free of charge by a third party. Contributions in kind do not therefore involve any expenditure for the grant beneficiary and are not entered in its accounts.

**“Council of Ministers”** means the governing body of the SADC Secretariat, established by Article 9 of the SADC Treaty.

**“Conflict of interest”**, in the context of these Guidelines, 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 SADC or 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/or the Procuring Entity.

**“Contractor”** means an economic operator entering into a contract with the Contracting Authority 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.

**“Cost-plus contract”** means a contract where the contractor, when finished the agreed-upon works, receives compensation equal to expenses plus profit.

**“Day”** means a calendar day unless specified otherwise.

**“Defects liability period”** means the period stated in the contract immediately following the date of provisional acceptance, during which the Contractor is required to complete the works and to remedy defects or faults as instructed by the Supervisor.

**“Direct award”** means the award of one or more grants without organising a call for proposals. A direct award is only appropriate under certain, special circumstances and must always be subject to an evaluation report.

**“Drawings”** means the designs provided by the Contracting Authority and/or the Supervisor, and/or drawings provided by the Contractor and approved by the Supervisor, for the carrying out of the works, the provision of goods or the performance of services.

**“Economic operator”** means contractors whether for services, works or goods.

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

**"Emergency"** means the circumstances which are urgent, unforeseeable, may cause loss of property, life or jeopardize SADC Secretariat interests are unforeseeable and are not caused by any dilatory conduct, or bad management, of the Procuring Entity.

**"Equipment"** means machinery, apparatus, components and any other articles intended for use in the works.

**"Evaluation Committee"** means a committee made up of a non-voting Chairperson, a non-voting Secretary and an odd number (three to five) of evaluators with the technical and administrative capacities to give an informed opinion on bids or grant applications.

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

**"Expenditure verification"** means both the process and the report by which an auditor verifies according to agreed-upon procedures contained in the relevant Terms of Reference that the Financial Report submitted by the contractor/beneficiary can be reconciled to the latter's accounting and bookkeeping system and to underlying accounts and records. The auditor also verifies that the contractor/beneficiary complies with the relevant contract provisions.

**"Expert"** means a natural person/consultant employed/contracted by an eligible contractor, or where applicable subcontractor, engaged to provide the expertise required for the proper performance of a contract.

**"Evaluation Committee"** means committee made up of a non-voting Chairperson, a non-voting secretary and an odd number (at least three) of voting members (the evaluators) with the technical and administrative expertise capacities necessary to give an informed opinion on tenders or grant applications.

**"External Tender Committee"**: means the Committee appointed yearly by the Executive Secretary from TROIKA Members and entrusted with the authority and responsibility to oversee all procurement processes using SADC Secretariat's financial resources, within the thresholds defined in these Guidelines.

**"Fee based contracts,"** means a service contract under which the services are provided on the basis of fixed fee rates for each day worked by consultants. These are activity-based contracts, which might be used for technical assistance and supervision.

**"Final beneficiary of a grant"** means those who will benefit from the project in the long term at the level of the society or sector at large.

**"Final acceptance certificate"** means a certificate issued by the Supervisor or Project Manager to the contractor at the end of the defects liability period or warranty period stating that the contractor has completed its obligations.

**"Financial offer"** means the part of a bid/application, which contains all the financial elements of the bid/application, including its summary budget and detailed price breakdown or cash-flow forecast required by the Bidding Documents.

**"Force Majeure"**, in the context of these Guidelines, means an exceptional event or circumstance:

(i) which is beyond the control of the party(ies) involved;

➤ which could not reasonably have been foreseen, avoided and overcome;

- not substantially attributable to the party(ies) involved.
- 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:
  - war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
  - rebellion, terrorism, sabotage by persons other than the SADC Secretariat/ Procuring Entity's and/or Economic Operator's personnel, revolution, insurrection, military or usurped power, or civil war,
  - riot, commotion, disorder, strike or lockout by persons other than the SADC Secretariat/ Procuring Entity,
  - presence of munitions of war, explosive materials, ionising radiation or contamination by radio-activity, explosives, and
  - natural catastrophes such as floods, earthquake, hurricane, typhoon or volcanic activity.

**“Fraud and Corruption”**, in the context of these Guidelines, means one or more of the following instances:

**“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;

**“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;

**“corrupt practice”** is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

**“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;

**“obstructive practice”**

- (v.1) deliberately destroying, falsifying, altering or concealing evidence to the investigation or making false statements to investigators in order to impede the SADC Secretariat's, 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 impede the exercise of the SADC Secretariat's or governmental inspection and audit rights.

**“Framework Contract”** means an agreement between the Procuring Entity and one or more contractors, which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement.

**“General conditions of contract”** means the general contractual provisions setting out the administrative, financial, legal and technical clauses governing the implementation of all contracts of a specific type. There are general conditions for goods, services and works.

**“General Damages”** means damages which have not been agreed beforehand by the parties and awarded by a court or arbitration tribunal, or agreed between the parties, as a compensation payable to an injured party for a breach of the contract by the other party.

**“Goods contract”** means a contract covering the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A contract for the supply of products and, incidentally, for siting and installation shall be considered a supply contract.

**“Global price service contract”** means a service contract under which the services provided are paid on the basis of the delivery of the specified outputs (result based contracts). These are commonly used for public relations contracts, studies, communication campaigns etc.

**“Grants”** means a direct payment of a non-commercial nature by the Contracting Authority to a specific beneficiary in order to implement an operation (or in some cases to finance part of its budget) in order to promote a SADC policy.

**“Grant programme”** means a programme which determines the objectives and scale of assistance in form of grants for operations promoting SADC policy objectives.

**“Guidelines for Applicants”** means a document explaining the purpose of a call for proposals for grants. It sets out the rules regarding who may apply, the types of operation and costs which may be financed and the evaluation criteria. It also provides practical information on how to complete the application form, what documents must be annexed and rules and procedures for applying.

**“Implementation period”** means the period from contract signature until final payment for services, or until release of the performance bid after final acceptance for goods and works.

**“Incidental expenditure”** means a provision covering the ancillary and exceptional eligible expenditure incurred under a service contract and the type of eligible expenditure incurred under a service contract. The type of eligible expenditure as specified in each contract. It cannot be used for costs which should be covered by the contractor as parts of its fees.

**“Internal Tender Committee”**: means the Committee appointed yearly by the Executive Secretary from staff within the Secretariat and entrusted with the authority and responsibility to oversee all procurement processes using SADC Secretariat’s financial resources, within the thresholds defined in these Guidelines.

**“Invitation to Bid”** means a letter sent to short listed candidates in a restricted or negotiated procedure inviting them to submit a Bid.

**“In writing communication”** means a communication either hand-written, typed or printed.

**“International Restrictive Bidding”** means a competitive procurement method which entails a pre-qualification process open to all economic operators as the first step, and an invitation to bid, open only to the prequalified bidders, as the second step.

**“Key expert”** means an expert who is defined as instrumental in the Terms of Reference and who are subject to evaluation as part of the Bid.

**“Lead applicant”** means in a grant the member of the consortium who acts as coordinator of the activity and signs the contract with the Contracting Authority representing itself and the rest of the beneficiaries.

**“Limited Bidding”** means 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.

**“Liquidated damages”** means damages which have been agreed beforehand by the parties and recorded in the contract as being a genuine estimate of the loss suffered by the injured party (i.e. compensation payable by the contractor to the Contracting Authority for failure to complete the contract or part of the contract within contractual periods/compensation payable by the Contracting Authority to the Contractor for failure to pay within the contractual periods shall be calculated according to general conditions of contract.



**“Local Restricted Bidding”** means a procurement method open to participation on equal terms by all providers through advertisement of the procurement on the SADC website and in a newspaper of wide circulation in the specific country or countries where services, works or goods will be rendered or consumed.

**“Lump sum contract”** means a works contract under which the contracting authority agrees to pay the contractor a specified amount for completing the work without requiring a cost breakdown.

**“Mixed contract”** means a contract between the Contracting Authority and a service provider, supplier or construction contractor covering two or more of the following: works, services and supplies.

**“Most economically advantageous Bid”** means the Bid judged the best in terms of the criteria laid down for the contract, e.g. quality, technical properties, aesthetic and functional qualities, after-sales services and technical assistance in relation to the price offered. These criteria must be announced in the Bidding Documents.

**“Negotiated Procedure”** means a procurement method for acquisition of goods, works and services in which one or several economic operators are invited to submit a technical and financial proposal and negotiate the technical, financial and commercial conditions of a contract.

**“Non-key expert”** means an expert who is not defined as instrumental in the Terms of Reference and who is approved by the Project Manager by administrative order.

**“Open Bidding”** means a procurement method for acquisition of goods, works and services which involves an invitation to submit a bid in a competitive bidding process to all interested economic operators.

**“Operating Grant”** means a direct financial contribution, by a way of budgetary support, in order to finance the functioning of an entity.

**“Observer in an Evaluation Committee”** means an independent individual expert with an in-depth knowledge of the issues covered by the Evaluation who will make an independent assessment.

**“SADC Preference”** means the terms used for describing the preferences given during an evaluation process to bidders from SADC countries, when their Bids are technically and economically equivalent with bids submitted by non-SADC nationalities.

**“Performance Security”** means a precautionary measure by which Procuring Entity requires a Contractor, upon signature of a SADC Secretariat contract, to provide guarantees to fulfil their contractual obligations as stipulated in contract. The Contractor, together with the contract signed, will provide the Performance Security. The Performance Security may be requested to contractors for goods, services and works but never for grantees. Performance security is 10% of the contract.

**“Price schedule”** means the completed schedule of prices, including the breakdown of the overall price, submitted by the contractor with his Bid, modified as necessary and forming a part of the unit price contract.

**“Procurement”** means the legal acquisition by any means of goods, works or services required to satisfy the needs of the SADC Secretariat.

**“Procurement method”** means the procedures through which the Procuring Entity purchases services, goods and works.

**“Procurement Procedure under Multiple Framework Contracts”** means a limited bidding procedure to be used with contractors with whom the Procuring Entity has signed a framework contract. The description and conditions of application of this method is to be found in the **Article 25** of the SADC Policy on Procurement and Grants.

**"Procuring Entity"** means the SADC Secretariat structure designated by the Accounting Officer to commit funds and implement programmes/project/activities on its behalf.

**"Price"** means the amount as money asked for or given in exchange for a service, good(s) or work.

**"Programmes Management Committee"** means the SADC body formed by the programme Directors/Heads of Unit plus the Director of Finance and budget. The SADC Programmes Management Committee shall have the role and responsibility in handling the grants appeal procedures in accordance with chapter 7 of these Guidelines. It is the body entrusted with the authority and responsibility to oversee all calls for proposals for grants using SADC Secretariat's financial resources

**"Project manager"** means the person responsible for monitoring the implementation of a project on behalf of the Contracting Authority".

**"Proposal"** means an offer by a supplier in response to a request for proposal.

**"Public contracts"** means those contracts of public nature concluded in writing between one or more legal entities and one or more contracting authorities in order to obtain, against the payment of price paid in whole or in part, the supply of goods, the implementation of works, the provision of services or the attribution of grants. Such contracts comprise works, services, goods and grants.

**"Regional Restricted Bidding"** means a competitive procurement method which entails a pre-qualification process including the publication at regional (SADC) level, as the first step, and an invitation to bid opened only to the prequalified bidders, as the second step. The description and conditions of application of this method is to be found in the **Article 22** of the SADC Policy on Procurement and Grants.

**"Regional Preference"** means an evaluation method through which the Procurement Entity grants bidders that are offering services, goods and works originating from the SADC Countries an evaluation advantage over the bidders offering similar services, goods and works originating from outside the SADC Countries. More details are to be found in **Article 16** of the SADC Policy on Procurement and Grants.

**"Restricted Bidding"** means a procurement method whereby the first step is pre-qualification and the second step an invitation to bid to pre-qualified bidders only. The description and conditions of application of this method is to be found in the **Article 22** of the SADC Policy on Procurement and Grants.

**"Retention Money Guarantee"** means a precautionary measure by which the contracting authority requires a works contractor (not used for services, goods or grants), upon signature of a SADC contract, to provide a guarantee to fulfil its contractual obligations during the period between provisional acceptance and final acceptance of the works (usually one year). It is a percentage (often 5%) of the amount certified as due to the contractor on an interim, that is deducted from the amount due and retained by the contracting authority.

**"SADC"** means Southern African Development Community and its institutions established by the Treaty.

**"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.

**"SADC Treaty"** means the treaty establishing SADC, as amended.

**"Site"** means the places provided by the Contracting Authorities where the works are to be carried out and other places stated in the contract as forming part of the site.

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

**“Special Conditions”** means the conditions laid down by the Contracting Authority as integral part of the Bid or Guidelines for Applicants, including amendments to the General Conditions, clauses specific to the contract and the Terms of Reference or Technical Specifications.

**“Staff”** means any personnel, employee or expert working for a contractor regardless of their contractual link.

**“Study contract”** means a service contract between a Contracting Authority and a service provider concerning e.g. identification and preparatory studies for projects, feasibility studies, economic and market studies, technical studies, evaluations and audits.

**“Successful Applicant”** means the applicant selected for granting at the end of a call for proposals procedure for the award of contract.

**“Successful Bidder”** means the Bidder selected at the end of a bidding procedure for the award of a contract.

**“Supervisor”** means the legal or natural person responsible for monitoring the implementation of a works contract on behalf of the Contracting Authority and/or donor (when the donor is not the Contracting Authority).

**“Supervisor’s representative”** means any natural or legal person designed by the Supervisor as such under the contract, and empowered to represent the Supervisor in the performance of its functions and in exercising such rights and/or power as have been delegated to it. In this case references to Supervisor will include its representative.

**“Supplier”** means any legal person or public entity or consortium of such persons and/or bodies offering goods/equipment.

**“Target groups”** means the groups/entities that will be directly positively affected by the project at the project purpose level.

**“Taxes”** means indirect taxes such as value added taxes, customs and import duties, other fiscal charges and duties.

**“Technical Bid”** means the part of a Bid which contains all non-financial elements of the Bid, i.e. all elements other than the financial bid which are required by the Bidding Documents. The Technical Bid for services must not contain financial indications.

**“Technical Specifications”** means the document approved by the Procuring Entity setting out the requirements and/or objectives in respect of the provision of goods or works, specifying, where relevant, the methods and resources to be used and/or results to be achieved“.

**“Terms of Reference”** means the document drawn up by the Procuring Entity setting out its requirements and/or objectives in respect of the provision of services, specifying, where relevant, the methods and resources to be used and/or results to be achieved.

**“Technical Assistance contract”** means contract between a service provider and the Contracting Authority, under which the service provider exercises an advisory role, manages or supervises a project, provides the experts specified in the contract.

**“Threshold”** in the context of these Guidelines, means a monetary value which is set in order to determine the procurement method(s) allowed and/or determines the required approvals at different stages of the procurement procedure.

**“Time limits”** means those periods in the contract which shall begin to run from the day following the act or event which serves as the starting point for those periods. There where the last day of the period is not a working day, the period expires at the end of the next working date.

**“Unit price contract”** means a work contract in which the price is based on estimated quantities of items included in the project and their unit prices.

**“Variation order”**: means a 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.

**"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.

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# 1. INTRODUCTION

## 1.1. Purpose and Use of the Guidelines

1. These Guidelines develop the contracting/awarding procedures for procurement and grants for all actions financed by/through SADC Secretariat unless otherwise is justified through a Convention, a Contribution Agreement, a Financing Agreement or any other legal instrument.
2. The Guidelines apply both to actions in which SADC Secretariat is the Procuring Entity/Contracting Authority and those in which the Secretariat is financing an external action.
3. The SADC Secretariat may, according to its internal regulations, decide not to use these Guidelines in exceptional cases. Any deviation from these Guidelines requires derogation from the competent SADC authority for the specific case.
4. These Guidelines are intended to provide guidance on the policies and procedures that govern the procurement of goods, works, and services as well as the contracting of grants to all the staff members involved in the various stages of the procurement activities conducted by the SADC Secretariat.
5. These Guidelines also detail the procedures through which the SADC Secretariat may select/hire individual consultants. The selection procedure is found in Annex 1.
6. The Guidelines and any subsequent amendments shall be governed by the SADC Secretariat's Financial Regulation and SADC Secretariat's Policy for Procurement and Grants.
7. The procedures stated in the Guidelines are designed to ensure that Procuring Entity staff can act in accordance with the Procurement Policy and Guidelines, and assisting those economic operators, natural persons and other entities seeking to enter into procurement or grant contracts with the Institution, and assure that their bids/applications are considered and assessed in a fair, consistent and transparent manner.
8. When involved in procurement activities or grant for the SADC Secretariat, all staff members are required to comply with the provisions of the Guidelines.
9. At the same time, for those seeking SADC Secretariat procurement or grants opportunities, the Guidelines set out the conditions to be mandatorily fulfilled for being awarded a SADC Secretariat procurement or grant contract. The Guidelines also provide procurement and grant procedures necessary to undertake procurement or grant procedures from the very first steps to the award, signature and implementation of contracts.
10. Non-recurrent purchases under 2.000 US\$ do not fall within the scope of these Guidelines.

## 1.2. Amendments and revisions to the Guidelines

1. For reasons of efficiency, transparency and, the technology changes over time, the Guidelines shall be subject to review from time to time through an internal consultative process. A relevant committee appointed by the Executive Secretary shall coordinate any review process.

2. All amendments shall come into effect only after approval by the Executive Secretary and publication on the SADC Secretariat website.
3. To ensure continuity and predictability of the SADC Secretariat procurement system, any procurement process already started at the time of the revision of the Guidelines shall follow the procurement rules and procedures stipulated in the Guidelines in force at the time when the specific procurement notice is published.

### 1.3. Principles

1. All contracting processes conducted by SADC Secretariat, directly or indirectly, shall comply with the following principles, deriving from the ones stated in Article 2 of the SADC Secretariat Policy for Procurement and Grants:
  - (a) **Economy:** Procurement is a purchasing activity whose purpose is to give the SADC Secretariat the best value for money. For complex purchases, value may imply more than just price, since quality issues also need to be addressed. In line with this principle, the lowest initial price may not equate to the lowest cost over the operating life of the item procured. The underline objective remains as the ultimate purpose of sound procurement and grant award, this is to obtain maximum value for money.
  - (b) **Efficiency:** SADC Secretariat procurement system shall be simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the SADC Secretariat and its procurement staff.
  - (c) **Fairness:** SADC Secretariat procurement system shall be impartial, consistent, and therefore reliable. It shall offer to all interested bidders a level playing field where to compete. This implies, among others, that the procurement processes shall be conducted based on the principles already announced, principles which shall not be artificially discriminatory, that no retrospective decision on procurement processes shall be taken, and that all bidders shall be equally treated prior and during the procurement processes. The Secretariat system for awarding grants must also follow this principle.
  - (d) **Transparency:** SADC Secretariat procurement system shall establish and then maintain, rules and procedures that are accessible and unambiguous. They shall not only be fair, but also they shall be seen to be fair. In this respect, prior and during the bidding process, SADC Secretariat shall ensure equal access to procurement information to all bidders or prospective bidders. The Secretariat system for awarding grants must also follow this principle.
  - (e) **Accountability:** SADC Secretariat procurement system shall hold its staff responsible for enforcing and strictly following the rules. It makes them subject to disciplinary process and sanction, if appropriate, for neglecting or violating those rules. The Secretariat system for awarding grants must also follow this principle.
  - (f) **Ethical Standards:** SADC Secretariat's procurement system shall observe ethical standards -by avoiding inducement, collusion and corruption- which is a key prerequisite for procurement and grants awarding credibility.

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- (g) **Promoting competition:** By using as much as possible bidding procedures and call for proposals, standardized requirements, and non-discriminatory qualification, selection and evaluation criteria.
2. All the actors involved in the contracting process shall have to comply with the ethical clauses of the SADC policy for procurement and grants and its annexes.

## 2. GENERAL RULES

### 2.1. Definition of procurement and grants

1. Procurement is the acquisition of goods, services or works from an external source via a bidding process (tender) process which must ensure that those goods, services or works meet the needs of the Contracting Authority in terms of quantity and quality and that they are procured at the best possible cost.
2. Grants are direct non-profit financial contributions to a beneficiary in order to finance one or more actions or the functioning of the institution which be awarded on competitive basis except otherwise contemplated in the legal frame authorising them.

### 2.2. Ethic clauses

#### 2.2.1. Fraud and Corruption

The SADC Secretariat requires that the procurement processes and the award of contracts shall be free of fraudulent practices, corrupt practices, collusive practices, coercive practices and conflict of interest. For the purpose of these Guidelines, the following concepts are defined:

- (a) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (b) “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;
- (c) “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;
- (d) “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;
- (e) “obstructive practice” means:
  - (i) 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

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

### **2.2.2. Conflict of Interest**

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A bidder/applicant or a contractor shall not be allowed to get engaged in any procurement/grant process for delivery of any kind of services, goods, works or award grants 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/Contracting Authority. Without limitation, economic operators shall not be hired under the circumstances set forth below:

- (a) A contractor that has been engaged by the Procuring Entity/Contracting Authority to provide goods, works, or services for the Institution, 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 services resulting from or directly related to the contractor's consulting services for such preparation or implementation.
- (b) 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 for an assignment shall not be hired for the assignment in question.
- (c) 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.

### **2.2.3. Actions taken on fraud, corruption and conflict of interest**

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1. When the economic operator or applicant is found involved in one of the situations described in para 2.2.1 and 2.2.2. above, the SADC Secretariat and/or the Procuring Entity/Contracting Authority shall take the following measures against the economic operator:
  - (a) reject its bid/application;
  - (b) declare the bidder/the applicant/the contractor, including its affiliates, ineligible for the award of a SADC Secretariat contract, either indefinitely or for a stated period of time of minimum two (2) years or any other period the Tender Committee might decide based on the nature of the offense committed;
  - (c) cancel or terminate any on-going contract with the bidder/the applicant/the contractor;

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- (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's 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 applicant/the contractor, under the contract in question or any other contract the bidder/the applicant/the contractor might have with the Institution, 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 applicant/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.
2. The SADC Secretariat shall prepare and maintain a database containing third parties who are banned from participating in bids and calls for proposals.

#### **2.2.4. Ethics and Professional Responsibility**

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##### **2.2.4.1. Officials' Ethics and Professional Responsibility**

1. The Procuring Entity /Contracting Authority and/or the SADC Secretariat staff engaged in the procurement and grant awarding activities such as but not limited to: requisitioning, planning, preparing, and conducting procurement proceedings or call for proposals, and administering the implementation of contracts, or authorizing or effecting payments under the contracts shall:
- (a) discharge their duties impartially so as to assure fair competitive access to by bidders/applicants;
  - (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 the SADC Secretariat's Procurement and Grants Policy and these Guidelines;
  - (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, obstructive 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 or any committee to which he is a member, he is required to declare the interest in accordance with the procedures set forth in the Guidelines, and is required to recuse himself from acting in any way in that matter and is required not take part in the consideration or discussion of, or vote on any question with respect to the matter.

#### 2.2.4.2. Applicants, Bidders and Contractors' Ethics

1. Economic operators and contractors shall act in a professional, objective and impartial manner in the mutual interest of the two parties and in line with the provision of these Guidelines.
2. Any attempt by an economic operator to obtain confidential information, enter into unlawful agreements with competitors or try to influence the members of the Evaluation Committee or the Procuring Entity /Contracting Authority or the SADC Secretariat staff during the process of examining, clarifying, evaluating and comparing bids, applications or proposals shall 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 raises a conflict of interest as defined in the SADC Policy for Procurement and Grants and these Guidelines.
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 commercial relationship with other bidders, applicants, the Procuring Entity or the SADC Secretariat staff or contractors involved in the same process. Should such a situation arise during the performance of the contract, the contractor shall immediately inform the Procuring Entity /Contracting Authority.
5. 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 the Procuring Entity or the SADC Secretariat in any way without its prior written consent.
6. 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 conventions.
7. 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 Institution.
8. The contractor and its staff are bound to maintain confidentiality for the entire duration of the contract and after its completion, as specified in the contract. 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.
9. 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 complaints, terminate the contract without further notice and without the contractor having any right to complaint for compensation.
10. All bidding documents/regulations for applicants and contracts for grants, works, goods and services shall include a clause stipulating that bidders shall 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.

11. 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.
12. Contractors found to have paid unusual commercial expenses on contracts 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/Contracting Authority/third party funds.

#### **2.2.4.3. Debarment of economic operators/applicants**

1. Contracting Authority shall have the right to debar economic operators/applicants, which are found guilty of Fraudulent, Corrupt, Obstructive or Collusive practice or Conflict of Interest or are not upholding their ethical and professional responsibilities as defined in Clause 2.2.4.2 of these Guidelines.
2. The debarment shall be for minimum two (2) years or for a maximum of ten (10) years depending of the gravity of the offense committed and according to Article 49 (2) of the SADC Secretariat Policy on Procurement and Grants. Presenting false or forged documents in a tender/call for proposals related to previous experience and eligibility or exclusion criteria shall lead to a debarment of at least five (5) years and the exclusion from the process. The Contracting Authority may also proceed to cancel all contractual relations existing between the Contracting Authority and the economic operator/applicant and its branches and/or subsidiaries.
3. The relevant Tender Committee (for tender procedures) or the Programmes Management Committee (for call for proposals) shall take the decision of debarment at the recommendation made by the Contracting Authority, either through request of the Evaluation Committee, the Procurement Function or the Requisitioning Function.
4. The decision of debarment shall be communicated by the Contracting Authority to the debarred economic operator in writing and shall give specific details on the reasons leading to debarment.
5. The economic operator/applicant shall have the right to appeal the Contracting Authority decision in accordance with section seven of these Guidelines.
6. The SADC Secretariat shall maintain on its procurement website a record of all debarred economic operators/applicants indicating the name, the place of registration, nationality, owner(s) of business (if applicable), the date when the decision for debarment was taken, the duration of the debarment and brief description of offense committed.

### **2.3. Categories of procurement**

1. The procurement process selected shall depend on the contract's outcome.
2. There are three basic categories of procurement, as follows:

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- (a) **Procurement of Services:** whereby a contractor will be selected to supply time, effort and/or expertise in exchange for remuneration; i.e. contracts for technical assistance, legal services, supervision of works, studies of all types (feasibility, social, environmental), audit, design and architectural services, training, event organising, transport, accommodation, printing, editing, broadcasting, cleaning, security, insurance, medical, communication, renting or leasing of property or equipment, installation, commissioning, operation and maintenance, surveys, exploratory drilling, aerial photography, satellite imagery or any type of consultancy service.
  - (b) **Procurement of Goods:** whereby a contractor will be selected to deliver/provide supplies in exchange for remuneration; i.e. contracts for purchasing commodities, raw material, machinery, equipment and ancillary services related to it.
  - (c) **Procurement of Works:** whereby a contractor will be selected for executing works such as constructions, refurbishment or maintenance of buildings or civil infrastructure (roads, bridges ports, channels, dams, sewage systems etc), land reclamation (such as earthworks, drainage, flooding etc) and civil installations (waste treatment plants, irrigation systems, electricity lines etc).
3. In some cases contracts may have outputs related to more than one category, i.e. ancillary services in some goods contracts or design services in some works contracts. In such cases the nature of the contract outcome shall be determined by the component with the largest input in the implementation of the contract.

## 2.4. Procurement methods

1. Competitive tendering is the basic way of awarding contracts. The purpose of competitive tendering is to ensure that bids comply with the awarding principles and to obtain the quality of works, goods and services needed at the best possible price.
2. There are several types of procurement method, each granting a different degree of competition. There are six procurement methods allowed under these Guidelines, each granting a different degree of competition, namely Open Bidding, Restricted Bidding, Limited Bidding, Negotiated Bidding, Single Source, Framework Contracts and Selection of Consultants.
3. Whatever the procedure used, the Contracting Authority must ensure that the conditions allow fair competition and respect the procurement principles established both in the SADC Secretariat Policy for Procurement and Grants and these Guidelines. Conditions justifying application of each method are provided in these Guidelines. The detailed steps on the procurement of services, goods and works are presented in Chapters 3, 4 and 5 of these Guidelines, respectively.
4. The thresholds included in the Schedule 3 are based on the maximum budget available for the contract. Where contracts are divided in lots, the value of each lot is taken into account for calculating the overall threshold. The contracts shall not be split artificially to circumvent the procurement thresholds. Once there is a financial allocation approved, the Procuring Entity shall decide which is the most adequate procurement procedure.
5. The Competent Authority may, through derogation and respecting the specific legal frame authorising the expenditure (Convention, Contribution Agreement, Programme, Financing Agreement or other legal frame) decide to follow a different procedure.

### 2.4.1. Open Bidding

1. This shall be the preferred method to be used for procurement of goods and works.

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2. The Open Bidding involves an open invitation to submit a technical and financial proposal in competitive bidding process to all interested economic operators. Under the Open Bidding, 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.
3. To avoid distortion of competition and eliminate possible corrupt practices, 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 per cent (20%) of the shares or the share capital. For the same purpose, major shareholder shall be defined as: any legal or natural person, which owns no less than twenty per cent (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 procurement processes undertaken by the Procurement Entity for a period of a period of two (2) years.
4. There are three types of Open Biddings, as follows:
  - (a) International Open Bidding, whereby the process is published internationally;
  - (b) Regional Open Bidding, whereby the process is published regionally; and
  - (c) Local Open Bidding, whereby the process is published locally.
5. The detailed steps on how this procurement procedure shall to apply for procurement of services, goods and works are presented further in chapters 3, 4 and 5 of these Guidelines.

#### **2.4.2. Restricted Bidding**

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1. This is a competitive procurement procedure.
2. The method shall be applied to procurement for services according to the thresholds established in Schedule 3. This method is divided in two stages:
  - (a) Prequalification of bidders**
    - i. Under the Restricted Bidding, the first stage of the procedures is the pre-qualification. During the pre-qualification, the Procuring Entity issues an Invitation for Pre-qualification open to all the interested economic operators.
    - ii. The Invitation for Pre-qualification shall indicate the selection criteria to be mandatorily fulfilled by an economic operator to be shortlisted for participating in the bidding procedure. The purpose of the pre-qualification is to draw up a shortlist of applicants based on their qualifications before launching the bidding procedure.
    - iii. 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. The short list must have a minimum three and a maximum of six operators.

- iv. In case the minimum of three is not achieved the procedure shall be cancelled and the Procuring Entity may decide to either launch again the tender or open a Negotiated Bidding with the company/ies that met the prequalification requirements.
- v. The contract shall be given the maximum publicity according to publicity guidelines. The selection criteria and the tasks to be undertaken shall be described in the specific contract notice.
- vi. To avoid distortion of competition and eliminate possible corrupt practices, 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 per cent (20%) of the shares or the share capital. For the same purpose, major shareholder shall be defined as: any legal or natural person which owns no less than twenty per cent (20%) of the shares or the share capital of the economic operator.
- vii. If an economic operator deliberately or inadvertently submits more than one application per contract, it shall be automatically disqualified from any procurement processes undertaken by the Procurement Entity for a period of two (2) years.

**(b) Invitation to bid to pre-qualified bidders**

- i. In the second stage of the Restricted Bidding, the Procuring Entity invites and sends the shortlisted applicants the Invitation to Bid and the Bidding Documents free of charge.
  - ii. In order to ensure fair competition, the same economic operator or consortium shortlisted that has submitted the application form shall submit bids. No change whatsoever in the identity or composition of the bidder is permitted unless the Procuring Entity has given its prior approval in writing. A situation where such approval could be given is i.e. 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.
3. There are three types of Restricted Biddings, as follows:
- (a) International Restricted Bidding, whereby the pre-qualification process is published internationally;
  - (b) Regional Restricted Bidding, whereby the pre-qualification process is published regionally; and
  - (c) Local Restricted Bidding, whereby the pre-qualification process is published locally.
4. The detailed steps on how the three types of implementation of this procurement procedure shall apply for procurement of services, goods and works are presented further in chapters 3, 4 and 5 of these Guidelines.

**2.4.3. Limited Bidding**

- 1. The Limited Bidding method is essentially the Restricted Bidding method with the exception that in Limited Bidding the Procuring Entity shall establish the short list without pre-qualification or open advertisement.
- 2. Under this method, the Procuring entity restricts the issue of bidding documents to a limited number of economic operators when:

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- (a) the goods, works, or services required are of a specialized nature or can be obtained from a limited number of specialized contractors, service providers or reputable sources, all of whom are known to the procuring entity; or
  - (b) the time and cost of considering a large number of tenders 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 tendering, 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. The Guidelines allow the Contracting Authority to use this procedure under certain thresholds. In this case Limited Bidding is not an exceptional procedure and can be applied by the Procuring Entity without any special authorisation/derogation.
  4. Unless it falls within the thresholds established for it in the Procurement Guidelines, this method shall only be deployed with the prior approval of the Executive Secretary or the Tender committee if the attribution has been delegated by the Executive Secretary and it has been fully demonstrated that any of the conditions laid out in the previous paragraph has been met.
  5. Under this method, for the procurement process to be considered successful, the shortlist shall consist of a minimum three (3) economic operators and the Procuring Entity shall receive at least two (2) responsive bids/quotations/proposals.

#### **2.4.4. Negotiated Bidding**

1. Negotiated Bidding is a competitive procedure which should follow strictly the awarding rules. The Procuring Entity shall prepare full set of bidding documents.
2. The difference between Limited Bidding and Negotiated Bidding is that in the former there is no negotiation between the Procuring Entity and the entities invited to submit bids whilst in the later the Procuring Entity may negotiate prices and technical conditions with the potential contractor/s. Unlike in Limited Bidding there is no requirement for a minimum number of entities invited or bids submitted although it is recommended to invite at least three economic operators.
3. Unless the tender falls within the thresholds contemplated for it in the Procurement Guidelines, the method shall only be deployed with prior approval of the Executive Secretary or the relevant Tender Committee in case the attribution has been delegated to it by the Executive Secretary and if it has been fully demonstrated that the conditions for application of this method have been met in line with the SADC Secretariat Policy on Procurement and Grants.
4. There are two types of Negotiated Bidding methods:

##### **(a) Negotiated bidding without publication.**

- (1) Under Negotiated Bidding, the Procurement Entity invites several potential economic operators to submit and negotiate technical and financial proposals. The application of this method may take place in successive stages of negotiation until the Procuring Entity is satisfied with the technical and commercial offer of the invited economic operators. The contract can only be awarded to the bidder that has submitted a technical compliant offer at the lowest negotiated price.

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(2) Negotiated Bidding can be used in the following circumstances:

- i. Following an unsuccessful open or restricted procedure, if the Procuring Entity cannot launch a new procurement process due to emergency reasons or adverse market conditions which prevent open competition.
- ii. If the Procuring Entity cannot launch a new procurement process due to emergency or other reasons following unsuccessful restricted procedure, where less than three companies qualified, the Contracting Authority may launch a Negotiated Bidding procedure with the entities that did comply with the prequalification (one or two).
- iii. Where the goods involved are manufactured purely for the purpose of research, experimentation, study or development; however, contracts awarded pursuant to this point shall not include quantity production to establish commercial viability or to recover research and development costs.
- iv. For the purchase of goods or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations.
- v. For goods and services which due to safety and security reasons can only be procured from a limited reputable source (i.e. drugs and medicines, financial services, legal services, medical services or where, for technical reasons or reasons involving the protection of exclusive rights, proprietary goods, works or services, the contract can only be awarded to a limited number or a single economic operator.
- vi. the time and cost of considering a large number of tenders is disproportionate to the value of the procurement; or
- vii. 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 tendering, 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) These Guidelines allow the Contracting Authority to use this procedure under certain thresholds. In this case Negotiated Bidding/Single Source is not an exceptional procedure and can be applied by the Procuring Entity without any special authorisation/derogation.

**(b) Negotiated Bidding with publication**

- (1) This method entails that the Procuring Entity launches an open invitation to all interested economic operators to participate in a two stages bidding process.
- (2) During the first stage, the interested economic operators are invited to submit un-priced technical proposals on the basis of a conceptual/preliminary design or performance specifications.
- (3) Upon review of the first stage proposals, the Procuring Entity shall invite bidders to negotiate improved technical proposal, discuss commercial conditions of contract and provide any other clarification as necessary.



- (4) Subject to specific request for improvement of their proposals as well as general amendments of the bidding documents, the bidders shall be further invited to submit final technical and financial proposals at the second stage.
  - (5) Following the second stage evaluation, the Procurement Entity shall invite the successful bidder to negotiate the contract.
  - (6) The Negotiated Bidding Procedure with Publication shall be used only in the case of contracts for: (a) large complex facilities awarded as single responsibility (including as turnkey) contracts for the design, supply and installation, or single responsibility contracts for the supply and installation of a facility or plant; (b) works of a complex and special nature; (c) complex design and build contracts or (d) complex equipment and information and technologies that are subject to rapid technology advances where it may be undesirable or impractical to prepare complete technical specifications in advance.
5. The Negotiated procedure entails the following stages which are also applicable to the Single Source:
- a) ***Request for Single Source or Negotiated procedure:***
    - (1) unless the tender falls within the thresholds contemplated for negotiated procedure in Schedule 3, the Procurement Function, on the basis of the submission from the Requisition Function, prepares the request for the negotiation procedure, and sends it to the Executive Secretary or to the relevant Tender Committee for approval.
    - (2) The Request for Negotiated Procedure/Single Source procedure shall contain at least the following information: i) an explanatory note justifying why the negotiation procedure is required; ii) the Terms of Reference/ Technical Specifications to describe the needs of the Institution, and an estimated value of the contract, iii) the eligibility criteria to be fulfilled by the economic operators invited to submit a proposal; and iv) the name(s) of the economic operator (s) invited to submit a proposal.
    - (3) In case of negotiations for amendment of existing contracts or resulting from failures in two successive bidding procedures, the eligibility criteria shall be the same as the one used for the initial procurement process.
    - (4) Once received from the Requisition Function, the Procurement Function will send the request for the prior approval of the SADC Tender Committee.
  - b) ***Preparation of the Request for Offer:***
    - (1) Upon the approval of the Request for Negotiation Procedure by the SADC Tender Committee, the Procurement Function will prepare, using the approved standard templates the Request for Offer.
    - (2) Depending of the complexity of the requirements, the economic operators shall be given a minimum of fifteen (15) and a maximum of sixty (60) days to submit a proposal in response to the Request for Offer.
  - c) ***Communication with the invited economic operator(s):***

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- (1) The economic operator(s) invited to submit a proposal is/ are allowed to request clarifications prior to submitting the proposal. However, all communications between economic operator (s) and Procuring Entity shall be in writing.
  - (2) To ensure fairness in the negotiation procedure, when more than one economic operator is invited to submit a proposal for the same contract, the request for clarification and the answers given by Procuring Entity shall be circulated among all the economic operators requested to submit a proposal.
- d) ***Submission of proposal:***
- (1) The invited economic operator(s) shall send the proposal in the format and by the deadline as set in the Request for Proposal.
  - (2) If the invited economic operator needs more time to prepare the proposal, it shall request the Procuring Entity to extend the deadline. The request shall be sent at least 10 days prior to the expiration of the deadline for submission of proposals. Procuring Entity has the right to grant or reject the request for extension. Procuring Entity shall inform simultaneously in writing to all the invited economic operators about its decision regarding the extension request.
- e) ***Negotiation Committee:***
- (1) The negotiation committee shall have the same composition, functions and origin as the Evaluation Committee regulated in para 2.11 of these Guidelines.
  - (2) If it is practicable, the person(s) who developed the Technical Specifications/Terms of References shall be included in the Negotiation Committee in order to provide the technical input.
  - (3) Members of the Appeals Review Committee, the Internal Audit Function, the Accounting Officer or the Complaints Officers shall not be appointed as members of the Negotiation Committee.
- f) ***Assessment and Negotiation of Proposal:***
- (1) The purpose of the negotiation is to secure a contract for services, goods and/or works needed by Procuring Entity, under the most advantageous conditions for the Institution and in accordance with the principles governing the SADC Secretariat procurement processes.
  - (2) The negotiation may include all aspects of the proposal: technical (including quantity and quality of deliverables), financial (including the unit prices) or legal aspects (including the contractual conditions and qualification criteria).
  - (3) The negotiation between the Negotiation Committee and the invited economic operator(s) shall be conducted in writing to a feasible extent. Should the negotiations require a direct contact between the Negotiation Committee and the invited economic operator, a direct meeting can be organized.
  - (4) The place of negotiation shall always be the Procuring Entity Head Quarters and the invited economic operator shall bear all the costs associated to its participation in such meeting(s).

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- (5) The discussion and the conclusions of the meeting shall be recorded by the Secretary of the Committee and signed by all the participants in the meeting. The recorded minutes shall state that the agreements reached during the meeting(s) are not binding either party, until a procurement contract is signed between the economic operator and the Procuring Entity.
  - (6) When the negotiation is conducted with more than one economic operator, the Negotiation Committee shall observe transparency and fairness at all times of the negotiation. During the negotiation, each economic operator shall be given the same chances to improve their proposal.
  - (7) The assessment and the negotiation procedures shall not take more than thirty (30) days.
- g) **Award of the contract:**
- (1) The negotiation procedure is a bidding procedure and the bids shall be evaluated against the qualification and award criteria contained in the bidding documents. The Negotiation Committee shall apply the award criteria and shall make a recommendation for award.
  - (2) The entire negotiation process and the justification of the recommendation for award shall be documented in the Negotiation Report. It shall be prepared by the Secretary of the Negotiation Committee and shall be signed by all members of the Negotiation Committee. The standard template shall be used for drafting the Negotiation Report.
  - (3) The Negotiation Report is subject to the relevant SADC Tender Committee's approval.
  - (4) After the SADC Tender Committee approval of the Negotiation Report, the Procurement Function shall inform the economic operator(s) the outcome of its deliberation.
  - (5) When informing unsuccessful operators, the notification shall include detailed reasons for the failed bid, it will also indicate the name of awarded economic operator (if any) and the value of the contract awarded for the services, goods or works.
  - (6) Unsuccessful economic operator(s) can appeal the decision of the Negotiation Committee in accordance with the procedures described in Chapter 7 of these Guidelines.
- h) **Preparation of the contract:**
- (1) The Procurement Function shall be responsible for the preparation of the contract, based on the standard templates and the agreements reached in the Negotiation Report.
  - (2) The contract shall be drawn up by the Procurement Function and is subject to financial and legal regulatory clearances prior to his/her signature by the Executive Secretary, his/her delegatee or any other Accounting Officer.
  - (3) The contract shall be issued in five (5) originals, be stamped on each page with the Procuring Entity's official stamp.
  - (4) Since the economic conditions offered by the economic operator might change rapidly and invalidate the agreements reached during the negotiation procedures, the contract shall be sent to the economic operator for its signature up to thirty (30) days from that date of notification of the recommendation of the Negotiation Committee for the award of the contract.

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- (5) The economic operator shall be given fifteen (15) days to sign the contract and return four (4) originals to Procuring Entity. If it fails to do so, the Procuring Entity may consider cancelling the award of the contract. In such case, the negotiation procedures done shall be cancelled or, if the negotiation was conducted with more than one economic operator, shall be reactivated with the one that submitted the second best proposal, as the Procuring Entity considers appropriate.
  - (6) The Procurement Function shall verify the power of representation of the natural person who signs the contract on behalf of the awarded bidder.
- i) **Publication of the award of contract:**  
After the signature of the contract by both parties, the Procurement Function shall publish the notification of award of the contract, using the standard template on the SADC Secretariat website, within five (5) days from the date of signature of the contract.
- j) **Cancellation of the negotiation procedure:**
- (1) The Procuring Entity shall not be bound to accept any proposal submitted by, or commence any negotiation with, the invited economic operator (s).
  - (2) At any time and without being liable for any compensation to the invited economic operator(s), the Procuring Entity may cancel the negotiation procedures if:
    - i. no proposal has been received within the deadline set in the Request for Proposal;
    - ii. after evaluating the proposal(s) submitted by the economic operator (s), the Negotiation Committee is in the view of that the quality of the proposals makes a mutual acceptable agreement improbable or very difficult;
    - iii. if the negotiations with the economic operator(s) fail;
    - iv. if the recommended economic operator fails to sign the contract which was subject to Single Source procedures; or
    - v. if the technical and/or economic conditions or the needs of the Procuring Entity changed from the moment of launching the procurement processes and the services, goods and works subject to procurement under the negotiation procedures are no longer justified.
  - (3) The decision to cancel the negotiation procedure shall be taken by the SADC Tender Committee and shall be communicated to the invited economic operators by the Procurement Function.

#### 2.4.5. Single Source

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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”.

- (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 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 Bidding 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.
2. where, under low value, i.e. transactions under US\$ 2.000. Non-recurrent purchases under this amount shall not require bidding documents and are not in the scope of these Guidelines.
  3. The method shall only be deployed with prior approval of the Executive Secretary or the relevant Tender Committee in case the attribution has been delegated to it by the Executive Secretary and if it has been fully demonstrated that the conditions for application of these methods have been met.
  4. The negotiation procedure is the same as for the negotiated procedure (as provided in para 2.4.4 (5)).

#### **2.4.6. Framework contracts**

1. Framework contracts are agreements between a Contracting Authority and one (single) or more (multiple) economic operators the purpose of which is to establish the terms governing specific contracts which may be awarded during a given period, particularly as regards the duration, subject, price, maximum value, implementation rules and quantities envisaged.
2. Procurement under 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/impossible to foresee the exact quantities and the time when they are needed.
3. Framework contracts with several economic operators are called “multiple” framework contracts; they take the form of separate contracts but they are all concluded on identical terms. The

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specifications must state both the minimum and the maximum number of operators with which the Contracting Authority intends to conclude contracts.

4. Framework contracts with a single economic operator are called “single” framework contracts.
5. The duration of multiple framework contracts should not exceed four (4) calendar years.
6. The duration of single framework contracts should not exceed two (2) calendar years.
7. The value of 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 Institution as reflected in the specific annual budgetary allocation.
8. Procuring Entity shall 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 aggregated total sum of the awarded Framework Contract shall not exceed the total budget foreseen.

#### **2.4.7. Procurement thresholds and packaging of procurement contracts**

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1. The procurement thresholds under which various procurement methods shall apply are specified in Schedule 3 to these Guidelines.
2. Non recurrent procurement of services, goods and works with a value under US\$ 2.000 shall be considered as petty cash transactions.
3. The thresholds given in Schedule 3 are based on the maximum estimated value of the contract in question. Where contracts are subdivided in lots, the value of each lot shall be taken into account when calculating the overall threshold.
4. If appropriate, in order to achieve economies of scale, to ensure maximum coordination between related activities and to keep contract implementation as simple as possible, care shall be taken to design projects allowing for maximum contract size and avoiding the unnecessary fragmentation of budget resources into a series of small contracts. This purpose can be achieved in two ways:
  - a) Through multiple framework contracts for the recurring needs of the same item when the specific quantity and time of the needs is difficult to assess when maintaining stocks will be not economically advantageous for the institution; and
  - b) Grouping the required items in lots in such a way to ensure transparency, economy and efficiency in the procurement processes and delivery of the right services, works and goods at the right time for the Institution. The grouping shall be made by categories: services, goods and works. Within each category, needs shall be examined to see whether it is possible, sensible and commercially accepted to combine similar or related items in a single lot.
5. Under no circumstances grouping contracts into lots shall lead to situations when the achievement of a contractual obligation under one lot shall depend on the fulfilling of the contractual obligation under another lot.
6. The contracts shall not be split artificially to circumvent the procurement thresholds.

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7. Thresholds limitations can be disregarded only through a specific derogation granted by the competent SADC authority.

## **2.5. Participation in bids/calls for proposals: eligibility/exclusion criteria**

In order to be eligible to participate in award procedures (whether procurement of goods, services and works or calls for proposals for grants) the potential contractors must meet the nationality, origin and non-exclusion criteria.

### **2.5.1. The rules of nationality and origin**

1. The Contracting Authority must take into consideration and introduce in the bidding documents, the rules of nationality, origin and preference.
2. The rules of nationality and origin shall be specific to the funding source and shall be regulated in the legal document authorising it (Convention, Agreement, Financing Agreement, Contract, Contribution Agreement or other similar legal instruments).

3. **The rule of nationality**

The rule of nationality applies to natural or legal persons. Certain bids, if authorised by the correspondent legal frame, restrict the possibility to participate to natural or legal persons of certain nationality. The rule of nationality may apply only to the legal persons applying or also to the individual experts (in case of service contracts).

Bidding documents (procurement) or guidelines for applicants (grants) must clearly state the rules of nationality applicable to the tender procedure.

For natural persons, the nationality must be declared in the bid and proved through providing copies of passport or national identification card. For legal persons, the bidding documents or guidelines for applicants shall require that the country in which they are established is stated and evidence by presenting the documents required under that country's law.

In order to demonstrate compliance with the nationality rule, legal persons have to prove that their legal personality is formed under the law of an eligible country and that their actual domicile is in that country.

4. **The rule of origin**

The rule of origin refers to the origin of goods. All goods purchased under a contract shall originate from a country eligible as per the corresponding financing instrument.

In case more than one country was involved in the production the concept of last substantial transformation shall apply.

When submitting the bid/application, the potential contractors must state expressly that all the goods meet the requirements concerning origin and must state the country/ies of origin. When the contract involves the supply of more than one item, the origin of each item must be specified.

The provider of the goods may be requested to provide documents supporting the origin e.g. certificates of origin and/or additional information.

The certificates of origin must be issued by the competent authorities of the goods' or the providers' country.

The Contracting Authority may on its own initiative make enquiries regarding the rule of origin and the certificates and/or documents provided.



### 2.5.2. The Exclusion criteria

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1. The economic operators/applicants shall not be eligible for 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; or
  - (f) they have been sanctioned by SADC Secretariat pursuant to the provisions of the SADC policy for procurement and grants.
2. The Contracting Authority shall accept, as satisfactory evidence, that the applicant or the bidder is not in one of the above situations described in (a), (b) or (e), on submission of a recent extract from the judicial record, or failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin showing that those requirements have been met.
3. The Contracting authority shall accept, as satisfactory evidence, that the bidder/applicant is not in the situation described in (d), on submission of a recent certificate issued by the competent authority of the country concerned. Where no such documents or certificates are issued in the concerned country, and for other cases of exclusion listed above, they may be replaced by a sworn / solemn statement (affidavit) made by the interested party in front of a judicial or administrative authority, a notary, or a qualified professional body in its country of origin or provenance.
4. The Contracting Authority takes into account that - as a rule - the exclusion criteria are related to the legal entity/ natural person acting as a bidder/applicant and not to the representatives in case of legal entities. However, depending on the legislation of the country where the bidder/applicant is legally established and if the Contracting Authority considers necessary or has reasonable doubts concerning the personal situation, the above stated documents may also relate to natural persons, including company directors or any person with power of representation, decision-making or control in relation to the bidder.
5. Whenever a bidder/applicant, due to its nature (for instance, national public administrations and international Institutions), cannot fall into one of the above categories and/or cannot provide the documents indicated above, a simple declaration explaining their situation shall suffice.
6. For procurement under Restricted Bidding/Restricted and call for proposals, the compliance with the eligibility criteria shall be assessed during the pre-qualification phase. Hence, the documentation proving that the applicant does not fall in any of the categories defined in the exclusion criteria, shall be submitted along with the application form for pre-qualification or once the short list is established. Entities not complying shall not be invited to send a full application/bid.
7. In case of Single Source procedure, the evidence that the economic operator complies with the eligibility criteria shall be included with their proposal.

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8. The date on the evidence or documents provided shall be up to one (1) year before the date of submission of the bid/application. Bidders/applicants shall, in addition, provide a statement confirming that their overall situation has not weakened in the period since the evidence was drawn up to the date they submitted the bid/application.
9. The above-required documents shall be submitted by the applicant/bidder, and in case of a joint venture, by all joint venture members. The documents may be originals or copies. If the documents are copies, a public notary shall certify them. However, at the Contracting Authority's request, the bidder/applicant shall be able to provide any original document. If sub-contractors are employed by the bidder/applicant, the same rules apply.
10. If the supporting documents are not written in an official SADC Secretariat language, an official and certified translation into an official SADC Secretariat language shall be attached.
11. Contracts shall not be awarded to applicants or bidders who, during the procurement process or call for proposals:
  - a) are subject to a conflict of interest;
  - b) are guilty of misrepresentation when submitting the information required by the Contracting Authority as a condition of participation in the contract procedure, or fail to submit the information required by the Contracting Authority as a condition of participation; or
  - c) find themselves in any situations of exclusion for the procurement procedure or call for proposal, after the bid or application was submitted.
12. Potential contractors for procurement or grants who have made false declarations, made substantial errors, committed irregularities or fraud may be excluded from participation in all procurement and calls for proposals.
13. Bidders who have made false declarations, committed substantial errors or irregularities or fraud may also be subject to financial penalties through the execution of the Bid Security (which may vary between 1.5 and 3% of the contract value). The bidding documents/guidelines for applicants may establish other penalties.
14. Where, after the award of the contract or during implementation, the Contracting Authority discovers that the contractor has made false declarations, substantial errors, committed irregularities or incurred in fraud, the Contracting Authority may refrain from concluding the contract, suspend performance or terminate the contract, apply penalties according to the contract and/or suspend payments. If there are serious suspicions, the Contracting Authority may suspend the contract and make further enquiries before taking a decision. The Contracting Authority may also choose to seize the performance guarantee.
15. The following economic operators are not allowed to participate in procurement processes for award of SADC Secretariat 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 prohibit 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 prohibit 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; and
- c) Political organizations, economic operators banned, pursuant to **Articles 7 and 8** of the SADC Policy on Procurement and Grants.

## 2.6. Selection/qualification, evaluation and award criteria

### 2.6.1. Selection/qualification criteria

1. The qualification criteria are a set of requirements that applicants or bidders shall fulfil in order to demonstrate their capability to execute the contract in question. When the Open Bidding procedure is employed, the qualification criteria are also called post-qualification criteria as the compliance with the criteria is verified only for bidder/applicant recommended for the award of the contract. When the Restricted Bidding is employed, the qualification criteria is called pre-qualification criteria as the compliance with the criteria is verified during the pre-qualification and are used for developing the shortlist of economic operators invited to submit a bid (technical and financial proposal).
2. The criteria shall be objective and not discriminatory. Both, the criteria and the documents needed to prove the compliance with the qualification criteria shall be clearly stated in the procurement notice. The qualification criteria verify the technical, professional and financial capacity of the bidders/applicants. Once announced, the criteria cannot be changed during the evaluation process.
3. The Contracting Authority may also publish criteria in addition to the financial, professional and technical ones, which are relevant to the assignment, i.e. facility resources.
4. The bidding documents/guidelines for applicants shall not contain criteria not related to the assignment, not objective or disproportionate, i.e.:
  - (a) Requesting a disproportionate annual turnover, number of staff, number of previous similar projects etc as regards the bid. Annual turnover requested should be between one and two times the estimated contract budget.
  - (b) Using imprecise terms such as “sufficient”, “major”, “relevant” as these are not objective terms.
  - (c) Requesting information that goes further back in time than eight years. For goods and services the information sought shall be for not longer than the past three years.
  - (d) Requesting a specific percentage of the staff working in a specific field. Number of staff working in a specific field is acceptable.
  - (e) Requesting specific experience of projects related to a single donor may be considered discriminatory.
  - (f) Requesting specific experience in a specific country, unless specific justification may be considered discriminatory.
  - (g) Requesting technical experience in an overly prescriptive manner which restricts competition to one or very few operators.
5. The qualification criteria must be specified in the specific contract notice and/or the bidding documents.
6. In case of consortium, the qualification criteria must be applied to the consortium as a whole.

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7. The bidder or applicant shall be asked to indicate in the application form the economic, financial, professional and technical capacity in accordance with the qualification criteria established in the bidding documents/guidelines for applications.
8. For international and regional restricted bids for services, the supporting documents in response to qualification criteria shall be submitted with the full set of pre-qualification documents.
9. For restricted applications for grants, the supporting documents in response to qualification criteria shall be submitted with the full application documents.
10. For open bidding procedure only successful bidders shall have to submit proof of complying with the qualification requirements.
11. If there is doubt about the authenticity of some of the documents, the Contracting Authority shall carry out additional checks.
12. For contracts with a value under the international thresholds (see Schedule 4 below) and grants under US\$ 350.000 the Contracting Authority may, depending on its own risk assessment, decide not to require proof, but if so is decided no pre-financing shall be granted without financial guarantee.
13. Depending on the category of procurement, the qualification criteria are the following:

**(a) Technical capacity**

The technical capacity is measured by having successfully implemented, during the last three to eight years in services or goods from three to five and in works from three to eight, a certain number of contracts of the same nature, complexity and price.

By similar contracts shall be understood contracts of the same nature as the contract for which the bidding process was launched, not necessarily contracts with exactly the same specifications (for instance in case of a technical assistance in design and supervision of a highway, it shall not be looking for a firm experienced in design and supervision of highways with the same specific features as the requested highway but with general experience in technical assistance in design and supervision of highways).

Similarly, experience in a SADC country is not usually a relevant criterion; however, experience in countries with similar environment/conditions can be considered as a relevant factor for assessing the experience in implementation of similar contracts. The criteria shall be demonstrated by the provision of certified copies of similar contracts or letters of acceptance for services, goods and works from previous clients. In case of contracts for goods not manufactured by the economic operator, the proof shall be presented in a form of a statement from the manufactures or suppliers of the services and goods, confirming that the economic operator is an accredited dealer for their products and services. The above statement shall also indicate the average volume and the type of products supplied by the manufacturer or supplier and traded by the economic operator in the last three years.

If the Procuring Entity wants to confirm the quality or reliability of the manufacturer or supplier mentioned above, as the case may be, it may request from the economic operator additional information about the capacity of the manufacturer and supplier related to the quality of the goods and/or services as well as the technical support, maintenance and troubleshooting for the goods and services produced and traded by the economic operator.

**(b) Professional capacity**

The bidder/applicant may be requested to demonstrate availability of experienced staff, capable of performing functions required for the contract.

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The requirements concerning this criterion may list the essential functions, and/or the number of years of relevant experience of the personnel needed by the economic operator to prove compliance with this criterion. The Procuring Entity shall avoid using words such as “qualified” or “licensed” as well as “Master or PhD degrees”, unless they are essential for implementation of the contract. This request may be proved by presenting a list of the available personnel and highlighting the compliance with the requirement.

**(c) Financial and economic capacity**

The bidder/applicant is requested to demonstrate the availability of the financial means to fully finance the estimated contract cash flow for twelve months, net of requirements for other known commitments over the period of implementation of the contract. Usually, the following aspects are taken into consideration when evaluation this criteria: i) the average annual turnover over the last three years (it shall be a minimum of three times the estimated cash flow value of the contract); ii) the average liquid funds held over the last three years shall be equivalent to the estimated contract cash flow for twelve months; iii) the average financial performance has to be positive over the last three years; and iv) the minimum net worth of the economic operator shall be the minimum equivalent of the estimated contract cash flow for twelve months. The compliance with the requirement concerning the liquid funds can also be demonstrated by providing the proof of access to a dedicated credit line, overdraft facility or other bank loans from a reputable bank, equal to the cash flow for twelve months. For contracts valued over US\$ 350,000, the proof of access to a dedicated credit line or overdraft facility shall be a mandatory requirement for proving the compliance with the liquidity criteria. For compliance with the other criteria, the economic operator shall provide certified copies of the balance sheets, audit reports and/or similar statements of the accounts, audited by certified reputable auditors or certified by the fiscal authority of the country where the economic operator is registered/incorporated.

The minimum annual turnover requested should be at least the same amount budgeted for the specific bid and not over two times the budgeted amount.

**(d) Facilities resources**

Facilities resources is an additional criterion which might be requested for bidders competing for services, goods and/or works contracts. In such instance, bidders or applicants shall be required to demonstrate the availability of specialized equipment, essential for the execution of the contract, or facilities to provide maintenance or technical support at the site where the general services, goods or works shall be delivered. The list of such requirements should be limited to highly specialized and/or heavy equipment, as well to service facilities critical to the execution of the contract, which cannot be easily purchased, hired or leased in the market, or readily manufactured. To prove compliance with this criterion, the economic operator shall provide documents demonstrating the ownership of the equipment or facility, or any binding agreement with a local supplier to lease or rent the equipment and/or facility, or to provide technical support for maintenance and troubleshooting.

All the documents presented by the bidder/applicant to demonstrate the compliance with the aforementioned criteria shall be in original or certified copies (by a public notary or Commissioner of Oath) and be in any of the SADC Secretariat official languages. When the documents are not written in one of the official languages, they shall be accompanied by the original certified translation into one of the SADC Secretariat official languages.

The Contracting Authority reserves the right to request the economic operator to provide additional information. The Contracting Authority may also contact any of the references mentioned in the supporting documents.



### 2.6.2. Evaluation criteria

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1. The evaluation criteria are meant to determine the compliance of the services, goods and works offered by the bidders with the requirements stated in the terms of reference, technical specifications or guidelines for applicants.
2. The evaluation criteria shall be clearly stated in the Bidding Documents or Guidelines for Applicants. It shall be precise, non-discriminatory and not prejudicial to fair competition. The evaluation criteria shall not be changed or modified during the evaluation process.
3. The Contracting Authority may use one of these two systems of evaluation for procurement processes:
  - a) **Evaluation using the merit point system:** This system of evaluation entails that merit points or weightings are assigned for each relevant or critical aspect or sub-criteria, being evaluated and compared with the requirement. In such case, in order to preserve the relevance, no aspect or sub-criteria shall be assigned less than five per-cent (5%) of the overall score. This system shall be used for fee-based services as well as for those complex global price services.
  - b) **Evaluation on the compliance with the requirements and price:** This system of evaluation implies the comparison of the bids against the requirements. If a bid fails to comply with any critical requirement, it is automatically rejected. The technical compliant bids are ranked based on the price. This system shall be used for goods, works and some global price services with technical requirements clearly defined and widely available on the market.
4. A variation of the evaluation on the compliance with the requirements and price is the evaluation on the life cycle cost. The life cycle cost procedure entails that the price of the offer shall be calculated on the basis of the initial acquisition cost plus the ownership's use cost, to determine the total cost during the life of a works plant or equipment. The life cycle cost method shall also be used for acquiring specialized Consulting Services (i.e.: procurement of fiscal agent services, privatization services, legal support services), or for works or equipment where the cost of operation and maintenance is substantial. A minor difference in the initial purchase price between two bids can easily be overcome by the difference of the operating cost.

### 2.6.3. Award criteria

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Contracts are awarded on the basis of the award criteria established in the Bidding Documents in one of the following two ways:

- 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) best value for money/quality and cost (i.e. the most economically advantageous bid or best price-quality ratio). This award procedure entails the successful bid to be determined by applying a formula including the evaluation points and the offered price.

### 2.7. 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 services, goods and works originating from SADC countries, when compared to bids offering services, goods and works originating from elsewhere. 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.

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2. The nationality of the economic operator shall not be a condition for determination of the eligibility stated in paragraph 1.
3. The regional preference clause may not apply to procurement funded in whole by a cooperating partner, in which case, the regional preference may be governed by the relevant binding cooperating policy instrument.
4. In case of procurement funded in part by a cooperating partner the regional preference shall be governed by the relevant policy instrument or criteria agreed upon following negotiations between SADC Secretariat and the cooperating partner.
5. In case the agreement with cooperating partner does not provide for application of specific procurement policy this preference shall apply.
6. To this end:
  - (a) for works contracts, bids that offer at least fifty per cent (50%) construction materials, equipment and labour in contract value of a SADC origin, shall be accorded a ten per cent (10%) price preference on the evaluated contract price where bids of an equivalent economic, technical and administrative quality are compared.
  - (b) for goods and global price services contracts, bids that offer goods and services of at least fifty per cent (50%) in contract value of SADC origin, shall be accorded a fifteen per cent (15%) price preference where bids of equivalent economic, technical and administrative quality are compared.
  - (c) for fee based service contracts, bids who offer at least fifty per cent (50%) in contract input (key experts staff days) of SADC experts, shall be accorded a fifteen per cent (15%) price preference where bids of equivalent economic, technical and administrative quality are compared.
7. The determination of the percentage of SADC origin shall be done as following:
  - (a) for works contracts, the total value of construction materials, equipment and labour of SADC origin offered in the bid shall be divided by the total value of the bid;
  - (b) for goods and global price services contracts, the total value of goods and general services of SADC origin offered in the bid shall be divided by the total value of the bid; and
  - (c) for fee based service contracts, the total number of key staff days performed by experts who are citizens or permanent residents of a SADC Member State shall be divided by the total number of key staff days in the bid.
8. A contractor that was awarded the contract as a result of application of the margin of preference must demonstrate prior to payment of the invoices that the services, good and works indicated in the bid as having SADC origin have been delivered and they are originating or manufactured in SADC Member State.
9. The documents to prove the origin shall be the following:
  - (a) For goods the poof of origin shall be the Certificate of Origin issued by the relevant authority where the goods were manufactured.
  - (b) For global price services shall be sworn statement by the contractor indicating the country where the services originated.
  - (c) For labour or experts shall be the proof of residence of the natural person.



## 2.8. Availability of funds and procedure with a “suspension clause”

1. As a general rule call for proposals and bidding procedures cannot be launched without a specific budgetary allocation approved thus before initiating any procedure the funds must be available. However, in exceptional circumstances, if the internal regulations and the legal frame (Convention, Contract, Contribution Agreement, Financing Agreement or other legal instrument) allow it, the procedures may be published with a suspension clause before the financing decision or the legal instrument are finally approved.
2. Under no circumstance shall a contract be awarded or signed without the adoption of the financing decision and the legal frame.
3. The bidding documents or guidelines for applicants must explicitly contain the suspension clause providing that the process may be suspended in the case of non availability of funding. If the financing agreement and/or the legal frame are not signed the bid/call shall be inevitably cancelled.

## 2.9. Cancellation of processes

1. The Contracting Authority may, before the contract is signed, abandon the procurement or grant exercise and cancel the procedure without the applicants or bidders being entitled to claim any compensation. If the process is divided into lots, a single lot may be cancelled. Cancellation may occur when:
  - (b) the bidding procedure has been unsuccessful, i.e. no qualitatively or financially worthwhile bids have been received or there is no response at all;
  - (c) the economic or technical data for the contract have been fundamentally altered;
  - (d) exceptional circumstances or Force Majeure render the normal performance of the contract impossible;
  - (e) all technically compliant bids/ applications substantially exceed the available financial resources; or
  - (f) there have been noted flaws in the application of procurement procedures.
  - (g) The financial allocation becomes unavailable.
2. If a procurement process is cancelled, all applicants/bidders shall be notified in writing of the reasons for the cancellation at the earliest time (no more than seven days since the decision to cancel is taken). Furthermore, a cancellation notice shall be published on the SADC Secretariat website with the reasons for cancellation (no more than seven days since the decision to cancel is taken).
3. After cancelling a bidding procedure or call for proposals, the Contracting Authority may decide to:
  - a) launch a new process;
  - b) re-launch the previous process;
  - c) in case of procurement processes, to open negotiations with one or more bidders who participated in the bidding procedure and met the qualification criteria, provided that the original contract terms have not been substantially altered; or
  - d) not to award the contract.
4. Under no circumstances shall the Contracting Authority be liable for any damages whatsoever including, but without limitation, damages for loss of profits in any way connected with the

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cancellation of a procurement process. The publication of a procurement notice does not commit the Procuring Entity to award the contract announced or accept any application or bid received.

## **2.10. Technical specifications and terms of reference**

Technical specifications (for goods and works contracts) and terms of reference are part of the bidding documents provided by the Contracting Authority in order to give guidance and instructions to operators to submit their bids which respond to all technical and administrative requirements, and later to serve as the contractor's mandate during project implementation. The terms of reference or technical specifications shall become an annex to the contract.

### **2.10.1. Technical specifications**

1. The Technical Specifications is the document setting out the requirements and/or objectives in respect of the provision of goods and works, specifying, where relevant, the methods and resources to be used and/or results to be achieved.
2. The Requisition Functions are responsible for the preparation of the Technical Specifications for the goods and works to be procured by Procuring Entity. When an external contractor drafts the Technical Specifications under a service contract, the Requisition Function shall be responsible for checking and approving the quality of the result.
3. When drafting Technical Specifications, detailed descriptions of technical requirements for the goods and works to be procured shall be given. Precise and clear specifications are prerequisite for bidders to respond realistically and competitively to the requirements.
4. Unless the Negotiated Bidding or Single Source procedure procurement methods are used, the technical specifications 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 goods and works to be procured. Only then, the economy, efficiency and fairness in procurement processes can be ensured and an objective evaluation procedure can be conducted.
5. For goods and works, the specification shall require all supplies to be new, unused, and of the most recent or current models, and they have to incorporate all recent improvements in design and materials. Any reference to brand names, catalogue numbers or other details that limit any materials or items to a specific manufacturer shall be avoided. Where unavoidable, such item description shall always be followed by the words "or substantially equivalent".
6. Technical Specifications, shall be descriptive and give the full requirements in respect of, but not limited to, the following:
  - (a) standards of materials and workmanship required;
  - (b) details of all factory tests required (type and number);
  - (c) details of all work required to achieve completion;
  - (d) details of all pre-commissioning and commissioning activities to be performed by the Contractor;
  - (e) details of all ancillary services requested, such as training, installation, maintenance, storage and operational manuals; and
  - (f) details of all functional guarantees required, and liquidated damages to be applied in the event that contractual obligations are not met.





7. The Technical Specifications shall include the essential technical and performance characteristics and requirements, including maximum or minimum acceptable values.
8. When ancillary services are requested, the Technical Specifications shall provide full details about the required services allowing bidders to price them in their proposal. These details can cover aspects such as:
  - a) **in case of training:** the number of trainees, the location of training, the language of the training, the duration of the training, the requirement concerning the training materials and any other requirement;
  - b) **in case of maintenance services:** the total period to be covered by these services (which shall not exceed the duration of the contract), the type of maintenance envisaged, the frequency of maintenance, the preferred quality of expertise expected and any other requirement.
  - c) **In case of installation services:** the location of the place of installation, the complete technical details of the space where the goods will be installed (including drawings if needed), and the list of additional estimated materials requested by the contractor to perform the installation (if these are not included in the list of goods), the condition for the contractor's personnel to be given access to the site, etc.
  - d) In case of procurement of works certified experts in accordance with the international accepted standards shall draft the Technical Specification.
9. In case of procurement of goods, depending on the nature of supplies to be purchased, the Technical Specifications should address the following aspects, as appropriate:
  - (a) General Description (including the quantities, place of delivery and other conditions);
  - (b) Technical requirements;
  - (c) Functional requirements;
  - (d) Accessories and Attachments;
  - (e) Tools or Other Required Items;
  - (f) Maintenance Requirements;
  - (g) Installation Requirements;
  - (h) Spare Parts Required;
  - (i) Manuals;
  - (j) Required Performance;
  - (k) Warranty Specifications;
  - (l) Training Requirements;
  - (m) Delivery requirement;
  - (n) Storage Requirements; and
  - (o) Other Requirements.

### **2.10.2. Terms of reference**

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1. Terms of reference are key in procurement for services. It explains the objectives, scope of assignment, activities, tasks to be performed, and the respective responsibilities of the Procuring Entity and the Contractor, including the expected results and deliverables of the assignment. Adequate and clear terms of reference are of utmost importance for the proper understanding of the assignment and its correct execution. It reduces the Procuring Entity's risk of unnecessary extra work, delays, and additional expenses. In addition, they help minimizing the risk of ambiguities during the preparation of bidders' proposals, the contract negotiation and execution of services. Drafting the

terms of reference require expertise with the type of the requested assignment and the necessary resources, as well as the familiarity with the assignment background and the environment where the assignment ought to be implemented.

2. The requisition unit shall have the responsibility for drafting terms of reference. However, when the terms of reference need to cover areas of responsibility of several units within the Contracting Authority, a working group, comprising representatives of all the concerned units with the stake in the assignment, shall be formed.
3. When an external contractor under a service contract drafts the Terms of Reference, the Requisition Function coordinating the work of the contractor shall ensure the adequacy of the Terms of References and therefore held responsible for their quality.
4. The terms of reference shall be approved, as part of the process of the approval of the bidding documents in which they have to be incorporated, by the relevant authority within the Procuring Entity's organizational structure, depending on the threshold and the procurement method used for procuring the services described in the terms of reference.
5. The terms of reference shall include at least the following information:
  - (a) background of the project;
  - (b) objectives of the assignment;
  - (c) scope of assignment;
  - (d) data, local services, personnel and facilities to be provided by the contractor;
  - (e) objectively verifiable indicators, list of reports, schedule of deliveries, period of performance;
  - (f) data, local services, staff, and facilities to be provided by the Procuring Entity;
  - (g) institutional arrangements, and
  - (h) downstream work.

#### **a. The background**

The background summarizes the main features of the project and describes the assignment's objectives and its general purpose. In particular, it shall include:

- (i). name of the Procuring Entity/Contracting Authority and if applicable the name of the end Beneficiary of the assignment;
- (ii). assignment location;
- (iii). rationale of the assignment ;
- (iv). assignment history (what has been already done and by whom, what is the current state of affairs where the consulting assignment is expected to continue working);
- (v). list of relevant studies and basic data;
- (vi). need for consultants in the assignment and issues to be resolved;
- (vii). source of financing for the assignment; and
- (viii). supervision arrangements.

#### **b. The objectives**

To avoid misleading the bidders or applicants, the terms of reference shall describe precisely the objectives and expected results of the assignment.



### **c. The Scope**

1. This section of the terms of reference details the main activities (or tasks) to be conducted by the contractor and the expected results. The terms of reference should normally describe only the requested activities, not the approach or methodology to achieve the results, since these are precisely the tasks the bidders are contracted for.
2. Nevertheless, for fee based contracts and/or for procurement procedure under Multiple Framework Contracts, if the evaluation criteria consider mostly the professional qualifications of consultants, the terms of reference shall provide suggestions on the approach or methodology that contractor should use to execute the assignment.
3. In the terms of reference, the scope of work of the assignment is usually defined by addressing the following issues:
  - (i). task to be performed by the contractors, including: definition, scope, limits, and criteria of acceptance of the assignment;
  - (ii). desired level of detail (level of design, accuracy, composition of cost estimates, and so forth);
  - (iii). span of projections (time horizon, life span of project components, and so forth);
  - (iv). necessary comparison of the assignment with similar projects;
  - (v). main issues to be addressed;
  - (vi). alternatives to be considered;
  - (vii). necessary surveys, special analyses and models;
  - (viii). special equipment requirements;
  - (ix). institutional and legal framework of the project;
  - (x). transfer of knowledge, objectives and scope;
  - (xi). language requirements;
  - (xii). units of measurement to be used;
  - (xiii). need for continuity, such as data gathering; and
  - (xiv). quality management requirements (if needed).

### **d. Requirements concerning the personnel and facilities to be provided by the contractor**

1. The Terms of Reference shall provide detailed information regarding personnel and facilities to be provided by the contractor.
2. Generally personnel requirements are only for fee-based contracts. Global price contracts, being based in results, do not require the specific curricula qualifications.
3. Concerning the personnel requirements, these shall indicate the key expert positions and if a pool of experts is required, the qualifications, skills, general and specific professional experience for the key experts as well as for the pool of experts, the minimum number of days to be used by each key expert as well as the non key experts as a whole (not per non-key).
4. The key expert shall be considered the expert having a relative higher input in the implementation of the assignment or whose expertise is paramount for the successful implementation of the contract.
5. The requirements concerning the qualifications, skills, general and specific professional experience shall not be unjustifiably restrictive or not able to be evaluated based on the intrinsic documents. For instance, a requirement asking the expert to have a Master or PhD degree, or hold specific professional certifications, shall only be requested if they are absolutely necessary for implementing the assignment.

6. Concerning the facilities to be provided by the contractors, the terms of reference shall indicate if the consultant shall make provision for office accommodation, computers, cars or any specialized equipment or software. The terms of reference shall also indicate whether these expenses shall be covered by the contractor under their operational expenses or by the Procuring Entity under the incidental expenses budget to be included in the contract.
7. When the facilities to be provided by the contractor are to be financed under Incidental Expenses, the terms of reference shall indicate the maximum budget for such expenses, the category of expenses eligible to be financed under the incidental budget stating that the incidental budget shall be included in the bidder's or applicant's financial proposals as a lump sum, without any modifications.

**e. Objectively verifiable indicators, Reports and schedule of deliveries**

1. The terms of reference shall indicate the estimated duration of the assignment, from the date of commencement to the date the Procuring Entity receives and accepts the contractor's final report or a specified completion date.
2. The assignment's reporting requirements shall be clearly specified. When possible, each task of the assignment shall have a task report as a deliverable. This is of paramount importance, in particular in the case of global price contracts, since each report might constitute a delivery (study, design, technical specification, assessment, etc), and hence be associated with payments
3. The terms of reference shall indicate the format, frequency, and content of the reports as well as the number of copies, language and the names of the prospective recipients.

**f. Data, local services, staff, and facilities to be provided by the Procuring Entity**

1. The terms of reference shall provide details about all the information and services to be made available by the Procuring Entity to the contractor. This may include:
  - (i) office space, vehicles, computers, printers, copiers and other office equipment;
  - (ii) list of data to be made available to the consultant, specifying the format and the language;
  - (iii) training or other facilities the consultant might have access to, free of charge (i.e., phone, internet, transportation, etc) and
  - (iv) supporting staff provided to the consultant free of charge (if any).
2. Should the assignment envisage provision of support staff by the Procuring Entity, the terms of reference shall define the hierarchy and level of authority of the counterpart staff as well as the requested level of experience of the staff to be integrated into the contractor's team. This information shall be presented as a list indicating only the function, the level of professional experience and the responsibilities of the staff in the contractor's team.

**g. Institutional arrangements**

The terms of reference should define the institutional setup for the implementation of the assignment. This entails the definition of the mechanism for the contractor's interaction with the assignment stakeholders. Hence, the terms of reference shall define:

- (i). the beneficiaries of the assignment ;
- (ii). the coordination authority for the assignment ;
- (iii). the reporting authority for the assignment;
- (iv). the monitoring authority for the assignment; and
- (v). the approving authority for the assignment's deliverables;

clearly defining the role and responsibilities of all the involved personnel, specifying the type, timing, and relevance of everyone's participation.

### **i. Downstream work**

1. The terms of reference shall indicate if Procuring Entity envisages any additional or supplementary work which might be requested to the contractor following the completion or during the implementation of the main activities of the terms of reference.
2. Since any additional or supplementary work must be subject to an Addendum to the contract, the Procuring Entity shall pay particular attention when formulating these requirements so as not to breach the provisions of these Guidelines.
3. If as a result of the implementation of the activities under the terms of reference, subsequent procurement shall be generated, clear references to the potential conflict of interests between the terms of reference activities and the downstream work to be procured as result of these activities shall be mentioned.

## **2.11. The Evaluation Committee**

4. Bids from procurement procedures and applications for grants shall be opened and evaluated by an Evaluation Committee formally and promptly appointed by the authorised person in the Contracting Authority.
5. The Evaluation Committee shall be composed of one Chairperson, one Secretary and an odd number of evaluators. For goods, services and works under US\$ 5.000.000 the number of evaluators should be three. For works over US\$ 5.000.000 the Contracting Authority may decide to nominate more evaluators (up to five).
6. In order to maintain the confidentiality of the proceedings, participation in the Negotiation Committee meetings shall be strictly limited to the members of the Evaluation Committee designated by the Contracting Authority.
7. The Secretary is a non-voting member, nominated from a procurement unit and conversant with the SADC rules on procurement and grants.
8. The Chairperson shall be nominated by the appointing authority or members of the evaluation team and shall chair the meetings of the Evaluation Committee.
9. The Chairperson shall be in charge of summoning the Evaluation Committee through the Secretary; only through him/her, the Secretary shall get in touch with the bidders/applicants once the evaluation procedure has started.
10. The Secretary shall coordinate the evaluation process in accordance with the procedures, principles and regulations contained in the SADC policy for procurement and grants, these Guidelines and any other legal document applicable to the specific procedure.
11. The Chairperson, assisted by the Secretary of the Evaluation Committee, shall ensure the impartiality and transparency of the procedures as well as the consistency of the decisions taken by the Evaluation Committee.
12. The Secretary shall advise the Evaluation Committee on administrative matters and documents. If a bid or proposal infringes the formal requirements, the Secretary shall advise the evaluators in deciding whether or not it shall be considered during the rest of the evaluation process, while ensuring equal treatment of bidders and applicants and in accordance with the principle of proportionality.

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13. Whatever decision is taken by the Evaluation Committee it shall be fully recorded and justified in the Evaluation Report.
14. The Secretary shall be responsible for carrying out all administrative tasks connected with the procedure, including preparing/circulating the declarations of impartiality and confidentiality; keeping the minutes of all meetings and relevant records and documents; and recording attendance at meetings and compiling the evaluation reports and their annexes.
15. The Secretary shall draft the pre-selection and evaluation reports, which shall be deliberated and signed by all members of the Evaluation Committee.
16. The Secretary, on behalf of the Evaluation Committee and on the instructions of the Chairperson, shall prepare and send the requests for clarifications to the bidders/applicants according to procedures as well as requests for interviews if need arises. Only under these circumstances may the Secretary communicate with bidders or applicants. The members of the Evaluation Committee under no other circumstance shall be allowed to communicate with the bidders/applicants.
17. The evaluators, including the Chairperson, shall have equal voting rights.
18. The evaluators shall possess the technical capacities necessary to give an informed opinion on the submitted applications or bids. If possible, the persons who developed the terms of reference/technical specifications/guidelines for applicants shall be evaluators.
19. The Contracting Authority or the institution funding the action may, if the legal frame allows it, nominate observers to the Evaluation Committee. The observers shall be non-voting members and shall not be able to intervene in the Evaluation Committee unless requested to do so by the Chairperson. The observers shall provide technical assistance to the Evaluation Committee and shall write an independent report on procedural and/or technical matters according to their terms of reference. The reports shall be circulated to the Contracting Authority and the funding institution.
20. All the members of the Evaluation Committee (voting and non-voting) must be present in all the sessions. Any absence must be recorded by the Secretary and justified.
21. Only the members of the Evaluation Committee are allowed to evaluate the applications or the proposals. In the evaluation of the applications or bids, the members of the Evaluation Committee are not allowed to receive or to seek any external (e.g.: outside the members of the Evaluation Committee) support for the assessment of the bids except experts or observers officially nominated under para 19.
22. The members of the Evaluation committee meetings shall be collectively and individually accountable for any decision and the recommendations made by the Evaluation committee.
23. The Evaluation committee shall be formed before the bid/application opening session to ensure the availability of the designated members during the period necessary to prepare and conduct the evaluation process.
24. The evaluation shall be completed as soon as possible to allow the successful bidder/applicant to be notified by the Contracting Authority (after all necessary approvals) within the validity period specified in the solicitation documents.

25. The Evaluation Committee shall make its recommendation through an evaluation report, which shall be presented to the competent authority for approval.
26. Once the competent authority approves the evaluation report, the Secretary of the Evaluation Committee shall proceed with the awarding and contracting procedures according to the provisions contained in these Guidelines and the content of the evaluation report.
27. The bids/applications and other working documents of the Evaluation Committee shall be kept in a safe place when not in use. The documents are confidential and shall not be shared to anyone outside the Evaluation Committee.

## **2.12. Validity of the bids/applications**

1. Bidders/applicants are bound by their bids for the period specified in the bidding documents.
2. In Restricted Bidding procedure the period shall be also indicated in the letter of invitation. This period (normally 90 days from the deadline for the submission of bids/applications) should be enough for the Contracting Authority to finish all the steps leading to contract signature.
3. In case the 90 days are not sufficient, the Secretary of the Evaluation Committee, with the agreement of the Evaluation Committee, must request an extension from the bidders/applicants. The bidders shall be free to accept the extension or not in which case they shall be excluded from the procedure.

## **2.13. Award/contract signature and publishing of the contract**

### **2.13.1 Award**

1. The Contracting Authority shall, before issuing the notice of award to a successful bidder, issue a notice of intention to award the contract to all bidders who participated in the process by giving them ten (10) working days within which to submit a complaint to the Procuring Entity, if any. This notice shall be published at the SADC Secretariat's web site and must contain name of successful economic bidder, applicant, contract sum, and completion of delivery period.
2. The requirement in para 2.13.1 above shall not apply to:
  - (a) cases of emergency procurement if circumstances does not allow issuance of notice of intention to award the contract;
  - (b) small procurement transactions where no written contract is required.
3. The Procurement Entity shall issue an official response to the complaints within seven days from the receipt of Complaints stated in para 2.13.1 above.
4. Before the period of validity of bids expires, and on the basis of the approved evaluations report, the Contracting Authority shall notify the successful bidder in writing that its offer has been accepted; if the case, it shall draw attention to any arithmetical errors corrected during the evaluation process requesting the applicant/bidder to accept such correction; it shall request the bidder to reconfirm the validity of their bid and, when necessary and foreseen in the bidding documents it shall invite the bidder to produce supporting documents.
5. If more than one hundred and twenty (120) days have elapsed from the deadline from submission of the bids to the date of notification of the successful bidder, the successful bidder shall be requested to produce updated information to demonstrate that they are continuing to satisfy the pre qualification (pre or post) criteria set in the solicitation documents. For this purpose the bidder shall be given fifteen



(15) days to produce updated supporting documents demonstrating the compliance with the qualification criteria. Such requirement shall be indicated in the notification letter.

6. The Evaluation Committee which evaluated the bid in the first instance shall conduct such verification. The findings shall be documented in a report, which shall and be subject to approval of the Contracting Authority.
7. Failing to produce the documents demonstrating the compliance with the qualification criteria within the given timeframe or failing to demonstrate compliance with the qualification criteria shall lead to the automatic rejection of the bid. In such instance, the second best qualified bidder shall be awarded the contract, provided that it satisfies the qualification (pre or post) criteria. In case of call for proposals the Evaluation Committee shall propose awarding the contract to the highest-ranking applicant on the reserve list. In case that there is no compliant bidder the Evaluation Committee shall recommend cancelling the procedure.
8. Except in the case of Negotiated or Single Source procedure methods is employed, no negotiations of contract shall be permitted with the successful bidder prior to the award of any contract for services, goods and works.
9. The negotiation shall be documented in a report which shall be attached as annex to the contract.

#### **2.13.2 Contract preparation**

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1. When preparing the contract for signature, the Contracting Authority must proceed as follows:
2. The Secretary of the Evaluation Committee with the with the necessary approvals and the confirmation of availability of funding, shall prepare a contract dossier containing the following:
  - (a) Explanatory note;
  - (b) Copy of the legal frame authorising the project (financing agreement, convention, contract or other relevant legal instruments);
  - (c) Copy of the call/tender;
  - (d) The original of the proposed contract; and
  - (e) Evaluation report.
3. Upon presentation of the contract dossier, the competent official shall sign and date all originals of the contract and initial all pages of the contract. Grant contracts must be signed within 3 months from the date of notification of the evaluation results.
4. The Secretary shall send the contracts to the successful bidder/applicant who must countersign them within 30 days of receipt, keep one original and return the rest to the Contracting Authority together with any financial guarantee required in the bidding documents.
5. If the contractor fails to do this within deadline or indicates at any stage that is not willing or able to sign the contract, the contract shall not be finally awarded. In this case the contract preparation procedure must be started from step one for the next contractor.
6. The Secretary of the Evaluation Committee shall check that the natural person who signs the contract for the contractor has a valid power of representation.





7. The contract shall be signed in at least four originals (three for the Contracting Authority and one for the contractor) although the specific bid/call for proposals may demand more originals (i.e. for funding authority).

### **2.13.3 Publicizing the award of the contract**

1. The Procurement Entity shall inform applicants/bidders of the award of the contract as in seven days (7) after the lapse of the (10) ten working days cool off period unless the proceedings have been suspended according to chapter 7 of these Guidelines.
2. Once the contract has been signed, the Contracting Authority shall prepare Contract Award Notice using the standard template and publish it according to SADC publication guidelines.
3. The award notice shall be published within maximum fifteen (15) days from the signing of the contract by the parties.
4. In the case of call for proposals, the Contracting Authority shall publish, according to SADC publication guidelines the list of beneficiaries. The list shall include at least the amounts awarded by beneficiary, the co-financing, the beneficiaries' names and that of the projects financed.

### **2.14. Contract modification: addendum**

1. Contracts may be subject to modification during implementation 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 per cent (25%) of the original contract amount.
  - (d) Any modification of the duration of the contract shall not exceed an aggregate of maximum of one hundred per cent (100%) of the duration of the initial contract.
  - (e) All modification shall be signed by contracting parties prior to the expiration of the contract.
  - (f) All variations under this clause shall be approved by the Executive Secretary or the Tender Committee in case the attribution is delegated by the Executive Secretary.
2. Both parties must agree any modification in the implementation period, budget, scope of the contract or any other substantial contract element.
3. Contract modifications shall not have retroactive effect.
4. The modifications of the contract must be done through addendum or administrative order agreed by both parties.
5. Requests for contract modifications shall be made (by one contracting party to the other) well in advance to allow for the addendum to be signed by both parties before the expiry of the execution period of the contract.

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6. Addenda enter into force the date of later signature unless there is a specific provision for entering into force in the contract or the specific addendum.
7. The responsibility for preparing addenda rests with the Procurement Function, obliged to proceed as follows:
  - a) Preparing the addendum: this is the responsibility of the Procurement Function. It shall use the standard template for drafting the addendum. All references in the proposed addendum to article number or annexes to be modified shall correspond to those in the initial contract. Any addendum modifying the budget shall include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this addendum (and any other previous addenda). If the budget is modified by the proposed addendum, the payment schedule shall also be accordingly modified, taking into account any payments already made in the course of the contract. The payment schedule shall not be modified unless the budget is being modified or the contract extended.
  - b) Prepare a file comprising the following items:
    - i. Explanatory note providing technical and financial justification for making the modifications in the proposed addendum. The explanatory note shall be prepared by the contracting party which initiated the request for addendum.
    - ii. Copy of the request for (or agreement to) the proposed modifications (i.e. all the communications between the contracting parties leading to the addendum, including the official request).
    - iii. Five originals of the proposed addendum, based on the standard addendum template and including any revised annexes.
  - c) Secure the approval and the signing of the addendum: the addendum shall be subject of the same approval procedures and signed by the same authority signing the contract, as stipulated in these Guidelines.
  - d) Secure the Contractor signature of the addendum: after the approval and signature of the addendum, all five originals shall be sent to the Contractor for signature. The Contractor shall countersign and initial them within the established period (maximum fifteen days of receipt), keep one and return four original to the Contracting Authority together with the Financial Guarantee if applicable.
  - e) Circulate the addendum among the SADC Secretariat's units: on receipt of the four signed originals from the Contractor, the procurement unit shall send the other originals to the relevant units according to Schedule 2.

## 2.15. Record keeping

1. The Contracting Authority shall maintain records of each step taken during the procurement/grant process.
2. Subject to the SADC Secretariat's policy on access to documents, these records shall be kept confidential and kept in accordance with the SADC Secretariat policy on archiving.
3. Unsuccessful applications and bids have to be kept for five (5) years from the submission date, while successful applications, bids and evaluation reports shall be kept for a minimum of seven (7) years from the date of issuance. The contractual and financial documents have to be kept for



- a minimum period of seven (7) years from payment of the balance and up to the date of the decision of any dispute action regarding the law governing the contract. During and after this period, the Contracting Authority shall treat the personal data in conformity with its privacy policy.
4. The documents to be conserved shall include all the preparatory documents, the originals of all applications/bids submitted and any related correspondence.
  5. It is recommended for each bid/call for proposals a separate file to be opened and maintained. If possible the record shall be kept both, in hardcopies and the electronic version.
  6. Upon completion of procurement/grant processes and in accordance with SADC Secretariat policy on access to documents, natural persons authorized by Procurement Function can inspect the procurement/grant documents on written demand and proper justification request.

## 2.16. Guarantees for bidding and contract implementation

2.16.1 The SADC Secretariat Guidelines recognize four types of securities:

(a) ***Bid Security:***

1. It is a precautionary measure by which the Procuring Entity requires all bidders to provide a guarantee to the bidding process, and in the event they are awarded a SADC Secretariat contract under the terms and conditions indicated in the bidding documents, the bidder must not refuse it. The Bid Security is given by the bidders in procurements of goods, services and works (never to applicants for grants) in the amount requested in the bidding documents, which should be between 1 and 5% of the total estimated value of the contract. The Procuring Entity may execute the guarantee in case the winning bidder refuses to sign the contract in the conditions of its own bid and in any other case stipulated in the bidding documents. The Bid Security must be returned to bidders after the contract is awarded and signed. The Bid Security is regulated in article 37 of the SADC Policy for Procurement and Grants.
2. When the Procuring Entity requires economic operators submitting bids, to provide a bid security (tender guarantee):
  - (i) The requirement shall apply to all such economic operators;
  - (ii) The bidding documents shall stipulate that the issuer of the bid security and the confirmer, if any, as well as the form and terms it, shall be acceptable to the Procuring Entity;
  - (iii) The Bidding documents may impose the obligation of providing Bid Securities by institutions legally established in the country of implementation of the contract or the country of the Contracting Authority;
  - (iv) 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;
  - (v) 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. The Procuring Entity shall respond promptly to such a request;
  - (vi) 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;

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- (vii) The Procuring Entity shall specify in the bidding documents all requirements with respect to the nature, format, amount and other principal terms and conditions of the required bid security; any requirement that refers directly or indirectly to the conduct of the shortlisted economic operator submitting the bid shall be limited to:
    - (a) withdrawal or modification of the bid after the deadline for submission of bids,
    - (b) failure to sign the procurement contract if required by the Procuring Entity to do so; and
    - (c) 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 specified in the bidding documents, precedent to signing the procurement contract.
3. The Procuring Entity shall make no claim to the amount of the bid security, and shall promptly return, 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; or
  - (d) The withdrawal of the bid prior to the deadline for the submission of bids.
- (b) **Performance Security:**  
It is a precautionary measure by which Procuring Entity requires a Contractor, upon signature of a SADC Secretariat contract, to provide guarantees to fulfil their contractual obligations as stipulated in contract. The Contractor, together with the contract signed, must provide the Performance Security. The Performance Security may be requested to contractors for goods, services and works but never for grantees. Performance security is 10% of the contract in works contracts. In goods, grants and services it may be from 5 to 10%.
- (c) **Advance Payment Guarantee:**  
It is a precautionary measure by which Contracting Authority requires a Contractor, upon signature of a SADC Secretariat contract, to provide a guarantee to cover for the amount received by Contractor as an advance payment under the contract. The Advance Payment Guarantee may be requested to contractors for goods, services, works and grants prior to making an advance payment. It should guarantee for the full amount of the pre-finance and may be released as the pre-finance is recovered.
- (d) **Retention Money Guarantee:**  
It is a precautionary measure by which the Contracting Authority requires a works contractor (not used for services, goods or grants), upon signature of a SADC contract, to provide a guarantee to fulfil its contractual obligations during the period between provisional acceptance and final acceptance of the works (usually one year). It is a percentage (often 5%) of the amount certified as due to the contractor on an interim, that is deducted from the amount due and retained by the Contracting Authority.
- 2.16.2 All securities shall be in the amount specified by Contracting Authority (in the bidding documents respectively in the Contract), denominated in US\$, and shall be:
- a) in a form of a unconditional bank guarantee;

- b) issued by a reputable financial institution selected by the bidder or contractor and acceptable to SADC Secretariat. It shall have a correspondent reputable financial institution located in any of the SADC Secretariat member states to make it enforceable;
  - c) in accordance with the standard template or other form approved by the Procuring Entity prior to submission;
  - d) promptly payable upon a written demand by the Procuring Entity, in case the conditions for forfeiture are met; be submitted in its original form; copies shall not be accepted; and
  - e) valid for a period indicated in the bidding documents.
- 2.16.3 At any time, the Contracting Authority may reject the bidder's or contractor's choice of the financial institution issuing the security, by giving a written explanation for such decision. In that case the bidder or contractor shall provide another security issued by a financial institution acceptable to the Contracting Authority and then cancel the security with the financial institution not acceptable to Contracting Authority, in this precise order.
- 2.16.4 The Contracting Authority shall release the security to the bidder or contractor up to a maximum of thirty (30) days from the security expiration date.

## 2.17. Management modalities

1. The SADC Secretariat works in close cooperation with various intergovernmental international financing institutions or international donors and Member States to implement jointly financed programmes, projects and/or activities. Whenever SADC Secretariat jointly con-finance programmes/projects/activities with other international organizations, donors or Member States it may allow the application of alternative procurement rules, including the national procurement rules, provided the SADC Secretariat is satisfied that those alternative procurement, financial management and monitoring procedures are acceptable to SADC Secretariat.
2. Such exemption to the application of the SADC Secretariat Procurement Policy shall not prevent SADC Secretariat from conducting financial and procurement audits of the programme/project/activity. Whenever the financial or procurement audit identifies deviation from core SADC Secretariat Procurement Policy principles or SADC Financial Regulation, SADC Secretariat shall take the necessary remedy actions to protect its financial interest and safeguard the principles lay down in the SADC Secretariat Financial Regulations and Procurement Policy.
3. SADC Secretariat may delegate the implementation of its programmes/projects/activities to implementation structures in the Member States. In such cases, the procurement responsibility may be delegated to the respective implementation structure in the Member State, under the obligation of observing in full the provision of these Guidelines. In such cases, all procurement processes conducted by SADC Secretariat implementation structures in the Member States using SADC Secretariat Funds, shall be subject to SADC Secretariat review, as defined in the SADC Secretariat Policy for Procurement and Grants and these Guidelines.

## 2.18. The bidder/the applicant/the consortium

1. Bidders are the economic operators submitting bids to a procurement tender for goods, services or works while, Applicants are operators submitting an application to a call for proposals for grants (see chapter 6 of these Guidelines).
2. When competing for a SADC Secretariat contract, any economic operator, natural person or any other entity may submit an application or bid independently or in joint venture or consortium with other

economic operators, individuals and entities provided they legally confirm joint and several liabilities for the bid in case of winning a contract for the implementation of the contract.

3. A joint venture or consortium may be either a permanent legally established group or a group constituted informally for the purpose to apply, bid and undertake a specific SADC Secretariat contract. In every case, all members of a joint venture or consortium are jointly and severally liable to the SADC Secretariat in relation to the application, bid, offer or contract for which it was constituted.
4. Applications and bids submitted by a joint venture or consortium of two or more economic operators shall also comply with the following requirements:
  - a) the application and the bid shall be signed to be legally binding on all members;
  - b) the application and the bid shall be accompanied by the original legally binding agreement for the all members; the document has to be witnessed by a Public Notary or a Commissioner of Oath; and
  - c) the agreement legally binding the members of the joint venture or consortium shall include the following mandatory provisions:
    - i. one of the members shall be nominated in charge, and this nomination shall be evidenced by submitting a power of attorney signed by the legally and authorized signatory members;
    - ii. the member in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all the members of the joint venture or consortium. The entire communication during the bidding processes and for the execution of the contract, including payments, shall be made exclusively with the member in charge (leader);
  - d) if the joint venture or consortium are awarded the SADC Secretariat contract for, all members of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contractual terms; and
  - d) the members of the joint venture or consortium are not allowed to leave the joint venture or consortium, and decline their responsibilities, without the Contracting Authority's written approval, or until they have been notified by the Procuring Entity that the contract was not awarded to the joint venture or consortium, or in the event they were awarded the contract, until the liability period indicated of the contract expires.
5. In case of applications or bids submitted by a joint venture or consortium, each member shall demonstrate that they fulfil the eligibility criteria set in the Guidelines for Applicants. If one single member fails to demonstrate the compliance with the eligibility criteria, the whole joint venture or consortium shall be considered non eligible.
6. Regarding the compliance with the qualification criteria, an application or a bid submitted by a joint venture or consortium shall satisfy the qualification requirements as a whole and not as individual member of the joint venture or consortium.
7. To avoid distortion of competition and eliminate possible corrupt practices, an economic operator and its affiliates, individually or as member of a joint venture or consortium, shall submit only one application or bid for the same Procuring Entity contract. Affiliates are the group of companies, firms, associations or any other economic operator where the economic operator or any of the major shareholders of the economic operator owns not more than twenty per cent (20%) of the shares or the share capital. A major shareholder shall be any legal or natural person owning not less than twenty per cent (20%) of the shares or the share capital of the economic operator.

8. If an economic operator submits, individually or as member of a joint venture or consortium, more than one bid for the same contract, all the bids submitted by the economic operator shall be rejected and the economic operator shall be banned from participating for a minimum of two (2) and a maximum of (5) years in any other SADC Secretariat procurement or grant award process.
9. The restriction concerning the participation in more than one application or bid shall not apply to sub-contractors or personnel.
10. The Contracting Authority does not acknowledge or undertake any obligations towards the sub-contractors or personnel of the economic operator participating in a procurement process of the Institution.
11. The composition of the joint venture or consortium shall not be changed after pre-qualification or during the implementation of a contract awarded to the joint venture or consortium without prior approval. The Contracting Authority 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.

## 2.19. Planning

### 2.19.1 Introduction

1. Procurement and Grant planning is essential for the effective and timely launching of the procurement and grant processes, award of contracts and delivery of the required services, goods and/or works and contracting of the grants. Moreover, procurement and grant planning also enables the Contracting Authority to better manage its resources to obtain value for money, by identifying the appropriate procurement category and method for the acquisition of the necessary services, goods and/or works as well as to plan properly calls for proposals. Clearly, the procurement and grant planning is a vital and mandatory function of the SADC Secretariat procurement and grant system. The procurement and grants plan serves as a monitoring tool for assessing the performance of the various departments engaged in the procurement processes of the Institution.
2. The Coordination of the procurement planning functioning shall be the responsibility of the Procurement Function. However, in order to avoid duplication of activities and inconsistencies, the procurement and grant planning shall be integrated within the budgeting and planning of the SADC Secretariat.
3. The Requisition Function responsibilities in the procurement planning are the following:
  - a) identify the specific needs of their own unit;
  - b) estimate the time when these needs will be required;
  - c) estimate the cost of procuring the needs;
  - d) secure the funding through budgetary allocations for the needs;
  - e) prepare the Annual Procurement Plan for their Requisition Function;
  - f) provide bi-annual updates of the Annual Procurement Plans; and
  - g) assist the Procurement Function in compiling all Annual Procurement Plans for the SADC Secretariat.

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4. The role of The Procurement Function in the procurement planning process is to:
  - a) compile the Overall Procurement Plan of the SADC Secretariat based on the annual procurement plans provided by the Requisition Functions;
  - b) identify and formulate the strategy for procurement of the services, goods and works needed by the Procuring Entity, by recognizing synergies among the needs of the various Requisition Functions and selecting the most suitable procurement processes to acquire the needed services, goods and works;
  - c) monitor the performance of the implementation plan and take action to remedy the deviations from the set objectives on biannual basis;
  - d) gather the biannual revised Overall Procurement Plan and the monitoring report of the procurement performance stated above; and
  - e) Identify and formulate the strategy for launching calls for proposals planned by the institution.

### **2.19.2. Annual Procurement and Grant Plan**

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1. The Requisition Function shall start preparing the Annual Procurement and Grant Plan at least three (3) months prior to the commencement of the annual budget process, since the identifications of needs and estimating the cost for procuring might become a very time consuming process.
2. In the process of drafting an annual procurement and grant plan, each Requisition Function shall start by putting together a list of all known goods, works and services to perform their mandate within the Institution, as well as a list of the calls for proposals planned. Once the list is drawn, a market research shall be conducted to estimate the cost and the particular market conditions for the required services, goods and works. The list shall also identify the timing when the Requisition Function shall require the services, goods or works.
3. The Requisition Function shall prepare the annual procurement and grant plan using the standard template.
4. The procurement plans shall be subject to approval of the Head of the Function under which the Requisition Function operates before being sent to the Procurement Function.

### **2.19.3. Overall Procurement Plan**

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1. As part of the annual budget process, the Procurement Function in collaboration with the Financial Department and the Directorate of Policy, Planning and Resource Mobilization, shall meet on annual basis with each Requisition Function to set up spending plans for the forthcoming budget period(s). This information shall be consolidated in the annual procurement plans.
2. The Annual Procurement and Grants Plans prepared by the Requisition Functions become the basis for the Overall Procurement Plan. The Overall Procurement Plan shall establish how items of the Annual Procurement and Grants Plans should be combined or divided into different contract packages and calls for proposals; what method of procurement/selection shall be used for each one; the scheduling for procurement activities and how the responsibilities shall be cascaded during the implementation of the procurement activities.
3. The Procurement Function shall coordinate the process since the consolidation of the annual procurement and grants plans into the overall one implies a strategic decision about how procurement and contracting shall be executed.



4. The main objective to be observed when putting together the Overall Procurement and Grants Plan, is to look for similar needs among the various Requisition Function, in order to obtain economy of scale in procurement and management of contracts.
5. Each procurement method has particular requirements in terms of procedures and implementation time- After the preliminary packaging plans have been formulated and the methods of procurement or selection for each tentatively determined by the nature and size of the packages, it is necessary to verify whether the services, goods and or works will be delivered when they are required by the Requisition Function. The best way to check it, is to work backwards starting from the desired date of delivery and determine whether sufficient time is available to carry out all the necessary procurement steps for each item. Should the timing not be suitable, a different method of packaging and/or acquisition shall be considered. Sometimes it may be determined that no other approach is agreeable for a particular project component, and the time cannot be shortened by changing packaging or procurement/selection methods. In no case the procurement plans shall promote artificial splitting on non competitive procurement methods based on the ground of urgency.
6. The consolidated overall procurement plan shall be presented in the standard template.
7. The Overall Procurement Plan shall be reviewed by the SADC Tender Committee and established by Deputy Executive Secretary Finance and Administration.
8. The approved Overall Procurement and Grant Plan shall be posted on the SADC secretariat website, within five (5) days after approval.

#### **2.19.4. Market survey**

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1. It is expected that in the process of identifying needs and estimating the budget for procurement of such needs, the Requisition Function will conduct technical research into the economic sector that produces and delivers the services, goods and works needed, as well as participating in professional discussions in various forums to keep abreast of technological and other developments within their area of expertise.
2. However, in case of complex services, installations and works, when a simple market research is not adequate to determine the market conditions and technical requirements, the Requisition Function shall consider employing consultants to conduct the market survey and prepare the technical specifications or the terms of references for the needs of the Institution. In such case, the procedures to employ the contractor for conducting the market survey and develop the technical specifications or the terms of references shall commence within at least six (6) months prior to preparation of the Overall Procurement Plan.
3. To conduct the market survey the Procurement Function may:
  - (a) Review the procurement database for identifying recent procurement processes aiming at acquiring similar needs;
  - (b) Review the results of recent market surveys undertaken to meet similar needs;
  - (c) Conduct internet inquires with the industry;
  - (d) Obtain lists of similar items from other agencies, trade Institutions or other sources;
  - (e) Review catalogues and other product literature; or

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- (f) Employ external technical assistance to assist surveying the market, developing technical specifications or terms of reference, estimating the budget and assisting the evaluation of bids.
4. Under no circumstance a procurement process shall be launched with the only purpose to assess the market conditions.
5. The results of the market research shall be documented in the market survey case file. The Requisition Function shall keep the original and the Procurement Function shall keep a copy.

#### **2.19.5. Modification and updating of the Procurement Plan and Overall Procurement Plans**

1. During project execution, the original procurement and grants plans shall be regularly monitored and updated to compare the actual performance with the planned activities, and to make changes or necessary adjustments in the plan. The need for changes simply demonstrates that planning is a dynamic process rather than a static picture.
2. The Procurement Function shall review the procurement performance on a bi-annual basis. The objective of the review is not fault finding but rather to:
  - (a) gain better understanding of the causes and reasons for delays or changes in plans;
  - (b) maintain efficiency in the procurement operations; and
  - (c) improve forecasting and planning for similar operations.
3. If slippage occurs in the award or execution of one major contract, it may require rescheduling of other related contract awards and deliveries of products.
4. The process of bi-annual review of the overall procurement plan shall be conducted following the procedures established for the initial overall procurement plan.

### **3. Procurement of Services**

#### **3.1. Type of service contracts (fee based/global price/framework)**

1. A service contract is an agreement whereby a contractor supplies time, effort and/or expertise in exchange for remuneration. Service contracts can be global price, fee based and framework contracts.
2. **Global price service contract:** means a service contract under which the services provided are paid on the basis of the delivery of the specified outputs (result-based contracts). These are commonly used for public relations contracts, studies, communication campaigns, evaluations, audits, training and organization of events. In global price contracts the bidder presents its intentions in terms of mobilization of means, however, during the implementation, the technical and operational means by which the contractor achieves the specified output are not relevant for the measurement method. Global price contracts are not evaluated through the presentation of experts, although the Terms of Reference may require access to certain profiles.

Under a global price contract the Contracting Authority shall pay the contractor a fixed sum of money upon submission and approval of the deliverables indicated in the contract. These contracts are easy to administer and require limited supervision from Contracting Authority, however the mechanisms to ensure the quality of deliverables should be put in place in the specific contract.



3. **Fee based/time based contract:** means a service contract under which the services are provided on the basis of fixed fee rates for each day worked by consultants. These are activity-based contracts, which might be used for technical assistance and supervision. Fee based contracts are evaluated through the presentation of curricula of experts.

Under this type of contracts, the contractor provides services on a time basis, according to quality specifications and the contractor's remuneration is based on agreed unit rates for contractor's staff, multiplied by the actual time spent by the staff executing the assignment.

Fee based contracts are preferred when the specific outputs are unknown or difficult to define in advance and the main objective of the contract is to give support on a continuous basis; when the outputs are known and easy to define global price contracts are more appropriate. These contracts require the Contracting Authority to closely supervise the contractor.

Some contracts may include activities which are fee based and others which are global price (i.e. design and supervision contracts). In these cases each item should have a clear method of measurement and verification.

4. **Framework Contract:** is an agreement between the Procuring Entity and one or more contractors, which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement. The aim of the framework contract is to improve efficiency and lower costs due to economies of scale.

The framework contract does not legally commit the Contracting Authority to purchase any of the products offered by the contractor, but secures their access to a restrictive competition.

The framework may not indicate the precise quantities to be ordered by the Contracting Authority during the contract term. However, it shall indicate the estimated minimum and maximum volume of fees and/or purchases. Under no circumstance the maximum volume of purchases shall exceed the budgetary allocation.

Framework contracts require intensive monitoring and administrative support from the Contracting Authority.

### 3.2. Preparation of cost estimates to determine the contract value

1. The value of the contracts shall be estimated during the preparation of the Annual Procurement Plan, and Included in the Overall Procurement Plan. However, prior to the initiating a procurement process, the Requisition Function needs to estimate the cost of each category of expenses against the services required in the terms of reference.
2. The cost estimate shall include, as necessary, expenses relating to:
  - (a) consultant staff remuneration;
  - (b) travel and transport;
  - (c) mobilization and demobilization;
  - (d) staff allowances (per-diem, travel allowances, insurances, etc);
  - (e) communications;
  - (f) office rent, supplies, equipment, shipping, and insurance;
  - (g) surveys and training programs;
  - (h) report translation and printing;
  - (i) overheads, profit margin, taxes and duties; and
  - (j) contingencies.

3. The estimation of the cost for fee based contracts relies on the approximated allocation of personnel (expert per month) required for carrying out the services, taking into account the level and area of expertise of the experts. It is important to define these inputs as accurately and realistically as possible to avoid failures in the procurement process. To estimate the cost of this expense, the procuring entity's own operational expenses should be taken as a reference. However, to obtain the estimated total cost of the contract, the Requisition Function shall also include the cost of the insurances, the overheads, the profit margin, and the taxes and duties the contractor has to pay under the contract.
4. For highly specialized categories of Services the Procuring Entity shall conduct a market research prior to define the terms of reference and the estimated contract cost.
5. If the estimated total cost of the contract exceeds the available budget (as per the Overall Procurement Plan and budgetary allocation), the Requisition Function shall revise the terms of reference and reduce, if possible, the scope of the assignment to match the available budget. The terms of reference may indicate that the Procuring Entity shall reserve the right to request the contractors to provide additional services under the contract, provided it will obtain additional funds to secure payments for the required additional services. In that case, the additional services shall be briefly defined in the terms of reference.
6. The estimated value shall be deployed in the full Bidding Documents. The Bidders shall not be allowed to quote a value higher than the estimated except for Negotiated Bidding.

### **3.3. Procurement Procedures for Services**

#### **3.3.1. Contracts with a value over 250.000 US\$.**

All service contracts estimated at USD\$ 250.000 or above will be tendered through Restricted Bidding (Schedule 3) unless a specific derogation from the competent authority allows the use of a different procedure. The Restricted Bidding shall be international, regional or local according to the thresholds established in Schedule 4.

#### **3.3.2. Contracts with a value between 50.000 and 250.000 US\$**

Contracts with an estimated value between US\$ 50.000 and US\$ 250.000 will be tendered through Limited Bidding unless a specific derogation from the competent authority allows the use of a different procedure. The Procuring Entity must justify why and how the economic operators invited to present bids were selected.

#### **3.3.3. Contracts with a value between 2.000 and 50.000 US\$**

1. Contracts with an estimated value between 2.000 and 50.000 US\$ may be tendered through Negotiated Bidding procedure preferably with three bidders. The Procuring Entity must justify why and how the economic operators invited to present bids were selected.
2. The Procuring Entity must justify the cases in which it enters into negotiation with less than three entities or chooses single source.

#### **3.3.4. Exceptional procedures**

1. In exceptional cases, with the prior approval of the competent SADC Secretariat authority in line with the SADC Policy for Procurement and Grants, the Procuring Entity may use Limited Bidding

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(contracts over 350.000 US\$) or Negotiated Bidding for services over the mentioned ceilings according to programme/legal frame and as prescribed in these Guidelines.

2. The Contracting Authority may use the exceptional procedures on the following cases:
  - a. There was previously an unsuccessful restricted procedure and the procuring entity cannot launch a new procurement process due to emergency reasons or adverse market conditions which prevent open competition. In this case, if less than three economic operators qualified the Negotiated Bidding procedure should be started with the one or two operators that prequalified. In case that none of the bidders pre qualified, the Procuring Entity may engage with third party operator(s).
  - b. For the purchase of terms on particularly advantageous terms as specified in the SADC policy for procurement and grants.
  - c. For services which due to safety and security reasons can only be procured from a limited reputable source.
  - d. For reasons of extreme urgency brought about by events which the Contracting Authorities could not have foreseen and which can in no way be attributed to them.
  - e. Where the services are entrusted to public sector bodies or to non-profit institutions and relate to activities of an institutional nature or designed to provide to people in the social field.
3. The use of exceptional procedures requires specific authorisations and must be justified in detail and approved according to SADC Secretariat rules and regulations.

3.3.5 Under no circumstances shall contracts be split to avoid/manipulate thresholds.

### **3.4. Restricted Bidding and Limited Bidding for services**

1. The difference between the two procedures is that in the Restricted Bidding there is a pre-qualification whilst in the Limited Bidding the Procuring Entity establishes the pre-qualification without pre-qualification or open advertisement.
2. The rules for prequalification are exclusive for Restricted Bidding for Services, which can be local, international or regional (provided in Schedule 4).

#### **3.4.1. Publicity**

To ensure competition, the bidding procedure must be published according to the SADC Secretariat publication guidelines. The publication guidelines shall require the publication of a general procurement notice (GPN) and a specific procurement notice (SPN).

##### **3.4.1.1. General procurement notice**

1. For contracts with a value over 1.000.000 US\$ the Procuring Entity shall publish a general procurement notice at least 30 days prior to the publication of a specific procurement notice. In contracts of lower value the publication shall not be compulsory.
2. The prior general procurement notice shall contain a brief description of the services to be provided, location, financing source, estimated value and duration. This information shall not be binding for the Procuring Entity and the service providers shall not be requested to submit bids. Its purpose is to inform about a future opportunity.

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3. The general procurement notice shall be published according to SADC publication guidelines.

#### **3.4.1.2. Specific procurement notice**

1. The Procuring Entity shall publish the specific procurement notice according to SADC publication guidelines after 30 days since the publication of the prior information notice.
2. The specific procurement notice shall provide all the information referring to the capacity to implement the project, including technical capacity, financial, economic and professional capacity. It shall also contain the rules of origin and nationality of the tender as well as the source of the financing.
3. In case of Restricted Bidding Procedure, specific procurement notice shall also contain a deadline for presentation of pre-qualification bids. The time allowed for bidders to submit their application shall be sufficient to allow proper competition. The minimum period for submitting applications is thirty (30) days from the date of publication of the procurement notice. The number of days shall be determined by the contract size and complexity.
4. For Restricted Bidding Procedure, the specific procurement notice shall contain all the selection criteria for the pre qualification. The selection criteria (technical, economic, financial and professional capacity) must be clear, objective and possible to prove by bidders. The selection criteria shall be adapted to the nature, complexity and cost of the assignment.
5. For Restricted Bidding Procedure, the minimum time allowed for candidates to submit their applications shall be thirty (30) days from the date of publication. However, the Procuring Entity may decide to grant a longer period.
6. The bidders may submit questions for clarification on the specific procurement notice. The bidders must submit their questions no later than 21 days since the publication. The Procuring Entity must publish all the answers according to publication guidelines no later than 11 days before the deadline for presenting bids.
7. The Procuring Entity may publish clarifications or corrigenda to the specific procurement notice. If the corrigenda are of substance the Procuring Entity may extend the original period for submission.

#### **3.4.2. Short list (for Restricted Bidding only): pre selection criteria**

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1. After bid submission deadline of bids the Evaluation Committee appointed by the Procuring Entity shall meet to prepare the short list report.
2. The Evaluation Committee shall prepare a long list with all the bids presented. Afterwards it shall eliminate the candidates not eligible according to the rule of nationality or on non-compliance with eligibility criteria. Finally, the Evaluation Committee must objectively apply the pre selection criteria to the remaining candidates in order to obtain the final short list that shall contain the candidates which shall be invited to present a complete bid at the next stage.
3. A successful pre qualification entails that a minimum of three (3) and a maximum of six (6) bidders are shortlisted. Should the minimum number of qualified economic operators not be attained the pre qualification process shall be declared unsuccessful and cancelled. In such cases

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the Procuring Entity may either re-launch the tender or launch a Negotiated Bidding procedure with the economic operator which passed the pre-qualification.

4. The shortlisting process must be fully documented in a selection report which has to be signed by all the members of the Evaluation Committee. The short list shall be published according to publication guidelines.
5. Candidates not selected will be informed in writing of the causes. The candidates selected shall receive a letter of invitation to bid and the full bidding documents.

### **3.4.3. The Bidding documents**

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1. The Procuring Entity shall issue the bidding documents to ensure that the contract is complete and the procurement procedure carried out correctly.
2. In the Open Bidding procedure the bidding documents shall be published online and any economic operator shall have access to them while in the Restricted Bidding procedure only the short listed candidates shall be given access to the documents.
3. The bidding documents must be comprehensive, containing all the information and templates needed to submit a bid.
4. The bidding documents must contain at least:
  - (a) Letter of invitation;
  - (b) Information to bidders (ITB), including the Data Sheet;
  - (c) Templates/forms (including administrative compliance grid) for technical and financial proposals;
  - (d) Draft contract (including general and special conditions);
  - (e) Terms of Reference (containing the technical criteria);
  - (f) Deadline for submission of tenders indicating exact time and address;
  - (g) Award criteria;
  - (h) Bid security requirements (tender guarantee, performance guarantee, advance guarantee);
  - (i) Maximum price; and
  - (j) Validity period of the bids.
5. The aim of the award criteria in service contracts is to identify the best value for money. These criteria cover both the technical quality and the price.
6. The technical criteria allow the assessment of the technical quality of the bids. The main types of technical criteria are the methodology and the experts' profiles (only for fee based contracts). The methodology and experts proposed must be in line with the content of the terms of reference.
7. The bidding documents shall contain, in line with the terms of reference, an evaluation grid with the criteria to be evaluated.
8. Each criterion shall be given a maximum number of points out of 100 distributed among the different sub criteria. Their respective weightings shall depend on the nature of the services and

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shall be determined according to the terms of reference. The criterion must be as quantifiable as possible. The main criteria are usually:

- a) Methodology:
  - Rationale/understanding of TOR
  - Strategy
  - Work plan
  - Training/transfer of know how.
- b) Key Experts (only for fee based)
  - General qualifications
  - Specific qualifications
  - General experience
  - Specific experience

9. The evaluation grid shall specify in detail the criteria, sub criteria and their weightings.

#### **3.4.4. Questions/Clarifications during proceedings**

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1. The Procuring entity may on its own initiative provide the bidders with additional information (clarification) in case necessary always respecting fair competition.
2. All short listed bidders must be given the same information at the same time. In case the clarification is needed before shortlisting, the additional information/corrigendum shall be published and accessible to all bidders according to publication guidelines.
3. The bidders may submit questions in writing no later than 21 days before the deadline for submission of tenders. The Procuring Entity must reply no later than 11 days before the deadline for submission. The answers must be sent to all the bidders simultaneously or published according to publication guidelines.
4. In case the content of the bidding document is particularly complex, the Procuring Entity may hold a pre bid information meeting. The meeting must be announced and must take place no later than 21 days before the deadline for submission. The attendance to the meeting shall not be compulsory.

#### **3.4.5. Submission of bids**

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1. The bids must be submitted at the place designated in the bidding documents within deadline in accordance with the double envelope system, i.e. in an outer parcel/envelope containing two separate sealed envelopes, one marked "Technical Bid" and the other "Financial Bid".
2. All parts of the bid other than the financial quotation must be submitted in the envelope containing the technical bid. Unsealed envelopes or references to price in the technical bid shall lead to the rejection of the bid.
3. The rationale behind submission of technical and financial bids in separate invoices is to allow the Procuring Entity to evaluate the technical and financial bids successively and separately ensuring that the technical quality is considered independently of the price.





4. On receiving the bids, the Procuring Entity shall register them, indicating day and time of arrival and keeping receipts. The envelopes shall remain sealed and kept in a safe place till the opening session. The outer envelopes containing the bids must be numbered in order of receipt (whether or not received within deadline).
5. A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice by certified mail, duly signed by an authorized representative, and shall include a copy of the authorization.
6. The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be submitted by courier/mail and, in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" in addition, they must be received prior to the deadline for submission.
7. Bids requested to be withdrawn shall be returned unopened to the Bidders.
8. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Submission Form or any extension thereof.

#### **3.4.6. The evaluation process**

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The evaluation process is divided in the following steps namely Preparatory phase; Bid opening; administrative compliance; technical evaluation; financial evaluation and application of award criteria.

##### **3.4.6.1 Preparatory phase.**

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The first meeting of the Evaluation Committee must precede the opening session. The Secretary of the Evaluation Committee shall circulate the bidding documents to the evaluators and make a presentation of the tender and explain the procedures to be followed by the Evaluation Committee.

##### **3.4.6.2 Bid opening.**

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1. The evaluation team shall meet for the tender opening session. During the session the following the following shall be verified:
  - a) Registration number on the envelope;
  - b) Name of the tenderer;
  - c) Date/time of arrival;
  - d) All bids received are available for the opening session and numbered in order of reception;
  - e) Outer envelope is sealed;
  - f) Whether or not the technical and financial bid are sealed and contained in separate envelopes;
  - g) Whether the submission form is in the technical offer; and
  - h) Whether the statements of availability and exclusivity for the key experts are included.
2. Under no circumstance the envelope containing the financial bid shall be opened. It must remain sealed. The secretary of the committee must keep them in a safe place.

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3. The members of the Evaluation Committee shall sign the impartiality and confidentiality statements.
4. Envelopes marked “WITHDRAWAL” shall be opened first and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. If the withdrawal envelope does not contain a copy of the “power of attorney” confirming the signature as a person duly authorized to sign on behalf of the Bidder, the corresponding bid shall be opened. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Bid.
5. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening.
6. Only envelopes that are opened and read out at Bid opening shall be considered further.
7. The secretary of the Evaluation Committee shall draft an opening session report, which shall be signed by all the members of the Evaluation Committee and must contain a list of the bids compliant with the requirements of the opening phase.
8. Bids received after the deadline for submission shall be disqualified and returned to the bidder unopened.

#### 3.4.6.3 Administrative compliance

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1. Once the opening session is done, the Evaluation Committee shall proceed (in the same or different session) to the assessment of the administrative compliance. Major formal mistakes shall lead to the rejection of the bid.
2. During administrative compliance the Evaluation Committee shall not go into the content of the technical offer. The following elements shall be taken into account:
  - (a) Bid submission form is duly completed;
  - (b) Signed by all the members of the consortium and the leader;
  - (c) Language requirements;
  - (d) Organization and methodology are present;
  - (e) Key experts’ list and cv are in the bid (for fee based only);
  - (f) Each key expert is present in only one bid;
  - (g) Statements of exclusivity and availability are present and signed; and
  - (h) Rule of nationality is complied.
3. The Chairperson shall verify all these elements assisted by the Secretary. Non-compliant bids shall be excluded from further evaluation.
4. The Evaluation Committee may request for clarifications to one or more bidders giving reasonable time to answer depending on the clarification requested. The clarifications may refer to documents provided or complementing documents/information provided but not to missing administrative documents.



5. The financial bids shall remain sealed.

#### 3.4.6.4 Technical evaluation

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1. Once the administrative compliance is finished, the Evaluation Committee shall examine the technical offers. At this stage, each voting member awards each bid a score out of a maximum 100 points in accordance with the technical evaluation grid. Under no circumstance the evaluation grid can be changed. Only offers obtaining a minimum score of 70 are declared technically acceptable/compliant. The Procuring Entity may decide to raise the minimum score over 70 in the bidding documents.
2. The organization and methodology presented must be evaluated according to the terms of reference and the criterion and sub criterion contained in the evaluation grid.
3. For fee based contracts, the experts must be scored against the criteria contained in the terms of reference and the evaluation grid.
4. The bidders must provide documentary evidence for the key experts proposed. These include copies of the diploma and certificates and references of their professional experience as per cv.
5. The Evaluation Committee shall only take into consideration experience backed by diplomas and experience supported by documentary evidence.
6. Each voting member shall complete an evaluation grid to record his assessment of each offer establishing a general appreciation of strengths and weaknesses of the individual technical offers.
7. The points awarded by each voting member shall be compared at the Evaluation Committee session where the voting members shall present and discuss their views. After the discussion each member shall decide its final score. In case of major discrepancies dissenting members shall justify their dissent. Once discussed, each voting member shall fill its evaluation grid on each bid and hand it over signed to the secretary.
8. The secretary shall compile all the documents as well as comments to include them as part of the evaluation report.
9. The secretary shall calculate the aggregate final score which is the arithmetical average of the individual final scores.
10. The Evaluation Committee may request clarifications to the bidders. The bidders shall be allowed reasonable time to respond during working days/hours.
11. The Evaluation Committee may decide to interview key experts proposed in the technically compliant bids. The interviews must have been foreseen in the bidding documents and should be conducted fairly and giving sufficient notice to the bidders.
12. Bids not reaching 70 points shall be considered not compliant. If no bid reaches 70 points the procedure shall be cancelled. Out of the 70 points threshold, the best technical offer is awarded 100 points. The others receive points calculated using the following formula:

$$\text{Technical score} = (\text{final score of the technical offer in question} / \text{final score of the best technical offer}) \times 100$$



#### 3.4.6.5 Financial evaluation

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1. Only upon completion of the technical evaluation, the financial offers of the technically compliant bids shall be opened in a public session.
2. The chairperson and the secretary shall sign all the originals of the financial bids.
3. The envelopes containing financial bids of rejected bidders shall not be opened and shall be filed by the Procuring Entity with the rest of the proceedings.
4. The technical scores cannot be changed once the financial bids are opened.
5. The Evaluation Committee shall ensure that the financial bid satisfies all formal requirements. It shall also check that the financial bids do not contain arithmetical errors. Any obvious arithmetical error shall be corrected without penalty to the bidder.
6. The Evaluation Committee may request clarifications from the bidders giving them reasonable deadline.
7. The total contract value comprises the fees, incidental expenditure, lump sums and the expenditure for verification specified in the bidding documents. This value is compared with the maximum budget available.
8. Bidders exceeding the maximum budget available shall be eliminated.
9. Afterwards, the Evaluation Committee shall proceed with the financial comparisons of the fees and lump sums between the different financial offers. Both the provisions for incidental expenditure verification and lump sums shall be excluded from the comparison of the financial bids as they are specified in the bidding documents.
10. The offer with the lowest total fees plus lump sums shall receive 100 points. The others are awarded points by means of the following formula:

$$\text{Financial score} = (\text{lowest total fees} + \text{lump sums} / \text{total fees} + \text{lump sums of the tender being considered}) \times 100.$$

#### 3.4.6.6 Application of award criteria (best value for money)

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1. Service contracts are tendered on best value for money which is established by weighing technical quality against price on a Maximum technical points/maximum financial points basis.
2. The ratio has to be established in the bidding documents and cannot be changed thereafter. The value of the technical offer cannot be below 65 points, thus the maximum weighing for the financial bid would be 35 points. For advisory contracts the usual weighing should be 80/20.
3. In case of 80/20 basis, the best value for money shall be calculated by multiplying the scores awarded to the technical bids by 0.8 and the scores awarded to the financial bids by 0.2. The resulting, weighted technical and financial scores are then added together to find the tender with the highest score, i.e. the best value for money.
4. The Evaluation Committee shall recommend awarding the contract to the tender achieving the highest overall score once the documentary evidence submitted by the bidder is verified and accepted.

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5. The secretary of the Evaluation Committee shall prepare an evaluation report containing final recommendation on the evaluation process and submit to the Evaluation Committee for consideration and signature by all the members.

#### 3.4.7. The contract award

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1. Once the evaluation report is approved by the relevant authority, the Procuring Entity shall issue a notice of intention to award the contract to all the bidders which participated in the process by giving them ten working days within which to submit a complaint.
2. After the ten days have elapsed, the Procuring Entity shall send the award notice to the successful bidder requesting from the potential contractor a confirmation of acceptance which will have the effect of extending the validity of the bid for a period of sixty (60) days. If the potential contractor does not accept the award the Procuring Entity may choose to execute the Bid Security. In this case the Procuring Entity shall propose the award to the second lowest technically compliant bidder.
3. The Procuring Entity may choose to inform also the second best and keep the validity of its bid for another 60 days in case the best bidder fails or declines signing the contract.
4. For fee based contracts, the contractor shall confirm the availability of the experts presented for evaluation within five days of the receipt of the notification letter.
5. Should any of the key experts be unavailable the successful bidder shall propose a replacement expert. The Procuring Entity shall verify that the replacement expert's total score in relation to the evaluation criteria is at least the same as the scores given to the expert he is proposed to replace. The replacement expert must meet the minimum requirements for each evaluation criteria.
6. The maximum time limit for proposing replacement shall be 15 days from the date of receipt of the notification letter. The bidder may propose more than one replacement expert to the Procuring Entity for the later to select the most adequate.
7. If no replacement expert is proposed or the experts proposed do not meet the requirements, the Procuring Entity shall award the contract to the second best bidder. When there are no more compliant bidders left the Procuring Entity may cancel the tender.

#### 3.4.8. The contract signature

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1. Once the notification of contract award is accepted by the successful bidder the Contracting Authority shall prepare and sign/initial the contract in the number of originals required in the bidding documents and send them to the contractor for counter signature. The contractor shall sign the originals, keep one and send back the other/s to the Contracting Authority.
2. The Contracting Authority shall verify the power of representation of the person signing the contract on behalf of the contractor. It shall also verify that the awarded bidder is not within the exclusion criteria listed in para 2.5.2. In contracts over US\$ 350,000 the Contracting Authority must request proof.
3. Unless otherwise specified in the contract, the starting date shall be that of the later signature. The contract shall not cover earlier services or enter into force before signature by all parties.

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4. The Contracting Authority shall file and keep all the documentation referring to procurement and contract implementation for a period of five years from the date of final payment to the contractor. In case of dispute, the period shall be extended to five years after the dispute is finalized.

#### **3.4.9 The publication of awards**

1. The Procurement Entity shall inform applicants/bidders of the award of the contract as in seven days (7) following the lapse of the (10) ten working days cool off period unless the proceedings have been suspended according to chapter seven (7) of these Guidelines.
2. Once the contract has been signed, the Contracting Authority shall prepare Contract Award Notice using the standard template and publish it according to SADC publication guidelines.
3. The award notice shall be published within fifteen (15) days from the signing of the contract by the parties.

#### **3.5. Limited bidding**

1. The rules applicable to the Restricted Bidding procedure shall also apply to Limited Bidding except those referring to pre-selection, since in this procedure the Procuring Entity shall do the pre selection of at least three candidates without an opened pre-selection procedure. Those candidates shall be invited to submit bids.
2. The Procuring Entity shall write a report justifying its pre selection.
3. The Procuring Entity shall follow the publication guidelines established in these Guidelines.

#### **3.6. Negotiated Bidding**

1. Under this procedure the Procuring Entity will enter into negotiations with the entity/entities pre selected in order to enter into contract with the best bidder. The Procuring Entity shall enter into negotiations with at least three entities in order to encourage competition. In case the procuring entity decides to open negotiations with a single entity (Single Source) the decision has to be justified and approved by the relevant SADC Secretariat authority.
2. The procuring entity shall nominate an evaluation committee and shall establish comprehensive bidding documents as in the rest of the bidding procedures. The bidders shall submit their offers according to the bidding documents in a given deadline.
3. All bidders shall be treated equally.
4. The opening session shall be in public but the negotiations shall be held separately with each bidder.
5. The Evaluation Committee shall produce a detailed evaluation report containing the description of the negotiations with each bidder.
6. The negotiations may include discussions on the price, extension and the scope of the contract. In Negotiated Bidding, the Procuring Entity may decide proceed to negotiations with bidders which quoted a price higher than the one specified as maximum thresholds in the Bidding Documents in case none of the offers adjust to the thresholds. This must be specifically mentioned in the Bidding Documents.

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7. In case at least one of the offers adjust to the maximum threshold, the Procuring Entity shall only be allowed to invite Bidders above the thresholds meeting the following requirements:
  - a) The Bidding documents specifically contemplate the possibility to negotiate with bidders presenting bids above the threshold.
  - b) The Bidders which presented an offer below thresholds is not technically compliant.
  - c) The Procuring Entity has justified doubts that the contract can be implemented within the thresholds initially estimated.

### **3.7. Framework contracts**

#### **3.7.1. Definition and types**

1. Procurement under framework contracts is a simplified competitive procurement procedure to be used for the acquisition of simple or routine services.
2. A framework contract is an agreement between the Contracting Authority and one/several contractors with the purpose to establish the terms governing specific contracts/transactions which may be awarded during a given period.
3. There are two types of framework contract:
  - a) Multiple framework contract: when the agreement is between the Contracting Authority and several contractors. It takes the form of separate contracts with a number of economic operators (minimum three and maximum five).
  - b) Single framework contract: when the framework agreement is awarded to one economic operator. This type of contract is used when the specifications are well defined and shall not change for the contract duration.
4. In a multiple framework contract, the contracts shall be awarded to a minimum of three and maximum of five framework contractors, who shall be invited to participate every time the Contracting Authority has a need covered by the contract. The framework contractors invited to submit offers for each particular service shall do so through a simple procedure and the best bidder shall be awarded.
5. The Procuring Entity may, depending on the framework agreed, invite all the framework contractors to submit offer or randomly pick a minimum of three.
6. Single framework contracts shall follow the same procedures as regular service contracts.
7. Multiple framework contracts shall follow the open bidding procedure. The only difference is that instead of awarding it to one bidder, it shall be awarded to the bidders obtaining the best scores (minimum three and maximum five).

#### **3.7.2. Multiple framework contract: awarding procedure**

1. Once the multiple framework contract is signed with a number of economic operators, the beneficiary may make use of it during its validity period (maximum four years).
2. The multiple framework is generally used for fee based services (provision of experts).
3. Each requisition for services cannot exceed 350.000 USD.
4. The Contracting Authority shall follow a simplified procedure as follows:

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**a) Consultation**

- (1) The Contracting Authority shall send a requisition for services to at least three of the framework contractors. The requisition shall include the specific terms of reference for the assignment in order to give the framework contractors all the information they need to submit their bids. The terms of reference must be clear and within scope the framework contract. The contractual deadline for submitting should be between 5 and 15 days from the sending of the request. It might be shorter in urgent or emergency cases.
- (2) The framework contractors may ask for clarifications and the answers should be sent simultaneously to all framework contractors invited. All framework contractors must be treated equally.
- (3) The bidding documents must contain an evaluation grid with clear technical evaluation criteria with their respective weights specified.
- (4) For requests for consultants, the bidder shall not need to prepare methodology, but simply present the curricula of the experts proposed according to Terms of Reference.

**b) Evaluation of offers**

- (1) Bids are valid for 30 calendar days after deadline for submission.
- (2) There must be at least three evaluators.
- (3) Only bids fulfilling the following criteria shall be evaluated:
  - a) Complied with Deadline for submission
  - b) Fee rates comply with contract maxima
  - c) Not exceeded Maximum budget
  - d) Complied with Terms of reference
- (4) The Procuring Entity shall choose the bid with the best value for money using a 80/20 ration between technical quality and price.
- (5) Any bid obtaining less than 70 points in the technical evaluation shall be rejected. The evaluators shall follow the formula contained in the Restricted Bidding procedure above mentioned.
- (6) In fee based contracts, for the financial evaluation the provision for incidental expenditure and the provision for verification expenditure shall not be taken into consideration to compare the financial bids.
- (7) In global price contracts the total price shall be taken into account in the comparison of the financial offers except in cases where the bidding documents establish a fixed lump sum. The evaluators shall follow the formula contained in the Restricted Bidding procedure above mentioned.
- (8) Within 14 days of the deadline for receipt of offers, all bidders must be notified of the result of the evaluation and the award decision.

**c) Contract signature/Purchase Order**

(1) The Contracting Authority shall sign a contract (or Purchase Order) with the highest scored bidder or issue a Purchase Order in its favour. The contract or Purchase Order shall contain the general templates plus the terms of reference and the financial offer.

(2) The Framework Contractor upon receipt of the contract or the Purchase Order shall sign for acceptance and return to the Procurement Function within five (5) days from the receipt of the order.

(3) The acceptance of the contract or Purchase Order shall bind the Framework Contractor to deliver the services as per the terms and conditions stipulated in the contract or Purchase Order.

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**d) Performance assessment**

(1) The project manager shall make a performance assessment of the contract after the completion of the services.

(2) To prevent distortion of the competition, in case a multiple framework contractor fails to respond to five (5) Requests for quotations raised under a lot, the contract with the respective multiple framework contractor under that respective lot shall be automatically terminated and the performance guarantee attached to the contract forfeited.

## 4. Procurement of Goods

### 4.1. Type of goods contracts (conventional/framework)

1. A Goods contract is an agreement whereby a contractor delivers/provides supplies in exchange for remuneration. Goods contracts cover the purchase, leasing, rental or hire purchase (with or without option to buy) of supplies.
2. The Contracting Authority may establish framework contracts for goods. A framework contract is an agreement between the Procuring Entity and one or more contractors, which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement. The aim of the framework contract is to improve efficiency and lower costs due to economies of scale.
3. The framework contract does not legally commit the Contracting Authority to purchase any of the products offered by the contractor, but secures their access to a very restrictive competition.
4. The framework shall not indicate the precise quantities to be ordered by the Contracting Authority during the contract term. However, it shall indicate the estimated minimum and maximum volume of purchases. Under no circumstance the maximum volume of purchases shall exceed the budgetary allocation.
5. Framework contracts for goods require intensive monitoring and administrative support from the Contracting Authority.

### 4.2. Preparation of cost estimates to determine the contract value

1. After the Technical Specifications have been drafted, the Requisition Function shall conduct a market research to estimate the value of the goods to be procured.
2. Particular attention shall be given to grouping the procurement requirements in such a way as to ensure wide competition, economy and efficiency in the procurement process.
3. All similar or related items shall be grouped in a single package. Once the packages have been established, the Requisition Function with the support of the Procurement Function, shall assess if to procure them through one single procurement process with several lots, or if it is more convenient for some or all the packages to be independently procured.
4. The decision on how the packages shall be combined and procured, shall be based on the objective analysis of the market conditions and the time when the general services, goods or works are needed

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by the Procuring Entity. Under no circumstances, the decision shall lead to artificial splitting for the purpose of circumventing the procurement thresholds.

5. The decision of procuring the packages should take into consideration the following aspects:
  - a) Are the packages of a similar nature?
  - b) In the national and international commercial practice are the goods described in each package normally traded by same suppliers or by specialized suppliers?
  - c) Are the goods described in each package needed at more or less the same time, or will there be long gaps between the desirable delivery times?
  - d) Is the local or the international market targeted?
  - e) Is there enough competition for the goods; are they widely available?
  - f) Is the size of the contract generating more competition and economy of scale to potential suppliers?
  - g) Is the time a main factor for the delivery of the goods described in each package?
6. The estimated value of the contract shall be determined based on the information provided by the market research and the decision on how to package the goods described.
7. If the estimated value of the contract exceeds the available budget for procuring the needs, the Requisition Function shall revise the technical specifications to adjust the requirements in order to bring the estimated contract value into the available budget.
8. Under no circumstances shall such revision of the technical specifications affect the objectives the goods are required for, or render the use of the goods useless, unreliable or unsafe.
9. The estimated value shall not be deployed in the Bidding Documents and shall be kept secret by the Procuring Entity.

#### **4.3. Procurement procedures for goods**

##### **4.3.1. Contracts with a value over US\$ 150.000**

All goods contracts with a budget estimated over 150.000 EURO will be tendered through Open Bidding (Schedule 3) unless there is a specific derogation authorising another procedure. The Open Bidding can be International, Regional or Local according to the thresholds established in Schedule 4.

##### **4.3.2 Contracts with a value between US\$ 100.000 and 150.000**

All goods contracts with a budget estimated between US\$ 100.000 and 150.000 will be tendered through Limited Bidding unless there is a specific derogation authorising another procedure.

##### **4.3.3. Contracts with a value between US\$2.000 and 100.000.**

All goods contracts with a budget estimated between US\$ 2.000 and 100.000 may be tendered through Negotiated Bidding.

##### **4.3.4. Exceptional procedures**

1. In exceptional cases in line with the SADC Policy for Procurement and Grants, with the prior approval of the SADC Secretariat's competent authority, the Procuring Entity may use Limited Bidding,

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Negotiated Bidding or Single Source for goods over the mentioned ceilings according to the SADC and programme regulations/legal framework.

2. The Contracting Authority may use the exceptional procedures on the following cases:
  - a. There was previously an unsuccessful open procedure and the Procuring Entity cannot launch a new procurement process due to emergency reasons or adverse market conditions which prevents and open competition.
  - b. For the purchase of goods on particularly advantageous terms as specified in the SADC policy for procurement and grants.
  - c. For contracts which due to safety and security reasons can only be procured for a limited reputable source.
  - d. For reasons of extreme urgency brought about by events which the Contracting Authorities could not have foreseen and which can in no way be attributed to them.
  - e. Where the delivery of specific goods are entrusted to public sector bodies or to non profit institutions and relate to activities of an institutional nature or designed to provide to people in the social field.
3. Under no circumstances contracts shall be split to avoid/manipulate thresholds.

#### **4.4. Open Bidding for goods**

1. Open Bidding is the preferred bidding method for goods contracts with an estimated value over US\$ 150.000. The Open Bidding for goods may be:
  - (a) International: when it is published internationally according to the publication guidelines.
  - (b) Regional: when it is published regionally according to the publication guidelines.
  - (c) Local: when it is published locally according to the publication guidelines.
2. The thresholds are established in para 4.3 and Schedules 3 and 4 of these Guidelines. This clause applies equally for the three types stated in paragraph 1.
3. The provisions of this clause shall also apply to Limited Bidding for goods. The only difference is that for Limited Bidding the Procuring Entity shall establish a list of suppliers invited to participate and the competition shall be limited to this list.

##### **4.4.1. Publicity**

1. To ensure competition, the tender must be published according to the SADC publication guidelines.
2. Open Bidding procedures require the publication of a general procurement notice (only for International Open Bidding) and a specific procurement notice.

##### **4.4.1.1. General procurement notice**

1. The Procuring Entity shall publish the general procurement notice at least 30 days prior to the publication of a contract notice for International Open Bidding. For the Regional and Local Open Bidding this general procurement shall not be compulsory.
2. The general procurement notice shall contain a brief description of the goods to be delivered, location of delivery, estimated amount of units if possible, financing source, INCOTERM applicable and delivery deadline. This information contained in the general procurement notice shall not bind the Procuring Entity and the supply providers shall not be requested to submit bids. Its purpose is to alert potential economic operators about a future opportunity.

3. The general procurement notice shall be published according to SADC publication guidelines.

#### 4.4.1.2. Specific procurement notice

1. The Procuring Entity shall publish the specific procurement notice, together with the bidding documents, according to SADC publication guidelines after 30 days after the publication of the general procurement notice.
2. The specific procurement notice shall provide all the information specifying the bidders' required capacity to implement the project, including technical, financial, economic and professional capacity. It shall also contain the rules of origin and nationality applicable to the tender.
3. The time allowed for bidders to submit their application shall be sufficient to allow proper competition. The minimum period for submitting applications shall be thirty (30) days from the date of publication of the specific procurement notice. The actual period shall be determined by the contract size and complexity.
4. The specific procurement notice must provide potential suppliers with the information needed to determine their capacity to fulfil the contract. The selection criteria contained in the specific procurement notice (technical, economic, financial and professional capacity) must be clear, objective and possible to prove by bidders. The selection criteria shall be adapted to the nature, complexity and cost of the assignment.
5. The Procuring Entity may publish clarifications or corrigenda to the general procurement notice. If the corrigenda are of substance the Procuring Entity may decide to extend the original deadline for submission.
6. The specific procurement notice shall be part of the Bidding Documents.

#### 4.4.2. The Bidding documents

1. The Procuring Entity shall issue the bidding documents ensuring that procurement procedures are carried out correctly.
2. The bidding documents shall be published online to allow economic operators to have access to them. For Limited Bidding procedure the bidding documents shall only be provided to the invited economic operators.
3. The bidding documents must be comprehensive, containing all the information and templates needed to submit a bid.
4. The bidding documents shall contain at least:  
Invitation for Bids (for Limited Bidding only)
  - a) Part 1: Bidding Procedures
    - i. Information to Bidders (ITB) (Section I)
    - ii. Bidding Data Sheet (BDS) (Section II)
    - iii. Evaluation and Qualification Criteria (Section III)
    - iv. Bidding Forms (Section IV):
      - v. Bid Submission Form
      - vi. Technical Offer Form
      - vii. Price Schedule forms

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- viii. Price and Completion Schedule – Ancillary Services
- ix. Bid Security
- x. Manufacturer’s Authorisation.

b) Part 2: Supply Requirements

Schedule of Requirements (Section V)

- i. List of goods and delivery schedule
- ii. List of related/ancillary services and completion schedule
- iii. Technical Specifications
- iv. Drawings
- v. Inspections and tests

c) Part 3: Contract

- i. Draft contract
- ii. Technical Specifications
- iii. Bid security requirements

5. (a) The technical specifications must give equal access to all bidders and shall not create unjustified obstacles to competition. The technical specifications must not quote specific brands but shall specify what is required of a product or material to achieve the purpose for which they are intended. The technical specifications include:
- i) Clear definition of the tasks to be performed;
  - ii) Quantity levels;
  - iii) Environmental performance;
  - iv) Procedures for conformity assessment;
  - v) Safety or measurements, including for supplies of goods, the sales name and user instructions, and for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;
  - vi) Guarantee requirements; and
  - vii) The exact nature and performance required from the goods/equipment.
- b) It is essential that the performance characteristics suit the purpose intended.
6. In cases where the Procuring Entity estimates that an information visit or site visit to clarify technical requirements is needed, the bidding documents shall specify it, stating day, hour and location.
7. The technical specifications shall not refer or describe products of a given brand or origin unless the nature of the contract makes it impossible/unreasonable to proceed otherwise.
8. The bidding documents shall clearly specify whether a firm, non revisable price must be quoted. Normally prices should be fixed and not subject to revisions, but in specific/exceptional cases the technical specifications may allow a price revision. In those cases, the bidding documents must lay down the conditions and formulas for revision of prices during the contract implementation.
9. For International Open Bidding, the Procuring Entity shall request from the bidders a Bid Security to assure that the submitted bids will not be withdrawn. The Bid Security shall be between 1 and 5 %.

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10. The Bid Security shall be released to the unsuccessful bidders once the tender has been completed. It shall be released to the successful bidder once the contract is signed.
11. The Bidding documents shall specify the security Instruments that the successful bidder shall have to provide during implementation (Pre finance Security and Performance Security).

#### 4.4.3. Selection, Evaluation and award criteria

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1. The selection criteria refer to the bidder's capacity to implement the contract. The selection criteria shall verify:
  - a) The bidders' financial situation (financial and economic capacity), backed by statement of financial position, turnover or other objective data.
  - b) The bidders' technical and professional capacity, establishing average staff levels, size of professional experience and the main supply of goods/equipment delivered in the field in question the last years.
2. Only successful bidders must supply official supporting documents for the selection criteria before the award of the contract.
3. The selection criteria must be precise, non discriminatory and should encourage fair competition.
4. Price shall be the award criteria for goods, i.e. all non-compliant bidders having been eliminated; the contract shall be awarded to the bidder submitting the least expensive compliant bid.
5. Where a goods contract includes ancillary/related services (i.e. aftersales or training), the technical evaluation shall take into account the quality of such services on a yes/no basis. All non-compliant proposals shall be dismissed. The contract shall be awarded to the bidder offering the lowest price for both equipment and ancillary services together.
6. The Procuring Entity's evaluation of a bid may take into account, in addition to the Bid Price quoted, one or more of the following factors as evaluation criteria:
  - a) Delivery schedule (as per INCOTERM specified in the BDS).
  - b) Deviation in payment schedule (bidders shall state their bid price for the payment schedule outlined in the SCC and bids shall be evaluated on the basis).
  - c) Cost of major replacement components, mandatory spare parts and maintenance.
  - d) Availability in the Contracting Authority's country of spare parts and after sales services for equipment offered.
  - e) Projected operating and maintenance costs.
  - f) Performance and productivity of the equipment.
  - g) Specific additional criteria.
7. The Procuring Entity, if specified in the Bidding Documents, shall award "multiple contracts" to the Bidder offering the lowest evaluated combination of bids (one contract per bid).
8. The Procuring Entity shall:
  - a) Evaluate only lots that include at least the percentage of items per lot and quantity per items.
  - b) Take into account the lowest evaluated bid for each lot and the price reduction per lot and the methodology for its application as offered by the Bidder in its Bid.

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#### 4.4.4. Questions/clarifications during proceedings

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1. The Procuring entity may whenever necessary on its own initiative to provide the bidders with additional information while always respecting fair competition. The clarifications or corrigenda shall be published according to SADC publication guidelines.
2. The bidders may submit questions in writing no later than 21 days before the deadline for submission of tenders. The Procuring Entity must reply no later than 11 days before the deadline for submission. The reply must be published and not sent to the entity making the enquiries.
3. In case the content of the bidding document is particularly complex, the Procuring Entity may hold an information pre bid meeting. The meeting must be announced and take place no later than 21 days before the expiry of the deadline for submission.
4. The attendance by the bidders to the meeting shall not be compulsory unless specifically mentioned in the Bidding Documents.

#### 4.4.5. Submission of bids

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1. The bids must be submitted at the place designated in the bidding documents within the date and time established in the bidding documents. The deadline for submission must be long enough to guarantee the quality of the bids and allow competition.
2. On receiving the bids, the Procuring Entity shall register them, indicating day and time of arrival and keeping receipts. The envelopes shall remain sealed and kept in a safe place till the opening session. The outer envelopes containing the bids must be numbered in order of receipt (whether or not received within deadline).
3. A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice by certified mail, duly signed by an authorized representative, and shall include a copy of the authorization. The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be submitted by courier/mail and, in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" in addition, they must be received prior to the deadline for submission.
4. Bids requested to be withdrawn shall be returned unopened to the Bidders.
5. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Submission Form or any extension thereof.

#### 4.4.6. The evaluation process

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The evaluation process is divided in the following steps:

**a) Preparatory phase.**

The first meeting of the Evaluation Committee must precede the opening session. The Secretary of the Evaluation Committee shall circulate the bidding documents to the evaluators and shall make a presentation of the tender and explain the procedures to be followed by the Evaluation Committee.

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**b) Tender opening.**

1. The Evaluation Committee shall meet for the tender opening session. During the session the following shall be verified for each submission:

- (a) Registration number on the envelope
- (b) Name of the tenderer
- (c) Date/time of submission
- (d) All bids received are available for the opening session and numbered in order of receipt.
- (e) Outer envelope is sealed.
- (f) Financial bid is clear. Note any discounts.
- (g) Whether the submission form is in the offer.
- (h) Whether the Bid Security is included.

2. The tender opening shall be a formal public process. The opening session shall take place in public at the place and time set in the bidding documents. Participation of the opening session can be restricted to representatives of the bidders.

3. The chairperson shall read out loud the name of the bidders and the corresponding amount of the financial bids.

4. The members of the Evaluation Committee shall sign the impartiality and confidentiality statements.

5. Envelopes marked "WITHDRAWAL" shall be opened first and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalf of the Bidder, the corresponding bid shall be opened. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only envelopes that are opened and read out at Bid opening shall be considered further.

6. The secretary of the Evaluation Committee shall prepare an opening session report to be presented for consideration and signature by all the members of the Evaluation Committee; the report must contain the list of the bids which have complied with the requirements of the opening phase.

7. Bids received after the deadline for submission shall be disqualified and returned to the bidder unopened.

**c) Administrative compliance**

1. Once the opening session is concluded the Evaluation Committee shall proceed (in the same or different session) with assessment of submissions to ascertain administrative compliance. Major formal mistakes or shall lead to the rejection of the bid.

2. During administrative compliance the Evaluation Committee shall not go into the content of the technical offer. The following elements shall be taken into account:

- (a) Bid submission form is duly completed.

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- (b) Signed by all the members of the consortium and the leader.
  - (c) Language requirements.
  - (d) Documentation is complete.
  - (e) Declaration with exclusion criteria signed by all members of the consortium.
  - (f) Rule of nationality is respected.
  - (g) Any other administrative requirement in the bidding documents.
3. The Evaluation Committee shall verify all these elements with the assistance of the Secretary. Non-compliant bids shall be excluded from further evaluation.
  4. The Evaluation Committee may request for clarifications from one or more bidders giving reasonable time to answer depending on the clarification requested. The clarifications may refer to content documents provided or complementing documents/information provided but not to missing administrative documents.
  5. The administrative compliance shall be registered in the evaluation report.

**d) Technical evaluation**

1. Once the administrative compliance is completed the Evaluation Committee shall examine the technical offers to verify which bidders satisfy the minimum technical requirements set in the technical specifications.
2. Once the technical compliance is evaluated, the evaluators shall evaluate if the goods/equipment proposed fulfil the requirements of the rule of origin. In case there is any doubt as to the origin of the goods, the Evaluation Committee may request for clarifications or make enquiries/requests to the competent authorities to verify the compliance.
3. The bidders shall be required to provide proof of origin in the form of a certificate of origin or other official documentation as evidence.
4. Bids proposing goods/equipment not compliant with the rule of origin shall be rejected.
5. The Evaluation Committee shall rule on the technical compliance of each bid, classifying them as technically compliant or technically not compliant. This includes the evaluation of the compliance of the ancillary services (if any).
6. The Evaluation Committee may request clarifications from the bidders giving them reasonable deadline.

**e) Financial evaluation**

1. Once the technical evaluation is completed, the Evaluation Committee shall verify that the financial bids presented by technically compliant bidders do not contain arithmetical errors. The Evaluation Committee shall correct any arithmetical error.
2. If the tender procedure contains several lots, financial bids are compared per lot. The evaluators shall select the best financial bid per lot, taking into consideration any discounts.
3. The Evaluation Committee may request clarifications from the bidders giving them reasonable deadline.

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**f) Application of award criteria (lowest price)**

1. The successful bidder shall be the one submitting the least expensive bidder classified as technically compliant.
2. The Evaluation Committee shall propose awarding the contract to the successful bidder.
3. If the bidding documents expressly allow variant solutions, such solutions shall be taken into consideration separately. The Contracting Authority may take the variant solutions into consideration when submitted by the successful bidder provided the requirements specified in the technical specifications are met, only in cases where the price of the variant proposed is lower than that of the successful bidder. When these requirements are met the Evaluation Committee may compare the variant and the original offer and recommend the best solution to the Contracting Authority.
4. In tenders for goods the bidding documents shall not mention the maximum allocated price. When the lowest financial proposal quoted is above the maximum budget for the contract, the Evaluation Committee may if it is possible and meets the needs of the beneficiary/project propose awarding the contract to the successful bidder reducing the amount of items.

**4.4.7. The contract award**

1. Once the evaluation report is approved by the relevant authority, the Procuring Entity shall issue a notice of intention to award the contract to all the bidders which participated in the process by giving them ten working days within which to submit a complaint.
2. After the ten days have elapsed, the Procuring Entity shall send the award notice to the successful bidder requesting from the potential contractor a confirmation of acceptance which shall have the effect of extending the validity of the bid for a period of sixty (60) days.
3. If the potential contractor does not accept the award the Procuring Entity may choose to execute the Bid Security. In this case the Procuring Entity shall propose the award to the second lowest technically compliant bidder.

**4.5. Negotiated bidding**

1. Under this procedure the Procuring Entity will enter into negotiations with the entity/entities pre-selected in order to enter into contract with the best bidder. The Procuring Entity shall enter into negotiations with at least three entities in order to encourage competition. In case the procuring entity decides to open negotiations with a single entity (single source) the decision has to be justified and approved by the relevant SADC Secretariat authority.
2. The Procuring Entity shall nominate an evaluation committee and shall establish comprehensive bidding documents as in the rest of the bidding procedures. The bidders shall submit their offers according to the bidding documents in a given deadline.
3. All bidders shall be treated equally.
4. The opening session shall be in public. The negotiations shall be held separately with each bidder. The Evaluation Committee shall produce a detailed evaluation report containing the description of the negotiations with each bidder.

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5. The negotiations may include discussions on the price, extension and quantity of items to be delivered.

## 4.6. Framework contracts

### 4.6.1. Definition and types

1. Framework contracts are simplified competitive procurement procedures to be used for the acquisition of simple or routine goods/equipment.
2. A framework contract is an agreement between the Contracting Authority and one/several contractors with the purpose to establish the terms governing specific contracts/transactions which may be awarded during a given period.
3. There are two types of framework contract:  
**Multiple framework contract:** when the agreement is between the Contracting Authority and several contractors. It takes the form of separate contracts with a number of economic operators (minimum three and maximum five).  
**Single framework contract:** when the framework agreement is awarded to one economic operator. This type of contract is used when the specifications are well defined and will not change for the contract duration.
4. In a multiple framework contract, the contracts shall be awarded to a minimum of three and maximum of five framework contractors, who shall be invited to participate every time the Contracting Authority has a need covered by the contract. The framework contractors invited to submit offers for each particular requisition shall do so through a simple procedure and the cheapest bidder shall be awarded. The Procuring Entity may, depending on the framework agreed, invite all the framework contractors to submit offer or randomly pick a minimum of three.
5. Framework contracts for goods shall follow the same procedures as Open Bidding.

### 4.6.2. Multiple framework contract: awarding procedure

1. Once the multiple framework contracts are signed with a number of economic operators, they beneficiary may make use of it during its validity period (maximum four years).
2. The Contracting Authority shall follow a simplified procedure:
  - a) **Consultation**
    - (1) The Contracting Authority shall send a requisition for equipment to at least three of the framework contractors. The requisition shall include the specific technical specifications in order to give the framework contractors all they information needed for bid submission. The technical specifications must be clear and within scope the framework contract. The contractual submission period should be between 5 and 15 days from the moment the request was made.
    - (2) The framework contractors may ask for clarifications; in such cases, the answers should be sent simultaneously to all framework contractors invited. All framework contractors must be treated equally.
    - (3) The bidding documents must contain an evaluation grid with clear technical evaluation criteria with their respective weights specified.

**b) Evaluation of offers**

- (1) Bids are valid for 30 calendar days after deadline for submission. All bids shall be evaluated.
- (2) There must be at least three evaluators.
- (3) Only bids fulfilling the following criteria shall be evaluated:
  - Deadline for submission complied with.
  - Prices per item comply with contract limit.
  - Maximum budget not exceeded.
  - Technical Specifications complied with.
- (4) The successful bidder shall be the one submitting the least expensive bidder technically compliant offer.
- (5) Within 14 days of the deadline for receipt of offers, all bidders must be notified of the result of the evaluation and the award decision.

**c) Contract signature/Purchase Order**

- (1) The Contracting Authority shall sign a contract or issue a Purchase order in favour of the successful bidder.
- (2) The contract/purchase order shall contain the general templates plus the technical specifications and the financial offer.
- (3) The Framework Contractor shall sign for acceptance and return it to the Procurement Function within five (5) days from the receipt of the order.
- (4) The acceptance of the Purchase order shall bind the Multiple Framework Contractor to deliver the goods as per terms and conditions stipulated in the contract order.

**d) Performance assessment**

- (1) The project manager shall make a performance assessment after the delivery of the goods/equipment.
- (2) To prevent distortion of the competition, in case a multiple framework contractor fails to respond to five (5) Requests for quotations raised under a lot, the contract with the respective multiple framework contractor under that respective lot shall be automatically terminated and the performance guarantee attached to the contract forfeited.

## 5. Procurement of Works

### 5.1. Type of work contracts (lump sum and unit price)

1. Works contracts are those covering the execution or execution and design for works or the realisation by whatever means of a work corresponding to the requirements specified by the Contracting Authority. A work means the outcome of building or civil engineering works taken as a whole that is sufficient in itself to fulfil an economic or technical function.
2. Public works are generally contracted through two types of work contracts, lump sum and unit price.
  - a) **Lump sum:** with this kind of contract the contractor agrees to do the works as described and specified in the bidding documents for a fixed price. A lump sum is suitable if the scope and schedule of the project are sufficiently defined. In the lump sum an all inclusive price covers all the works concerned by the Contract. The all inclusive price, if necessary, shall be calculated on the basis of the Breakdown of the Lump Sum price; in such case, an all inclusive price shall be given for each separate item in the itemised breakdown. The total price shall be calculated by adding together the various all inclusive prices for all such items. Where items are accompanied by quantities, these shall be firm quantities drawn up by the Contracting Authority. The firm quantity is the quantity for which the Contractor has submitted an all in price, which must be paid to it irrespective of the quantity actually supplied.

- b) **Unit price contracts:** this kind of contract is based on estimated quantities of items included in the project and their unit prices (bill of quantities). The final price of the project is dependent on the quantities needed to carry out the work. This type of contract is suitable for construction projects where the different types of items, but not their numbers, can be accurately defined in the bidding documents. In these contracts, the works are broken down into different items on the basis of a Bill of Quantities drawn up by the Contracting Authority, and the proposed unit price for each item is indicated. The amounts due under the Contract shall be calculated by applying the unit prices to the quantities actually supplied in accordance with the contract.
3. It is not unusual to combine a unit price and lump sum parts in a single contract. In these cases the Bidding Documents must indicate how to calculate the prices.
4. Each set of Bidding Documents shall specify the exact type of contract used. The Bill of Quantities and Price Schedule (for unit price contracts)/Break down of the Lump-sum Price (for lump-sum contracts) must provide sufficient information of the quantities of works to be performed to enable preparation of bids, and when a contract has been entered into, to provide an itemised basis for measuring the works executed. In order to attain these objectives, works should be itemised in the Bill of Quantities and Price Schedule (for unit price contracts)/Breakdown of the Lump-sum Price (for lump-sum contracts) in sufficient detail to distinguish between the different categories for works, or between works of the same nature carried out in different locations or any other circumstances which may give rise to variation of costs. Their layout and content should be as simple and brief as possible, while remaining consistent with these requirements.

## 5.2. Preparation of the cost estimates to determine the contract value

1. After the Technical Specifications have been approved, the Requisition Function, in case of low value contracts shall conduct a market research to estimate the value of the works to be procured. In most cases the estimations shall be done through studies done by specialized engineering firms contracted through a service contract.
2. The estimated value shall not be deployed in the Bidding Documents and shall be kept secret by the Procuring Entity.

## 5.3. Procurement procedures

### 5.3.1. Contracts with a value over US\$ 500.000

1. Contracts with an estimated value over US\$ 500.000 USD will be tendered through Open Bidding (Schedule 3) unless a specific derogation granted by the competent authority allows the use of a different procedure. The Open Bidding may be Local, Regional or International according to the thresholds established in Schedule 4.
2. The estimations of value in works contracts must be done by specialized experts and shall be accurate.

### 5.3.2. Contracts with a value between US\$ 200.000 and 5.000.000

Contracts with an estimated value between US\$ 200.000 and 500.000 shall be tendered through Limited Bidding unless a specific derogation granted by the competent authority allows the use of a different procedure.

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### 5.3.3. Contracts with a value between US\$ 2.000 and 200.000

1. Contracts with an estimated value between US\$ 2.000 and 200.000 shall be tendered through Negotiated Bidding.
2. For contracts under US\$ 20.000 the Procuring Entity may use simplified Bidding Documents.

### 5.3.5. Exceptional procedures

1. In exceptional cases, with the prior approval of the SADC Secretariat's competent authority, the Procuring Entity may use Negotiated Bidding for contracts over the mentioned ceilings according to the SADC Secretariat and programme rules and regulations.
2. The Contracting Authority may use the exceptional procedures on the following cases:
  - a. There was previously an unsuccessful open or restricted procedure and the Procuring Entity cannot launch a new procurement process due to emergency reasons or adverse market conditions which prevents an open competition.
  - b. For the purchase of terms on particularly advantageous terms as specified in the SADC policy for procurement and grants.
  - c. For works which due to safety and security reasons can only be procured for a limited reputable source.
  - d. For reasons of extreme urgency brought about by events which the Contracting Authorities could not have foreseen and which can in no way be attributed to them.
  - e. For contracts declared to be secret or whose performance must be accompanied by special security measures or when the protection of the interest of the SADC Secretariat, its Member States or the beneficiary requires so.
  - f. Where the works are entrusted to public sector bodies or to non profit institutions and relate to activities of an institutional nature or designed to provide to people in the social field.
3. Under no circumstances contracts shall be split to avoid/manipulate thresholds.

## 5.4. Open Bidding for works

1. Open Bidding is the preferred bidding system for works contracts over US\$ 500.000. The Open Bidding for works may be:
  - (a) International: when it is published internationally according to the publication guidelines.
  - (b) Regional: when it is published regionally according to the publication guidelines.
8. Local: when it is published locally according to the publication guidelines.
2. The thresholds are established in article 5.3 and Schedule 4 of these Guidelines.
3. This section applies equally for the three modes of Open Bidding.

### 5.4.1. Publicity

1. To ensure competition, the tender must be published according to the SADC publication guidelines.
2. Open Bidding procedures require the publication of a general procurement notice (only for International Open Bidding) and a specific procurement notice.

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#### **5.4.1.1. General procurement notice**

1. The Procuring Entity shall publish the general procurement notice at least 30 days prior to the publication of a contract notice for International Open Bidding. For the Regional and Local Open Bidding this notice shall not be compulsory.
2. The general procurement notice shall contain a brief description of the works, location and financing source. This information shall not be binding for the Procuring Entity and potential contractors shall not be requested to submit bids. Its purpose is to inform about a future opportunity.
3. The general procurement notice shall be published according to SADC publication guidelines.

#### **5.4.1.2. Specific procurement notice**

1. The Procuring Entity shall publish, together with the bidding documents, the specific procurement notice according to SADC publication guidelines after 30 days since the publication of the general procurement notice.
2. The specific procurement notice shall provide with all the information referring to their capacity to implement the project, including technical capacity, financial capacity, economic capacity and professional capacity. It shall also contain the rules of origin and nationality applicable to the tender.
3. The time allowed for bidders to submit their application shall be sufficient to allow proper competition. The minimum period for submitting applications is thirty (30) days from the date of publication of the procurement notice. The period shall be determined by the contract size and complexity.
4. The procurement notice must provide potential contractors with the information they need to determine their capacity to fulfil the contract. The selection criteria contained in the specific procurement notice (technical, economic, financial and professional capacity) must be clear, objective and possible to prove by bidders. The selection criteria shall be adapted to the nature, complexity and cost of the assignment.
5. For International and Regional Open Bidding, the minimum time allowed for candidates to submit their applications shall be thirty (30) days from the date of publication. However, the Procuring Entity may decide to grant a longer period.
6. The Procuring Entity shall publish clarifications or corrigenda to the general procurement notice. If the corrigenda are of substance the Procuring Entity may extend the original period for submission.
7. The specific procurement notice shall be part of the Bidding Documents. It shall contain also the selection criteria (technical, economic, financial and professional), which must be assessed before assessing the technical offer.

#### **5.4.2. The Bidding documents**

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1. The Procuring Entity shall issue the bidding documents ensuring that the contract is complete and the procurement procedures are carried out correctly.
2. The bidding documents shall be published online to allow economic operators to have access to them. For Limited Bidding procedure the bidding documents shall only be provided to the invited economic operators.

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3. The bidding documents must be comprehensive, containing all the information and templates needed to submit a bid.
4. The bidding documents must contain at least:
  - (a) Information to bidders (ITB) including data sheet;
  - (b) Draft contract and conditions;
  - (c) Technical Specifications;
  - (d) Model Financial Offer;
  - (e) Design documents and Drawings (except for build and design contracts);
  - (f) Bid security requirements ; and
  - (g) Implementation security requirements: performance bond, retention bond and pre-finance bond.
5. The technical specifications must be clear and should not create unjustified obstacles to competition.
6. The technical specifications include:
  - (a) Clear definition of the works to be performed;
  - (b) Quality levels;
  - (c) Environmental performance;
  - (d) Procedures for conformity assessment;
  - (e) Safety or measurements and quality assurance; and
  - (f) Guarantee requirements.
7. In cases where the Procuring Entity estimates that an information visit or a site visit to clarify technical requirements is needed, the bidding documents shall specify it, stating day, hour and location.
8. The technical specifications must state the exact nature and performance characteristics of the works. Where applicable, they also specify conditions for delivery and installation, training and aftersales service. The purpose of the technical specifications is to define the required works precisely. The minimum quality standards defined shall allow the Evaluation Committee to determine which tenders are technically compliant.
9. The Procuring Entity shall request from the bidders a Bid Security to assure that the submitted bids shall not be withdrawn. The Bid Security should be between 1 and 3 % of the contract amount. In contracts under 500.000 the Procuring Entity may choose to not request for a Bid Security.
10. The Bid Security shall be released to the unsuccessful bidders once the tender has been completed. It also shall be released to the successful bidder once the contract is signed.
11. The Bidding documents shall specify the security instruments that the successful bidder shall provide during implementation.

#### **5.4.3. Selection and award criteria**

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1. The selection criteria refer to the bidders' capacity to implement the contract. The selection criteria shall verify:
  - (a) The bidder's financial situation (financial and economic capacity), backed by statement of financial position, turnover or other objective data.

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- (b) The bidder's technical and professional capacity, establishing average staff levels, size of professional experience and the main works delivered in the field in question the last three to eight years.
2. Only successful bidders must supply official supporting documents for the selection criteria before the award of the contract. The Procuring Entity may make all the enquiries which it considers necessary to verify the accuracy of the documents provided by bidders.
  3. The selection criteria must be precise, non discriminatory and should encourage fair competition.
  4. Price shall be the award criterion for works, i.e. all non-compliant bidders having been eliminated; the contract shall be awarded to the bidder submitting the least expensive compliant tender.

#### **5.4.4. Questions/Clarifications during proceedings**

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1. The Procuring entity may on its own initiative provide the bidders with additional information in case necessary always respecting fair competition. The clarifications or corrigenda must be published according to SADC publication guidelines.
2. The bidders may submit questions in writing no later than 21 days before the deadline for submission of tenders. The Procuring Entity must reply no later than 11 days before the deadline for submission. The reply must be published and not sent to the entity making the enquiries.
3. In case the content of the bidding document is particularly complex, the Procuring Entity may hold a pre bid information meeting, whether at the site or at the premises of the Contracting Authority. The meeting must be announced and must take place no later than 21 days before the expiry of the deadline for submission. The attendance to the meeting shall not be compulsory unless otherwise stipulated in bidding documents.

#### **5.4.5. Submission of bids**

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1. The bids must be submitted at the place designated in the bidding documents within the date and time established in the bidding documents. The deadline for submission must be long enough to guarantee the quality of the bids and allow competition.
2. On receiving the bids, the Procuring Entity shall register them, indicating day and time of submission and keeping receipts.
3. The envelopes must remain sealed and kept in a safe place till the opening session. The outer envelopes containing the bids must be numbered in order of receipt (whether or not received within deadline).
4. A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice by certified mail, duly signed by an authorized representative, and shall include a copy of the authorization. The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be submitted by courier/mail and, in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" in addition, they must be received prior to the deadline for submission.
5. Bids requested to be withdrawn shall be returned unopened to the Bidders.



6. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Submission Form or any extension thereof.

#### 5.4.6. The evaluation process

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The evaluation process is divided in the following steps:

**(a) Preparatory phase.**

The first meeting of the Evaluation Committee must precede the opening session. The Secretary of the Evaluation Committee shall circulate the bidding documents to the evaluators. The Chairperson shall make a presentation of the tender explaining the procedures to be followed by the Evaluation Committee in the evaluation sessions.

**(b) Tender opening.**

1. The evaluation shall meet for the tender opening session. During the session the Evaluation Committee must verify the following:
  - (a) Registration number on the envelope;
  - (b) Name of the tenderer;
  - (c) Date/time of arrival;
  - (d) All bids received are available for the opening session and numbered in order of reception;
  - (e) Outer envelope is sealed;
  - (f) Financial bid is clear, noting any discount;
  - (g) Whether or not the technical and financial bid are sealed and contained in separate envelopes;
  - (h) Whether the submission form is in the technical offer; and
  - (i) Whether the Bid Security is included.
2. The tender opening is a formal public process. The opening session shall take place in public at the place and time set in the bidding documents. Participation of the opening session can be restricted to representatives of the bidders. The chairperson shall read out loud the name of the bidders and the correspondent amount of the financial bids.
3. The members of the Evaluation Committee shall sign the impartiality and confidentiality statements.
4. Envelopes marked "WITHDRAWAL" shall be opened and read out first and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalf of the Bidder, the corresponding bid shall be opened. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid.
5. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only envelopes that are opened and read out at Bid opening shall be considered further.

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6. The secretary of the Evaluation Committee shall prepare an opening session report to be presented for signature to all the members of the Evaluation Committee; the report must contain the list of the bids which have complied with the requirements of the opening phase.
7. Bids received after the deadline for submission will be disqualified and returned to the bidder unopened.

**(c) Administrative compliance**

1. Once the opening session is completed, the Evaluation Committee shall proceed (in the same or different sessions) to the assessment of the administrative compliance. Major formal mistakes shall lead to the rejection of the bid.
2. During administrative compliance the Evaluation Committee shall not go into the content of the technical offer. The following elements shall be taken into account:
  - (a) Bid submission form is duly completed;
  - (b) Signed by all the members of the consortium and the leader;
  - (c) Language requirements;
  - (d) Documentation is complete;
  - (e) Declaration with exclusion criteria signed by all members of the consortium;
  - (f) Rule of nationality is respected; and
  - (g) Any other administrative requirement in the bidding documents.
3. The Evaluation Committee shall verify all these elements assisted by the Secretary. Non-compliant bids must be excluded from further evaluation.
4. The Evaluation Committee may request for clarifications to one or more bidders giving reasonable time to answer depending on the clarification requested. The clarifications may refer to contents in documents provided or complementing documents/information provided but not to missing administrative documents.
5. The administrative compliance shall be registered in the evaluation report.

**(d) Technical evaluation**

1. Once the administrative compliance is completed the Evaluation Committee shall examine the technical offers to verify which bidders satisfy the minimum technical requirements set in the technical specifications.
2. Once the technical compliance is evaluated, the evaluators shall evaluate if the equipment proposed within the works fulfil the requirements of the rule of origin. In case there is any doubt as to the origin, the Evaluation Committee may request for clarifications or make enquiries/requests to the competent authorities to verify the compliance.
3. The bidders shall be required to provide proof of origin in the form of a certificate of origin or other official documentation as evidence.
4. Bids proposing goods/equipment not compliant with the rule of origin shall be rejected.
5. The Evaluation Committee shall rule on the technical compliance of each bid, classifying them as technically compliant or technically not compliant. This includes the evaluation of the compliance of the ancillary services (if any).

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6. The Evaluation Committee may request clarifications from the bidders giving them reasonable deadline.

**(e) Financial evaluation**

1. Once the technical evaluation is completed the Evaluation Committee verifies that the financial bids presented by technically compliant bidders do not contain arithmetical errors. The Evaluation Committee shall correct any arithmetical error.
2. If the tender procedure contains several lots, financial bids are compared per lot. The evaluators shall select the best financial bid per lot, taking into consideration any discounts.
3. The Evaluation Committee may request clarifications from the bidders giving them reasonable deadline.
4. For unit price contracts the Evaluation Committee shall carefully check the content/accuracy of the bill of quantities, which must be provided also in electronic copy.
5. The Evaluation Committee may request clarifications from bidders giving them reasonable deadline.
6. The Evaluation Committee shall be specifically attentive to abnormally low bids making enquiries about the prices proposed. An abnormally low bid may be disqualified.
7. The Evaluation Committee shall justify its decision.

**(f) Application of award criteria (lowest price)**

1. The successful bidder shall be the one submitting the least expensive bidder classified as technically compliant.
2. The Evaluation Committee shall propose awarding the contract to the successful bidder.
3. If the bidding documents expressly allow variant solutions, such will be taken into consideration separately. In these cases the Contracting Authority may take them into consideration if the following criteria are met:
  - a) The successful bidder submitted the variant solutions.
  - b) The variant solutions meet the requirements of the technical specifications.
  - c) The price of the variant solution is lower than that of the successful bidder.
4. If all of these requirements are met the Evaluation Committee may compare the variant solution and the original offer and recommend the best solution to the Contracting Authority.
5. In tenders for works the bidding documents must not mention the maximum allocated price. When the cheapest bidder is above the maximum budget for the contract, the Evaluation Committee may if it is possible and meets the needs of the beneficiary/project propose awarding the contract to the successful bidder reducing the scope of the works.

#### **5.4.7. The contract award**

1. Once the evaluation report is approved by the relevant authority, the Procuring Entity shall issue a notice of intention to award the contract to all the bidders which participated in the process by giving them ten working days within which to submit a complaint.
2. After the ten days have elapsed, the Procuring Entity shall send the award notice to the successful bidder requesting from the potential contractor a confirmation of acceptance which will have the effect of extending the validity of the bid for a period of sixty (60) days.
3. If the potential contractor does not accept the award the Procuring Entity may choose to execute the Bid Security. In this case the Procuring Entity shall propose the award to the second lowest technically compliant bidder.

#### **5.5. Negotiated bidding/Single Source (contracts under 150.000 USD)**

1. Under this procedure the Procuring Entity will enter into negotiations with the entity/entities pre selected in order to enter into contract with a contractor.
2. The Procuring Entity shall enter into negotiations with at least three entities in order to encourage competition. In case the procuring entity decides to open negotiations with a single entity (Single Source) the decision has to be justified and approved by the relevant SADC Secretariat authority.
3. The Procuring Entity will nominate an evaluation committee and will establish comprehensive bidding documents as in the rest of the bidding procedures.
4. The bidders shall submit their offers according to the bidding documents in a given deadline.
5. The Procuring Entity may hire independent expertise in order to participate in the evaluation as advisors to the members of the Evaluation Committee. Those independent experts shall not be evaluators but advisors to the Committee. The advisors shall produce a report on the evaluation procedure which shall be annexed to the Evaluation Report.
6. All bidders shall be treated equally.
7. The opening session shall be public. The negotiations shall be held separately with each bidder. The Evaluation Committee shall produce a detailed evaluation report containing the description of the negotiations with each bidder.
8. The negotiations may include discussions on the price, extension and the scope of the contract.

#### **5.6. Modification of works contracts**

1. Unit price contracts are paid on measurements against the bill of quantities. In such contracts, the quantities in the bill of quantities are estimates (although they are expected to be very accurate). Whenever an application for payment is submitted, the supervisor measures, for each item, the actual quantities of the works executed in order to calculate the amount due through applying the unit rates.
2. Increases on the initial contract price which are the sole result of the measured actual quantity exceeding the bill of quantities do not represent a contract modification, however an administrative order or addendum shall be required in order to increase the overall contract budget.

3. The application of the price revision clause of the contract shall have an automatic effect and shall not require any addendum or administrative order to have the effect of increasing the budget, since the parties already agreed upon the formula.
4. Works contract can be amended through:
  - (a) Administrative order**
    1. In works contracts, the supervisor, with the written consent of the Contracting Authority, may be empowered to issue an administrative order to change any part of the works if necessary for the proper completion of the works. These changes may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, position, dimension, level or line and changes in the specific sequence, method or timing in the execution of the works.
    2. The contractor is obliged to make the changes ordered by the supervisor, and cannot delay the works ordered pending a decision on the claim he might have either to extend the implementation period or for additional payment.
    3. The supervisor shall not be allowed to approve changes in budget, scope of the works or completion date without the written authorisation of the Contracting Authority.
  - (b) Addendum**
    1. Changes in budget, completion date and scope of the works shall be done through addendum agreed and signed by both parties.
    2. The total implementation period shall the works implementation period and the defects liability period, which is the period between the provisional acceptance and the final acceptance. During this entire period budget, scope of works and implementation period can be modified.
    3. Lump sum contracts will require a substantial change in the circumstances or a change in the scope of the works in order to generate an increase in the budget.
    4. Extensions of time must be justified and approved by the Contracting Authority.
    5. All modifications in completion date, time and scope of the works must be fully justified.

## 6. Grants

### 6.1. General rules

#### 6.1.1. Definition and nature of grants: procurement and grants

1. Grants are direct non-profit financial contributions from the budget to a beneficiary in order to finance any of the following:
  - a) An action or group of actions oriented to achieve a SADC objective. These are action grants and finance specific actions.
  - b) The functioning of a body/institution, which pursues an aim of general interest for SADC or its Member States. These are operational grants and finance a work programme.
2. Grants are always availed through a legal agreement, which may be a contribution agreement, a financial agreement, a contract, a convention or a similar legal frame.

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3. Procurement and grants are actions of different nature and objective. Procurement covers public contracts concluded with economic operators to obtain services, goods or works in return for a payment generally involving profit. The operators are selected via bidding and each tender generates only one successful bid. On the other hand, grants constitute financial support to an action of an external organisation/entity whose activities contribute to SADC's objectives by means of subsidy. Grants are non-profit and beneficiaries are selected via calls for proposals, which might finance not only one but more entities proposing relevant activities. Grants may cover totally or partially the cost of the activity proposed for financing. Generally, grants require the beneficiary to finance a part of the action (co-financing).
4. Grants can be awarded through a direct agreement only under circumstances specifically provided for in the legal frame governing the grant.
5. Grants given to a beneficiary may generate secondary procurement i.e. when the action involves buying services, goods or works from economic operators. These activities shall be done through subcontracting.
6. Grants have non-profit nature, nevertheless, if stipulated in the guidelines for applicants so, they can be awarded to profit making bodies.

### 6.1.2. Actors

There are up to six type of actors in a grant:

**a) The funding institution/s**

The funding institution(s) is the body providing the financial allocation for the grant. The funding institutions may be the same as the Contracting Authority or may be a third body financing a Contracting Authority to launch a call for proposals, i.e. an international body (World Bank, EU, African Union) may give a grant to SADC to launch a call for proposal acting as Contracting Authority.

**b) The Contracting Authority**

The Contracting Authority is the body signing the contract with the grant beneficiary. The Contracting Authority shall be the body in charge of monitoring/evaluating the implementation of the actions and making the payments.

**c) The applicant/beneficiary**

The applicant, when awarded a grant, shall become the beneficiary. The role of the beneficiary shall be to lead the implementation of the actions proposed. The beneficiary shall be solely responsible before the Contracting Authority for the implementation of the grant.

The beneficiaries can be either private bodies (associations, NGOs, private companies, individuals or any other economic body) or public bodies (national or international administrations). SADC Secretariat may award grants to Member States and its public bodies. SADC Secretariat may, if allowed by the contribution agreement or similar legal frame, sub-grant to third parties.

In case several applicants present one proposal under a consortium there will be a lead applicant as provided in paragraphs d) and e).

**d) The co-applicants/co-beneficiaries (if any)**

A single applicant or a consortium may present the grant application. Every consortium shall have a lead applicant (defined in the previous paragra) and a number of co-applicants. The actions to be undertaken by the co-applicants must be defined in the proposal. Co-applicants, once became co-

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beneficiaries, shall participate in designing and implementing the action, and their costs are eligible in the same way as those incurred by the applicant.

The lead applicant shall sign the contract on behalf of the whole consortium and shall act as project coordinator before the Contracting Authority. The relations between the members of the consortium shall be regulated by a consortium agreement.

Co-applicants must comply with the same eligibility rules as the lead applicant.

**e) Affiliated entities (if any)**

The consortium may contain also affiliated entities, which shall not be part of the grant contract but may participate in the implementation and their costs are eligible in the same way as those incurred by the beneficiaries.

Affiliated entities are legal bodies with a link to the applicant. The link must be structural and permanent not related only to the specific action.

Affiliated entities must comply with the same eligibility rules as beneficiaries.

**f) Subcontractors**

Grants guidelines may allow beneficiaries the subcontracting of a number of activities. These may include buying equipment, implementing works or delivering services. The instructions for applicants shall define the frame of that subcontracting which should not go over 50% of the total value of the grant.

Subcontractors are not beneficiaries and their responsibilities do not go beyond their specific contract.

### **6.1.3. Co-financing and eligible costs**

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1. The grant may cover all the expenses of the action or a percentage. The grant shall only cover the eligible costs (whether 100% or less). Non-eligible costs will not be reimbursed.
2. Generally, the Contracting Authority's contribution shall cover a certain percentage of the eligible costs according to the rules set up in the call for proposals. The call for proposal shall also establish the maximum and minimum amounts of the contribution.
3. The co-financing may be provided by the beneficiary's own resources, income generated by the action or contribution from other donors.
4. When it is stipulated by the specific guidelines for applicants, the beneficiaries may propose in kind contribution as co-financing. This means the provision of good or services free of charge by the beneficiary or a third party, which will be allocated to the activity. Thus in kind contributions do not involve any expenditure for the grant beneficiary but are considered as contribution to cover the beneficiary's contribution.
5. Grants operate on basis of reimbursements of actual eligible cost incurred by the beneficiary during the implementation of the action. The costs must have been incurred by beneficiary.
6. The specific guidelines for applicants for each call for proposal shall define the eligible costs. The proposal presented by the applicants shall propose their costs according to the content of the guidelines for applicants. Only the costs approved by the Contracting Authority will be financed by the grant.





#### 6.1.4. Eligibility criteria

1. The guidelines for the specific calls for proposals will define what the eligibility criteria are. The eligibility criteria will define the type of entities, which may apply for the grant.
2. The eligibility criteria must comply with the general principles mentioned in these Guidelines. The eligibility may refer to:
  - a) Nationality
  - b) Region/geographical area of activity
  - c) Profit/non profit
  - d) Scope of activity of the institution
  - e) Previous experience (technical capacity)
  - f) Financial/economic capacity
  - g) Grounds for exclusion (para 2.5.2)
3. The grounds for exclusion contained in these Guidelines (para 2.5.2) are applicable to grant applicants.
4. Natural or legal persons are not entitled to participate in calls for proposals or be awarded grants if they fall into any of the mentioned grounds for exclusion.

#### 6.2. Grant principles

The Contracting Authority must comply with the following principles for launching call for proposals and prepare guidelines for grants:

##### 1. Programming/publication

The Contracting Authority must programme the calls for proposals establishing clear objectives. Calls must be published according to publication guidelines.

##### 2. Transparency

Calls must be published according to publication guidelines (except in cases of direct award grants). The Contracting Authority shall publish a yearly list with all the grants awarded.

##### 3. Equal treatment

The grant award procedure must be impartial; all proposals must be evaluated through an independent Evaluation Committee and all applicants should be treated equally.

##### 4. Non-cumulation

Beneficiaries shall not receive more than one grant for the same action. Several donors on percentage basis may finance one action but the financing must never go beyond 100% of the total cost.

##### 5. Non-retroactivity

Grants shall only cover costs incurred by after the date of the contract signature. Only exceptionally may a call for proposal or a direct grant cover activities that already begun before the contract signature date. These cases must be carefully justified and will be subject of a specific derogation.

Under no circumstances a grant may be awarded retroactively for actions already completed.

##### 6. Co-financing

As a general rule, a grant shall not finance the entire cost of the action or the entire operating expenditure (operational grants).



## **7. Non-profit**

Grants shall not produce profit. Profit is a surplus of the receipts over the eligible cost of the action approved by the Contracting Authority when the request for payment is made.

### **6.3. Award procedures**

There are two ways of awarding grants, through call for proposals (competitive procedure) or through direct agreements (direct awards).

#### **6.3.1. Direct awards**

1. The Contracting Authority may award grants directly, on non competitive basis, when there is a legal agreement allowing it (contribution agreement, financing agreement, convention, contract or other legal basis). In this case, the Contracting Authority must prepare a report developing the manner in which the beneficiary is chosen and the budget established.
2. The Contracting Authority shall assure that the grant principles are complied with during the implementation (especially those referred to expenditure verification).

#### **6.3.2. Call for proposals**

1. Launching calls for proposals is the preferred way of awarding grants.
2. A call for proposal is a mechanism whereby a competitive selection process is launched to choose beneficiaries for grants. The call for proposal allows a number of beneficiaries to obtain funding according to the proposals made and the budget available.
3. Calls for proposals may be open or restricted.
  - a) Restricted calls for proposals is a two step procedure where all the applicants meeting the eligibility conditions may ask to take part but only the applicants who have been short listed (on the basis of a concept note) are invited to submit a full proposal
  - b) Open calls for proposals is a single step procedure where all applicants meeting the eligibility conditions are free to submit a full grant application in response to the published guidelines for applicants.
4. The Contracting Authority will choose the most appropriate method for each call. Both are competitive therefore preferred.

##### **6.3.2.1. Publicity**

1. Call for proposals must be published according to SADC publication guidelines in order to ensure transparency and equal treatment.
2. SADC shall publish the guidelines for applicants of all the call for proposals it launches, whether restricted or open.

##### **6.3.2.2. The guidelines for applicants**

1. The guidelines for applicants is a document which contains all the requirements to participate in a call for proposal. It explains the purpose of the call, the rules of eligibility of applicants, the types of actions and costs which are eligible for financing, the % of co financing required, the maximum and minimum of financing that may be requested, the available budget for the cost, the mechanism for cost

reimbursement, guarantee requirements (if any), the evaluation (selection and award) criteria and the deadline for submission of proposals. It also contains instructions on how to fill the application form, documents which will have to be attached and procedures to follow for applying. They shall also contain information on the evaluation process and the draft contract for successful applicants.

2. The guidelines for applicants shall establish the objectives and priorities of the call, giving enough information for the applicants to prepare sound relevant proposals according to them.
3. The application submitted by the applicants shall contain at least a concept note, information of the action proposed and the information of the applicants. All these shall have to be developed in detail by the guidelines for applicants.

#### 6.3.2.3. Eligibility and evaluation

##### **(a) Eligibility criteria**

1. The eligibility criteria shall define the conditions for participation in a call for proposals. They must be prepared with regard for the objectives of the action and be transparent, objective and non-discriminatory.
2. The eligibility criteria apply to the eligibility of the applicants (nationality, legal status, grounds for exclusion, financial capacity, technical capacity) and the action (it may refer to the type of activities, geographical area, sectors).

##### **(b) Evaluation criteria: selection and award**

1. The evaluation criteria shall be listed and defined in the call for proposals (evaluation grid). There are the selection criteria and the award criteria.
2. The selection criteria shall assess the applicant/s' financial and operational capacity to implement the action. The economic and financial criteria shall assure that the beneficiary shall have enough resources to keep the action operating considering that payments are done on reimbursements of expenditure made.
3. The operational capacity criteria shall show that the applicant/s' experience, professional competencies and qualifications are adequate to implement the action proposed.
4. The Contracting Authority shall verify both the financial and operational capacity of the legal entities proposed for award (except in cases of public administrations and public bodies or in cases in which grants are given to natural persons in need).
5. The award criteria refer to the relevance of the action and its compatibility with the objectives of the call/programme framing the call. They refer to the quality, expected impact, sustainability, cost effectiveness and others.
6. The eligibility and evaluation criteria are specific to each call and must be applied as specified in it. They cannot be changed once the procedure has started.

#### 6.3.2.3. Request for clarifications

1. In the period between the publication of the call and the deadline for submission applicants will be able to request clarifications on the content of the guidelines for applicants.

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2. The Contracting Authority should answer to those clarifications through online publication (according to SADC publication guidelines).
3. Applicants may submit questions in writing up to 21 days before the deadline for proposal submission. The Contracting Authority must answer to these questions at least 11 days before the date for submission.

#### **6.3.2.4. Deadline for submission of proposals**

1. The guidelines for applicants shall establish the deadline (day/hour) and location for submitting the proposals. This deadline should be long enough to allow applicants to prepare good proposals.
2. For open grants the minimum period should be 45 days for grants over US\$150.000. For grants under US\$ 150.000 it may be between 30 and 45 days.
3. For restricted grants, the period for submitting concept notes should be no shorter than 45 days.
4. The Contracting Authority may establish shorter deadlines through derogation.

#### **6.3.2.5. Submission of proposals**

1. The proposals shall be submitted following the instructions contained in the guidelines for applicants.
2. As a general rule, the supporting documents shall not be requested till the proposals are selected for award although the Contracting Authority may decide otherwise.
3. The proposal and the supporting documents should be in the language established in the guidelines for applicants.
4. The Contracting Authority, for grants over US\$ 750.000, may request an audit report from the beneficiary approved by external auditor certifying its accounts for the last available year. The requirement to submit an audit report shall not apply to public bodies or international organizations.

### **6.4. Evaluation of the proposals**

#### **6.4.1. Evaluation Committee**

1. The Evaluation Committee shall evaluate the proposals/applications. The Evaluation Committee shall have the same composition as those for procurement processes.
2. The evaluators must have the technical capacity necessary to give an informed opinion on the proposals.
3. The evaluators, as well as the chairperson and the secretary, shall sign impartiality and confidentiality statements.

#### **6.4.2. The evaluation process**

1. Once the Contracting Authority has received the concept notes (for restricted calls) or the full proposals (for open calls), the Evaluation Committee shall start the evaluation process which shall end with the approval of recommended grant awards, in accordance with the procedure described under section 6.4.2 (4).

2. Internal Tender Committee shall review recommendation(s) for award of grant(s) and:
  - (a) where appropriate, recommend the award of grant(s) to the Executive Secretary for final approval; or
  - (b) where there is a need for the review, refer the recommendations for award of grant(s) back to the Evaluation Committee for appropriate action.
  
3. For Grants to be awarded to Non-State Actors in SADC Member States, the Executive Secretary shall seek a no objection on the recommended award of grant(s) from SADC Member States through the Standing Committee of Senior Officials established under Article 9 of the SADC Treaty.
  
4. The evaluation process has the following steps:
  - (a) Receipt and registration of proposals**  
The Contracting Authority shall register all the proposals upon arrival and provide a receipt for those delivered by hand. The envelopes must remain sealed and safe till the opening session.
  
  - (b) Opening session and administrative checks**
    1. The proposals received shall be opened in an opening session at which the registration details shall be checked and the proposals numbered.
    2. The register of concept notes/proposals shall contain at least the following: registration number of the concept note/proposal, submission date and applicant's name and address.
    3. For each proposal the original shall be kept safely and the copies shall be given to the evaluators.
    4. The proposals that arrived before the deadline for submission shall be subject to an administrative check to assess whether they meet all the criteria mentioned in the grant application form checklist.
    5. If any information is missing the proposal shall be rejected and not evaluated further.
    6. The Evaluation Committee may request clarifications on documents/information received. Clarifications shall not alter or change the proposals or provide new evidence.
    7. The Contracting Authority must keep the proposals which were excluded from further evaluation on administrative grounds.
    8. All this shall be registered in the evaluation report drafted by the secretary.
  
  - (c) Evaluation of the concept note (for restricted calls only)**
    1. In restricted call for proposals, the Evaluation Committee shall evaluate the concept note according to the objectives of the call established in the guidelines for applicants once the administrative check is finished. For this, the evaluators must use the evaluation grid contained in the guidelines. The overall assessment shall be based on the scores obtained under each subheading, added up by heading.
    2. Once the evaluation is completed, the secretary shall draw up a list of concept notes ranked by score. This achieved, only concept notes receiving a score of at least 65 points in the evaluation shall be considered for pre selection. Secondly, the list of concept notes shall be reduced according to the ranking to no less than twice the available budget for the call.

3. After the competent authority approves the evaluation of the concept notes, the Contracting Authority shall inform all applicants in writing of the results of the evaluation.
4. The applicants selected to submit full application shall be informed of the deadline for submission.

**(d) Evaluation of the application form**

1. The full application shall be evaluated using the evaluation grid containing the selection and award criteria proposed in the guidelines for applicants. The overall assessment shall be based on the scores obtained under each subheading, added up by heading.
2. The secretary shall then prepare a list of all the proposals ranked by score which shall be attached to the evaluation report.
3. Once the required approvals have been received, the Contracting Authority shall send a notification to the applicants informing (i) whether their proposals passed the opening and administrative checks (ii) whether they have been proposed for funding according to their score and (iii) inviting those selected for funding to submit supporting documents (as per guidelines for applicants).
4. Applications receiving scores under 65 points shall not be considered for funding.
5. The Evaluation Committee shall analyse the budget proposed and shall consider if it corresponds to the action proposed. The Evaluation Committee may propose to reduce the funding of a proposal.

**(e) Eligibility checks**

1. The chairperson, with the assistance the secretary of the Evaluation Committee shall check the supporting documents sent by the applicants to verify eligibility according to guidelines and the declarations submitted by the applicants.
2. The Evaluation Committee shall verify if the declaration submitted by the applicant is in conformity with the supporting documents requested. Any missing document or inconsistency between the declaration and the supporting documents will be enough to reject the proposal.
3. The Evaluation Committee shall also assess if the applicants are eligible according to documentation submitted.

**(f) Conclusion**

1. The Evaluation Committee shall prepare its written recommendations after examining all the proposals. The recommendations will be contained in the evaluation report signed by all the members of the Evaluation Committee.
2. The Evaluation Report shall contain a list of beneficiary/actions recommended for financing. The Evaluation report may establish a reserve list also.
3. The list may decide not to allocate all the available funds if it finds that there are too few proposals meeting the minimum quality required to receive a grant (under 65 score).

**6.4.3. Awarding grants and contract signature**

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1. Once the evaluation report is approved, the Contracting Authority shall inform the applicants of the outcome and start awarding the grants.

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2. The notices of award to successful applicants must be communicated within 30 days of the award decision. Unsuccessful applicants must be communicated that they have not been selected also within 30 days also.
3. Upon receipt of the notification of award, the beneficiary must communicate within 15 days its acceptance of the grant. If the Evaluation Committee made any budgetary correction it shall be communicated to the beneficiary together with the letter of award.
4. The beneficiary shall have at least 15 days to contest those cuts proposed by the Contracting Authority, and the Contracting Authority shall make a final decision no later than one month after having received the beneficiary's deposition.
5. Once the beneficiary has accepted the award, the Contracting Authority shall send a contract signed in minimum two copies to each beneficiary. The beneficiaries shall sign the contract returning one original to the Contracting Authority. The starting date for implementation shall be marked in the contract.
6. In case some beneficiaries decide not to accept the funding or additional funds are allocated to the call, the Contracting Authority may proceed to offer funding to the beneficiaries on the reserve list.

#### 6.4.4. The grant contract

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1. The Contracting Authority and the main applicant shall be the only signatories of the contract. The rest of the members of the consortium shall not sign the grant but shall remain bound in terms of the consortium agreement signed with the main applicant. The consortium agreement shall be an annex to the grant contract.
2. It shall be the responsibility of the applicant and the co-applicants to fulfil the provisions of the consortium agreement. It shall not be the responsibility of the Contracting Authority to enforce it. The consortium agreement shall be an annex to the grant contract.
3. The grant contract shall contain at least:
  - a) General and special contract conditions;
  - b) Activities to be implemented under the grant;
  - c) Budget per activity and sub-activity;
  - d) Percentage of co-financing, if any;
  - e) Financial reporting obligations (including template);
  - f) Technical reporting obligations (including template);
  - g) Pre-finance guarantee provision (in case of pre financing); and
  - h) Secondary procurement rules.
4. The Grant contract can be modified through an addendum agreed and signed between the Contracting Authority and the beneficiary.
5. The addendum may modify the implementation period, the budget, increase or decrease the activities approved and/or incorporate new activities.

#### 6.4.5. Publication of grants awarded

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1. The outcome of all call for proposals shall be published according to the SADC Secretariat publication guidelines.

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2. The Contracting Authority shall keep a record of all the information regarding the call for proposals, including the number of applicants per call, the number and percentage of successful applications per call, the average duration of the procedure from launching to the contracting, the amount granted and the name and details of the beneficiaries. All this information should be published yearly according to publication guidelines.

#### 6.5. Specific elements for restricted call for proposals

1. The procedures applicable to open grants calls for proposals shall also apply to restricted calls.
2. Restricted calls shall require a pre-selection based on concept notes. The concept note checks shall be done in line with checklists published in the guidelines for applicants.
3. The guidelines for applicants for restricted calls shall state approximately the number of applicants to be selected for granting depending on the available budget and the maximums and minimum budgets established for the actions in the Guidelines for Applicants.
4. Once the selection is done, through an Evaluation Committee and according to the content of the guidelines for applicants and the concept note, the Contracting Authority shall publish the list of beneficiaries who shall be invited to submit a full application. The list shall be made up of the applicants who scored highest during the evaluation.
5. The content of the full application shall not deviate from the content of the concept note but shall just develop it. The contribution requested cannot deviate more than 20% from the estimation done in the concept note. Any amount over that in the full application will not be taken into account.
6. The Contracting Authority shall communicate applicants not preselected of the decision with the score obtained and shall publish the list of selected applicants.
7. The minimum period between the date of publication of the guidelines for applicants and the deadline for submission of applications for grants shall be 45 days.

#### 6.6. Secondary procurement/subcontracting

1. The grant implementation, whether action grant or operational grant, may require the procurement of goods, services and/or works. In these cases the grant contract shall specify the rules and regulations that shall apply to such secondary procurement.
2. The rules governing secondary procurement shall be as directed in the legal frame supporting the budgetary allocation.
3. The guidelines for applicants shall contain the limits to subcontracting activities, which shall not go beyond 50% of the total budget unless the legal frame specifically allows a higher threshold.

#### 6.7. Modification of Grant contracts

1. Grant contracts may be modified if the circumstances of project implementation have changed since the contract was signed.
2. Notwithstanding paragraph 1 above, the subject matter of the contract cannot be altered. Contracts can only be modified during their period of implementation.

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3. Any changes to the contract must be made by means of an addendum agreed and signed by the Contracting Authority and the beneficiary.
4. The beneficiary shall notify the Contracting Authority of change of address, change of bank account, and change of auditor (in the case of service contracts). This shall not affect the Contracting Authority's right to oppose the contractor's/beneficiary's choice of bank account or auditor.
5. Para 2.14 of these Guidelines shall also apply to grants.

## **7. Appeal of a decision regarding procurement and call for proposals**

1. Any economic operator, bidder or applicant that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the Contracting Authority by the SADC policy on procurement and grants and these Guidelines, may appeal decision in accordance with the procedures hereby stipulated.
2. The following shall not be subject to the review provided for in paragraph (1) of this clause:
  - (a) The selection of a method of procurement pursuant to paras 3.3, 4.3 and 5.3;
  - (b) The choice of a qualification and eligibility criteria pursuant to paras 2.5 and 2.6 of these Guidelines, if they have not been contested prior to submission of an application;
  - (c) A decision by the Contracting Authority to cancel the procedure;
  - (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; and
  - (e) The content of the SADC Secretariat standard solicitation documents (including the general terms of the contracts, purchase orders, templates and others).

### **7.1. Challenge of a decision**

#### **7.1.2. Request for clarifications**

1. The Appeal Review process is a time consuming and costly process, therefore the SADC Secretariat request applicants and bidders, to seek firstly written clarifications from the Contracting Authority's Procurement and Grant Function for the respective process on any decision considered unjust by the bidder/applicant.
  - (a) To be considered valid, the bidder/applicant shall send the request for clarification or notification of breaching of SADC Secretariat procurement/grant procedure within seven (7) days from the notification of the Procuring Entity of the decision that is challenged by the bidder/applicant.
  - (b) The contact points for submission of request for clarifications shall be sent to the Procurement and Grant Function at the address indicated in the bidding documents/guidelines for applicants. The Contracting Authority shall have seven (7) days to respond to the bidders' or applicants' request for clarification.
  - (c) If following the receipt of clarification or notification of a breach of SADC Secretariat procedure for procurement or grants from a bidder/applicant, the Procurement and Grant Function becomes

aware of a breach of SADC Secretariat procedures, it shall promptly notify the Tender Committee (for procurement) or the Programmes Management Committee (for calls for proposals) and request the suspension of the procurement process until corrective measures are taken to remedy such event. In such instance, the Tender Committee shall promptly review the decision contested and decide on the matter brought into their attention.

- (d) The Chairperson and Deputy Chairperson of the Finance Sub-Committee shall handle bid complaints and appeals for all procurement handled by the External Tender Committee.

### **7.1.3. Submission of a Complaint**

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1. If, after three (3) days from the receipt of the Contracting Authority's response to the request for clarification, the bidder/applicant is still not satisfied answer received, he/she shall escalate the matter to the Tender Committee or the Programme Management Committee (for calls for proposals).
2. The complaint to the Tender Committee/Programme Management Committee shall be submitted through the Procurement and Grant Function at the address indicated in the solicitation document/bidding documents.
3. The Tender Committee/Programme Management Committee shall have fourteen (14) days to respond to the bidders or applicants' complaint.
4. If following the receipt of complaint from a bidder and applicant, the Tender Committee/Programme Management Committee becomes aware of a breach of SADC Secretariat procedures, it shall promptly suspend the process and take corrective measures to remedy the situation noted by the bidder/applicant in his complaint.

## **7.2. Appeal of a procurement/call for proposal decision**

### **7.2.1. Procurement and Grants Appeals Review Committee**

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1. To enforce these rules, the SADC Secretariat shall have a specialized permanent body - the Procurement and Grants Appeals Review Committee - consisting of an odd number of members (minimum three), entrusted with the review and decision-making on the complaints submitted by the Complainant.
2. The External Tender Committee of SADC Secretariat shall be the Procurement Appeals Review Committee to decide on bidders/applicants complaints adjudicated by the Internal Tender Committee and the Programmes Management Committee.
3. The Finance Sub-committee sitting as Appeals Review Committee shall adjudicate appeals for all procurement handled by the External Tender Committee.
4. The Procurement Appeals Review Committee shall be supported by the Complaints Officer acting as Secretary of the Procurement Appeals Review Committee, with the only role of recording the proceedings, drafting the communications with the involved parties (including the decisions of the Procurement Appeals Review Committee) and be the custodian of the appeal and hearing proceedings records.
5. The members of the Procurement Appeals Review Committee shall sign a Declaration of Impartiality and Confidentiality using the standard template.

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6. No member of the Procurement Appeals Review Committee shall be member of the SADC Secretariat or should have been involved in the decision leading to the compliant, prior to the appeal proceeding.
7. In case a member of the Appeals Review Committee become aware at any time during the appeal proceedings, that she/he might be in a conflict of interest situation, shall notify the Chairperson on the circumstances and request the withdrawal from the Appeals Review Committee. After analysing the situation, the Chairperson and members of the Appeals Review Committee shall take a decision on the member's withdrawal. Such proceedings shall be recorded in the appeals proceeding records/files.
8. All members of the Appeals Review Committee shall have equal decision rights and the decision shall be settled by consensus.
9. When deliberating, the Appeals Review Committee shall apply the Procurement Principles defined in the SADC Secretariat Policy and Guidelines on Procurement and Grants and its annexes, as well as in the documents issued during the procurement processes/calls for proposals.

### **7.2.1 Filing a Complaint**

1. Any bidder/applicant ("The complainant") who has experienced or reasonable believes may experience loss or injustice due to a breach of the SADC Secretariat rules on procurement or call for proposals during the course of a process, may file a written complaint ("Complaint").
2. All Complaints shall be submitted within five working days from the day when the bidder/applicant has exhausted the previous steps in clarifying the decision i.e. following receipt of clarification.
3. The Complaint shall be in one of the SADC Secretariat official language (or with a certified translation attached) and shall:
  - a) include the name, address, telephone and facsimile numbers of the Complainant.
  - b) Identify the procurement process in relation to which the Complaints arises:
    - i) include the name, address, telephone and facsimile numbers of the Complainant.
    - ii) identify the process in relation to which the Complaint arises.
    - iii) describe the nature of the Complaint and the facts supporting such Compliant, including references to the SADC Secretariat Policy on Procurement and Grants and/or Guidelines violated and the time lines of the Complaints.
    - iv) provide justification (grounds) for the Complaint
    - v) provide explanation of the steps taken to request review of the procurement decision with the Contracting Authority (i.e. request for clarification and submission of complaints).
    - vi) state the steps in the procurement/grant process (if any) the Complaint is requesting to the revised and/or what other remedies are sought by the Complainant; and
    - vii) state expressly whether the Compliant requests a hearing to present the case.
4. Only the lead member of the Complainant shall submit Complaints under these Guidelines. Under no circumstances shall any Complaint be submitted by non leading members of the joint-venture or subcontractors.
5. The Complainant shall not pay any fees or charges for submitting Complaints to the SADC Secretariat and/or for the review and adoption of a decision.
6. Within two working days from the receipt of the Complaint, it is to be forwarded by the Procurement Function to the External Tender Committee, the Programmes Management Committee or Finance Sub-Committee.

7. Within three working days, the Chairperson of the External Tender, Programmes Management or Finance Sub-Committee shall forward any Complaints received to each member of the Committee.
8. The External Tender Committee, Programmes Management or Finance Sub-Committee shall reject a complaint filed after the five working days period set forth in paragraph one of this section or not meeting the requirements set forth in paragraph two of this section.

### **7.2.3. Suspension of the procurement and call for proposals processes**

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After the Tender Committee, Programmes Management Committee or Finance Sub-Committee receives a Complaint, it shall suspend the disputed proceeding until a decision on the Complaint is issued in accordance with these rules, unless the Tender Committee Programmes Management Committee or Finance Sub-Committee believes that:

- a) the Complaint is frivolous and obviously unjustified;
- b) the Complainant filing the Complaint will not sustain irreparable harm;
- c) the Procuring Entity may demonstrate a disproportionately greater damage produced by the suspension compared to the possible damage indicted by the Complainant filing the Complaint; or
- d) the suspension of the proceeding is against an important public interest subject.

### **7.2.4. Decision on accepting the Complaint**

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1. The Tender Committee, Programmes Management Committee or Finance Sub-Committee shall issue a written decision accepting any Complaint filed in accordance with para 7.2.1 within five (5) working days from receipt of such Complaint, the period may be extended for an additional five (5) working days by a written notice from the Tender Committee Programmes Management Committee or Finance Sub-Committee addressed to the Complainant who filed the Complaint.
2. The Committee will deliver copies of the written decision to the Procurement and Grant Function and the Complainant who filed the Complaint within twenty four (24) hours of rendering a written decision.
3. In reaching its decision, the Tender Committee, Programmes Management Committee or Finance Sub-Committee may, at its discretion, seek assistance from experts in the area being reviewed. When such additional experts are to be consulted, the Tender Committee, Programmes Management Committee or Finance Sub-Committee shall use its best efforts to appoint experts who are the best qualified and shall ensure that the experts do not have any direct or perceived interest in the outcome of the Complaint and have not been involved in the procurement process at any time.
4. The Tender Committee, Programmes Management Committee or Finance Sub-Committee may decide to dismiss or uphold the Complaint in whole or in a part, indicating corrective measures.
5. If after the review of the Complaint, the Tender Committee, Programmes Management Committee or Finance Sub-Committee considers that in order to reach a conclusion on the Complaint, or if specifically requested by the Complainant in its Complaint, hearing procedures shall be conducted, it shall notify in writing its decision to initiate the hearing proceedings.

### **7.2.5. Costs**

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1. The Tender Committee, Programmes Management Committee or Finance Sub-Committee shall establish the costs of the hearing proceedings in its Decision. The term "costs" includes only:

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- (a) The fees, travel, accommodation and other incidental expenses of the Tender Committee, Programmes Management Committee or Finance Sub-Committee members;
  - (b) The costs of the expert advice and of other assistance (including translation) required by the Tender Committee, Programmes Management Committee or Finance Sub-Committee if any; and
  - (c) The travel and other expenses of witnesses to the extent such expenses are approved by the Tender Committee, Programmes Management Committee or Finance Sub-Committee.
2. The cost of the hearing proceeding shall be communicated to the Claimant along with the invitation to the hearing proceedings and the bank account details where the cost shall be paid.
  3. The cost of the hearing procedures shall be borne by the party which was found unsuccessful in the hearing proceedings.

### **7.2.6 Hearing proceedings**

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#### **a) Introduction**

1. The hearing proceedings shall take place up to fifteen (15) working days from the date of notification of the parties on the Tender Committee, Programmes Management Committee or Finance Sub-Committee's decision to conduct hearing procedures.
2. In the hearing proceedings there are two parties involved: the Complainant and the Procuring Entity whose decision has led to the Complaint.
3. Subject to these rules, to the Tender Committee, Programmes Management Committee or Finance Sub-Committee may conduct the hearing proceedings in a manner it considers appropriate, provided the parties are fairly treated and at any stage of the proceedings, each party is given the full opportunity to present its case.
4. If either party requests in its Statement of Complaint (as defined in paragraph b) or the Statement of Defence (as defined in paragraph e), the Tender Committee, Programmes Management Committee or Finance Sub-Committee shall allow the presentation of evidence by witnesses, including expert witnesses.
5. All the documents or information supplied to the Tender Committee, Programmes Management Committee or Finance Sub-Committee by a party shall at the same time be communicated by that party to the other party.
6. The proceedings shall be recorded in the appeal proceeding records/files.

#### **b) Place of hearing procedures**

1. The Tender Committee, Programmes Management Committee or Finance Sub-Committee proceedings shall be conducted at the SADC Secretariat Headquarters in Gaborone, Botswana.
2. The Tender Committee, Programmes Management Committee or Finance Sub-Committee may conduct any checks it deems appropriate for the inspection of the evidence on the spot. The parties shall be given at least five (5) working days' notice of the spot checks to be conducted and be invited to attend the visits.

#### **c) Language**

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The language to be used in the proceedings shall be one of the SADC Secretariat official languages. This decision shall apply to the Statements of Complaint, and Defence. In any further written statements and, if oral hearings take place, only the SADC Secretariat official languages shall be used. SADC Secretariat will ensure translation in all SADC Secretariat official languages.

#### **d) Statement of Complaint**

1. Within five (5) working days after the Complainant was notified about the initiation of the hearing procedures, it shall submit its statement of complaint (the “Statement of Complaint”) to the Tender Committee, Programmes Management Committee or Finance Sub-Committee including the following particulars:
  - a) the decision which is contested;
  - b) detailed statement of the facts supporting the complaint;
  - c) the damage sustained by the bidder/applicant. (if any)
  - d) remedy sought; and
  - e) whether the Complainant is requesting a hearing of witnesses or experts to support the Complaint.
2. The Complainant shall annex to its Statement of Complaint all the documents deemed relevant. It shall add a reference to the documents or other evidence submitted. When witnesses or experts are invited to support the Complaint, the name of the witnesses and their Curricula Vitae and credentials will be annexed to the Statement of Complaint.
3. The Statement of Complaint shall be accompanied by an unconditional bank guarantee, issued by a reputable bank, for the amount covering the cost of the hearing proceeding. The bank guarantee shall be valid for one hundred twenty (120) days from the date of issuance of the invitation to participate in the hearing procedures.

#### **e) Statement of defence**

1. Within five (5) working days after the Defender’s representative receipt of the Statement of Complaint from the Complainant, will communicate the response in writing to the Tender Committee, Programmes Management Committee or Finance Sub-Committee, in the form of a statement of defences in accordance with this clause (the “Statement of Defence”).
2. The Statement of Defence shall reply to the particulars set forth in the Statement of Complaint in particular to the aspect indicated in first paragraph letters (i), (ii) and (iii) of the Statement of Complaint and shall also indicate if any oral hearings of witnesses and experts to support their position are requested.
3. The Defender shall annex to its Statement of Defence, the documents supporting its defence and shall add a reference to the documents or other evidence to support their position. When witnesses or experts are invited to act on their defences, the name of the witnesses and their Curricula Vitae and credentials will be annexed to the Statement of Defence.
4. The Statement of Defence shall be filed with the Compliant Officer and distributed to the members of the Tender Committee, Programmes Management Committee or Finance Sub-Committee and the Complainant.

#### **f) Evidence and hearings**



1. The Tender Committee, Programmes Management Committee or Finance Sub-Committee shall give the parties not less than twenty (20) working days advance notice of the date, time and place to conduct the hearing procedures. The hearing shall not take place earlier than ten (10) working days from the date of the receipt of the Statement of Defence.
2. Each party shall have to prove the facts to support its complaint or defence.
3. The Tender Committee, Programmes Management Committee or Finance Sub-Committee may, if appropriate, require the parties to produce documents, exhibits or other evidence within fifteen (15) working days from the receipt of the request.
4. Evidence of witnesses may also be presented in the form of written statements, duly signed.
5. Audio -video materials are admissible as evidence during the hearing proceedings. However, they have to be accompanied by a written description of the content.
6. The Tender Committee, Programmes Management Committee or Finance Sub-Committee shall determine the admissibility, relevance, materiality and weight of the offered evidence.

**(f) Independent Experts**

1. The Tender Committee, Programmes Management Committee or Finance Sub-Committee may appoint experts to report, in writing, on specific issues to be determined by the Committee. A copy of the experts' Terms of Reference, established by the Tender Committee, Programmes Management Committee or Finance Sub-Committee, shall be communicated to the parties.
2. The parties shall give the experts any relevant information or arrange for the inspection of any relevant documents or goods they may require. Any dispute between a party and the expert regarding the relevance of the required information shall be referred to the Tender Committee, Programmes Management Committee or Finance Sub-Committee and it will issue its decision within five (5) working days.
3. Upon receipt of the expert's report, the Tender Committee, Programmes Management Committee or Finance Sub-Committee shall communicate the report to the parties. They will be given the opportunity to express, in writing, their opinion of the report, within five (5) working days from the receipt of the report. A party shall be entitled to examine any documents where the expert has based his report.
4. At the request of either party, the expert after delivering the report may be questioned at a hearing where the parties have the opportunity to attend and interrogate the expert. At this hearing, either party may present expert witnesses to testify on the points at issue.

**(g) Default**

1. If the Complainant fails to communicate its Statement of Complaint in accordance with this clause (see Statement of Compliant) within fifteen (15) working days without demonstrating sufficient causes for such a failure, the Tender Committee, Programmse Management Committee or Finance Sub-Committee shall order the termination of the hearing procedures.
2. If one of the parties, duly notified under these rules, fails to appear at a hearing - without showing sufficient cause for such failure - the Tender Committee, Programmes Management Committee or Finance Sub-Committee may proceed with the hearing procedures.

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3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the required period of time without showing sufficient cause for such failure, the Tender Committee, Programmes Management Committee or Finance Sub-Committee may render the award on the evidence available at that time.

#### **(h) Closure of hearings**

1. The Procurement Appeals Review Committee may inquire from the parties any further proof to offer, or witnesses to be heard, or submissions to make and, if there are none, it shall promptly (and in any event within less than fifteen (15) working days after the hearings' start) declare the hearings closed.
2. A party who knows that any provision of, or requirement under these rules has not been fulfilled and yet proceeds with the hearing proceedings without promptly stating its objection to the non-compliance, shall be deemed to have waived its right to object.

#### **7.2.7. The Decision**

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1. The Tender Committee, Programmes Management Committee or Finance Sub-Committee shall issue a decision within ten (10) working days after the Complainant has submitted its Complaint or the closure of the hearings proceedings (the "**Decision**").
2. Any Tender Committee, Programmes Management Committee or Finance Sub-Committee's decision shall be made by consensus of all the members of the Committee.
3. The Tender Committee, Programmes Management Committee or Finance Sub-Committee's decision shall be bear jointly and individually by all members of the Committee.
4. If the event the Tender Committee, Programmes Management Committee or Finance Sub-Committee cannot reach a consensus, the reasons shall be recorded in the appeal and hearings proceeding records, the Appeals Review Committee shall be taken by majority of votes.
5. The decision of the Tender Committee, Programmes Management Committee or Finance Sub-Committee shall be final and binding the parties and enforceable by the SADC Secretariat and/or Procuring Entity.

#### **7.2.8. Form and Effect of the Decision**

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1. All decisions reached by the Tender Committee, Programmes Management Committee or Finance Sub-Committee shall be made in writing, stating the grounds of the decision; it shall be signed by all the Procurement Appeals Review Committee members, including the date and the place where the decision was taken. It will be final and binding on the parties. The parties shall undertake to implement the decision without delay.
2. The Tender Committee, Programmes Management Committee or Finance Sub-Committee shall deliver copies of the Decision to the parties within 24 hours of reaching a decision.
3. Either party may seek to enforce a decision in any court with jurisdiction.

#### **7.2.9. Remedies**

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In its decision, the Tender Committee, Programmes Management Committee or Finance Sub-Committee may order one or more of the following remedies:





- (a) correction of any breach of the Procurement Principles or Procurement Guidelines in place,
- (b) compensation for any loss or damage suffered by a successful Complainant, such amount not to exceed the costs reasonably incurred by the Complainant in connection with the disputed procurement (but excluding any lost profits or other special, incidental, indirect, punitive or consequential damages);
- (c) suspension of a procurement activity that is under challenge, if the Tender Committee deems it necessary to preserve the commercial opportunity pending the outcome of the challenge; and/or
- (d) cancellation of the contract and restarting the procurement.

#### 7.2.10 Correction of the Decision

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Within five (5) working days after the Tender Committee, Programmes Management Committee or Finance Sub-Committee issues a decision, either party, with notice to the other party, may request that the Appeals Review Committee to correct any errors in computation, clerical, typographical, or any errors of similar nature made in the decision. The Tender Committee, Programmes Management Committee or Finance Sub-Committee may, within five (5) working days after the communication of the decision, make the corrections on its own initiative. Such corrections shall be in writing.

#### 7.2.11. Appeal Records

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1. The Tender Committee, Programmes Management Committee or Finance Sub-Committee shall maintain records of the appeal and hearing procedures and all materials submitted to the Tender Committee (the “**Records**”).
2. Following the issuance of a decision pursuant to para 7.3.10, the parties shall be given a copy of the records within ten (10) working days from the date of issuance of the decision.
3. The original records shall be kept by the Complainants Officer and copies distributed to the Procurement, Finance, Legal Affairs, Internal Audit and Requisition Functions.

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## Schedule 1 - Procurement Approving Authority

- (1) Depending on the estimated value of the contract to be placed through procurement processes, the following functions shall have the authority to approve the procurement processes conducted by the Procuring Entity:

Contract Value	Procurement Approving Authority
Less than US\$2,000	Controlling Officer
From US\$2,001 to US\$ 10,000	Procurement Function
Over US\$ 10,001 to US\$250,000	SADC Internal Tender Committee-
Over US\$250,001	SADC External Tender Committee

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## Schedule 2 - Procurement Records Keeping Matrix

Depending on the category of procurement, the procurement method used or the nature of the procurement process, Procuring Entity shall maintain the following procurement files:

### *Documents for Open Bidding procurement method*

Document	One set of Original kept by	One set of Copies kept by
Market survey	Requisition Function	Procurement Function
Technical Specifications	Procurement Function	Requisition Function
Estimated budget	Procurement Function	Requisition Function
Qualification Criteria	Procurement Function	Requisition Function
Approval of the Technical Specifications, Budgets and Qualification Criteria	Procurement Function	Requisition Function
Bidding Documents	Procurement Function	Requisition Function
Approval of the Bidding Documents	Procurement Function	Requisition Function
Specific Procurement Notice (Procurement Notice)	Procurement Function	Requisition Function
Correspondence with the potential bidders	Procurement Function	Requisition Function
Amendments to the Bidding Documents	Procurement Function	Requisition Function
Approval of the Evaluation Committee	Procurement Function	Requisition Function
Bid Securities	Budget and Finance Function	Procurement Function Requisition Function
Evaluation Reports (including the bids)	Procurement Function	Requisition Function
Approval of the Evaluation Report	Procurement Function	Requisition Function Budget and Finance Function
Notification Letters	Procurement Function	Requisition Function

Document	One set of Original kept by	One set of Copies kept by
Contract	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the contract	Procurement Function	Requisition Function Budget and Finance Function Legal Affairs Function
Performance security	Budget and Finance Function	Procurement Function Requisition Function
Advance Bank Guarantee	Budget and Finance Function	Procurement Function Requisition Function
Correspondence with the Contractor	Requisition Function	Procurement Function
Amendments to the contract	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the contract amendments	Procurement Function	Requisition Function Budget and Finance Function
Approval of contract deliverables	Budget and Finance Function	Requisition Function Procurement Function
Payments	Budget and Finance Function	Procurement Function Requisition Function

*Documents for International Restricted Bidding procurement method*

Document	One set of Original kept by	One set of Copies kept by
Market survey	Requisition Function	Procurement Function
Terms of Reference/Technical Specifications	Procurement Function	Requisition Function
Estimated budget	Procurement Function	Requisition Function

Document	One set of Original kept by	One set of Copies kept by
Qualification Criteria	Procurement Function	Requisition Function
Approval of the Terms of Reference/Technical Specifications, Budgets and Qualification Criteria	Procurement Function	Requisition Function
Invitation to Pre-qualification (Procurement Notice)	Procurement Function	Requisition Function
Correspondence with the potential applicants	Procurement Function	Requisition Function
Amendments to the Invitation to Pre-qualification	Procurement Function	Requisition Function
Approval of the Evaluation Committee for Pre-qualification	Procurement Function	Requisition Function
Pre-qualification Report (including the applications)	Procurement Function	Requisition Function
Approval of the Pre-qualification Report	Procurement Function	Requisition Function
Shortlist Notice	Procurement Function	Requisition Function
Bidding Documents/Request for Proposals	Procurement Function	Requisition Function
Approval of the Bidding Documents/Request for Proposals	Procurement Function	Requisition Function
Correspondence with the bidders	Procurement Function	Requisition Function
Amendments to the Bidding Documents/Request for Proposals	Procurement Function	Requisition Function
Approval of the Evaluation Committee	Procurement Function	Requisition Function
Bid Securities	Budget and Finance Function	Procurement Function Requisition Function
Evaluation Reports (including the bids)	Procurement Function	Requisition Function
Approval of the Evaluation Report	Procurement Function	Requisition Function Budget and Finance Function
Notification Letters	Procurement Function	Requisition Function

Document	One set of Original kept by	One set of Copies kept by
Contract	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the contract	Procurement Function	Requisition Function Budget and Finance Function Legal Affairs Function
Performance security	Budget and Finance Function	Procurement Function Requisition Function
Advance Bank Guarantee	Budget and Finance Function	Procurement Function Requisition Function
Correspondence with the Contractor	Requisition Function	Procurement Function Budget and Finance Function
Amendments to the contract	Procurement Function	Requisition Function Budget and Finance Function Legal Affairs Function
Approval of the contract amendments	Procurement Function	Requisition Function Budget and Finance Function
Approval of contract deliverables	Procurement Function	Requisition Function Budget and Finance Function
Payments	Budget and Finance Function	Procurement Function Requisition Function

*Documents for Limited Bidding*

Document	One set of Original kept by	One set of Copies kept by
Market survey	Requisition Function	Procurement Function
Terms of Reference/Technical Specifications	Procurement Function	Requisition Function

Document	One set of Original kept by	One set of Copies kept by
Estimated budget	Procurement Function	Requisition Function
Qualification Criteria	Procurement Function	Requisition Function
Approval of the Terms of Reference/Technical Specifications, Budgets and Qualification Criteria	Procurement Function	Requisition Function
Bidding Documents/Request for Proposals	Procurement Function	Requisition Function
Approval of the Bidding Documents/Request for Proposals	Procurement Function	Requisition Function
Justification of for the use of the method and the name and explanation of the composition of the shortlist	Procurement Function	Requisition Function
Approval of the justification of for the use of the method and the name and explanation of the composition of the shortlist	Procurement Function	Requisition Function
Correspondence with the potential bidders	Procurement Function	Requisition Function
Amendments to the Bidding Documents/Request for Proposals	Procurement Function	Requisition Function
Approval of the Evaluation Committee	Procurement Function	Requisition Function
Bid Securities	Budget and Finance Function	Procurement Function Requisition Function
Evaluation Reports (including the bids)	Procurement Function	Requisition Function
Approval of the Evaluation Report	Procurement Function	Requisition Function Budget and Finance Function
Notification Letters	Procurement Function	Requisition Function
Contract	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the contract	Procurement Function	Requisition Function Budget and Finance Function Legal Affairs Function

Document	One set of Original kept by	One set of Copies kept by
Performance security	Budget and Finance Function	Procurement Function Requisition Function
Advance Bank Guarantee	Budget and Finance Function	Procurement Function Requisition Function
Correspondence with the Contractor	Requisition Function	Procurement Function
Amendments to the contract	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the contract amendments	Procurement Function	Requisition Function Budget and Finance Function
Approval of contract deliverables	Procurement Function	Requisition Function Budget and Finance Function
Payments	Budget and Finance Function	Procurement Function Requisition Function

*Documents for Local and Regional Restricted Bidding procurement method*

Document	One set of Original kept by	One set of Copies kept by
Market survey	Requisition Function	Procurement Function
Terms of Reference/Technical Specifications	Procurement Function	Requisition Function
Estimated budget	Procurement Function	Requisition Function
Evaluation Criteria	Procurement Function	Requisition Function
Approval of the Terms of Reference/Technical Specifications, Budgets and Evaluation Criteria	Procurement Function	Requisition Function Budget and Finance Function
Request for Quotations/Proposals	Procurement Function	Requisition Function

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Correspondence with the Approved Suppliers	Procurement Function	Requisition Function
Amendments to the Request for Quotations/Proposals	Procurement Function	Requisition Function
Evaluation Report (including the quotations/proposals)	Procurement Function	Requisition Function
Approval of the Evaluation Report	Procurement Function	Requisition Function
Notification Letters	Procurement Function	Requisition Function
Purchase Order	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the Purchase Order	Procurement Function	Requisition Function Budget and Finance Function
Correspondence with the Contractor	Requisition Function	Procurement Function
Amendments to the Purchase Order	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the Purchase Order amendments	Procurement Function	Requisition Function Budget and Finance Function
Approval of Purchase Order deliverables	Procurement Function	Requisition Function Budget and Finance Function
Payments	Budget and Finance Function	Procurement Function Requisition Function

*Documents for Single Source procurement method*

Document	One set of Original kept by	One set of Copies kept by
Market survey	Requisition Function	Procurement Function

Terms of Reference/Technical Specifications	Procurement Function	Requisition Function
Estimated budget	Procurement Function	Requisition Function
Request for Single Source procedure	Procurement Function	Requisition Function
Approval of the Terms of Reference/Technical Specifications, Budgets and Request for Single Source procedure	Procurement Function	Requisition Function
Request for Offer	Procurement Function	Requisition Function
Correspondence with the invited economic operator	Procurement Function	Requisition Function
Approval of the Negotiation Committee	Procurement Function	Requisition Function
Negotiation Report (including the proposals)	Procurement Function	Requisition Function
Approval of the Negotiation Report	Procurement Function	Requisition Function
Notification Letters	Procurement Function	
Contract	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the contract	Procurement Function	Requisition Function Budget and Finance Function Legal Affairs Function
Performance security	Budget and Finance Function	Procurement Function Requisition Function
Advance Bank Guarantee	Budget and Finance Function	Procurement Function Requisition Function
Correspondence with the Contractor	Requisition Function	Procurement Function
Amendments to the contract	Procurement Function Requisition Function	

	Budget and Finance Function Legal Affairs Function	
Approval of the contract amendments	Procurement Function	Requisition Function Budget and Finance Function
Approval of contract deliverables	Procurement Function	Requisition Function Budget and Finance Function
Payments	Budget and Finance Function	Procurement Function Requisition Function

*Documents for Procurement under Multiple Framework Contracts method*

Document	One set of Original kept by	One set of Copies kept by
Market survey	Requisition Function	Procurement Function
Terms of Reference/Technical Specifications	Procurement Function	Requisition Function
Estimated budget	Procurement Function	Requisition Function
Evaluation Criteria	Procurement Function	Requisition Function
Approval of the Terms of Reference/Technical Specifications, Budgets and Evaluation Criteria	Procurement Function	Requisition Function
Request for Quotations/Proposals	Procurement Function	Requisition Function
Correspondence with the Multiple Framework Contractors	Procurement Function	Requisition Function
Amendments to the Request for Quotations/Proposals	Procurement Function	Requisition Function
Evaluation Report (including the quotations/proposals)	Procurement Function	Requisition Function
Approval of the Evaluation Report	Procurement Function	Requisition Function Budget and Finance Function
Notification Letters	Procurement Function	

Document	One set of Original kept by	One set of Copies kept by
Purchase Order	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the Purchase Order	Procurement Function	Requisition Function Budget and Finance Function
Correspondence with the Contractor	Requisition Function	Procurement Function
Amendments to the Purchase Order	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the Purchase Order amendments	Procurement Function	Requisition Function Budget and Finance Function
Approval of Purchase Order deliverables	Procurement Function	Requisition Function Budget and Finance Function
Payments	Budget and Finance Function	Procurement Function Requisition Function

*Documents for Selection of Individual Consultants procurement method*

Document	One set of Original kept by	One set of Copies kept by
Market survey	Requisition Function	Procurement Function
Terms of Reference	Procurement Function	Requisition Function
Estimated budget	Procurement Function	Requisition Function
Qualification Criteria and Evaluation Criteria	Procurement Function	Requisition Function
Approval of the Terms of Reference Specifications, Budgets and Qualification & Evaluation Criteria	Procurement Function	Requisition Function
Request for Expression of Interests (Procurement Notice)	Procurement Function	Requisition Function

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Document	One set of Original kept by	One set of Copies kept by
Correspondence with the potential applicants	Procurement Function	Requisition Function
Amendments to the TORs and Expression of Interests	Procurement Function	Requisition Function
Approval of the Evaluation Committee	Procurement Function	Requisition Function
Evaluation Report (including the applications)	Procurement Function	Requisition Function
Approval of the Evaluation Report	Procurement Function	Requisition Function Budget and Budget and Finance Function
Notification Letters	Procurement Function	Requisition Function
Contract	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the contract	Procurement Function	Requisition Function Budget and Finance Function
Correspondence with the Individual Consultant	Requisition Function	Procurement Function
Amendments to the contract	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function	
Approval of the contract amendments	Procurement Function	Requisition Function Budget and Finance Function
Approval of contract deliverables	Procurement Function	Requisition Function Budget and Finance Function
Payments	Budget and Finance Function	Procurement Function Budget and Finance Function

*Documents for procurement decision challenge*

Document	One set of Original kept by	One set of Copies kept by
Bidder/applicant letter and supporting evidence challenging the procurement decision	Procurement Function	Requisition Function
Answer to the challenge letter	Procurement Function	Requisition Function
Procurement Function request to the Tender Committee to suspend the procurement process and remedy the mistakes	Procurement Function	Requisition Function
Tender Committee decision on Procurement Function request	Procurement Function	Requisition Function
Bidder/applicant letter and supporting evidence complaining about the answer received from procurement Function to the challenge letter	Procurement Function	Requisition Function Legal Affairs Function
Tender Committee decision on the compliant letter	Procurement Function	Requisition Function Legal Affairs Function
Notification to the bidder/applicant of the Tender Committee decision	Procurement Function	Requisition Function Legal Affairs Function

*Documents for Appeal proceedings*

Document	One set of Original kept by	One set of Copies kept by
Approval of the Appeal Review Committee	Complainants Officer	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function
The Complaint Letter	Complainants Officer	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function
The Statement of Complaint	Complainants Officer	Procurement Function Requisition Function Budget and Finance Function

Document	One set of Original kept by	One set of Copies kept by
		Legal Affairs Function
The Statement of Defence	Complainants Officer	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function
The Minutes of the Hearings	Complainants Officer	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function
The Evidence	Complainants Officer	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function
The Decision	Complainants Officer	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function
Correction of the Decision	Complainants Officer	Procurement Function Requisition Function Budget and Finance Function Legal Affairs Function

*Documents for Procurement Planning and Monitoring*

Document	One set of Original kept by	One set of Copies kept by
Market survey	Requisition Function	Procurement Function Budget and Finance Function PPRM Function
Estimated budget	Requisition Function	Procurement Function Budget and Finance Function PPRM Function
Annual Procurement Plan	Requisition Function	Procurement Function Budget and Finance Function PPRM Function
Approval of the Annual Procurement Plan	Requisition Function	Procurement Function Budget and Finance Function PPRM Function
Overall Procurement Plan	Procurement Function	Requisition Function Budget and Finance Function

		PPRM Function
Approval of the Overall Procurement Plan	Procurement Function	Requisition Function Budget and Finance Function PPRM Function
General Procurement Notice	Procurement Function	Requisition Function Budget and Finance Function PPRM Function

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### Schedule 3 - Procurement Thresholds for the application of Procurement Methods

(1) The Depending on the estimated value and the category of the procurement contract, the following procurement thresholds shall apply when launching a procurement process:

Procurement method Category of procurement	Negotiated	Limited Bidding	Open Bidding	Restricted Bidding
Services	Between 2.001 and US\$50.000	Between 50.001 and US\$ 250.000	N/A	Over US\$ 250.001
Goods	Between 2.001 and US\$100.000	Between 100.001 and 150.000 US\$	Over US\$ 150.001	N/A
Works	Between 2.001 and US\$200.000	Between 200.001 US\$ and 500.000 US\$	Over US\$ 500.001	N/A

### Schedule 4 – Publication Thresholds (international, regional, local)

Publication Category of procurement	Local	Regional	International
Restricted bid for services	Between 350.000 and 500.000 US\$	Between 500.001 and 1.000.000 US\$	Over 1.000.001 US\$
Open bid for goods	Between 150.000 and 250.000 US\$	Between 250.001 and 1.000.000 US\$	Over 1.000.001 US\$
Open bid for works	Between 500.000 and 1.000.000 US\$	Between 1.000.001 and 5.000.000 US\$	Over 5.000.001 US\$

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## Annex 1: Guidelines for Publication and Visibility

### Publishing calls for tenders and calls for proposals

1. These guidelines are meant for the contracting authority managing SADC funded projects. They include practical information on publication procedures for procurement and grants procedures.
2. **Rules:**
  - (a) The SADC Guidelines for Procurement and Grants describe the rules to be complied with in publishing tenders and call for proposals: paragraph 3.4.1 for services, paragraph 4.4.1 for goods, paragraph 5.4.1 for works and 6.3.2.1 for grants.
  - (b) The publication rules depend on the type of procedure and the document to be published.
  - (c) When a document is published in various media, publication must take place simultaneously and the content of the document must be identical in the various media.
3. **Publication rules for procurement:**
  - (d) International calls for tender must be published through General Procurement Notice and Specific Procurement Notice:
    - (i) SADC Secretariat website.
    - (ii) UN Development business.
    - (iii) DgMarket.
  - (e) Regional calls for tender must be published through General Procurement Notice (not compulsory) and Specific Procurement Notice (compulsory) in:
    - (i) SADC Secretariat website.
    - (ii) UN Development business
  - (f) Local calls for tender must be published through General Procurement Notice (not compulsory) and Specific Procurement Notice (compulsory) in:
    - (i) SADC Secretariat website.
    - (ii) At least one local newspaper.
  - (g) The following documents require publication in the SADC Secretariat website for international, regional and local:
    - (i) Bidding documents.
    - (ii) Clarifications requested and answer to clarifications.
    - (iii) Modifications to bidding documents.
    - (iv) Long list and short list.
    - (v) Award notice.
    - (vi) Cancellation notice.
4. **Publication rules for Grants**
  - (h) All call for proposals launched (whether opened or restricted) will be published at the SADC web page.
  - (i) Calls for proposals over 2.000.000 USD will be published at UN Development business and DG Market.

- (j) The following documents require publication:
  - (i) Guidelines for applicants.
  - (ii) Clarifications requested and answer to clarifications.
  - (iii) Long list of applicants.
  - (iv) Short list for applicants for restricted call for proposals.
  - (v) List of applicants awarded.
  - (vi) Reserve list.

## 5. Forms

All forms to be used for publication can be found in Annex 5 “templates”.

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## Annex 2: Guidelines for the Recruitment of Individual Consultants

1. The SADC Secretariat may decide to hire individual consultants for specific tasks. Individual consultants are employed on assignments where:
  - a) teams of experts are not required,
  - b) additional outside (home office) professional support is required, and
  - c) when the experience and 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 service contract 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 the highest evaluated Individual Consultant who has submitted a financial offer within the available budget.
6. Only individuals are eligible to submit application under this procurement method.
7. The Selection of Individual Consultants procurement methods requires the following processes:
  - a. **Preparation of Terms of Reference:** The Requisition Function has the responsibility to prepare the Terms of Reference, using the standard template, the evaluation criteria and the estimated budget of the contract.
  - b. **Preparation of the Request for Expression of Interest and Application Form:** Upon the review of the Terms of Reference, the evaluation criteria and the estimated budget received from Requisition Function the Procurement Function shall prepare the Expression of Interest, Application Form and Standard Contract for the approval of the procurement authority as stipulated in these Regulations.

Once approved by the Procuring Entity, the Procurement Function shall publish the Request for Expression of Interest on the SADC Secretariat, the United Nations Development Business and in the DG Market websites using the standard template. Additionally, the Procurement Function shall publish, only on the SADC Secretariat website, the Application Form, the Terms of Reference for the assignment, the template for Curriculum Vitae, the standard Contract for Individual Consultant and any other forms and documents to be used by interested Individual Consultants for the preparation of their submission.
  - c. **Communication with interested Individual Consultants:** Interested Individual Consultants are allowed to request clarifications up to seven (7) days prior to the deadline for submission of an application. All communications shall be in writing, and the questions received and answers given shall be posted on the SADC Secretariat website no later than three (3) days prior to the deadline for Submission of the applications.
  - d. **Submission of applications:** The interested Individual Consultants shall be given the choice to send the application by courier or e-mail. The time allowed to Individual Consultants for submitting their application shall be not less than twenty one (21) days from the date of publication of the Request for Expression of Interest. To be considered for evaluation, the application shall be submitted in the requested format, before the deadline and be

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accompanied by the documents indicated in the Expression of Interest. Incomplete applications or not compliant with these requirements shall be automatically disqualified.

- e. **Evaluation Committee:** The Evaluation Committee shall be appointed and have the responsibilities stated in these Regulations.
- f. **Receipt and registration of applications:** On receipt of the applications, the Procurement Function shall register them stating the date and time of reception, issuing a receipt of the application to all applicants. The standard template shall be used for such notifications.
- g. **Evaluation of applications:**

**Part 1: Preparatory phase:** The first meeting of the Evaluation Committee shall be held immediately after the deadline for submission. The Secretary of the Evaluation Committee shall introduce the purpose of the evaluation and explain the procedures to be followed, including the evaluation grid, award criteria and weightings specified in the Request for Expression of Interest. At the end of this phase, the Secretary of the Evaluation Committee shall give to all evaluators copies of all applications received and ask them to sign a declaration of Impartiality and Confidentiality. However, the Terms of Reference and the Request for Expression of Interest should have been circulated in advance to the members of the Evaluation Committee.

**Part 2: Compliance with formal submission requirements:** The Evaluation Committee shall decide whether or not the application complies with the formal submission requirements (i.e. deadline for submission, format of the Curriculum Vitae, completeness of the submission as per the Request for Expression of Interest and the application form requirements). At this stage it shall be also checked whether the Individual Consultant complies with the requirements concerning the eligibility criteria stated in the Request for Expression of Interest. Non compliant Applications shall not be further considered in the evaluation. The deliberation of the Evaluation Committee at this stage shall be recorded in the Evaluation Report using the standard template.

**Part 3: Technical Evaluation:**

(1) At this stage, the Evaluation Committee examines only the submissions that passed the formal compliance evaluation.

(2) When evaluating the application, each member awards each offer a score out of a maximum 100 points in accordance with the technical evaluation grid (setting out the technical criteria, sub-criteria and weightings) as presented in the Request for Proposal. Under no circumstances may the Evaluation Committee or its members change the technical evaluation grid stated in the Request for Expression of Interest.

(4) Each voting member of the Evaluation Committee completes an evaluation grid (using the standard template) to record his/her assessment in order to establish a general appreciation of strengths and weaknesses of each application.

(5) On completion of the technical evaluation, the points awarded by each member are compared at the Evaluation Committee's session. Besides the numerical score, a member shall explain the reasons for his/her choice and defend his/her scores before the Evaluation Committee.

(6) The Evaluation Committee discusses each application and every member awards it a final score. The Evaluation Committee members may modify their individual evaluation grids as a result of the general discussion on the merits of each offer. Once discussed, each Evaluation Committee member finalizes his/her evaluation grid of each evaluated application and signs it before handing it to the Secretary of the Evaluation Committee. The Secretary of the

Evaluation Committee shall then compile a summary of the comments of the Committee members as part of the Evaluation Report.

(7) In the case of major discrepancies, a full justification has to be provided by the dissenting members during a meeting of the Evaluation Committee.

(8) The Secretary of the Evaluation Committee calculates the aggregate final technical score, which is the arithmetical average of the individual final scores, and communicates the result to the Evaluation Committee.

(9) Applications not receiving the minimum seventy (70) points required as a final technical score, shall be disqualified.

**Part 4: Recommendation of Award:** Individual Consultants are selected on the basis of their professional qualifications for the assignment. Hence, the contract shall be awarded to the Individual Consultant who has obtained the highest final technical score and has a financial proposal within the available budget for the assignment.

(1) All above mentioned evaluation proceedings shall be recorded by the Secretary of the Evaluation Committee in the Evaluation Report, and signed by all members of the Evaluation Committee.

(2) The Evaluation Report, along with the Draft Contract, shall be subject to SADC Tender Committee's approval.

**h. Notification of award of the contract:**

(1) After the Evaluation Report approval by the SADC Tender Committee, the Procurement Function shall notify the outcome of the evaluation to all applicants.

(2) The notification sent to the unsuccessful applicants shall provide information on the final technical score that his/her application received, or the reason for having been disqualified, as the case may be. The standard template shall be used for these letters.

(3) The notification sent to successful applicant shall provide - in addition to the information on the final technical score that his/her application received - the draft contract the Individual Consultant is expected to sign to start his/her assignment. The successful applicant shall be requested to confirm in writing, within seven (7) days from the notification of award, his/her interest and availability for the assignment, the acceptance of the conditions of the contract and the date when he/she will be able to commence the assignment. Unless otherwise agreed by the two parties, the starting day of the assignment shall be no less than thirty (30) days from the notification of award of the contract.

(4) If the recommended applicant fails to respond to the notification, or is no longer interested or available for the assignment, or does not accept the terms and conditions of the contract including the commencement day of the assignment, the application shall be disqualified and the procedures for award shall be repeated with the other qualified applicants in the descending order of their final technical score, until a contract is secured.

(5) Unsuccessful applicants can appeal the decision of the Evaluation Committee following the procedures described in Chapter 7 of these Guidelines.

**i. Award of the contract:**

(1) The Procurement Function is responsible for the preparation of contract, based on the standard templates and the information stated in the Evaluation Report.



(2) The contract is subject to financial and legal regulatory clearances prior to its signature by the Executive Secretary or any other Accounting Officer which have the authority to sign contracts on behalf of the Procuring Entity.

(3) The contract shall be issued in five (5) originals, be stamped on each page with the Procuring Entity official stamp.

(4) The awarded Individual Consultant shall be given fifteen (15) days to accept to sign the contract and return it to the Procuring Entity. Once received, the awarded Individual Consultant will sign all five (5) originals and, at its own cost, shall arrange for a secured return of four (4) originals to the Procuring Entity prior to the fifteen (15) days deadline. If it fails to do so, the Procuring Entity may consider to cancel to award the contract to the recommended the Individual Consultant, and start the same procedures with the second best applicant, until the contract is awarded.

j. **Publication of the award of contract:** After the signature of the contract by both parties, the Procurement Function shall publish on the SADC Secretariat website, within five (5) days from the signature of the contract, the notification of award of the contract, using the standard template.

k. **Cancellation of the procedure:**

(1) Procuring Entity shall not be bound to accept any proposal submitted by an applicant in response to the Request for Expression of Interest.

(2) At any time, and without being liable for any compensation, Procuring Entity can cancel the procurement procedure for selection of an Individual Consultant:

- if no application is formal or technically compliant;

- if no application, formal and technically compliant, falls within the budget limit for the contract.

- if the recommended applicant fails to accept the conditions of contract (including the commencement date of the assignment) and there is no other applicant with a formal and technically compliant proposal within the budget limit set for the contract, and

- if the technical and economic conditions or the needs of the Procuring Entity have changed from the moment the procurement process was launched, and then, the services requested to the Individual Consultant are no longer needed by the Institution.

(3) The decision to cancel the procedure shall be taken by the SADC Tender Committee and be published on the SADC Secretariat website.

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## Annex 3: Guidelines on Procurement and Grants Roles and Responsibilities

### Part 1: Procurement and Grants Responsibilities

#### *1. Roles and responsibilities*

Within the limits set by these Guidelines the overall responsibility for all the Procurement and Grants Functions of the SADC Secretariat shall be entrusted to the Procurement and Grants Function. Hence, all procurement and grants activities of the Institution shall be coordinated and conducted by the Procurement and Grants Function.

In the case of decentralised structures of the SADC Secretariat or in the case of independent projects or programmes funded by the Institution, with the prior approval of the Executive Secretary, the role and responsibilities of the SADC Secretariat Procurement and Grants Function may be delegated to decentralized Procurement Functions or to external contractors to provide Procurement and/or Grant Agent Services.

Prior to delegating the procurement roles and responsibilities to an external Procuring Entity/Contracting Authority, SADC Secretariat shall sign memorandum of understating defining the extent or responsibilities and the exact role and procedures which shall be followed by such entities. However, irrespective of role and responsibilities delegated to the external Procuring Entity/Contracting Authority, SADC Secretariat shall be ultimately held responsible for the outcome or the legality of the procurement/grant processes and for the implementation and administration of contracts financed by the Institution.

#### *2. General responsibilities in implementation of the procurement and grants activities*

Pursuant to provisions under the Treaty, as amended, in particular the responsibilities of the SADC Secretariat (Article 14), Executive Secretary and Deputy Executive Secretary (ies) (Article 15) and Financial Provisions (Articles 28 to 30) and other instruments established under the provisions of the Treaty including the SADC Policy on Procurement and Grants, the following general responsibilities shall apply on procurement:

**(a) Council:** shall also be responsible for:

- (i) approval of the Policy on Procurement and Grants and its amendments
- (ii) appointing and revoking membership of the SADC Procurement Appeals Review Committee; and
- (iii) receive and consider reports on compliance with the Policy on Procurement and Grants.

**(b) Executive Secretary:** Has the overall responsibility and accountability for proper implementation of the Policy and Guidelines. He/She is exercising his role in procurement by:

- (a) performing his attribution as Accounting Officer;
- (b) proposing to the Council amendments to Policy on Procurement and Grants and implementation structure;
- (c) establishing a schedule of delegation of authority to commit resources;
- (d) establishing decentralisation of Procurement and Grant Function to implementing partners;
- (e) appointing and revoking membership of the SADC Tender Committee;
- (f) approving procurement regulations, including procurement guidelines and regulations, standard procurement and solicitation documents (such as bidding documents, contracts, procurement notices, evaluation reports, etc) and other similar procurement operational manuals, as well their subsequent modifications; and

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- (g) approving the use of Single Source, Negotiated and Limited Bidding procurement methods and approves any proposal for derogation from the standard procurement methods and standardized procurement documents;
  - (h) approving the use of any exceptional procedure below the thresholds established in the procurement approving authority matrix attached as Schedule 1 of these Guidelines;
  - (i) approving the launching of call for proposals and direct grant agreements to be prepared by the Procurement and Grant Function.
- (c) **Deputy Executive Secretary(ies):** Assisting the Executive Secretary in the development and implementation of organisational policies. The Deputy Executive Secretary (Finance and Administration) shall oversee the provision of corporate procurement and grant services by discharging the following responsibilities:
- (i) approving the overall corporate procurement plan;
  - (ii) overseeing management of risks in procurement,
  - (iii) monitoring and continuous assessment of the procurement processes; and
  - (iv) making recommendations to the Executive Secretary on strategic procurement matters such as structural and policy issues.
- (d) **Other functions:** The SADC Secretariat applies instruments governing financial provisions which are established under the Treaty and approved by Council such as Financial Provisions (Article 28 to 30), Policy on Procurement and Grants, Internal Audit Charter, e.t.c. Roles established under the SADC Secretariat organisational structure with responsibilities to facilitate procurement operations are as follows:
- (i) **Budget and Finance Function:** their responsibilities in the area of procurement are determined by the provisions of the Financial Regulations and Procedures, and for purposes of procurement these are aimed at facilitating adherence to principles of sound finance management of economy, efficiency and effectiveness. Specifically, Finance Officer shall verify compliance with the relevant provisions in the financial regulations through the verification of the contractual instrument (e.g: contract, purchase order, etc) committing funds for:
    - (a) existence and allocation of budgetary appropriations; and
    - (b) compliance with the decision of award taken by the relevant authority as stipulated by these Guidelines.
  - (ii) **Legal Affairs Function:** their responsibilities in the area of procurement and grants are determined by the mandate of their function, and for purposes of procurement and grants these are aimed at facilitating adherence to legal and contractual requirements aimed at safeguarding interests of the SADC Secretariat.
  - (iii) **Controlling Officer:** their responsibilities in the area of procurement and grants are determined by the mandate of their function, and for purposes of procurement and grants these are aimed at facilitating adherence to budget management regulations. In procurement, a Controlling Officer's specific responsibilities are set out in the Guidelines for Procurement and Grants under the Requisition Function.
  - (iv) **Internal Audit Function:** their responsibilities in the area of procurement and grants are determined by the provisions of the Internal Audit Charter, and these do not permit them to engage in a line operational role. The Internal Audit function exercises the ex ante control function.

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### 3. *Specific responsibilities in implementation of the procurement and grant activities*

- (1) **Requisition Function.** The Requisition Function is held by any SADC Secretariat Controlling Officer, and generally they shall represent a directorate, section, department or unit being the direct or indirect beneficiary of the services, goods, works or grants procured by the Institution through procurement processes. The holder of the Requisition Function is to be defined in the SADC Secretariat Financial Regulations and re-confirmed during the process of preparation of the annual budgets and procurement plans. In relation to the procurement and grants processes, the Requisition Function is responsible, but not limited, to the following:
- a) identifying the needs of the Procuring Entity, in the area of their operations;
  - b) estimating the cost for procuring their requirements;
  - c) securing the funds for procurement of the needs through budgetary allocations;
  - d) preparation of procurement plans;
  - e) provision of support to the Procurement Function in preparation of the procurement strategy of the Institution;
  - f) preparation of Technical Specifications and Terms of Reference,
  - g) preparation of guidelines for applicants
  - h) preparation of qualification, selection, evaluation and award criteria;
  - i) provision of assistance to the Procurement Function in drafting the technical parts of the Bidding Documents, Request for Proposals, Request for Expression of Interest, Request for Quotations Request for Offers or any other similar solicitation documents.
  - j) provision of needed technical input for response to bidders or applicants request for clarifications;
  - k) provision of technical support to the Evaluation Committees by appointing the members;
  - l) providing support to the Negotiation Committees in negotiation of contracts by appointing members for the Negotiation Committee.
  - m) the day to day management of the contracts;
  - n) monitoring and assessing the performance of the Contractors/Grant beneficiaries;
  - o) accepting the deliverables and certifying their compliance with the contractual requirements;
  - p) endorsing the request for payments as specified in the contracts;
  - q) maintaining the records of the contractual deliverables (including any approval or rejection of such deliverables); and
  - r) maintaining the record of the grant implementation activities.
- (2) **Procurement and Grant Function.** The Procurement and Grant Function has the overall responsibility of coordination and implementation of the procurement and call for proposal processes of the SADC Secretariat. With the exceptions indicated in the procurement rules and procedures as well as in the financial regulations of the Institution, it is the only unit within the SADC Secretariat vested with the attribution to procure services, goods and works as well as of launching call for proposals on behalf of the Institution. More specifically, the Procurement and Grant Function responsibilities shall include, but not limited to, the following:

- a) drafts and revises the procurement and grants rules and procedures;
  - b) drafts and revises the standard templates for procurement and grants processes;
  - c) coordinates the procurement planning and prepares the Overall Procurement Plan;
  - d) reports on procurement/grant performance and implementation of the overall procurement plan;
  - e) prepares and revises the procurement strategy of the Procuring Entity;
  - f) reviews the Technical Specifications and Terms of Reference for compliance with the procurement procedures;
  - g) reviews the Guidelines for Applicants for compliance with grant procedures;
  - h) reviews the eligibility, qualification, evaluation and award criteria for compliance with the procurement and grants procedures;
  - i) advertises the procurement processes by (i.e.: General Procurement Invitation to Pre-qualification, Short List Notice, Contract Award Notice, Cancellation Notices);
  - j) advertises calls for proposals;
  - k) prepares the Bidding Documents, Request for Quotations/proposals, Request for Negotiation, Request for Expression of Interest and any other similar solicitation documents;
  - l) develops application bid forms;
  - m) coordinates the communications with applicants and disseminates the clarification information;
  - n) provides logistic support to the Evaluation Committees;
  - o) acts as the secretariat and provide the necessary logistical support to the SADC Tender Committee;
  - p) prepares the contracts and the purchase orders,
  - q) notifies bidders and applicants on the outcome of the evaluation processes;
  - r) assists the Procuring Entity in the appeal processes;
  - s) assists the requisition function in the administration of contracts;
  - t) maintains the records of procurement processes;
  - u) nominates members of the Negotiation Committees;
  - v) approves the evaluation reports for local and restricted bidding procurement and procurement under multiple framework contract methods which are below in the limits set in the procurement approving authority matrix attached as Schedule 1 of these Guidelines.
  - w) ensure that all the contracts/purchase order sent for signature to the Accounting Officer have been cleared by the Legal Affairs Function and Budget and Finance Function and certifies they are awarded and drafted in compliance with the SADC Secretariat Procurement Policy and Guidelines.
- (3) **Internal Audit:** exercise the ex-ante control function of procurement and grants processes and endorse for compliance with the SADC Secretariat Policy and Guidelines for Procurement and Grants, all solicitation documents issued by the Procuring Entity/Contracting authority.
- (4) **SADC Tender Committee:** These are permanent bodies of executive professionals appointed by the Executive Secretary, with the role of representing the Procuring Entity and the Executive Secretary

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all the procurement processes. The SADC Tender Committee(s) shall consist in an odd number of members with equal voting rights, no subordination relationships among themselves with the structure of the Institution and with no conflict of interest. The Procurement Function will provide the secretariat services to The SADC Tender Committee(s).

The role of the SADC Tender Committee(s) in procurement processes is the following:

- a) Reviews the overall Procurement Plan.
- b) Reviews and approves, on behalf of the Procuring Entity, the procurement processes
- c) Approves, on behalf of the Procuring Entity, the solicitation documents prepared by the Procurement Function, prior to be released to the bidders/applicants and any subsequent modifications of these documents;
- d) Approves on behalf of the Contracting Authority the bidding documents (both pre-qualification documents and full bidding documents) prepared by the Procurement Function, prior to be launched;
- e) Recommends any proposal for derogation from the standard procurement methods and standardized procurement documents prior to be approved by the Executive Secretary;
- f) If the attribution is delegated by the Executive Secretary to them, approves, the use of the Single Source, Negotiated procedure and Limited Bidding as procurement methods;
- g) Approves or rejects the evaluation and negotiations reports;
- h) Approves the cancelation of procurement processes;
- i) Recommends to the Deputy Executive Secretary Finance and Administration the establishment of the Overall Procurement Plan;
- j) Approves the registration and deregistration of economic operators on the Database of Approved Suppliers;
- k) Approves the debarment of the economic operators according to provision of chapter seven of these Guidelines;
- l) Recommends the award of the contracts prior to the execution by the Accounting Officer; and
- m) Recommends any subsequent addenda to the contracts prior to be sent for the execution by the Accounting Officer.

The Tender Committee may approve the opening session reports, pre-qualification documents, pre-qualification reports and full bidding documents through electronic communications. However, the Tender Committee shall meet for the approval of the evaluation/negotiation reports.

The SADC Secretariat shall have two Tender Committees, namely the External Tender Committee and the Internal Tender Committee.

The External Tender Committee shall be responsible for adjudicating tender processes of values above US\$250,001.

The Internal Tender Committee shall be responsible for adjudicating all procurement of value between US\$10,001 and US\$250,000.

The External Tender Committee, sitting as Procurement Appeals Review Committee, shall also handle bidders complaints and appeals for all procurement adjudicated by the Internal Tender Committee.

The Finance Sub-Committee, sitting as Procurement Appeals Review Committee, shall handle bid complaints and appeals for all procurement handled by the External Tender Committee.



(5) **Procurement Appeals Review Committee:** The SADC Procurement Appeals Review Committee shall have the role and responsibility in handling the procurement and appeals procedures in accordance with the Chapter 7 of these Guidelines. The SADC Procurement Appeals Review Committee shall consist in an odd number of members with equal voting rights, no subordination relationships among themselves with the structure of the Institution and with no conflict of interest. The SADC Procurement Appeals Committee shall be supported by an officer from the Legal Affairs Function designated by the Executive Secretary as a Complaints Officer. The Members of the Committee shall be nationals of SADC Member States identified from the Troika Institutional Structure, with the Chairperson coming from the Member State chairing SADC. The members of the Appeals Review Committee will be:

- For revising decisions taken by the SADC Internal Tender Committee: the members of the External Tender Committee will sit as Appeal Review Committee.
- For revising decisions taken by the SADC External Tender Committee: the Chairperson and Deputy Chairperson of the Finance-Subcommittee shall sit as Appeal Review Committee.

(6) **Programmes Management Committee:** the members of the SADC Programmes Management Committee are all the directors and heads of units of the operational directorates and units plus the Director of Finance and Budget. The Programmes Management Committee shall represent the Contracting Authority and the Executive Secretary all the grant awarding procedures. Moreover, the SADC Programmes Management Committee shall have the role and responsibility in handling the grants appeal procedures in accordance with Chapter 7 of these Guidelines.

The role of the SADC Programmes Management Committee in grants processes shall be the following:

- a) Reviews and approves, on behalf of the Contracting Authority, the grant processes.
- b) Approves, on behalf of the Contracting Authority, the guidelines for applicants prepared by the Procurement and Grant Function, prior to be released to the bidders/applicants and any subsequent modifications of these documents;
- c) Recommends any proposal for direct grant award prior to be approved by the Executive Secretary;
- d) If the attribution is delegated by the Executive Secretary to them, approves, the use of direct grant award.
- e) Approves or rejects the evaluation reports;
- f) Approves the cancelation of calls for proposals;
- g) Approves the debarment of the economic operators according to provision of chapter seven of these Guidelines;
- h) Recommends the award of the contracts prior to the execution by the Accounting Officer; and
- i) Recommends any subsequent addenda to the contracts prior to be sent for the execution by the Accounting Officer.

## **Part 2: The SADC Tender Committee**

### ***1. Composition***

The SADC Tender Committee are appointed by the Executive Secretary for the minimum period of one (1) fiscal year and shall have the role of representing the Procuring Entity in all Procurement

Functions. This entails that the SADC Tender Committee(s) shall be the sole entity responsible for the final review and decision-making on all procurement processes conducted by the Procuring Entity within the threshold as stipulated in Schedule 3 of these Guidelines.

The SADC External Tender Committee shall have a minimum three (3) and maximum five (5) members comprised of senior procurement officials from the Troika Member States and two officials from the SADC Secretariat namely the head of Budget and Finance or his designate and an officer nominated to represent the Executive Secretary.

The SADC Internal Tender Committee shall have minimum three (3) and maximum five (5) members, chosen among the directors of the SADC Secretariat with no subordination relationships among themselves with the structure of the institution.

The Executive Secretary shall appoint for each member Tender Committee an alternate, selected from senior officer of the SADC Secretariat, to replace him/her in the Tender Committee(s) in circumstances where his/her participation in the Tender Committee(s) meetings is not possible.

To have a quorum, the SADC Tender Committee(s) shall have at least three (3) member from the technical directorates (such as: Directorate of Policy Planning & Resource Mobilisation, Directorate of Budget & Finance and Directorate of Human Resources and Administration) participating in the SADC Tender Committee(s) meetings.

The SADC Tender Committee(s) shall be supported by a Procurement Function which will act as a permanent secretariat of the SADC Tender Committee. The Secretariat of the SADC Tender Committee(s) is in charge with distributing the documents to be reviewed, logistic of the meetings, recording the deliberation and decision, securing the signatures of the members on the Tender Committee(s) decisions, and maintaining the record and archives of the SADC Tender Committees. The Head of the Procurement Function will act as Secretary of the Tender Committees meetings.

No member of the SADC Tender Committee(s) shall be involved in the procurement processes other than in the capacity of member of the SADC Tender Committee(s).

When a member of the Tender Committee(s) is also requisitioner for the services, goods and work for which the Tender Committee is requested to take a procurement decision, the respective member shall not be allowed to participate in the Tender Committee meeting and be replaced, for that specific procurement process, by an alternate from a different technical department which is not under the coordination of the requisitioner.

No member of the SADC Tender Committee(s) shall be part of the internal Institutional structures that audits the procurement processes.

All members of the SADC Tender Committee(s) have equal decision rights and the decision shall be settled by consensus. If a SADC Tender Committee cannot reach a decision by consensus, the

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Committee decision shall be taken by majority of vote. Such incidents shall be dully recorded in the minutes of the SADC Tender Committee meetings.

All members of the SADC Tender Committee(s) shall be free of conflict of interest as defined in para 2.2 of Chapter 2 of these Guidelines. The members shall sign a Declaration of Impartiality and Confidentiality using the standard template.

When a member becomes aware that he/she is in a situation which might generate a potential conflict of interest, he/she shall notify the SADC Tender Committee(s) by giving details of the particulars that created the potential conflict of interest and recuse him/herself from further participating in the SADC Tender Committee(s) meetings or decisions in relation with that particular bidding process. Such circumstances shall be recorded in the minutes of the SADC Tender Committee(s) meetings.

## **2. *Role and responsibilities of the SADC Tender Committee(s)***

The role of the SADC Tender Committee(s) in procurement processes are defined in paragraph 3 of this Annex.

In relation to the above mentioned attributions, the SADC Tender Committee(s) has the following responsibilities:

- a) Ensure that the overall Procurement Plan is develop in accordance with the procedures set in the para 2.19 of Chapter 2 of these Guidelines and that the document is aligned to the SADC Secretariat budget.
- b) Ensure that the solicitation documents have been reviewed by the relevant authorities according with the procedures set in the Guidelines and standard procurement documents ;
- c) Ensure that the principles of procurement as stated in the SADC Secretariat Procurement Policy and in para 2.2 of Chapter 2 of these Guidelines are applied in all solicitation documents and evaluation/assessment/ negotiation processes.
- d) Ensure that the services, goods and works to be procured by the Institution are indispensable for the Procuring Entity and budgetary provision have been made to their acquisition.
- e) Ensure that the appropriate procurement method is used for the procurement of the services, goods and works so as to obtain maximum value for the Procuring Entity.
- f) Ensure that recommendations of the Evaluation / Negotiation Committees, as reflected in the evaluation/negotiation report, are sound and responsive to the qualification, evaluation and award criteria indicated in the solicitation documents.
- g) Ensure that the request for using the single source procedure and limited bidding procurement methods is justifiable.
- h) Ensure that any derogation from using the standard solicitation documents and procurement methods are necessary and that the interest of the SADC Secretariat and of the Procuring Entity will be protected.
- i) Ensure that the contracts to be executed by the Accounting Officer are a true reflection of the evaluation/ negotiation processes and the award decision.
- j) Ensure that the addendum to the existing contract is opportune, justifiable and in the interest of the Procuring Entity and is complies with the provision of the Article 46 of the SADC Policy for Procurement and Grants and para 2.14 of Chapter of these Guidelines.



### **3. *Communication and records of the SADC Tender Committee***

All correspondence, meetings and decisions of the SADC Tender Committee(s) shall be recorded in writing by the Secretary of the SADC Tender Committee(s) and shall be signed by all members of the SADC Tender Committee(s).

The SADC Tender Committee(s) shall communicate their request for clarification, objections, rejections or any other decision only to the Procurement Function who shall further distribute it to the relevant party.

Any decision of rejection or objection of a solicitation document or evaluation/negotiation report shall be justified by making reference to the clauses or articles of the Procurement Policy on Procurement and Grants or these Guidelines, which have been breached by the Procurement Function or Evaluation Committee.

### **4. *Decision Timelines***

The SADC Tender Committee review and decision shall be taken in the shortest time possible from the receipt of the document to be reviewed.

The maximum time allowed to review a document shall not exceed fourteen (14) calendar days.

