



Southern African Development Community Secretariat

Procurement and Grants Policy

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Table of Contents

Preamble	1
Definitions and Glossary of Terms.....	2
PART ONE - GENERAL	8
CHAPTER I. GENERAL PROVISIONS	8
Article 1. Purpose of this Policy	8
Article 2. Procurement principles	8
Article 3. Grants principles	8
Article 4. Scope of application	9
Article 5. Application of the Procurement Policy in relation to International obligations of the SADC Secretariat..	10
Article 6. SADC Procurement and Grants Guidelines	10
Article 7. Quality Assurance.....	11
Article 8. Conduct of SADC Secretariat’s Officials.....	11
Article 9. Fraud, Corruption and Conflict of Interest	12
Article 10. Conduct of Economic Operators and Grant Applicants	12
Article 11. Language	14
Article 12. Form of communications	14
Article 13. Disclosure of procurement related information	14
Article 14. Procurement Planning.....	15
Article 15. Rules concerning the description of goods, works or services.....	15
Article 16. Visibility	16
Article 17. Participation by economic operators and grant applicants	16
Article 18. Eligibility and qualifications of economic operators and grant applicants.....	16
Article 19. Regional Preference	17
Article 20. Rules concerning documentary evidence provided by economic operators and grant applicants	18
Article 21. Cancellation of procurement processes.....	18
Article 22. Records of procurement process	19
Article 23. Review of the Procurement and Grants Policy	20
Article 24. Sanctions	20
Article 25. Record keeping.....	21
PART TWO - PROCUREMENT	22
CHAPTER I. METHODS OF PROCUREMENT AND CONDITIONS FOR USE	22
Article 26. Methods of procurement and thresholds	22
Article 27. Open Bidding	22
Article 28. Restricted Bidding	23
Article 29. Limited Bidding	24
Article 30. Negotiated Procedure	25
Article 31. Single Source procedure	26
Article 32. Selection of Individual Consultants	27

Article 33. Procurement procedure under Multiple Framework Contracts	29
Article 34. Procurement procedure under Single Framework Contracts	30
CHAPTER II. PROCUREMENT PROCEEDINGS.....	30
SECTION I. BIDDING PROCEEDINGS.....	30
Article 35. Publication	30
Article 36. Invitation to bid and access to bidding documents	30
Article 37. Contents of bidding documents	31
Article 38. Evaluation and award criteria	31
Article 39. Technical requirements.....	32
Article 40. Clarifications and modifications of bidding documents.....	32
Article 41. Submission of bids.....	33
Article 42. Validity period; modification and withdrawal of bids	34
Article 43. Bid securities	34
Article 44. Opening of bids	35
Article 45. Examination, evaluation and comparison of bids	35
Article 46. Prohibition of negotiations with bidders	37
Article 47. Acceptance of bid and entry into force of the contract.....	37
SECTION II. PREQUALIFICATION PROCEEDINGS	38
Article 48. Prequalification Processes	38
CHAPTER III. APPEAL OF PROCUREMENT DECISIONS	39
Article 49. Right to appeal a procurement decision	39
Article 50. Procedures for handling appeals.....	40
CHAPTER IV. ADMINISTRATIVE PROVISIONS	40
Article 51. Procurement implementation structure.....	40
Article 52. Modifying contracts	41
Article 53. Monitoring and Auditing of Procurement Activities	41
PART THREE - GRANTS.....	43
CHAPTER I. SCOPE	43
Article 54. Scope of Application.....	43
Article 55. Purpose of Grants.....	43
CHAPTER II. PRINCIPLES.....	43
Article 56. General principles applicable to Grants	43
Article 57. Eligible Costs	44
Article 58. In-kind contributions	44
Article 59. Transparency	45
Article 60. Programming.....	45
Article 61. Calls for proposals	45
Article 62. Exceptions to calls for proposals	46
Article 63. Publication of beneficiary awarded	46

<u>Article 64</u> . Information for applicants	46
<u>Article 65</u> . Principle of no cumulative awards	47
<u>Article 66</u> . Principle of non-retroactivity	47
CHAPTER III. APPLICATION AND AWARD PROCEDURE	47
<u>Article 67</u> . Guidelines for Applicants	47
<u>Article 68</u> . Applications for Grants	48
<u>Article 69</u> . Submission of grant applications	48
<u>Article 70</u> . Selection and award criteria	49
<u>Article 71</u> . Evaluation of proposals	49
<u>Article 72</u> . Grant contract	49
<u>Article 73</u> . Payments and controls	50
<u>Article 74</u> . Miscellaneous	51

Preamble

1. Noting that SADC Secretariat as executive institution of Southern African Development Community (SADC) is responsible under the SADC Treaty for financial administration of SADC resources;
2. Acknowledging the need to create a regulatory framework to govern procurement and grants systems and processes of the SADC Secretariat and its decentralized structures;
3. Considering the need to align the procurement and grants systems and processes with current international best practices that guarantee transparency, competitiveness, equal treatment, non-discrimination and value for money through attainment of economy, efficiency and effectiveness, in order to achieve intended procurement and grants objectives;
4. Further, noting the necessity to have relevant provisions of the SADC Secretariat's Financial Regulations maintained in the present Policy:

The Council of Ministers has approved the provisions of this Policy to enter into force on **1st January 2017**; and

From the date of entry into force this Policy shall replace SADC Procurement and Grants Policy of 2016 and SADC Procurement and Grants Guidelines of 2017, as amended.

Definitions and Glossary of Terms

For the purposes of this Policy:

- (1) “**Accounting Officer**” refers to the Executive Secretary’s overall responsibility on financial administration of SADC resources. The Accounting Officer may appoint or delegate to, one or more deputy Accounting Officers to discharge functions on matters of financial administration in place of the Accounting Officer.
- (2) “**Addendum**” means the document through which significant modification to the terms and conditions of a document or contract are introduced.
- (3) “**E-Procurement**” means a dedicated system permitting bidders to submit bids by electronic means.
- (4) “**Board of Auditors**” means the body of External Auditors established as per the requirement of Article 29 of the Treaty.
- (5) “**Bidding Documents**” means the file containing all the documents needed to prepare and properly submit a bid.
- (6) “**Bid**” means a written and formal offer to provide goods, works or services for an agreed price.
- (7) “**Bid security**” means a security provided by the bidder that he would accept and sign the contract in case he is awarded it and, in case he does not, the bid security is forfeited.
- (8) “**Bidder**” means an economic operator submitting a bid, proposal or quotation; willing to conclude a contract with the Procuring Entity.
- (9) “**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;
- (10) “**Council of Ministers**” means the governing body of the SADC Secretariat, established by Article 9 of the Treaty.
- (11) “**Collusive practice**” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (12) “**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 a bid award decision.
- (13) “**Contracting Authority**” means the entity signing the procurement or grant contract. It might be the procuring entity or a different entity, especially in cases of secondary procurement.
- (14) “**Conflict of interest**”, in the context of this Policy, means that an economic operator shall not be allowed to get engaged in any procurement process for delivery of any kind of services, goods or works that would be in conflict with their prior or current obligations to SADC Secretariat 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.
- (15) “**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.

- (16) "**Consultancy Services**" means a wide variety of services such as advisory services; research and research investigation, management; engineering; construction supervision; design and architectural services; training and training like education services; audit; financial (other than banking operation); legal and procurement services. It includes also feasibility studies, social and environmental studies; and identification, preparation and implementation of projects services or any other services in which the "human factor" is determinant for the output of the contract. By extension, the operational costs of implementation of the project, including research, organization or participation in workshops.
- (17) "**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;
- (18) "**Corrupt practice**" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (19) "**Economic operator**" means, according to the context, any natural person, 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.
- (20) "**Emergency**" means the circumstances which are urgent, unforeseeable, may cause loss of property, life or jeopardize SADC Secretariat interests and which are unforeseeable and are not caused by any dilatory conduct, or bad management, of the Procuring Entity.
- (21) "**Evaluation Committee**" means committee made up of an odd number (at least three) of voting members (the evaluators) with the technical and administrative expertise necessary to give an informed opinion on tenders or grant applications. The Chairperson of the Evaluation Committee will be one of the evaluators. Evaluation Committee will be assisted by the Secretary.
- (22) "**Ex-Ante Verification**" means compliance review of procurement processes and quality control of all procurement related documentation by designated personnel.
- (23) "**Executive Secretary**" means the Chief Executive Officer of SADC Secretariat appointed under Article 10 (7) of the Treaty.
- (24) "**External Tender Committee**" means the Committee appointed yearly by the Executive Secretary from TROIKA Members and entrusted with the responsibility of advising the Accounting Officer on all procurements as per thresholds defined in SADC Procurement and Grants Guidelines.
- (25) "**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.
- (26) "**Force Majeure**", in the context of this Policy, means an exceptional event or circumstance:
- (a) which is beyond the control of the party(ies) involved;
 - (b) which could not reasonably have been foreseen, avoided and overcome; and
 - (c) 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 (a) to (c) above are satisfied:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;

- (b) 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;
 - (c) riot, commotion, disorder, strike or lockout by persons other than the SADC Secretariat/ Procuring Entity;
 - (d) presence of munitions of war, explosive materials, ionising radiation or contamination by radio-activity, explosives; and
 - (e) natural catastrophes such as floods, earthquake, hurricane, typhoon or volcanic activity.
- (27) **"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;
- (28) **"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.
- (29) **"Goods contract"** means a contract covering the purchase, leasing, rental or hire purchase of products, with or without option to buy. A contract for the supply of products and, incidentally, for siting and installation shall be considered a supply contract.
- (30) **"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.
- (31) **"Grants"** means a direct payment of a non-commercial nature by the Contracting Authority to a Grant Beneficiary in order to implement an operation (or in some cases to finance part of its budget) that is of joint interest to SADC and Grant Beneficiary.
- (32) **"Grant Agreement"** means a legal instrument for financial support between the Contracting Authority and Grant Beneficiary.
- (33) **"Grant Beneficiary"** means the recipient of funds that support the implementation of specific action/operation, formalised through Grant Agreement.
- (34) **"Internal Tender Committee"**: means the Committee appointed yearly by the Executive Secretary from staff within the Secretariat and entrusted with the responsibility of advising the Accounting Officer on all procurements as per thresholds defined in SADC Procurement and Grants Guidelines.
- (35) **"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. The description and conditions of application of this method is to be found in the **Article 28** of this Policy.
- (36) **"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. The description and conditions of application of this method is to be found in the **Article 29** of this Policy.
- (37) **"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.

- (38) **“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.
- (39) **“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. The description and conditions of application of this method is to be found in the **Article 30** of this Policy.
- (40) **“Obstructive practice”** means:
- (i) 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
 - (ii) acts intended to impede the exercise of the SADC Secretariat’s or governmental inspection audit rights.
- (41) **“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. The description and conditions of application of this method is to be found in the **Article 27** of this Policy.
- (42) **“Post-qualification”** means a stage where the bidder with the Lowest Calculated Bid, in the case of goods and works, or the Highest Rated Bid, in case of services, undergoes verification and validation whether he has passed all the requirements and conditions as specified in the bidding documents.
- (43) **“Procurement”** means the legal acquisition by any means of goods, works or services required to satisfy the needs of the SADC Secretariat.
- (44) **“Procurement method”** means the procedures through which the Procuring Entity purchases services, goods and works.
- (45) **“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 33** of this Policy.
- (46) **“Procuring Entity”** means the SADC Secretariat structure designated by the Accounting Officer to commit funds and implement programmes/project/activities on its behalf.
- (47) **“Price”** means the amount as of money asked for or given in exchange for a service, good(s) or work.
- (48) **“Proposal”** means an offer by Economic Operator in response to an invitation to bid.
- (49) **“Public contracts”** means those contracts concluded in writing between one or more legal entities and the contracting authority in order to obtain, against the payment of price paid in whole or in part, the provision of goods, the implementation of works or the provision of services for SADC community benefits.

- (50) “**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 28** of this Policy.
- (51) “**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 advantage over the bidders offering similar services, goods and works originating from outside the SADC Countries. More details are to be found in **Article 19** of this Policy.
- (52) “**Request for Quotations**” means a competitive method that is based on comparing quotations/prices from economic operators commonly used for readily available off-the-shelf Goods or Non-Consulting Services or simple Works of small value, as per thresholds set in SADC Procurement and Grants Guidelines.
- (53) “**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 28** of this Policy.
- (54) “**SADC**” means Southern African Development Community and its institutions established by the Treaty.
- (55) “**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.
- (56) “**SADC Treaty**” or “**Treaty**” means the treaty establishing SADC, as amended.
- (57) “**Solicitation Document**” means the documents issued by the SADC Secretariat to inform potential bidders about its procurement requirements. It includes Bidding Documents, requests for proposals, and/or request for quotations, request for services, request for expression of interest, etc.
- (58) “**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.
- (59) “**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.
- (60) “**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.
- (61) “**Threshold**” in the context of this Policy, 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.
- (62) “**Unit price contract**” means a goods or works contract in which the price is based on estimated quantities of items included in the project and their unit prices.
- (63) “**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.
- (64) “**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.

PART ONE - GENERAL

CHAPTER I. GENERAL PROVISIONS

Article 1. Purpose of this Policy

- (1) The purpose of this Policy is to provide for the rules for the attribution of public contracts and grant agreements, whether services, works, or goods to be procured,
- (2) awarded, by the SADC Secretariat.
- (2) This Policy shall regulate procurement of goods, services and works, as well as award of grants.

Article 2. Procurement principles

- (1) The SADC Secretariat's principles that shall govern all procurement processes of the organization are the following:
 - (a) maximizing economy and efficiency in procurement to achieve value for money;
 - (b) fostering and promoting competition by encouraging participation in procurement proceedings by economic operators;
 - (c) promoting transparency, accountability and Ethical Standards among stakeholders in following the SADC Secretariat Procurement and Grants Policy; and
 - (d) providing for the fair and equitable treatment of all economic operators to promote the integrity of, and fairness and public confidence in the procurement process.
- (2) Any procurement procedure or regulation that is in conflict with these principles shall be declared null and void.

Article 3. Grants principles

- (1) Grant is a direct payment of a non-commercial nature by the Contracting Authority to a Grant Beneficiary in order to implement an operation (or in some cases to finance part of its budget) that is of joint interest to SADC and Grant Beneficiary.
- (2) Grants are divided in two general categories:
 - a) action grants financing actions that are of interest to both SADC and Grant Beneficiary.
 - b) operating grants financing the functioning of a body pursuing an aim of SADC's interest or objective and those of the Grant Beneficiary.
- (3) Grant agreements may have the following modalities:
 - a) financing not linked to a cost but supporting relevant operations by measuring achievement of performance indicators;
 - b) reimbursement of eligible costs actually incurred;
 - c) unit cost of eligible costs clearly identified in advance by reference to an amount per unit;
 - d) lump sums which cover in global terms all or certain specific categories of costs clearly identified in advance;
 - e) flat-rate financing, which covers specific categories of eligible costs, which are clearly

identified in advance, by applying a percentage determined by the project;

- f) a combination of the forms referred to in points (a) to (e)
- (4) The following principles should be followed:
- a) Co-financing - Where applicable and relevant, the costs should be shared between SADC Secretariat and the grant beneficiary as per SADC Procurement and Grants Guidelines.
 - b) No-profit - Grants must not have the purpose or effect of producing a profit within the framework of the action or the work programme of the beneficiary.
 - c) No-cumulative award - Each beneficiary may not get more than one grant per action, neither more than one operating grant for financial year.
 - d) Non-retroactivity - Financing by SADC Secretariat funding may not be used to finance actions that have already been completed and which have therefore proved achievable without financial support from SADC. At the same time the rule prohibits awarding an operating grant for activities carried out in previous budgetary years of the beneficiary.

Article 4. Scope of application

- (1) This Policy shall apply to all procurement contracts and grant agreements financed by SADC Secretariat, except as otherwise provided by paragraph (2) of this article.
- (2) The Policy does not apply to:
 - (a) subject to **Article 6** of this Policy, any contracts for which a prior derogation from this Policy has been obtained from the Council of Ministers;
 - (b) public utilities services as far as they are provided under a national monopoly e.g. water, electricity, gas, and waste water disposal;
 - (c) public transportation for persons as far as they are provided under a national monopoly (including railway and water transportation but excluding e.g.; transport by air, car rentals);
 - (d) landline communication services (if the landline communication provider is a national monopoly);
 - (e) national postal services as far as they are provided under a national monopoly: stamps, telex, registered mail, etc;
 - (f) Any other services provided under a National Monopoly;
 - (g) acquisition of land, buildings or similar facilities;
 - (h) direct acquisition (by SADC Secretariat) of commodities through the stock exchange mechanism;
 - (i) employment contracts of any nature: part time, temporary or permanent duration;
 - (j) procurement of any employment benefit related services (health insurance, pension fund, rental of house, etc);
 - (k) education services other than training like services;
 - (l) banking services (except financial services); and
 - (m) petty cash transactions (e.g.: car fuel, parking tickets and toll fees, visa fees, passport fees, fees for various licenses, fiscal and judicial charges or any purchase of services and good

which are defined in the SADC Secretariat Financial Regulation as petty cash transactions).

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

Article 5. Application of the Procurement Policy in relation to International obligations of the SADC Secretariat

- (1) To the extent that this Policy conflicts with an obligation of the SADC Secretariat under or arising out of any:
 - (a) Treaty or other form of agreement to which the SADC Secretariat is a party,
 - (b) Agreement entered into by the SADC Secretariat with an intergovernmental international financing institution or international donor, or
 - (c) Agreement between the SADC Secretariat and any Member State of the SADC.

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

- (2) 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 co-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. 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 this Policy. 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 Procurement and Grants Guidelines.

Article 6. SADC Procurement and Grants Guidelines

- (1) To fulfil the objectives and to carry out the provisions of this Policy, the SADC Secretariat shall have Procurement and Grants Guidelines, standardized procurement documents and any other operational implementation rules, hereafter called SADC Procurement and Grants Guidelines, aligned to this Policy.
- (2) The Executive Secretary of the SADC Secretariat is authorized to promulgate the SADC Procurement and Grants Guidelines for the implementation of this Policy and approve any of their subsequent modifications.
- (3) The Procuring Entity shall follow the SADC Procurement and Grants Guidelines developed for the purpose of the implementation of this Policy.

- (4) Whenever a conflict between this Policy and the SADC Procurement and Grants Guidelines occur, the provision of this Policy shall take precedence over the SADC Procurement and Grants Guidelines.

Article 7. Quality Assurance

- (1) Quality assurance is done through compliance review of procurement processes and quality control of all procurement related documentation by designated personnel.
- (2) Ex-Ante quality assurance modality implies that all documents require verification prior to proceeding with the subsequent step in the process of procuring.
- (3) The Ex-Ante function is expected to enhance the effectiveness and efficiency of the management of procurement by assuring quality, guaranteeing consistency and compliance, as well as ensuring value for money.
- (4) In order to ensure proper segregation of duties, independent decision-making and impartiality, Ex-Ante function reports directly to the Accounting Officer.

Article 8. Conduct of SADC Secretariat's Officials

- (1) The Procuring Entity and/or the SADC Secretariat staff engaged in procurement activities such as, but not limited to: requisitioning, planning, preparing, and conducting procurement proceedings, and administering the implementation of procurement contracts, authorizing or effecting payments under the contracts shall:
 - (a) discharge their duties impartially so as to assure fair competitive access to procurement by bidders;
 - (b) always act in the SADC Secretariat's and / or the Procuring Entity's interest, and in accordance with the objectives and procedures set forth in this policy and the subsequent SADC Procurement and Grants 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 or fraudulent practices, including the solicitation or acceptance of improper inducements.
- (2) If a Procuring Entity's and/or the SADC Secretariat's staff engaged in the procurement activities, in any matter to be determined by him/her or any committee to which (s)he is a member, has any interest, direct or indirect with economic operators that may be involved in the procurement process,(s)he is required to declare the interest in accordance with the procedures set forth in the regulations, and is required to recuse him- or herself from acting in any way in that matter and cannot take part in the consideration, discussion of, or vote on any question with respect to the matter.
- (3) Any infringement of the provisions of this Policy by the SADC Secretariat staff or Procuring Entity caused by misconduct or gross negligence shall be sanctioned by the SADC Secretariat according to SADC Secretariat's Policy relating to Conduct and Discipline of staff. The sanctions may include initiating civil or criminal proceedings for recuperating damages caused by the staff where necessary.

Article 9. Fraud, Corruption and Conflict of Interest

- (1) The SADC Secretariat requires that the procurement processes and the award of contracts and grant agreements shall be free of fraud, corruption, collusive practices, coercive practices, obstructive practises and conflict of interest.
 - (a) Without limitation, economic operators or grant applicants shall not be hired under the circumstances set forth below, which constitute conflict of interest:
 - (i) Conflict between consulting activities and procurement of goods, works or services. A supplier or a contractor that has been engaged by the Procuring Entity to provide goods, works, or services for the organization, or any 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.
 - (ii) Conflict among consulting assignments: neither, economic operators or grant applicants (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.
 - (iii) Relationship with the Procuring Entity's staff: economic operators grant applicants (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.

Article 10. Conduct of Economic Operators and Grant Applicants

- (1) Economic operators and grant applicants in relation with the Procuring Entity are required to act in a professional, objective and impartial manner in the mutual interest of the two parties.
- (2) Any attempt by an economic operator or grant applicant to obtain confidential information, enter into unlawful agreements with competitors or influence the members of the Evaluation Committee, the Procuring Entity or the SADC Secretariat's staff during the process of examining, clarifying, evaluating and comparing bids, applications or proposals will lead to the rejection of its candidacy, proposal, bid or application.
- (3) A contractor and its staff or any other economic operator or grant applicant associated or linked with the contractor shall not, even on an ancillary or subcontracting basis, bid or be allowed to provide services, goods or works if this will raise a conflict of interest as defined in the Article 9 of this Policy.
- (4) When submitting a bid or application, the economic operator, grant applicant or individual shall declare that (s)he is not affected by any potential conflict of interest, and has no relationship with other bidders, applicants, the Procuring Entity or the SADC Secretariat's staff or contractors involved in the same procurement process. Should such a situation arise during the performance of the contract, the contractor shall immediately inform the Procuring Entity.

- (5) Civil servants or other officials of the public administration of any SADC country, regardless of their administrative situation, shall not be engaged as experts by bidders, contractors or grantees and/or neither be employed as individual consultants by the Procuring Entity or the SADC Secretariat.
- (6) The contractor or grant beneficiary shall at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He may not commit or compromise the Procuring Entity or the SADC Secretariat in any way without its prior and written consent.
- (7) For the duration of the contract/grant agreement, the contractor/grant beneficiary and his staff shall respect human rights and not offend the political, cultural and religious morals of the beneficiary state. In particular, the contractor shall respect labour standards as defined in the relevant International Labour Organization conventions (such as the Conventions on freedom of association and collective bargaining; Elimination of forced and compulsory labour; and Abolition of child labour).
- (8) The contractor will not accept any payment connected to the contract other than that provided for therein. The contractor and its staff shall not exercise any activity or receive any advantage inconsistent with their obligations to the Procuring Entity or the SADC Secretariat as laid down in their contract with the organization.
- (9) The contractor and its staff are bound to maintain confidentiality for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the contractor during the performance of the contract are confidential and remain the property of the Procuring Entity.
- (10) The contractor shall refrain from any relationship likely to compromise his independence or of his staff. If the contractor ceases to be independent, the Procuring Entity or the SADC Secretariat may, regardless of any damage claims, terminate the contract without further notice and without the contractor having any right to claim for compensation.
- (11) All bidding documents and contracts for works, goods and services shall include a clause stipulating that bidders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses. Such unusual commercial expenses are:
 - (a) commissions not stated in the main contract or in the subcontracts stemming from the main contract;
 - (b) commissions not paid in return for any actual and legitimate service;
 - (c) commissions remitted to a tax haven;
 - (d) commissions paid to a recipient who is not clearly identified;
 - (e) commissions paid to a company having every appearance of being a “shell company”; or
 - (f) commissions paid for lobbyist services.
- (12) Upon request of the Procuring Entity, the SADC Secretariat or any other relevant national authority or investigator representing the Procuring Entity or the SADC Secretariat, the contractor or the grant beneficiary shall supply all supporting documents related to the conditions of the contract's or agreement's execution. The Procuring Entity or the SADC Secretariat may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected or unusual commercial expenses.
- (13) Contractors or grant beneficiaries found to have paid unusual commercial expenses on projects funded by the Procuring Entity or the SADC Secretariat are liable, depending on the seriousness of the facts observed, to have their contracts or grant agreements terminated or to be permanently excluded from participating in SADC Secretariat's future funding opportunities.

Article 11. Language

- (1) All the information pertaining to the procurement processes, including but not limited to SADC Procurement and Grants Policy and SADC Procurement and Grants Guidelines, procurement notices, solicitation documents, calls for proposals, procurement plans, etc, shall be advertised by the SADC Secretariat / Procuring Entity in all three official languages of the SADC Secretariat (i.e. English, French and Portuguese).
- (2) However, for practical reasons, the Procuring Entity will be allowed to conduct the procurement activities in only one of the three languages, widely used for commercial transaction in the host country.

Article 12. Form of communications

- (1) Subject to other provisions of this Policy, all communication between the Procuring Entity and Economic Operators or Grant Applicants shall be in written form, providing a record of the content of the communication (mail, email or facsimile).
- (2) When the communications between the Procuring Entity and the applicant(s), bidder(s), contractor(s) or grant beneficiary(ies) are, under exceptional circumstances held verbally, the summary of discussions of the meeting shall be recorded in minutes by the Procuring Entity, and a copy of the minutes made available to the applicant(s), bidder(s), contractor(s) or grant beneficiary(ies).
- (3) Whatever the means of communication are, the transmitting party shall be responsible for the confidentiality, completeness, integrity and timeliness of the data and the information being transmitted.

Article 13. Disclosure of procurement related information

- (1) The text of this Policy, SADC Procurement and Grants Guidelines and all administrative rulings and directives of general application in connection with procurement covered by this Policy, as well as all amendments thereof, shall be promptly made accessible to the public and systematically maintained.
- (2) The SADC Secretariat shall develop and maintain a dedicated web page to advertise all procurement opportunities as well as any subsequent solicitation documents related to these procurement opportunities, as specified in SADC Procurement and Grants Guidelines.
- (3) All procurement funding opportunities shall be advertised as specified in the SADC Procurement and Grants Guidelines.
- (4) With the exceptions specified in the paragraph (6) of this Article, all the notices, irrespective of the procurement method used or the value of the awarded contract or grant agreement, shall be also published on the SADC Secretariat website, as specified in the SADC Procurement and Grants Guidelines.
- (5) The period for which the procurement information referred to in paragraph (1), (2) and (3) above be made accessible to the public shall be minimum seven (7) years from the date of the final payment.
- (6) The disclosure referred to paragraphs (1) - (5) may be restricted in case of defence or security related procurement to the extent that such procurement is determined to be of a sensitive nature, in

accordance with the schedule of items eligible for such special treatment as set forth in SADC Procurement and Grants Guidelines.

Article 14. Procurement Planning

- (1) The Procuring Entity and/or The SADC Secretariat shall develop annual procurement plans, aligned to the business plans and the budget provision of the organization, with a view to achieving maximum value for expenditures and the other objectives set forth in this Policy.
- (2) The specific procedures, the role and responsibilities of various departments in the elaboration of the procurement plans shall be detailed in the SADC Procurement and Grants Guidelines.
- (3) The procurement plan shall present information about contracts and agreements SADC Secretariat expects to launch or sign in a fiscal year.
- (4) At minimum, the procurement plan shall contain the following information:
 - (a) a brief description of the contracts;
 - (b) the estimated value of the contracts;
 - (c) the category of procurement;
 - (d) the procurement method;
 - (e) number of lots;
 - (f) the main milestones in the procurement procedures and the estimated dates when they are expected to be attained;
 - (g) the estimated date when the contracts are expected to be signed; and
 - (h) the duration of the contracts.
- (5) The procurement plans shall be subject to annual review and be updated as and when required.
- (6) The Procuring Entity shall advertise a simplified version of the procurement plan on the SADC Secretariat's website.

Article 15. Rules concerning the description of goods, works or services

- (1) This Policy and SADC Procurement and Grants Guidelines shall regulate the procurement of goods, works, services and grants. The definition of each type of contract is stated in the glossary of terms.
- (2) Service contracts may be fee based or global price. Works contracts can be unit price or lump sum. Goods may be based on unit price. The definitions shall be found in the glossary of terms and shall be further developed in the Guidelines.
- (3) To the extent possible, any specifications, plans, drawings, designs and requirements or descriptions of goods, works or services shall be based only on the relevant and objective technical and quality characteristics of the goods, works or services to be procured. There shall be no requirement of, or reference to a particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, works or services to be procured and provided that words such as "or substantially equivalent" are included.

- (4) International standards shall be used, where available, for describing the features, requirements, symbols and terminology relating to the technical and quality characteristics of the goods, works or services to be procured, as well as in formulating specifications, making plans, drawings and designs to be included in the solicitation documents;
- (5) Due regard shall be given to the use of standardized trade terms (e.g. INCOTERMS), where available, in formulating the terms and conditions of contracts and other documents.

Article 16. Visibility

- (1) Unless otherwise requested or agreed by SADC Secretariat, all of its partners, whether contractors, grant beneficiaries or entities managing funds on behalf of the SADC, must ensure the visibility of SADC financing. If required, a communication plan must be submitted for approval of the Procuring Entity, according to the requirements and guidelines.

Article 17. Participation by economic operators and grant applicants

- (1) Unless they fall under the exceptions specified in the paragraph 2, economic operators and grant applicants are permitted to participate in procurement and grant process for award of SADC Secretariat's funds without regard to their nationality or form of association.
- (2) 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 9 and 10**.

Article 18. Eligibility and qualifications of economic operators and grant applicants

- (1) Notwithstanding **Article 17** of this Policy and unless otherwise specified in the solicitation documents, participation in the invitations to bid and in award of contracts shall be open on equal terms to:
 - (a) natural person, companies or firms, associations or public or semi -public agencies;
 - (b) cooperative societies and other legal entities governed by public or private law; and
 - (c) joint ventures, consortium or association of firms.
- (2) Economic operators or grant applicants shall not be eligible for the award of contracts or grant agreements when:
 - a) they are bankrupt;

- b) payments to them have been suspended in accordance with the judgment of a court of law and resulting in the total or partial loss of the right to administer and dispose of their property;
 - c) legal proceedings have been instituted against them, which may result, in a declaration of bankruptcy, suspension of payments, or the total or partial loss of the right to administer and dispose of their property as described in paragraphs (a) and (b) above;
 - 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 bid; and
 - f) they have been sanctioned by the SADC Secretariat pursuant to the **Article 24 paragraph (1) b** of this Policy;
- (3) The Procurement Entity may also restrict the award of a contract or grant agreement to economic operators or grant applicants that cannot demonstrate, to the satisfaction of the Procuring Entity that they have the legal, financial and technical capabilities required to successfully implement the contract or grant agreement. Such restrictions shall not be of a nature to unduly restrict the competition or favour certain economic operators and grant applicants. Conditions will be laid down in the bidding document, the prequalification documents or the guidelines for applicants.
- (4) To be eligible for participation in a tender or call and be awarded contracts or grant agreements, bidders and applicants shall provide evidence of their eligibility under this Policy, satisfactory to the Procuring Entity, and proof of compliance with the necessary legal, technical and financial requirements as well as of their capability, capacity and adequacy of resources to carry out the contract or the agreement effectively.

Article 19. 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.
- (2) In such cases, bidding documents shall clearly indicate the preference to be granted to domestic manufactured services, goods and works and the information required to establish the eligibility of a bid for such preference.
- (3) The nationality of the economic operator and grant applicant and their employees and consultants shall not be a condition for determination of such eligibility.
- (4) [...] Application of this Preference to procurement funded by a cooperating partner:
 - (a) This preference clause may not apply to procurement funded in whole by a cooperating partner, in which case, preference may be governed by the relevant binding cooperating policy instrument.
 - (b) In case of procurement funded in part by a cooperating partner preference shall be governed by the relevant policy instrument or criteria agreed upon following negotiations between SADC Secretariat and the cooperating partner.

- (c) In case the agreement with cooperating partner does not provide for application of specific procurement policy this preference shall apply.
- (5) The specific methodology for the application of the regional preference will be specified in the SADC Procurement and Grants Guidelines.

Article 20. Rules concerning documentary evidence provided by economic operators and grant applicants

- (1) If the Procuring Entity requires documentary evidence to be provided by economic operators and grant applicants to demonstrate their qualifications in a procurement process, the Procuring Entity shall not impose any other requirements other than those provided for in the laws of SADC Countries.

Article 21. Cancellation of procurement processes

- (1) The Procuring Entity may, before the contract is signed, abandon the procurement exercise and cancel the procurement procedure without the applicants or bidders being entitled to claim any compensation. If the procedure is divided into lots, a single lot may be cancelled. Cancellation may occur when:
 - (a) the bidding procedure has been unsuccessful, i.e. no qualitatively or financially worthwhile bids or applications have been received or there is no response at all;
 - (b) the economic or technical data for the contract have been fundamentally altered;
 - (c) exceptional circumstances or Force Majeure render the normal performance of the contract impossible;
 - (d) all technically compliant bids or applications substantially exceed the available financial resources;
 - (e) there have been noted flaws in the application of procurement procedures; or
 - (f) the financial allocation becomes unavailable.
- (2) If a procurement procedure is cancelled, all applicants or bidders shall be notified in writing of the reasons for the cancellation at the earliest time. Furthermore, a cancellation notice shall be published on the SADC Secretariat website with the reasons for cancellation.
- (3) Under no circumstances shall the Procuring Entity be liable for any damages whatsoever including, but without limitation, damages for loss of profits in any way connected with the cancellation of a procurement process. The publication of a procurement notice does not commit the Procuring Entity to award the contract or agreement announced or accept any application or bid received.

Article 22. Records of procurement process

- (1) The Procuring Entity shall maintain records of the procurement process containing, at a minimum, the following information:
 - (a) a brief description of the goods, works or services to be procured or grants awarded, or of the procurement need for which the Procuring Entity requested proposals or offers;
 - (b) the complete solicitation documents sent to the economic operators and grant applicants including the qualification, evaluation and award criteria and the approval of these documents by relevant authorities;
 - (c) the requests for clarification from or to the economical operators on the prequalification-, solicitation-, bidding documents and bids as well as the responses thereto, and any modification of those documents;
 - (d) the names and addresses of economic operators or grant applicants that submitted bids, proposals, applications, offers or quotations, the name and address of the economic operator or grant applicant with whom the procurement contract or grant agreement is entered into and the value of the contract or the agreement;
 - (e) information relative to the qualifications, or lack thereof, of economic operators or grant applicants that submitted bids, proposals, offers or quotations;
 - (f) the price, or the basis for determining the price, and a summary of other principal terms and conditions of each bid, proposal, offer or quotation as well as the contract;
 - (g) the records of the evaluation and comparison of bids, proposals, offers or quotations and the approval of these documents by the relevant authorities;
 - (h) if the procurement process is cancelled pursuant to **Article 21** of this Policy, a statement to that effect and the grounds therefore, in accordance with **Article 21 (2)** of this Policy;
 - (i) if, in procurement process involving methods of procurement other than bidding, those process did not result in a contract, a statement to that effect and the grounds thereof; and
 - (j) the information required by **Article 9**, if a bid, proposal, offer or quotation was rejected pursuant to that provision.
- (2) Subject to **Article 45** of this Policy, the portion of the records referred to in subparagraphs (a) to (c) of paragraph (1) of this article shall, on request, be made available to any person after a bid, proposal, offer or quotation, as the case may be, has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.
- (3) Subject to **Article 45** of this Policy, the portion of the record referred to in subparagraphs (a) to (k), of paragraph (1) of this article shall, on request, be made available to economic operators or grant applicant that submitted bids, proposals, applications, offers or quotations, or applied for prequalification, after a bid, proposal, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract. Disclosure of the portion of the record referred to in subparagraphs (a) to (g), may be ordered at an earlier stage by a competent court. However, except when ordered to do so by a competent court, and subject to the conditions of such an order, the Procuring Entity shall not disclose:
 - (a) information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition; and

- (b) information relating to the examination, evaluation and comparison of bids, proposals, offers or quotations, and bid, proposal, offer or quotation prices, other than the summary referred to in paragraph (1) (f).
- (4) The Procuring Entity shall not be liable to economic operators or grant applicants for damages owing solely to a failure to maintain a record of the procurement or granting proceedings in accordance with the present article.

Article 23. Review of the Procurement and Grants Policy

- (1) The SADC Secretariat may review regularly this Procurement and Grants Policy to adjust it to the evolving economic, political, social, cultural and technological environment in which the SADC Secretariat operates.
- (2) Any modification shall be subject to prior approval of the Council of Ministers.
- (3) No modification of this Policy shall apply retroactively.

Article 24. Sanctions

- (1) When an economic operator is found in one of the situations described in **Articles 9 and 10**, the SADC Secretariat and/or the Procuring Entity may take the following measures against the economic operator:
 - (a) reject his bid;
 - (b) declare the economic operator, including his affiliates, ineligible for the award of a SADC Secretariat contracts, either indefinitely or for a stated period of time as defined in SADC Procurement and Grants Guidelines;
 - (c) cancel or terminate any on-going contract with the contractor;
 - (d) request the relevant national authorities to conduct a joint investigation with the SADC Secretariat to inspect or carry out audits of the bidder's/contractor's records and financial statements in connection with the contract in question for which the operator is suspected 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 economical operator, under the contract in question or any other contract he might have with the organization, until the extent of damage caused by his engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the SADC Secretariat's contract are determined and recovered;
 - (g) sue the economic operator to recover the damages caused by his 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; and/or
 - (h) take any other measures contained in the contract.

Article 25. Record keeping

- (1) Contractors shall keep record, supporting documents, reports and other records for seven years following the payment of the final balance.
- (2) Record pertaining to audits, appeals, litigation or the pursuit of claims arising out of the performance of a project shall be retained till such audits, appeals, litigation or claims have been disposed of.
- (3) All records referring to Procurement activities shall be kept according to the SADC Secretariat Records Management Policy.

PART TWO - PROCUREMENT

CHAPTER I. METHODS OF PROCUREMENT AND CONDITIONS FOR USE

Article 26. Methods of procurement and thresholds

- (1) The Procuring Entity shall engage in procurement of services, goods or works only by means of procurement methods pursuant to **Articles 27, 28, 29, 30, 32 and 33** of this Policy.
- (2) Unless duly justified by specific circumstances, the competitive procurement methods described in the **Articles 27 and 28** of this Policy shall be the preferred methods used for the award of the SADC Secretariat's financed procurement contracts.
- (3) The thresholds for application of each method shall be defined in the SADC Procurement and Grants Guidelines. The Executive Secretary or the person/s with delegated powers may grant derogations to methods/thresholds. These derogations will be justified and made on a case-by-case basis.
- (4) The detailed description on how the methods are implemented shall be indicated in the SADC Procurement and Grants Guidelines.
- (5) Subject to the approval of the Executive Secretary, the application of these methods may be waived in the case of defence or security-related procurement to the extent that such procurement is determined to be of a sensitive nature, in accordance with the schedule of items eligible for such special treatment set forth in SADC Procurement and Grants Guidelines.

Article 27. Open Bidding

- (1) This shall be the preferred method to be used for procurement of goods and works.
- (2) The open procedure involves an open invitation to submit a bid in a competitive bidding process to all interested economic operators.
- (3) Under the open bidding procedure, any economic operator wishing to bid for the advertised contract receives, upon request, the Bidding Documents (which may have to be paid for), in accordance with the procedures laid down in the procurement notice. No short listing or other form of pre-selection shall be conducted in the application of this method.
- (4) An economic operator and his 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 natural person or legal entity (i.e.: companies, firms, associations, etc) or group thereof in which the economic operator or any of the major shareholders of the economic operator owns at least twenty percent (20%) of the shares or the share capital. For the same purpose, major shareholder shall be defined as: any legal or physical person who owns no less than twenty percent (20%) of the shares or the share capital of the economic operator. If an economic operator deliberately or inadvertently submits more than one application per contract, he shall be automatically disqualified from any SADC Secretariat procurement processes for a period indicated in the SADC Procurement and Grants Guidelines.
- (5) All bids received are examined by conducting a comparison of technical and financial proposal against the evaluation and award criteria.

- (6) For the bid recommended to be awarded the contract, an additional assessment of the bidder compliance with the post qualification criteria shall be conducted.
- (7) The contract shall be awarded to the bidder whose bid, after the application of the evaluation and award criteria, was recommended for the award of the contract, if it satisfies the post qualification criteria.
- (8) The open bidding shall have the following methods for application:
 - a) **International Open Bidding:** The method shall be applied for the procurement of large and/or complex goods and works. The application of the method shall follow the requirements stated in the paragraph (1) to (6) of this Article. Under this method the invitation must be announced internationally.
 - b) **Regional Open Bidding:** The method shall be applied for procurement, goods and works of smaller values (threshold to be set in the SADC Procurement and Grants Guidelines). Under this method, the invitation must be announced regionally (SADC countries).
 - c) **Local Open Bidding:** The method shall be applied for procurement of goods and works of small value (threshold to be set in the SADC Procurement and Grants Guidelines). Under this method, the invitation must be announced locally (in the country where the contract will be implemented).

Article 28. Restricted Bidding

- (1) This is a two-step competitive procurement procedure through a pre selection (short listing).
- (2) In a restricted procedure, all economic operators are allowed to take part in the first step but only applicants satisfying the eligibility and qualification criteria are invited to submit a bid.
- (3) Under the restricted procedure, the first stage of the procedures is the prequalification. During prequalification, the Procuring Entity issues an Invitation for Prequalification, open to all interested economic operators. The Invitation for Prequalification shall indicate the eligibility and qualification criteria to be mandatorily fulfilled by an economic operator in order to be shortlisted for participating in the bidding procedure. The purpose of the prequalification is to draw up a shortlist of applicants based on compliance of the bidders with the evaluation and qualification criteria, before launching the bidding procedure. The selection procedure, where the long list (all applicants expressing interest) is reduced to a shortlist, consists in examining the responses to the requirements established in the prequalification documents.
- (4) An economic operator and its affiliates, shall submit only one application for the same contract on its own or as member of a joint venture/consortium. For this purpose affiliates are defined as: any legal entity (i.e.: the group of companies, firms, associations, etc) where the economic operator or any of the major shareholders in the economic operator owns at least twenty per cent (20%) of the shares or the share capital. For the same purpose, major shareholder shall be defined as: any legal or physical person who 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 SADC Secretariat procurement processes for a period indicated in the SADC Procurement and Grants Guidelines. A successful prequalification entails that three (3) to six (6) economic operators are shortlisted. Should the minimum number of qualified economic operators not be attained; the prequalification process shall be declared unsuccessful and cancelled.
- (5) The prequalification process shall be re-launched only after the conditions leading to the failure of the previous prequalification have been identified and corrected.

- (6) In the second stage of the restricted procedure, the Procuring Entity sends the shortlisted applicants the Invitation to Bid and the Bidding Documents, free of charge.
- (7) In order to ensure fair competition, bids shall be submitted by the same economic operator or consortium shortlisted. No change whatsoever in the identity or composition of the bidder shall be permitted unless the Procuring Entity has given its prior approval in writing. A situation where such approval could be given is e.g. where a merger has taken place between a shortlisted applicant/member of a consortium with another company and where the new company is found to meet the eligibility and qualification criteria and does not raise any conflict of interest or unfair competition. Once the bids have been evaluated, the successful bidder is selected by applying the evaluation and award criteria stated in the bidding document.
- (8) The restricted bidding procedure shall have the following methods for applications:
 - d) **International Restricted Bidding:** The method shall be applied for the procurement of complex services. The application of the method shall follow the requirements stated in the paragraph (1) to (6) of this Article. Under this method the pre qualification must be announced internationally.
 - e) **Regional Restricted Bidding:** The method shall be applied for procurement of services of smaller values (threshold to be set in the SADC Procurement and Grants Guidelines). Under this method, the prequalification must be announced regionally (SADC countries).
 - f) **Local Restricted Bidding:** The method shall be applied for procurement of services, of small value (threshold to be set in the SADC Procurement and Grants Guidelines). Under this method, the prequalification must be announced locally (in the country where the contract will be implemented).

Article 29. Limited Bidding

- (1) The Limited Bidding method is essentially the Restricted Bidding method with the exception that the shortlist is established by the Procuring Entity without prequalification or open advertisement.
- (2) Under this method, the Procuring Entity restricts the issue of bidding documents to a limited number of specified economic operators when:
 - a) the goods, works, or services required are of a specialised nature or can only be obtained from a limited number of specialised economic operators or reputable sources, all of whom are known to the Procuring Entity; or
 - b) the time and cost of considering a large number of bids is disproportionate to the value of the procurement; or
 - c) there is an urgent need for the goods, works or services so that there would be insufficient time for the Procuring Entity to engage in open bidding, provided that the circumstances giving rise to the urgency could not have been foreseen by the Procuring Entity and have not been caused by dilatory conduct on its part.
 - d) It falls within the thresholds established for it in the SADC Procurement and Grants Guidelines.
- (3) This method shall only be deployed with prior approval of the Tender Committee (unless it falls within the thresholds established for it in the SADC Procurement and Grants Guidelines) and if it has been fully demonstrated that any of the conditions as laid out in section 1 (a) to (c) of this article have been met.

- (4) Under this method, the shortlist shall consist of a minimum of three (3) economic operators and the Procuring Entity shall receive at least two (2) bids/quotations/proposals. The Procuring Entity must justify the choice of the economic operators invited to participate.
- (5) The lowest evaluated substantially responsive bid i.e. the bid complying with all criteria stated in the bidding document shall be subjected to post qualification prior to contract award

Article 30. Negotiated Procedure

- (1) In the case of particularly complex contracts, where the Procuring Entity considers that neither direct use of the open procedure nor the arrangements governing the restricted procedure will result in the best value for money, it may use the Negotiated Procedure as outlined under Article 5(a) and (b).
- (2) A contract is considered to be 'particularly complex' if the Procuring Entity is objectively unable either to specify the technical means of satisfying its needs or objectives or to specify the legal or financial makeup of the project.
- (3) This method shall only be deployed with prior approval of the Tender Committee.
- (4) The Negotiated Procedure method is a procurement method that allows the Procuring Entity to negotiate with a minimum of two bidders, the technical, financial and commercial conditions of a contract.
- (5) The Negotiated Procedure has two methods of application as follow:
 - (a) **Negotiated Procedure with Publication.** This method entails that the Procuring Entity launches an open invitation to all interested economic operators to participate in a two stages bidding process. During the first stage, the interested economic operators are invited to submit technical proposals on the basis of a conceptual/preliminary design or performance specifications. Upon review of the first stage proposals, the Procuring Entity will invite bidders to negotiate improved technical proposal, discuss commercial conditions of the contract and provide any other clarification as necessary. Subject to specific request for improvement of their proposals as well as general amendments of the bidding documents, the bidders will be further invited to the second stage of the procedure, to submit final technical and financial proposals. Following the second stage evaluation, the Procurement Entity shall invite the successful bidder to negotiate the contract.
 - (b) **Negotiated Procedure without Publication.** This method entails that the Procuring Entity invite a minimum of one potential economic operator 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.
- (6) The Negotiated 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.
- (7) Unless the tender falls within the thresholds contemplated for it in SADC Procurement and Grants Guidelines, the Negotiated Procedure without Publication shall be used only in the following situations:

- (a) 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 prevents an open completion;
 - (b) 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;
 - (c) 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;
 - (d) for goods and services which due to safety and security reason can only be procured for a limited reputable sources (e.g.: drugs and medicines, financial services, legal services, medical services, etc) 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;
 - (e) for reasons of urgency, need or emergency or the nature of the tender, the Executive Secretary or the person delegated decides to follow this procedure;
 - (f) where the time and cost of considering a large number of tenders is disproportionate to the value of the procurement; and
 - (g) where SADC Procurement and Grants Guidelines allow the procuring entity to pursue this procedure under certain thresholds, in which case the Negotiated Procedure is not an exceptional procedure and can be applied by the procuring entity without any special authorisation.
- (8) Unless the tender falls within the thresholds contemplated for it in SADC Procurement and Grants Guidelines, the method shall only be deployed with prior approval of the relevant Tender Committee and if it has been fully demonstrated that the conditions for application of these methods have been met.

Article 31. Single Source procedure

- (1) This is an exceptional non-competitive procurement method that can only be used under the following conditions, irrespective of the estimated value of the contract:
- a) where, for reasons of exceptional circumstances that the Procuring Entity could not have foreseen and that can in no way be attributed to them, the time limits for the competitive procedures cannot be met. The circumstances invoked to justify extreme urgency shall in no way be attributable to the any department or staff of The Procuring Entity. For purposes of this clause, exceptional circumstances situations shall be one of the following situations:-
 - i) Where there is likely to be injury or loss of life;
 - ii) Where there is likely to be damage to property; or

- iii) Where there is a situation arising from “Force Majeure”.
- b) where, for technical reasons, or reasons involving the protection of exclusive rights/proprietary goods, services, the contract can be awarded only to a particular economic operator;
- c) where, pursuant to **Article 52**, existing contracts are amended for:
 - (i) complementary services not included in the main contract but which, due to unforeseen circumstances, have become necessary to perform the contract, provided that the complementary services are technically and economically inseparable from the main contract, without bringing serious inconveniences for the Procuring Entity additional services consisting of the repetition of similar services entrusted to the contractor furnishing the services under the initial contract, provided that a procurement notice has been published for the initial contract and that the possibility of using the negotiated procedure for further services for the project as well as the estimated cost, were clearly indicated in the Bidding Documents or the Terms of Reference for the initial contract.
 - (ii) additional deliveries by the original contractor intended either as a partial replacement of normal goods or installations or as the extension of existing contracts for goods or works, where a change of contractor would oblige the Procuring Entity to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance.
 - (iii) additional works not included in the initial contract which due to unforeseen circumstances, became necessary for carrying out the works described therein and have been awarded to the contractor already carrying out the work: a) where such works cannot be technically or economically separated from the main contract without serious inconvenience to the beneficiary; and b) where such works, although separable from the performance of the original contract, are strictly necessary to its completion.
- g) where, under low value, i.e. transactions under 2.000 USD according to SADC Secretariat financial rules. bellow 2,000.00 USD.
- (2) Slicing of larger contracts is not allowed. Particular attention is required to planning procurement in order to have as little as possible uses of this procedure.
- (3) Prior approval by the Executive Secretary is required for every case the procedure is to be used, as per SADC Procurement and Grants Guidelines.

Article 32. Selection of Individual Consultants

- (1) Individual Consultants are employed on assignments where:
 - a. teams of experts are not required,
 - b. there is no in-house competence and experience to carry out the assignment,

- c. the experience and professional qualifications of the individual are the main requirement,
 - d. there is no sufficient in-house expertise
- (2) Individual Consultants are not allowed to subcontract to any other Economic Operators in carrying out the assignments.
- (3) The Procuring Entity shall not misuse this method of selection for an assignment normally carried out through an employment contract. Similarly, the method shall not be used for artificially splitting a consulting service assignment.
- (4) 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.
- (5) The selection of individual consultants shall have the following methods for applications:

a. Open Competitive Selection of Individual Consultants

Advertisement through REoIs is encouraged, particularly when the Procuring entity does not have knowledge of experienced and qualified individuals, or of their availability, the services are complex, there is potential benefit from wider advertising, or advertising is mandatory under national law.

REoIs shall include complete TOR. Individual Consultants are selected from those that expressed interest in response to a REoI.

b. Limited Competitive Selection of Individual Consultants

When the Procuring entity has knowledge of experienced and qualified individuals and their availability, instead of issuing a REoI, it may invite those individual Consultants that it deems qualified to provide the required Consulting Services. The complete TOR shall be sent with the invitation.

Individual Consultants shall be selected from those that expressed interest in response to the invitation.

The method shall be used with prior approval of the Accounting Officer, following the advice of the Tender Committee, as per thresholds defined in SADC Procurement and Grants Guidelines.

c. Direct Selection of Individual Consultants

Individual Consultants may be selected on direct selection basis, with due justifications, under the following circumstances:

- i. tasks that are a continuation of previous work that the individual Consultant has carried out after being selected competitively, subject to provisions of point 4 of this same Article;
- ii. assignments with a total expected duration of less than six months;
- iii. situations of unforeseeable urgency; or
- iv. when an individual Consultant has relevant experience and qualifications of exceptional worth to the assignment.

The method shall be used with prior approval of the Accounting Officer, following the advice of the Tender Committee, as per thresholds defined in SADC Procurement and Grants Guidelines.

- (6) [The evaluation criteria applicable to Individual Consultants shall be based on scoring methodology taking into account both quality and costs, as defined in SADC Procurement and Grants Guidelines.](#)
- (7) Only natural persons/individuals are eligible to submit application under this procurement method.

Article 33. Procurement procedure under Multiple Framework Contracts

- (1) Procurement under the Multiple Framework Agreements is a simplified two-stage competitive procurement procedure to be used for the acquisition of services, goods or works, required by the Procuring Entity on a recurrent basis.
- (2) A Multiple Framework Agreements are agreements between the Contracting Authority and several contractors, with the purpose to establish the terms governing specific contracts which may be awarded during a given period. The terms and conditions of the agreement are mainly related to the duration, subject, price, implementation rules, quantities, delivery time, scope of services and payment rules.
- (3) The Multiple Framework Agreement takes the form of separate agreements with a number of economic operators but concluded in identical terms, specifically: the same general conditions, terms of delivery, type of services, goods or works to be delivered possibly the maximum cumulative contract value.
- (4) Multiple Framework Agreements are a modality that gives the Procuring Entity transparent, competitive and efficient way of mobilisation of resources and achieving best value for money.
- (5) The duration of such agreements shall be two (2) calendar years, and may be extended up to four (4) calendar years, subject to well-documented assessment of performance of the contractors one year after the signature of the contracts.
- (6) For a multiple framework agreement to be valid, there must be a minimum of three Economic Operators within the agreement.
- (7) The value of the each Multiple Framework Contract shall be determined based on the estimated annual value of specific group of recurrent services, goods and works needed by the organization as reflected in the specific annual budgetary allocation.
- (8) In a multiple framework contract, the contract will be awarded to a minimum of three and a maximum of 5 framework contractors, who will be invited to participate every time the Contracting Authority has a need covered by the contract. The framework contractors invited to submit offers will do so through a simple procedure and the Procuring Entity will award the contract to the best bidder, as per SADC Procurement and Grants Guidelines. The Procuring entity may, depending on the framework agreed, either invite all the framework contractors to submit an offer or randomly pick a minimum of three.
- (9) Only in exceptional justified cases the Procuring Entity may award a framework contract to less than three entities.
- (10) In case of extension of the Multiple Framework Agreement, the aggregated total sum of the awarded Multiple Framework Contracts shall not exceed double the original ceiling amount of the agreement.

Article 34. Procurement procedure under Single Framework Contracts

- (1) The principle is the same as for Multiple Framework Contracts but only one contract is awarded to the best bidder according to award criteria previously established.
- (2) This type of contract is used when the specifications are well defined and will not change for the duration of the contract.
- (3) The aggregated total sum of the awarded Single Framework Contract shall not exceed double the original amount in case of an extension.

CHAPTER II. PROCUREMENT PROCEEDINGS

SECTION I. BIDDING PROCEEDINGS

Article 35. Publication

- a. The Procuring entity shall advertise all the contracts by appropriate means respecting the principles of transparency and open competition. Procurement notices must be advertised in advance. A decision to award a contract must be advertised before contracting.
- b. The publication may be international, regional or local depending on the procurement method and the thresholds established in the SADC Procurement and Grants Guidelines.
- c. The SADC Procurement and Grants Guidelines will specify the publication requisites.

Article 36. Invitation to bid and access to bidding documents

- (1) When the open procedure is used, all interested economic operators shall have unrestricted access to the bidding documents.
- (2) In the case of restricted bidding, only the shortlisted economic operators are entitled to receive the bidding documents.
- (3) As in paragraph (2), when the shortlisted economic operator is a joint venture or consortium, the composition of the joint venture or consortium shall not be changed after prequalification or during the implementation of the contract awarded to the joint venture or consortium without prior approval of the Procuring Entity.
- (4) The Procuring Entity may approve the change in the composition of the joint venture or consortium composition only if the modification:
 - (a) is supported by solid and objective arguments;
 - (b) does not alter the competition;
 - (c) is not generating a conflict; and
 - (d) is not invalidating the criteria and conditions in place when the joint venture or consortium was prequalified or awarded the contract.

- (5) The invitation to bid shall contain, at a minimum, the following information:
 - (a) the name and address of the Procuring Entity;
 - (b) the nature, the location and main requirements for the services to be provided; the nature, quantity, and place of delivery of the goods to be supplied, or the nature and location of the works to be executed;
 - (c) the procurement method used and a reference to the applicable procurement policies and rules;
 - (d) the means of obtaining the Biding documents and the place from which they may be obtained;
 - (e) the place, deadline and procedures for the submission of bids;
 - (f) the amount of bid security, if required; and
 - (g) details of how further information or clarifications can be obtained.
- (6) As far as possible the bidding documents shall be distributed to economic operators in electronic version, pdf format, free of charge. However, in the situation when electronic version is not a recommended means of distribution, and when the cost of reproduction and distribution of the bidding documents is high, the Procuring Entity may ask the economic operators to pay for having access to the hard copy of the bidding documents. In such case, the price that the Procuring Entity may charge for the bidding documents shall reflect only the cost of printing them and delivering them to the economic operators.
- (7) When bid documents are distributed in hard copies, all economic operators who choose to be sent the documents may be charged the cost of making the documents available to them.

Article 37. Contents of bidding documents

- (1) The bidding documents shall include, but not limited to, the following information:
 - (a) the Invitation to bid;
 - (b) instructions to bidders for preparing the bid including the standard forms which the bidder needs to fill out;
 - (c) instruction to bidders explaining the evaluation processes, the evaluation and award criteria;
 - (d) the detailed description of the technical requirements (in the form of Technical Specifications or Terms of References);
 - (e) the General and Specific Conditions of Contract; and
 - (f) the draft contract (including the contract annexes).

Article 38. Evaluation and award criteria

- (1) Evaluation criteria are meant to determine the compliance of the services, goods and works offered by the bidders with the Procuring Entity's requirements stated in the Terms of References or Technical Specifications.
- (2) Award criteria shall describe the methodology which will establish the successful bid among those complying with the evaluation criteria. Usually there are two types of award criteria as follows:

- (a) price, in this case the contract is awarded to the bidder which, while satisfying the eligibility, qualification and evaluation criteria, quotes the lowest price, applied to goods and works; and
 - (b) quality and cost (i.e. the most economically advantageous bid). This award criterion entails that the successful bid is determined by applying a formula including the evaluation points and the offered price, applied to services.
- (3) When defining the evaluation and award criteria, the Procuring Entity shall ensure that the evaluation and award criteria are precise, non discriminatory and not prejudicial to fair competition.
 - (4) The evaluation and award criteria shall not be changed during the evaluation process.

Article 39. Technical requirements

- (1) The technical requirements shall be set in the Technical Specifications (for goods and works) and in the Terms of References (for services). These documents shall set out the requirements and/or objectives in respect of services, supplies or works, specifying, where relevant, the methods and resources to be used and/or results to be achieved.
- (2) Precise and clear Technical Specifications or Terms of Reference are prerequisite for bidders to respond realistically and competitively to the requirements. Hence, technical requirements or Terms of Reference shall provide all the necessary information to allow a bidder to easily identify all the Procuring Entity's needs and determine the cost of such needs.
- (3) The economy, efficiency and fairness in procurement processes shall always be considered when drafting the technical requirements.
- (4) Unless the negotiated procedure is used, the technical requirements shall be prepared to permit the widest possible competition, but at the same time, make a clear statement of the required standards of workmanship to be provided, standards of supplies and/or performance of the services or works to be procured.
- (5) For goods and works, the technical requirements shall indicate that all supplies be new, unused, and of the most recent or current models, and they have to incorporate all recent improvements in design and materials. Any reference to brand names, catalogue numbers or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words "or substantially equivalent".

Article 40. Clarifications and modifications of bidding documents

- (1) An economic operator may request a clarification of the bidding documents from the Procuring Entity. The Procuring Entity shall respond to any request for clarification prior to the deadline for the submission of applications. The Procuring Entity shall respond within a reasonable time so as to enable the economic operators to make a timely submission of their bid and shall, without identifying the source of the request, communicate the clarification to all economic operators to which the Procuring Entity has provided the bidding documents. Procedure and deadlines will be detailed in the SADC Procurement and Grants Guidelines.
- (2) At any time prior to the deadline for submission of bids, the Procuring Entity may, for any reason, whether on its own initiative or as a result of a request for clarification by an economic operator, modify the bidding documents by issuing an addendum. The addendum shall be communicated

promptly to all shortlisted economic operators to which the Procuring Entity has provided the solicitation documents and shall be binding on those economic operators. For Open Bidding the addenda will be published on the SADC website, as per SADC Procurement and Grants Guidelines.

- (3) If the Procuring Entity convenes a pre-bid meeting or site visit for economic operators, it shall prepare minutes containing the questions submitted at the meeting or site visit, and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all economic operators to which the Procuring Entity provided the bidding documents, so as to enable them to take the minutes into account in preparing their bids.
- (4) The cost and expenses related to attending pre-bid meetings and/or site visits shall be borne by the economic operator.

Article 41. Submission of bids

- (1) The Procuring Entity shall fix the place, and the deadline (date and time), for submission of the bids.
- (2) If, pursuant to **Article 42** of this Policy, the Procuring Entity issues a clarification or modification of the bidding documents, or if a meeting of economic operators is held, it shall, prior to the deadline for the submission of bids, extend the deadline if necessary to afford economic operators reasonable time to take the clarifications, modification or the minutes of the meeting, into account in their bids.
- (3) The Procuring Entity may, in its absolute discretion, prior to the deadline for the submission of bids, extend the deadline if it is not possible for one or more economic operators to submit their bids by the deadline and submit a request for such an extension.
- (4) Notice of any extension of the deadline shall be given prior to the deadline for submission of bids to each economic operator to which the Procuring Entity provided the solicitation documents, according to deadline in SADC Procurement and Grants Guidelines. When Open Bidding procedure is used the notice must be published on SADC website.
- (5)
 - (a) Subject to subparagraph (b) and (c), a bid shall be submitted in writing, signed and in sealed envelopes.
 - (b) When quality and cost award criteria are applied, the Procuring Entity shall employ the principle of double envelop system, whereby the technical proposal shall be separated from the financial proposal.
 - (c) Without prejudice to the rights of an economic operator to submit a bid in the form referred to in subparagraph (a) bids may be submitted, only in exceptional cases and if stated in the bidding documents, by e-mail or fax.
 - (d) The Procuring Entity shall provide the economic operator with a receipt showing the date and time when the bid was received.
- (6) A bid received by the Procuring Entity after the deadline for the submission of bids shall not be opened and shall be returned to the economic operator that submitted it. Similarly, pursuant to paragraph (5) (b) of this Article, unopened financial proposals shall be returned to the bidders who did not qualify following the technical evaluation.

Article 42. Validity period; modification and withdrawal of bids

- (1) Bids shall be valid for the period of time specified in the bidding documents.
- (2)
 - (a) Prior to the expiry of the validity period of the bids, the Procuring Entity may request bidders to extend it for an additional specified period of time. A bidder may refuse the request without forfeiting the bid security. In that case the validity period of the bid will terminate upon the expiry of the un-extended validity period.
 - (b) Bidders who agree to an extension of the validity period of their bids shall submit proof of the extension of the bid security or provide new bid securities to cover the extended validity. A bidder whose bid security is not extended, or has not provided a new bid security, is considered to have refused the request to extend the validity period of his bid.
- (3) An economic operator may modify or withdraw his bid prior to the deadline for the submission of bids without forfeiting his bid security. The modification or notice of withdrawal is effective if it is received by the Procuring Entity prior to the deadline for the submission of bids.

Article 43. Bid securities

- (1) When the Procuring Entity requires economic operators submitting bids, to provide a bid security:
 - (a) The requirement shall apply to all economic operators for the bid in question;
 - (b) 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;
 - (c) 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;
 - (d) 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;
 - (e) 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;
 - (f) 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;
 - (g) 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:
 - (i) withdrawal or modification of the bid after the deadline for submission of bids,
 - (ii) failure to sign the procurement contract if required by the Procuring Entity to do so; and

- (iii) failure to provide a required security for the performance of the contract after the bid has been accepted or to comply with any other condition specified in the bidding documents, precedent to signing the procurement contract.
- (2) 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.

Article 44. Opening of bids

- (1) Bids shall be opened at the time specified in the bidding, or, at the deadline specified in any extension of the deadline. They shall be opened at the place and in accordance with the procedures specified in the bidding documents.
- (2) All economic operators that have submitted bids, or their representatives and/or general public, shall be permitted to be present at the opening of bids.
- (3) When open procedures are used, the name and address of each economic operator whose bid is opened as well as the bid price shall be announced to those present at the opening of bids and communicated upon request to economic operators that have submitted bids but were not present or represented at the opening of bids. A Bid Opening Report, in the format determined in SADC Procurement and Grants Guidelines, will be made during the Bid Opening session and signed by the Evaluation Committee. Attendees at the public openings will sign the attendance list, which becomes an annex to the opening report.

Article 45. Examination, evaluation and comparison of bids

- (1) The evaluation of bids or proposals shall be conducted by an officially appointed Evaluation Committee which shall have the required competences to give an informed opinion on submitted bids.
- (2) The Evaluation Committee shall consist of minimum three voting members, of which one is the Chairperson. The number of members shall always be an odd number. The committee will be presided by a Chairperson appointed by the Procuring Entity. The Chairperson will be the only authorised representative of the Evaluation Committee entitled to communicate with third parties in relation with the decisions of the Evaluation Committee.
- (3) The Secretary of the Evaluation Committee shall be a procurement expert from the Procuring Entity and shall have the responsibility to take record of meetings and provide technical guidance to the members of the Evaluation Committee on matters relating to this Policy and SADC Procurement and Grants Guidelines while the voting members are entrusted with the responsibility of evaluating the bids.
- (4) The Evaluation Committee shall be independent and impartial. All members of the Evaluation Committee shall be individually and collectively responsible for observing the principles of this Policy and SADC Procurement and Grants Guidelines.

- (5) The members of the Evaluation Committee shall sign a statement of impartiality and confidentiality acknowledging that they are not in a conflict of interest position and will not disclose any information to economic operators or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bids should be accepted, except as provided in **Article 12** of this Policy.
- (6) The Procuring Entity may appoint Observers to the Evaluation Committee, to observe the way the evaluation proceedings are conducted. The Observers shall be subject to the same obligation about confidentiality as the members of the Evaluation Committee and shall be forbidden to interfere in the evaluation process and shall not have voting rights.
- (7) In case none of the members of the Evaluation Committee have sufficient knowledge to evaluate certain aspects of a bid, they can invite external expert to guide them. This shall not relive any member of the Evaluation Committee from the responsibility of the evaluation. During the evaluation process, the Procuring Entity, at the request of Evaluation Committee may ask economic operators for clarifications of their bids in order to assist in the examination, evaluation and comparison of bids. No change in a matter of substance in the bid, including changes in price and changes aimed at making an invalid bid valid, shall be sought, offered or permitted;
- (8) Notwithstanding subparagraph (7) above, the Procuring Entity, at the Evaluation Committee's recommendation, shall correct purely arithmetical errors that are discovered during the examination of bids. The Procuring Entity shall give prompt notice of any such correction to the economic operator that submitted the bid, for concurrence and acceptance or about any other corrections and/or clarifications resulting from the correspondence with the bidder during the tendering process.
- (9) Subject to paragraph (11) below, the Procuring Entity may regard a bid as valid only if it complies with all requirements set forth in the bidding documents.
- (10) The Evaluation Committee may regard a bid as valid even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bidding documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the bid. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of, in the evaluation and comparison of bids.
- (11) The Procuring Entity shall not accept a bid if the economic operator that submitted the bid does not accept a correction of an arithmetical error made pursuant to paragraph (8) of this Article or any other corrections and/or clarifications which have been specified in the Procurement Entity notice of acceptance of the bid. The Evaluation Committee shall evaluate and compare the bids that have been accepted in order to determine the successful bid as defined in paragraph (9) of this Article. The evaluation process shall be conducted in accordance with the procedures and criteria set forth in the bidding documents. No other criteria than those stated in the bidding documents shall be used.
- (12) A bid shall be considered successful only if it is has been determined to be:
 - (a) valid in terms of the specific evaluation criteria set forth in the bidding documents;
 - (b) having the lowest evaluated bid price or, in case of Quality and Cost Based Selection (for Consultancy contracts), having the highest combined score; and
 - (c) conforms with the qualification criteria set forth in the bidding documents or pre-qualification document, as appropriate.
- (13) The successful bidder shall not be allowed or asked to change its bid or required to accept new conditions during evaluation or as a condition of award except those specified in the paragraph 8 above.

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

Article 46. Prohibition of negotiations with bidders

- (1) No negotiation between Procuring Entity and the bidders/applicants shall be permitted prior to issuance of the notice of acceptance of bid, unless the procurement is conducted in accordance with the procurement methods described in the **Article 30** and **31** of this Policy.
- (2) The provision of this article shall not prevent Procuring Entity from inviting the successful bidder to agree on the final format of the contract including any correction of an arithmetical error made or any other corrections and/or clarifications which have been specified in the Procurement Entity notice of acceptance pursuant **Article 44 paragraph (8)** of this Policy.

Article 47. Acceptance of bid and entry into force of the contract

- (1) Subject to **Articles 18, 20** and **43** of this Policy, the bid that has been determined to be the successful bid pursuant to **Article 45 (12)** of this Policy shall be accepted. Notice of acceptance of the bid shall be given to the economic operator who submitted the successful bid.
- (2) The Procuring Entity shall, before issuing the Notice of acceptance of the successful bid, issue a notice of intention to award the contract to all tenderers who participated in the tender in question by giving them ten (10) working days within which to submit a complaint, if any.
- (3) The notice in paragraph two (2) of this Article shall contain the name of successful bidder, contract sum, and completion or delivery period.
- (4) The requirement in paragraph two (2) above shall not apply to:
 - (a) cases of emergency procurement if circumstances do not allow issuance of notice of intention to award the contract; and
 - (b) Small procurement transactions where no written contract is required.
- (5) Upon receipt of a complaint from an economic operator served with the notice of intention to award contract in paragraph two (2) the Executive Secretary shall proceed to determine the matter in accordance with **Article 49** and notification of award decision shall be issued after the decision of the Executive Secretary.
- (6) If there is no complaint from any of the economic operators notified in pursuant to paragraph two (2) the Procurement Entity shall issue a notice of acceptance of bid in line with paragraph one (1) of this article.
- (7) Between the time when the notice of acceptance of bid referred to in paragraph one (1) of this article is dispatched to the economic operator and the entry into force of the procurement contract, subject to paragraph five (5) of this article, neither Procuring Entity nor the economic operator shall take any action that interferes with the entry into force of the procurement contract or with its performance.

- (8) The economic operator whose bid has been determined successful will enter into a contract with the Contracting Authority according to the content of the tender. Unless otherwise provided in the Special Conditions, the contract will enter into force when signed by the last of the parties.
- (9) If the economic operator whose bid has been accepted fails to sign a written contract, if required to do so, or fails to provide any required security for the performance of the contract, the Procuring Entity shall forfeit the bid security (if any) and select the second listed successful bid in accordance with **Article 45 (12)** of this Policy from the remaining bids, subject to the right of the Procuring Entity.
- (10) In small transactions where no written contract is required, the contract will enter into force once the Contracting Authority duly dispatch Purchase Order for the services, goods and works to the economic operator who submitted a bid provided the dispatch is done within bid's validity period.

SECTION II. PREQUALIFICATION PROCEEDINGS

Article 48. Prequalification Processes

- (1) Prior to the invitation to bid, request for proposals or offers, the Procuring Entity may engage in prequalification processes with the purpose to identify, economic operators that are eligible and qualified. The provisions of **Article 18** of this Policy shall apply to prequalification proceedings.
- (2) If the Procuring Entity engages in prequalification processes, it shall provide a set of prequalification documents to each economic operator that requests them in accordance with the invitation to prequalify.
- (3) The Procuring Entity shall solicit applications to prequalify by publishing an invitation to prequalify on the SADC Secretariat website.
- (4) The prequalification documents shall include, at a minimum the following information:
 - (a) instructions for preparing the application, including the standard forms which the applicant needs to fill out;
 - (b) the criteria and procedures, in conformity with the provisions of **Article 18** of this Policy, relative to the evaluation of the eligibility and qualifications of economic operators
 - (c) the requirements regarding all documentary evidence or other information that needs to be submitted to demonstrate eligibility and qualifications;
 - (d) a brief description of the scope of the contract;
 - (e) the language, in which application shall be prepared;
 - (f) the way, place and deadline for the submission of the application;
 - (g) the means by which, economic operators may seek clarifications of the solicitation documents;
 - (h) the period of time during which application shall remain valid;
 - (i) references to the this policy and SADC Procurement and Grants Guidelines which applies to the respective procurement proceedings;

- (j) the name, functional title and address of one or more officers or employees of the Procuring Entity who are authorized to communicate directly with, and to receive communications directly from economic operators in connection with the procurement proceedings;
 - (k) the reference to the procurement policy and regulation which allows the economic operator to appeal a procurement decision;
 - (l) a statement that the Procuring Entity reserves the right to cancel the procurement processes pursuant to **Article 21** of this Policy; and
 - (m) any other requirements that may be established by the Procuring Entity in conformity with this Policy and SADC Procurement and Grants Guidelines relating to the preparation, submission of applications or proceedings to prequalify.
- (5) The economic operators are allowed to seek clarifications with regards to the prequalification documents, prior to deadline for submission of application.
 - (6) The evaluation shall be conducted in accordance with the procedures set in the prequalification documents and against the eligibility and qualification criteria already announced in the invitation to prequalification. No deviation from the pre-disclosed procedures and criteria are allowed during the assessment of the applications.
 - (7) The evaluation shall determine the short list of economic operators, satisfying the eligibility and qualification criteria, whom shall be further invited to participate in the bidding proceedings.
 - (8) The evaluation process shall be documented in a report shall be signed by all members of the Evaluation Committee.
 - (9) The report will be subject to approval of the authorised representative of the Procuring Entity, as detailed in SADC Procurement and Grants Guidelines.
 - (10) The Procuring Entity shall promptly notify each economic operator whether or not it has prequalified and shall make the names of all economic operators that have been prequalified available to any member of the general public upon request. Only economic operators that have been prequalified are entitled to participate further in the procurement proceedings.
 - (11) The Procuring Entity shall communicate the reasons leading to the exclusion from the shortlist to unsuccessful economic operators
 - (12) When prequalification is used, prior to contract award, the Procuring Entity may require the economic operator recommended for award of the contract, to demonstrate again its eligibility and qualifications in accordance with the same criteria used to prequalify the economic operator. The Procuring Entity shall disqualify any economic operator that fails to demonstrate again its eligibility and qualifications if requested to do so.

CHAPTER III. APPEAL OF PROCUREMENT DECISIONS

Article 49. Right to appeal a procurement decision

- 1) Subject to paragraph two (2) of this article, any economic operator that claims to have suffered, or that may suffer, loss or injury due to a breach of duty imposed on the Procuring Entity by this Policy or any other SADC Procurement and Grants Guidelines developed for the implementation of this Policy, may appeal the procurement decision according to the procedure for handling appeals contained in the SADC Procurement and Grants Guidelines.

- 2) The following shall not be subject to the review provided for in paragraph one (1) of this article:
 - (a) The selection of a method of procurement pursuant to **Articles 26 to 33** of this Policy;
 - (b) The choice of qualification and eligibility criteria pursuant to **Article 18** of this Policy, if they have not been contested prior to submission of an application;
 - (c) 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;
 - (d) The content of the SADC Secretariat standard solicitation documents (including the general terms of the contracts, purchase orders, templates, etc).
 - (e) **Cancellation of procurement process Article 21 of this Policy**

Article 50. Procedures for handling appeals

- (1) SADC Secretariat shall develop procedures for procurement appeals that are fair, clear and transparent.
- (2) The procedures to be followed by economic operators in appealing a procurement decision as well as the proceedings for handling the appeals shall be detailed in SADC Procurement and Grants Guidelines.

CHAPTER IV. ADMINISTRATIVE PROVISIONS

Article 51. Procurement implementation structure

- (1) To implement the provision of this Policy, the SADC Secretariat has set up an appropriate procurement implementation structure that promotes:
 - (a) accountability of the Procuring Entity’s staff engaged in procurement activities, by defining clear roles and responsibilities among the staff and organizational structures involved in the procurement activities;
 - (b) separation of duties between various department and functions within the Procuring Entity organization, by ensuring that procurement responsibilities are cascaded among various structures within the organization
 - (c) quality control over the procurement activities, by ensuring that all procurement documents sent for approval are subject to independent ex-ante control
 - (d) absence of conflict of interest, by ensuring that the structure has adequate checks and balances and no player is at the same time referee; and
 - (e) efficiency in the implementation of procurement activities, by ensuring that the implementation structure will not require unnecessary resources and/or promote redundant processes that are costly and/or time consuming for the organization.

Article 52. Modifying contracts

- (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 the contracting parties.
 - (b) No modification to the contract may alter the award conditions prevailing at the time the contract was awarded.
 - (c) Any modification of the contract value shall not exceed an aggregate amount of up to twenty five percent (25%) of the original contract amount.
 - (d) Any modification of the duration of the contract shall not exceed an aggregate of maximum of one hundred percent (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 Article shall be approved by the Tender Committee.
- (2) The procedures for initiating and approving any modification to the contract shall be detailed in SADC Procurement and Grants Guidelines.

Article 53. Monitoring and Auditing of Procurement Activities

- (1) The SADC Secretariat shall conduct regular Monitoring and Evaluation of the procurement activities financed by the SADC Secretariat through its dedicated structure. This will include contractors' performance.
- (2) The Monitoring and Evaluation reports shall be presented at least once per year to the Executive Secretary and upon request to the Council of Ministers.
- (3) In addition, the SADC Secretariat shall also conduct regular internal audits of the procurement process.
- (4) Procurement activities financed by the SADC Secretariat shall be subject to annual auditing by the Board of Auditors to ensure that
 - (a) funds are expended for their intended purpose,
 - (b) value for money is maximized,
 - (c) proper and accountable systems are in place and adhered to, and
 - (d) any weaknesses in procurement are identified.
- (5) The Board of Auditors' procurement audit reports shall be presented annually to the Council of Ministers for their information and endorsement.
- (6) All the SADC Secretariat and/or the Procuring Entity's staff involved in procurement processes shall provide full cooperation and disclosure to these auditors, evaluators and any other authorities conducting audits and/or monitoring and evaluation reviews, in accordance with this policy and other SADC Secretariat policies.

PART THREE - GRANTS

CHAPTER I. SCOPE

Article 54. Scope of Application

- (1) This Policy shall apply to all grants financed by SADC Secretariat except when otherwise provided in the legal frame (e.g. convention, contribution agreement, or contract) agreed by the SADC Secretariat.
- (2) This Policy does not apply to Member States contributions as defined in Articles 26 and 28 of the Treaty.

Article 55. Purpose of Grants

- (1) The purpose of Grants is to allow no 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; or
 - (b) the functioning of a body, which pursues an aim of general interest for SADC. These are operational grants and finance a work program.
- (2) Grants shall be covered by a written agreement (contribution agreement, contract, convention).
- (3) Budget support actions are not considered grants.
- (4) SADC Secretariat may award grants for communication activities where, for duly justified reasons, the use of procurement procedures is not appropriate.
- (5) Grants shall take any of the following forms:
 - (a) reimbursement of a specified proportion of the eligible cost;
 - (b) reimbursement on the basis of unit costs;
 - (c) lump sums;
 - (d) flat rate financing; or
 - (e) a combination of the above
- (6) When determining the appropriate form of a grant, SADC Secretariat shall take into consideration the beneficiary's interest and the accounting methods.

CHAPTER II. PRINCIPLES

Article 56. General principles applicable to Grants

- (1) Grants shall be subject to the principles of transparency and equal treatment.
- (2) Grants shall not be cumulative or awarded retrospectively
- (3) As a general rule, grants shall involve co-financing.

- (4) Grants are non-profit, therefore shall not have the aim or the effect of producing a profit within the framework of the action or the work program of the beneficiary.
- (5) For purposes of paragraph (4) profit shall be defined as a surplus of the receipts over the eligible cost incurred by the beneficiary, when the request is made for payment of the balance.
- (6) Grants are awarded through calls for proposals, unless otherwise decided in the legal frame. Only in exceptional circumstances grants may be awarded directly.

Article 57. Eligible Costs

- (1) Grants shall not exceed an overall ceiling expressed in terms of a total value that shall be established on the basis of estimated eligible costs. Grants shall not exceed the eligible cost.
- (2) Eligible cost, in line with SADC Financial Regulations, are those incurred by the beneficiary of a grant and include the following criteria:
 - (a) they are incurred during the duration of the action, with the exception of the costs related to the final report;
 - (b) they are indicated in the estimated overall budget or work program;
 - (c) they are necessary for the implementation of the action or the work program;
 - (d) they are identifiable and verifiable, in particular being recorded in the accountancy records according to the laws applicable;
 - (e) they comply with the requirements of applicable tax and social legislation; and
 - (f) they are reasonable, justified and comply with the principle of sound financial management.
- (3) Call for proposals shall specify the categories of costs considered as eligible.
- (4) Without prejudice to the provisions of legal frame regulating the grant, the following categories of costs shall be eligible when declared as such:
 - (b) costs related to pre financing guarantee given by the beneficiary of the grant when the guarantee is compulsory;
 - (c) costs related to external audits when they are compulsory;
 - (d) Value Added Tax where it is not recoverable under the applicable VAT legislation and is paid by a beneficiary;
 - (e) depreciation cost, provided that the beneficiary incurs them;
 - (f) salaries of the personnel of national administrations to the extent that they relate to the cost of activities, which the relevant public authority would not carry out if the project concerned was not undertaken; and
 - (g) other costs estimated eligible under the call for proposal.

Article 58. In-kind contributions

- (1) Co-financing in the form of contributions in kind shall not be taken into account for the purpose of assessing whether the grant has generated profit or not.
- (2) In-kind contributions will only be accepted when the Contracting Authority has foreseen them in the guidelines for applicants and they are considered necessary or appropriate.

- (3) Contributions in kind shall not exceed either the cost actually incurred by third parties and duly supported by accounting documents or, in the absence of such documents, the cost that correspond to those generally accepted on the market in question.

Article 59. Transparency

- (1) Grants shall be subject to a work program which will be published prior to its implementation. That program shall be implemented through the publication of calls for proposals, except in duly justified exceptional cases of urgency (i.e. humanitarian aid) or where the characteristics of the beneficiary or the action leave no other choice or where the beneficiary is identified in a Council decision, a contribution agreement, a convention or any other similar legal text.
- (2) Calls for proposals shall specify the planned date by which all applicants shall have been informed of the outcome of the evaluation of their application and the indicative date for the signature of grant agreements or notification of grant decisions.

The dates shall be fixed on the basis of the following:

- (a) for informing all applicants of the outcome of the evaluation of their application, a maximum of six months from the final date for submission of complete proposals; and
 - (b) for signing grant agreements with applicants or notifying grant decisions to them, a maximum of three months from the date of informing applicants they have been successful.
- (3) All grants awarded in the course of a financial year shall be published annually.

Article 60. Programming

- (1) SADC Secretariat will make an annual or multiannual work program for grants. The annual program shall be adopted and published adequately no later than 1st of the financial year of implementation.
- (2) The work program shall specify the period it covers, the legal background, the financial source, the objectives pursued, the expected results, the indicative timetable for call for proposals with the indicative amount and the maximum rate of co-financing.
- (3) Any substantial change in the work program shall also be published.

Article 61. Calls for proposals

- (1) For Grants awarded through call for proposals the process should be as competitive as possible.
- (2) Call for proposals shall specify:
 - (a) objectives pursued;
 - (b) eligibility, exclusion, selection and award criteria;
 - (c) financing source;
 - (d) the arrangements and final date for the submission of proposals; and
 - (e) the planned date by which all applicants are to be informed of the outcome of the evaluation of their application and the indicative date for the signature of grant agreements or notification of grant decisions.

- (3) Call for proposals must be published conveniently, in order to encourage transparency and competition. Any modification of the content of the call for proposal shall be subject to publication under the same conditions as those for the call for proposal.
- (4) Any substantial change in the work program shall also be published.
- (5) Calls for Proposals can be Open or Restricted (single or two-stage process). The decision on which procedure to apply is based on the nature of the call and expected number of applications (i.e. if large number of applications is expected for a particular call, use of Concept Note/Restricted Call may be applied).

Article 62. Exceptions to calls for proposals

- (1) Grants may be awarded without a call for proposal only in the following cases:
 - (a) for the purpose of humanitarian aid and civil protection operations or crisis management or in any other exceptional circumstances;
 - (b) to institutions with a “*de iure*” or “*de facto*” monopoly, duly substantiated in the award decision;
 - (c) to public bodies, research institutions and bodies designated by Member States under their responsibility; or
 - (d) when it is agreed through a prior contribution agreement/contract or any other similar legal instrument agreed upon by SADC Secretariat and a third party.

Article 63. Publication of beneficiary awarded

- (1) The information related to grants awarded in the course of a financial year must be published. The publication must contain at least the following information:
 - (a) name of the institution or consortium awarded;
 - (b) name of the action;
 - (c) budget awarded and total budget of the action;
 - (d) implementation period; and
 - (e) identification of source of financing.
- (2) The Secretariat shall produce an annual report on:
 - (a) the number of applicants;
 - (b) the number and percentage of successful applications per call for proposals;
 - (c) the duration of the procedure from the date of closure of the call for proposals to the award of the grants; and
 - (d) how the publication obligations were fulfilled.

Article 64. Information for applicants

- (1) SADC Secretariat may provide information and advice to applicants through the following means:
 - (a) laying down joint standards for application forms for similar grants and monitoring the size and readability of the application forms;
 - (b) supplying information to potential applicants in particular through seminars and/or the provision of handbooks;
 - (c) maintaining permanent data for beneficiaries; and

- (d) providing detailed guidelines for applicants, which according to **Article 58** of this Policy comprehensively develop the call's objectives, the eligible actions and all the elements needed to make a proposal.

Article 65. Principle of no cumulative awards

- (1) Each action may give rise to the award of only one grant to any beneficiary. The same action must not be funded by several sources over 100% of the cost.
- (2) The applicant shall immediately inform SADC Secretariat of any multiple applications and any multiple grants related to the same action or to the same work program.
- (3) An action may be co-financed by different contributors.

Article 66. Principle of non-retroactivity

- (1) A grant can only be awarded for an action which has already begun on the following cases:
 - (d) exceptional cases in which the applicant can demonstrate the need for starting the action prior to signature of the grant agreement or notification; or
 - (e) in cases of extreme urgency in which the legal frame allows it.
- (2) Grants cannot be awarded retroactively for actions already completed.

CHAPTER III. APPLICATION AND AWARD PROCEDURE

Article 67. Guidelines for Applicants

- (1) The SADC Secretariat will provide for the production of guidelines for applicants. The guidelines for applicants are a comprehensive document explaining the purpose of a call for proposals for grants. It sets out the rules regarding who may apply, the types of operations and the costs which may be financed, and the evaluation (selection and award) criteria. It also provides practical information on how to complete the application form, what documents must be annexed, and rules and procedures for applying.
- (2) The Guidelines for applicants must contain at least the following:
 - (c) amount available for the call and source of the funding;
 - (d) maximum and minimum amount funded per grant;
 - (e) amount of co-finance needed;
 - (f) eligibility rules for candidates, which determine the conditions for participating in the call for proposal. These criteria shall be established with due regard for the objectives of the action and shall comply with the principles of transparency and non-discrimination;
 - (g) eligible actions under the call. This criterion shall be established with connection with the objective of the call;
 - (h) eligible costs under the call;
 - (i) maximum percentage and activities that can be subcontracted through secondary procurement;
 - (j) deadline for submissions;
 - (k) selection criteria;
 - (l) award criteria;
 - (m) maximum implementation period;
 - (n) payment conditions, including if necessary conditions for pre financing guarantee; and

- (o) reporting conditions (audit, monitoring and evaluation)
- (3) The Beneficiaries of grants may be natural or legal persons. When several entities satisfy the criteria for being awarded a grant and together form one entity, that entity may be treated as the sole beneficiary, including where the entity is specifically established for the purpose of implementing the action to be financed by the grant.

Article 68. Applications for Grants

- (1) Grant applications shall be submitted in writing, including, where appropriate, in a secure electronic format and according to the guideline for applicants previously published. SADC Secretariat may provide, where appropriate, the possibility of making online applications.
- (2) Grant applications shall be eligible if submitted by natural persons or legal persons according to the basis of the call contained in the guidelines for applicants
- (3) The application shall state the legal status of the applicant and demonstrate his financial and technical capacity to carry out the proposed action. For such purpose, the applicant shall submit a declaration of honour and, unless the grant is of low value, any supporting document requested, on the basis of a risk assessment. The prerequisite documents shall be indicated in the call for proposals.

The verification of financial capacity shall not apply to natural persons in receipt of scholarships, to natural persons most in need and in receipt of direct support to public bodies.

- (4) **Articles 9, 10 and 18.2** in part one of this Policy shall also apply to grant applicants. Applicants shall certify that they are not in one of the situations referred in those articles.

Article 69. Submission of grant applications

- (1) The submission should be done according to the guidelines for applicants. The submission shall always be in written form, whether by hard copies or by electronic means. However, those means shall be non discriminatory in nature and must not restrict competition.

The means chosen shall ensure that the following are fulfilled:

- (a) each submission contains all the information required for its evaluation according to guidelines for applicants previously;
 - (b) the integrity of data must be preserved;
 - (c) the confidentiality of proposal must be preserved; and
 - (d) the protection of personal data is in accordance with national regulations.
- (2) Without prejudice to the application of penalties established in the agreement and/or the law, candidates who found to have made false declarations, provided false documents, committed irregularities or fraud, committed substantial errors or have been found in serious breach of their contractual obligations may be excluded from all granted agreements with SADC Secretariat for a maximum of 10 years from the date on which the infringement is established as confirmed following a contradictory procedure with the candidate or contractor. The provisions of **Article 24** in part one of this Policy shall relevantly apply to grants.

Article 70. Selection and award criteria

- (1) The Guidelines for applicants shall be published and contain the selection criteria. The selection criteria shall be set:
 - (a) to make it possible to assess the applicant's ability to complete the proposed action or work programme; and
 - (b) to ensure that the applicants have financial, technical and professional capacity to implement the action proposed.
- (2) The Guidelines for applicants shall also contain the selection criteria to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set in the call for proposals. The award criteria should enable to award the grants to actions which maximise the overall objective of the program.

Article 71. Evaluation of proposals

- (1) The evaluation must be done on the basis the selection and award criteria which are in the guidelines for applicants. The evaluation will determine which proposals will be financed.
- (2) SADC Secretariat may, where appropriate, divide the awarding process into two procedural stages. The rules governing the process shall be published in the guidelines for applicants.

Where the call for proposals specifies a two stage submission procedure, only those applicants whose proposals satisfy the evaluation criteria for the first stage shall be requested to submit a complete proposal in the second stage, consequently only those proposals who pass the first stage, based on the evaluation against a limited set of criteria, shall go forward for further evaluation.

Each subsequent stage of the procedure must be clearly distinct from the previous one. The same documents and information shall not be required more than once during the same procedure.

- (3) SADC Secretariat will appoint an evaluation committee to evaluate the proposals. The committee will have the same composition as that in **Article 45** in part one of this Policy. The rules of **Article 46** shall also apply to grants.
- (4) As a result of the evaluation, the Contracting Authority will draw up the list of beneficiaries and the amount approved per proposal. The Contracting Authority shall inform all applicants of its decision to award or reject the proposals justifying its decision. If the process is divided in two steps the applicants must be informed at each step.
- (5) The evaluation committee will prepare an evaluation report which shall contain at least the subject and overall amount of the decision, the name of the successful applicants, the title of the actions, the amounts accepted and the reasons for that choice and the names of the applicants rejected and the reason for that rejection.

Article 72. Grant contract

- (1) The Contracting authority will propose a grant agreement to those entities whose proposals have been approved for funding. The entities awarded with grant will sign a grant agreement (contract) with the Contracting authority. The contract shall at least specify the following:
 - (a) subject;
 - (b) beneficiary;

- (c) duration of the grant, including date of its entry into force, starting date and duration of the action;
 - (d) maximum amount of funding given by SADC Secretariat;
 - (e) description of the action or work programme (for operating grants);
 - (f) the general terms and conditions applicable to actions of this type;
 - (g) the estimated overall budget of the action or work program;
 - (h) if the implementation involves procurement, which are the rules to be applied;
 - (i) the responsibilities of the beneficiary regarding financial management (reporting, monitoring, targets etc.) and arrangements and time limits for submitting those reports.
 - (j) payment schedule;
 - (k) detailed eligible costs of the action or approved work programme or the unit costs, lump sums or flat rates when applicable;
 - (l) visibility provisions; and
 - (m) provisions for suspension and termination.
- (2) SADC Secretariat may, if it deems appropriate and proportionate, require the beneficiaries of grants to provide a pre-finance guarantee to limit the financial risk connected with the payment of the pre-finance for up to the same amount of the pre-financing. An approved bank or financial institution in the country of the Contracting Authority/the country where the action is being implemented shall provide the guarantee.
- (4) The guarantee shall be released as the pre-financing is gradually cleared against interim payments or payments of the balance to the beneficiary in accordance with the conditions laid down in the grant contract.

Article 73. Payments and controls

- (1) The amount of the grant shall not be final until the Contracting Authority responsible has approved the final reports and accounts, without prejudice to subsequent checks by the institution concerned, which shall be carried out in a timely manner.
- (2) The guidelines for applicants and the grant agreement will contain the audit and reporting requisites. The beneficiary shall comply with these conditions in order to receive the payments. The Contracting Authority will not pay and bear ineligible costs.
- (3) The contract will contain the payment provisions, which will respond to sound financial management. The contract will define the conditions for pre-financing and reimbursements.
- (4) If it is proven that the award procedure was subject to substantial errors, irregularities or fraud, the SADC Secretariat may suspend the procedure and take whatever measures necessary, including cancellation of grants.
- (5) If, after the award, the award procedure or the implementation of the grant, there is proof that it has been subject to substantial errors, irregularities, fraud or breach of obligations, the SADC Secretariat may, depending on the stage reached in the procedure and, provided that the applicant or beneficiary has been given the opportunity to make observations:
- (a) suspend the implementation of the grant; or
 - (b) terminate the contract.

- (6) If errors, irregularities or fraud are attributable to the beneficiary, or should the beneficiary breach its obligations under the contract, SADC may reduce the grant or recover amounts unduly paid in proportion to the seriousness of the errors, irregularities, frauds or breach of contractual obligations. The beneficiary will have the opportunity to make observations.
- (7) Where control or audits prove systemic or recurrent relevant errors, irregularities, fraud or breach of contractual obligations attributable to the beneficiary and having a material impact on a number of grants awarded to that beneficiary under similar conditions, the SADC Secretariat may suspend the implementation of all grants concerned or even terminate them in proportion to the seriousness of the errors, irregularities, frauds and/or contractual breaches. The beneficiary will have the opportunity to make observations.
- (8) SADC Secretariat will determine the amounts to be reduced or recovered wherever possible and practicable on the basis of cost unduly declared as eligible for each grant concerned, following acceptance of the revised financial statements submitted by the beneficiary.
- (9) In cases where it is impossible or unreasonable to quantify exactly the amount of ineligible costs for each Grant, the amounts to be reduced or recovered may be determined by extrapolating the reduction or recovery rate applied to the grants for which the systemic or recurrent irregularities have been demonstrated or where ineligible costs cannot serve as basis for determining the amounts to be reduced or recovered, by applying a flat rate, having regard to the principle of proportionality. The beneficiary will have the opportunity to make observations.
- (10) SADC Secretariat will ensure equal treatment to all beneficiaries.
- (11) SADC Secretariat shall conduct regular monitoring and evaluation of Grants activities financed by the Secretariat through its dedicated structure. This will include grantees' performance. The provisions of **Article 53** of part one of this Policy shall be applicable to grants.

Article 74. Miscellaneous

- (1) Provisions of **Articles 2, 3, 4, 5, 6, 7, 11, 21, 49, 50, 52** and **53** of Part One of this Policy shall apply to grants as relevant.
- (2) The final interpretation of the provisions of this Policy shall rest with the Accounting Officer.
- (3) In cases where a specific situation is not foreseen in this Policy or in the SADC Procurement and Grants Guidelines, the SADC Secretariat may resort to international best practice as implemented by international institutions such as the African Development Bank, the European Union or the World Bank in order to accommodate such circumstances.