

PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT
(Cap. 42:08)

**PUBLIC PROCUREMENT AND ASSET DISPOSAL
(AMENDMENT) REGULATIONS, 2013**
(Published on 22nd March, 2013)

ARRANGEMENT OF REGULATIONS

REGULATION

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IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by section 130 of the Public Procurement and Asset Disposal Act, the following Regulations are hereby made —

<p>1. These Regulations may be cited as the Public Procurement and Asset Disposal (Amendment) Regulations, 2013.</p>	<p>Citation</p>
<p>2. The Public Procurement and Asset Disposal Regulations (in these Regulations referred to as “the Regulations”) are amended in regulation 2 by inserting, in its correct alphabetical order, the following new definition — ““procurement activity” includes a disposal as defined under section 2 of the Act.”.</p>	<p>Amendment of regulation 2 of Cap. 42:08 (Sub. Leg.)</p>
<p>3. Regulation 5 of the Regulations is amended by inserting, immediately after paragraph (b), the following new paragraph — “(c) a procurement unit established under regulation 11.”.</p>	<p>Amendment of regulation 5 of the Regulations</p>
<p>4. Regulation 8 of the Regulations is amended in subregulation (6) by substituting for the word “Minister”, the word “Board”.</p>	<p>Amendment of regulation 8 of the Regulations</p>
<p>5. Regulation 9 of the Regulations is amended in subregulation (2), by deleting paragraphs (a), (b), (d) and (e).</p>	<p>Amendment of regulation 9 of the Regulations</p>
<p>6. Regulation 10 of the Regulations is amended — (a) in subregulation (8) by deleting the words “unless the Committee otherwise directs.”; and (b) by deleting the words “and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both” appearing in subregulation (10).</p>	<p>Amendment of regulation 10 of the Regulations</p>
<p>7. Regulation 12 of the Regulations is amended by inserting immediately after paragraph (r), the following new paragraphs — “(s) recommend procurement procedures to the Board or Ministerial Committee; (t) recommend to the Board or Ministerial Committee the type of documents to be used for a procurement before the issuance of a solicitation document; and (u) recommend technical, financial or combined technical and financial evaluation reports to the Board or Ministerial Committee for adjudication and award of contracts.”.</p>	<p>Amendment of regulation 12 of the Regulations</p>
<p>8. Regulation 13 of the Regulations is amended in subregulation (1) — (a) by substituting for the words “Ministerial Committee” appearing in paragraph (a), the words “accounting officer”; and (b) by substituting for the words “Ministerial Committee” appearing in paragraph (d), the words “Board or its Committees”.</p>	<p>Amendment of regulation 13 of the Regulations</p>
<p>9. Regulation 23 of the Regulations is amended by substituting for subregulation (1), the following new subregulation — “(1) A procuring entity or a disposing entity may — (a) proceed to issue a bid or invitation to tender without the approval of the Board where the procuring or disposing entity was required to proceed with the bid or invitation due to an urgent requirement or emergency arising from special circumstances, and the procurement shall be sanctioned by the Board in accordance with section 44 of the Act; or</p>	<p>Amendment of regulation 23 of the Regulations</p>

- (b) where there is insufficient time to follow the established procedures for procurement, make a request to the Board, in writing, stating the reasons for the urgency and justification for the departure from the established procedures.”.
- Amendment of regulation 28 of the Regulations
- 10.** Regulation 28 of the Regulations is amended —
- (a) by substituting for subregulation (4), the following new subregulation —
- “(4) A procuring entity shall commence a pre-qualification exercise by submitting a request for the pre-qualification to the Board, the Ministerial Tender Committee or District Tender Committee, as the case may be.”;
- (b) by substituting for subregulation (5), the following new subregulation —
- “(5) A pre-qualification notice shall contain a statement of the scope of the procurement, clearly giving the necessary details of the requirements and the criteria for pre-qualification, and such pre-qualification notice shall be vetted by the Board or its committees, as the case may be.”; and
- (c) by substituting for subregulation (7), the following new subregulation —
- “(7) A procuring entity shall require providers to submit sealed, written pre-qualification applications accompanied by such documents as the procuring entity may require, including the details contained in the pre-qualification form set out in the Third Schedule.”.
- Amendment of regulation 31 of the Regulations
- 11.** Regulation 31 of the Regulations is amended by substituting for subregulation (5), the following new subregulation —
- “(5) The procuring entity shall prepare minutes for all pre-bid meetings and copies of the minutes shall be provided to all providers who purchased or were issued with the bidding documents.”.
- Amendment of regulation 34 of the Regulations
- 12.** Regulation 34 of the Regulations is amended by inserting immediately after subregulation (2), the following new subregulation —
- “(2A) A procuring entity shall respond to bidders promptly or within a reasonable time of receipt of a request for clarification of bidding documents from a bidder, to enable bidders to incorporate the clarification in their bid proposals.”.
- Amendment of regulation 36 of the Regulations
- 13.** Regulation 36 of the Regulations is amended in subregulation (5), by inserting, immediately after the word “name” appearing in paragraph (b), the words “, telephone number and postal address”.
- Amendment of regulation 38 of the Regulations
- 14.** Regulation 38 of the Regulations is amended in subregulation (7) by substituting for the words “subregulation (8)”, the words “subregulation (6)”.
- Amendment of regulation 51 of the Regulations
- 15.** Regulation 51 of the Regulations is amended —
- (a) in subregulation (2), by inserting immediately after the words “The Evaluation Committee shall give”, the words “a recommendation for”;
- (b) by substituting for subregulation (4), the following new subregulation —
- “(4) The procuring entity shall submit minutes of the negotiations and the evaluation report, in writing, to the Board, Ministerial Committee or District Tender Committee on the success of the negotiations in attaining the objectives set out on the negotiation document.”; and
- (c) by substituting for subregulation (5), the following new subregulation —
- “(5) The Board, Ministerial Committee or District Tender Committee may —
- (a) approve the outcome of the negotiations in their entirety;
- (b) request further negotiations on specific points; or
- (c) reject and cancel the negotiations in their entirety.”.

- 16.** Regulation 52 of the Regulations is amended —
- (a) in subregulation (2) by substituting for the words “Ministerial Committee” appearing in paragraph (e), the words “procuring entity”, and
 - (b) in subregulation (4), by substituting for the words “Ministerial Committee”, the words “Board or its committees”.
- 17.** The Regulations are amended by inserting immediately after regulation 53, the following new regulation —
- “Tender cancellations 53A. (1) A procuring or disposing entity shall not cancel a procurement activity without the prior approval of the Board or its committees.
- (2) The Board or its committees shall not authorise the cancellation of any tender awarded by a procuring or disposing entity unless the Board or its committees are given sufficient justification for the cancellation of the tender.
- (3) The Board or its committees shall, prior to the cancellation of a tender ensure that —
- (a) the circumstances claimed by procuring or disposing entity for the cancellation of a tender exist; and
 - (b) the circumstances claimed by the procuring or disposing entity are beyond the control of the procuring or disposing entity.
- (4) Where the Board or its committees have approved a tender cancellation, the Board or its committees shall publish a tender cancellation notice in one newspaper of wide circulation in Botswana and in the *Gazette*.”.
- 18.** Regulation 55 of the Regulations is amended by substituting for subregulation (4), the following new subregulation —
- “(4) The Minister, in consultation with the Board, shall, in compliance with the provisions of the procurement guidelines, determine the cost of bidding documents that are to be sold to prospective bidders.”.
- 19.** Regulation 56 of the Regulations is amended —
- (a) in subregulation (1), by inserting immediately after the words “open domestic bidding”, the words “, with the prior written approval of the Board,” ; and
 - (b) by substituting for subregulation (3) the following new subregulation —
- “(3) The Minister, in consultation with the Board, shall, in compliance with the provisions of the procurement guidelines, determine the cost of bidding documents that are to be sold to prospective bidders.”.
- 20.** Regulation 57 of the Regulations is amended by inserting immediately after subregulation (2), the following new subregulation —
- “(2A) The Minister, in consultation with the Board, shall, in compliance with the provisions of the procurement guidelines, determine the cost of bidding documents that are to be sold to prospective bidders.”.
- 21.** Regulation 58 of the Regulations is amended by inserting immediately after subregulation (2), the following new subregulation —
- “(2A) The Minister, in consultation with the Board, shall, in compliance with the provisions of the procurement guidelines, determine the cost of bidding documents that are to be sold to prospective bidders.”.

Amendment of regulation 52 of the Regulations

Insertion of regulation 53A in the Regulations

Amendment of regulation 55 of the Regulations

Amendment of regulation 56 of the Regulations

Amendment of regulation 57 of the Regulations

Amendment of regulation 58 of the Regulations

- Amendment of regulation 60 of the Regulations
- 22.** Regulation 60 of the Regulations is amended —
- (a) by substituting for subregulation (1) the following new subregulation —
- “(1) The micro procurement method may be used where the value of goods, services or works to be procured does not justify a competitive procedure or the value is within the threshold relating to micro procurement.”; and
- (b) in subregulation (2), by substituting for the word “shall”, the word “may”.
- Amendment of regulation 61 of the Regulations
- 23.** Regulation 61 of the Regulations is amended in subregulation (1) by substituting for the word “completion”, the word “competition”.
- Amendment of regulation 78 of the Regulations
- 24.** Regulation 78 of the Regulations is amended —
- (a) in subregulation (2), by inserting immediately after the word “support”, the word “of”;
- (b) in subregulation (3), by substituting for the word “and” appearing in paragraph (a), the word “or”; and
- (c) by substituting for subregulation (4) the following new subregulation —
- “(4) The Board shall not consider any complaint brought under regulation 77, unless such complaint is submitted within 14 days of the publication of the decision of the Board or its committees, or within 14 days of the date the bidder became aware of the circumstances giving rise to the complaint.”.
- Amendment of regulation 81 of the Regulations
- 25.** Regulation 81 of the Regulations is amended —
- (a) by substituting for subregulation (1), the following new subregulation —
- “(1) Except as is provided for in the conditions of any contract, any provision relating to price adjustment may be included in any contract exceeding 12 months, where it is more economical for a procuring and disposing entity to accept the inflation risk than to pay the additional cost for the supplier to accept the risk.”; and
- (b) in subregulation (7) by inserting, immediately after the word “90”, the word “calendar”.
- Amendment of regulation 88 of the Regulations
- 26.** Regulation 88 of the Regulations is amended in subregulation (2), by inserting, immediately after the words “Bank of Botswana” appearing in paragraph (b), the words “or any other legally recognised financial institution, registered in Botswana”.
- Amendment of regulation 95 of the Regulations
- 27.** Regulation 95 of the Regulations is amended —
- (a) by substituting for subregulation (6) the following new subregulation —
- “(6) An individual contract amendment may be increased by up to 15 per cent of the original contract price without seeking, the prior approval of the Board.”; and
- (b) by deleting subregulation (7).
- Amendment of regulation 102 of the Regulations
- 28.** Regulation 102 of the Regulations is amended by substituting for the words “this Part”, the words “Part XII”.
- Amendment of regulation 106 of the Regulations
- 29.** Regulation 106 of the Regulations is amended in subregulation (2), by substituting for the word “four”, the word “14”.

- 30.** Regulation 120 of the Regulations is amended by substituting for subregulation (1), the following new subregulation —
- “(1) Where the best evaluated bid is less than the reserve price, the accounting officer, in consultation with the Board or any of its committees, may —
- (a) obtain a further valuation from an independent source;
 - (b) negotiate the price with the best evaluated bidder;
 - (c) arrange for new bids to be submitted;
 - (d) use an alternative method of disposal, which is likely to obtain a higher price; or
 - (e) sell the assets at the reduced price.”.

31. Regulation 123 of the Regulations is amended in subregulation (1), by substituting for the word “shall”, the word “may”.

32. The Fourth Schedule is amended —

 - (a) by substituting for the words “minimum qualifying mark” and “minimum qualifying score” appearing in Stage Two, paragraphs 2 (1) (c) and 3 of Part I, and paragraphs 2 and 4 of Part V, respectively, the words “qualifying score”; and
 - (b) by substituting for paragraph 2 (1) appearing in Stage Three of Part V, the following new paragraph —

“2 (1) Subject to any negotiations that may need to be held, the bidder who has submitted the lowest priced bid of all bids that have met the qualifying score, shall be recommended for award of contract.”.

Amendment of regulation 120 of the Regulations

Amendment of regulation 123 of the Regulations

Amendment of Fourth Schedule to the Regulations

MADE this 12th day of March, 2013.

O.K. MATAMBO,
*Minister for Finance and
Development Planning*

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