

The Laws of Zambia

REPUBLIC OF ZAMBIA

THE ZAMBIA NATIONAL TENDER BOARD ACT

CHAPTER 394 OF THE LAWS OF ZAMBIA

CHAPTER 394 THE ZAMBIA NATIONAL TENDER BOARD ACT

THE ZAMBIA NATIONAL TENDER BOARD ACT

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CHAPTER 394

ZAMBIA NATIONAL TENDER BOARD

Act No.
30 of 1982
13 of 1994

An Act to provide for the establishment of the Zambia National Tender Board; to regulate and control the procurement of goods and services for the Government and parastatal bodies; to consolidate the law relating to tenders generally; and to provide for matters connected with or incidental to the foregoing.

[3rd August, 1990]

PART I PRELIMINARYPART I

PRELIMINARY

1. This Act may be cited as the Zambia National Tender Board Act. Short title

2. In this Act, unless the context otherwise requires- Interpretation
 - "Board" means the Zambia National Tender Board established by section *three*;

 - "Chairman" means the Chairman of the Board appointed under section *four*;

 - "company" means a company registered under the Companies Act; Cap. 388

 - "Director" means the Director of the Board appointed under section *fourteen*;

 - "member" means a member of the Board;

 - "parastatal body" means a statutory corporation or body, or a company in which the Government has a majority or controlling interest, and includes a local authority;

 - "Secretary" means the person appointed under section *fifteen* to be Secretary to the Board.

PART II ZAMBIA NATIONAL TENDER BOARDPART II

ZAMBIA NATIONAL TENDER BOARD

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3. There is hereby established the Zambia National Tender Board which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may do by law.

Establishment of Board

4. (1) The Board shall consist of a Chairman and twelve other members of whom the following shall be *ex-officio* members-

Composition of Board

- (a) the Secretary to the Cabinet;
- (b) the Director-General of the Zambia Industrial and Mining Corporation Limited;
- (c) the Chairman of the Zambia Consolidated Copper Mines Limited;
- (d) the Governor of the Bank of Zambia;
- (e) the Permanent Secretary in the Ministry responsible for finance;
- (f) the Permanent Secretary in the Ministry responsible for development planning; and
- (g) the Permanent Secretary in the Ministry responsible for works and supply.

(2) The Chairman and the other members, other than the *ex-officio* members, shall be appointed by the President.

(3) Where an *ex-officio* member is for any reasonable cause unable to attend any meeting of the Board, he may, in writing, nominate another senior official from his organisation to attend such meeting in his stead and the person so nominated shall be deemed to be a member for the purpose of such meeting.

5. (1) The provisions of this section shall apply to members other than the *ex-officio* members.

Tenure of office and vacancies

(2) Subject to the provisions of this section, a member shall hold office for a period of two years:

Provided that a retiring member may be reappointed.

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(3) Upon the expiry of the period for which a member is appointed, he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(4) A member shall cease to hold office-

- (a) subject to subsection (3), upon the expiry of the period for which he is appointed or reappointed;
- (b) if he is adjudged or otherwise declared to be of unsound mind;
- (c) if he is adjudged or otherwise declared to be bankrupt;
- (d) if he is lawfully detained or his freedom of movement is restricted under any law in force in Zambia;
- (e) if he is sentenced to a term of imprisonment exceeding six months;
- (f) if he is absent from three consecutive meetings of the Board without reasonable cause;
- (g) upon the expiry of not less than one month's notice in writing of his intention to resign given by him to the Chairman;
- (h) if he is removed by the President.

6. A member other than a public officer or an employee of a parastatal body shall be paid such remuneration or allowance as the Minister may from time to time determine. Remuneration and allowances of members

7. (1) The functions of the Board shall be to regulate and control the procurement of goods and services for the Government and parastatal bodies. Functions of Board

(2) Without prejudice to the generality of subsection (1), the Board may-

- (a) formulate rules and regulations governing the procurement of goods and services for the Government and parastatal bodies;
- (b) advertise locally and abroad tenders for the procurement of goods and services for the Government and parastatal bodies;

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- (c) regulate the procedures relating to the award of contracts on behalf of the Government and parastatal bodies;
- (d) formulate the conditions under which any rules and regulations governing the procurement of goods and services for the Government and parastatal bodies may be varied or waived.

8. (1) The Board may, for the purpose of carrying out its functions under this Act, establish committees and delegate to any such committee such of its functions as it may think fit. Committees of Board

(2) The Board may appoint as members of a committee established under subsection (1), persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.

(3) Subject to any specific or general direction of the Board, any committee established under subsection (1) may regulate its own procedure.

9. (1) If a person is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter such person or his spouse is directly or indirectly interested in a private capacity, he shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question touching upon, such matter. Disclosure of interest

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

10. No action or other proceedings shall lie or be instituted against any person for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act. Immunity of members

11. (1) The Board shall regulate its own procedure and the validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled so to do took part in the proceedings. Procedure and meetings

(2) For the transaction of its business, the Board shall meet at such places and at such times, being not less than once every three months, as the Chairman may determine.

(3) At any meeting of the Board, one-half of the members holding office at that time shall form a quorum.

(4) There shall preside at every meeting of the Board the Chairman or in the absence of the Chairman such member as the members present may elect for the purpose of that meeting.

(5) A decision of the Board on any question shall be by a majority of the members present and voting at a meeting of the Board and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(6) Notwithstanding the provisions of subsection (5), a decision may be made by the Board on any urgent matter by the circulation of the relevant papers among the members, and by the expression in writing of the views of the majority thereof:

Provided that any member shall be entitled to require that any decision shall be deferred until the matter is considered at a meeting of the Board.

(7) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.

(8) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and of every meeting of any committee established by the Board.

12. (1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Secretary. Seal of Board

(2) The Board may use a wafer or rubber stamp *in lieu* of the seal.

(3) The affixing of the seal of the Board shall be authenticated by the Chairman and the Secretary, or by the Chairman and one other person authorised in that behalf by a resolution of the Board.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate would not be required to be under seal, may be entered into or executed without seal on behalf of the Board by the Secretary or any other person authorised in that behalf by a resolution of the Board.

(5) Any document purporting to be a document under the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

13. (1) No person shall, without the consent in writing given by or on behalf of the Board, publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of, his duties under this Act.

Prohibition of publication or disclosure of information to unauthorised persons

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding twelve thousand five hundred penalty units or to imprisonment for a term not exceeding three years, or to both.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of the provisions of subsection (1) unlawfully publishes or communicates any such information to any other person, he shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding twelve thousand five hundred penalty units or to imprisonment for a term not exceeding three years, or to both.

(As amended by Act No. 13 of 1994)

PART III ADMINISTRATIONPART III

ADMINISTRATION

14. (1) The President shall appoint, on such terms and conditions as he thinks fit, a Director who shall be the chief executive officer of the Board.

Appointment of Director

(2) The office of Director shall be an office in the public service.

(3) The Director shall attend all meetings of the Board, and shall be entitled to address such meetings, but shall not vote on any matter under discussion:

Provided that the Board may, for good cause, request the Director to withdraw from any meeting of the Board.

15. (1) There shall be a Secretary to the Board who shall be appointed by the Board on such terms and conditions as the Board may determine.

Secretary and other staff

(2) The Secretary shall be responsible for the administration of the day-to-day affairs of the Board under the general supervision of the Director.

(3) The Board may appoint, on such terms and conditions as it may determine, such other staff as it may consider necessary for the performance of its functions under this Act.

16. (1) In order to ensure due compliance with the provisions of this Act, the Board shall establish under the general supervision of the Director an inspectorate unit which shall monitor, in accordance with the rules or regulations made under this Act, all contracts placed by the Board, any committee established by the Board, any Government Department or any parastatal body.

Inspectorate unit

(2) The Board may appoint such inspectors and other staff to the inspectorate unit as may be necessary for the performance of its functions under this Act.

17. In the performance of his duties under this Act, any inspector or member of staff of the inspectorate unit shall have-

Powers of inspectors, etc.

- (a) access to all books, records, returns, reports and other documents relating to the work of any Government Department or parastatal body which is under inspection;
- (b) access at all reasonable times to the premises of any Government Department or parastatal body which is under inspection;
- (c) power to call for any relevant information from persons responsible for the financial administration of any Government Department or parastatal body which is under inspection:

Provided that no inspector or member of staff of the inspectorate unit shall have access to any books, records, returns, reports or other documents, or to any premises if-

- (a) such books, records, returns, reports, other documents or premises belong to any component of the Defence Force or the Zambia Security Intelligence Service; or
- (b) such access is likely to-
 - (i) prejudice the security, defence or international relations of the Republic or the investigation or detection of offences; or
 - (ii) involve the disclosure of any matters or deliberations of a secret or confidential nature of the Cabinet or of any sub-committee of the Cabinet.

18. (1) Notwithstanding anything to the contrary contained in any written law, where any expenditure is to be incurred on any procurement of goods or services, it shall be the duty-

Failure to comply with prescribed procedures

- (a) in respect of a head of expenditure, of the controlling officer designated as such for that head of expenditure under section *four* of the Finance (Control and Management) Act; or

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(b) in respect of a parastatal body, of the chief executive officer of that parastatal body;

to ensure that such procurement of goods or services is in accordance with the procedures prescribed by or under this Act.

(2) Subject to the provisions of subsection (3), every controlling officer and chief executive officer shall be accountable for failing to comply with the provisions of subsection (1).

(3) Where a controlling officer or chief executive officer satisfies the Board that he had, in accordance with the provisions of any rules or regulations made under this Act, delegated his functions under subsection (1) to any other person or committee, then such other person or every member of such committee shall also be accountable for any failure to comply with the provisions of subsection (1).

(4) Where a controlling officer or chief executive officer satisfies the Board that he is, under the provisions of any written law, subject to the control or direction of any other person, board, committee or other body, and that it was such control or direction of such other person, board, committee or other body which caused the failure to comply with the provisions of subsection (1), then such other person or every member of such board, committee or other body shall also be accountable for such failure to comply with the provisions of subsection (1).

(5) In respect of any failure to comply with the provisions of subsection (1), the Board may take such appropriate corrective or punitive measures as it may consider necessary.

19. (1) Where the Board is satisfied that an employee of the Government or parastatal body has caused financial loss by his recklessness, misconduct or wilful default to follow procedures laid down in this Act or in any regulations made thereunder, the Board shall afford such person a reasonable opportunity to furnish a written explanation as to why he should not be surcharged with the amount of such loss.

Surcharge and
appeals

(2) After considering any explanation furnished under subsection (1), the Board may surcharge such person with the amount of such loss or any part thereof, and certify in writing to that effect.

(3) Any person aggrieved by a decision of the Board made under subsection (2) may, where the amount of surcharge is in excess of K1,000, appeal against such decision to the High Court or to a subordinate court of competent jurisdiction.

(4) The High Court or subordinate court, as the case may be, may, upon determining any appeal lodged under subsection (3)-

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- (a) confirm, vary or quash the decision of the Board;
- (b) remit the case to the Board with such directions as it thinks fit for giving effect to the decision on appeal;
- (c) make such other order as to costs or otherwise as may seem just.

(5) The Chief Justice may, by statutory instrument, make rules providing for the period within which appeals under this section may be brought and otherwise regulating such appeals.

20. (1) The amount of every surcharge certified in accordance with subsection (4) shall become due and recoverable from the emoluments or other financial benefits of such employee within thirty days after a copy of the certificate has been furnished to him or, if an appeal with respect to the surcharge has been lodged, within thirty days after the appeal is finally disposed of or abandoned or fails by non-prosecution thereof, as the case may be.

Payment and recovery
of surcharge

(2) The Board may authorise the payment of a surcharge in instalments:

Provided that if default is made in the payment of any instalment, the balance of the surcharge outstanding shall thereupon become payable in full.

(3) The amount of any surcharge which is not paid shall be recoverable by the Board as a civil debt.

(4) Unless the contrary is proved, in any proceedings for the recovery of the amount of a surcharge, a certificate issued by the Board shall be conclusive evidence of the facts certified therein, and a certificate signed by the Secretary that the sum certified to be due has not been paid to him shall be conclusive evidence of non-payment.

21. Any person who assaults, resists or obstructs any inspector or member of staff of the inspectorate unit in the exercise of his powers of access or power to call for relevant information under this Act shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Resisting or
obstructing inspector,
etc.

(As amended by Act No. 13 of 1994)

PART IV FINANCIAL AND OTHER PROVISIONS

FINANCIAL AND OTHER PROVISIONS

22. (1) The funds of the Board shall consist of such moneys as may-

Funds of Board

- (a) be appropriated by Parliament for the purposes of the Board;
- (b) vest in or accrue to the Board.

(2) The Board may-

- (a) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the performance of its functions;
- (b) charge and collect fees on tender and other related documents;
- (c) levy fees and other charges for services provided by the Board.

(3) There shall be paid from the funds of the Board-

- (a) the salaries, allowances and loans of the staff of the Board;
- (b) such reasonable travelling, transport and subsistence allowance for members or members of any committee of the Board when engaged on the business of the Board, at such rates as the Board may determine; and
- (c) any other expenses incurred by the Board in the performance of its functions.

(4) The Board may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

23. The financial year of the Board shall be the period of twelve months ending on the 31st December in each year.

Financial year

24. (1) The Board shall keep proper books of accounts and other records relating to its accounts.

Books of accounts

(2) Such books of accounts and other records shall be open for inspection by the Minister or any person duly authorised by him in that behalf.

25. (1) The accounts of the Board shall be audited annually and a detailed report thereon submitted to the Minister and to the Board. Audit of accounts

(2) For the performance of his duties under subsection (1), the auditor to the Board shall have access at all reasonable times to all books of accounts, records, returns, reports and other documents relating to the Board's accounts.

(3) In respect of each financial year, the auditor to the Board shall certify whether or not-

- (a) he has received all the explanations and other information necessary for the performance of his duties;
- (b) the accounts of the Board have been properly kept; and
- (c) according to the explanations and other information received, and the books of accounts, records, returns, reports and other documents relating to the Board's accounts produced to him, the accounts of the Board reflect a true and accurate financial position of the Board or of its profit and loss position, for the period covered by his certification.

26. (1) As soon as is practicable, but not later than six months after the expiry of each financial year, the Board shall submit to the Minister a report containing a balance sheet showing the assets and liabilities of the Board as at the last day of the financial year to which the report relates, accompanied by an income and expenditure account for that financial year, together with all supporting statements and returns duly certified by the auditor to the Board. Annual report

(2) The Minister may at any time request the Board in writing to submit to him such other reports, returns or statements, duly certified by the auditor to the Board as he may consider necessary, and the Board shall comply with such request.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report referred to in subsection (1) lay it before the National Assembly.

27. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the purposes of this Act. Regulations

(2) Without prejudice to the generality of subsection (1), the Minister may, on the recommendation of the Board, make rules or regulations prescribing any matter which the Board is authorised by this Act to formulate, regulate or prescribe.

(3) Rules or regulations made under this Act may provide in respect of any contravention thereof that the offender shall be liable to a fine not exceeding twenty five thousand penalty units or to a term of imprisonment not exceeding ten years, or to both.

(As amended by Act No. 13 of 1994)

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ZAMBIA NATIONAL TENDER BOARD

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PRELIMINARY

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PART I PRELIMINARYPART I

PRELIMINARY

1. These Regulations may be cited as the Tender Regulations.

Title

2. In these Regulations, unless the context otherwise requires-

Interpretation

"Board Secretary" means the Secretary to the Board appointed under section *fifteen* of the Act;

"Central Tender Committee" means the Central Tender Committee established by regulation 3;

"Controlled price" means a price of a commodity or service which is prescribed under the Control of Goods Act;

Cap. 421

"Controlling Officer" shall have the meaning assigned to it under section *two* of the Finance (Control and Management) Act;

Cap. 347

"formal tender" means a tender which is advertised in the *Gazette*;

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"informal tender" means a tender which is not advertised in the *Gazette*, but for which competitive quotations have been obtained;

"non-responsive offer" means an offer whose contents do not conform with what is required in a tender document;

"parastatal body" means any company, management board, association or statutory body in which the Government has a majority or controlling interest and includes a city, a municipality or a district council established under the Local Government Act; Cap. 281

"purchasing officer" means any officer whose responsibility it is to sign an order for the purchase of any goods or the supply of any service;

"official price" means the price of a commodity or service approved by the Central Tender Committee in a running contract;

"running contract" means a contract extending over a period of time for an estimated or variable quantity of goods or services;

"supplies officer" means any person appointed as such by the Board under section *fifteen* of the Act;

"tender committee" means a tender committee established by regulation 3, 7, 11 or 16;

"ZCCM" means the Zambia Consolidated Copper Mines Limited, a company registered under the Companies Act; Cap. 388

PART II CENTRAL TENDER COMMITTEEPART II

CENTRAL TENDER COMMITTEE

3. There is hereby established the Central Tender Committee, in Lusaka, which shall perform such functions of the Board as are set out in these Regulations. Establishment of Central Tender Committee

4. (1) The Central Tender Committee shall consist of the following members: Composition of Central Tender Committee

(a) the Permanent Secretary responsible for finance, who shall be the Chairman;

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- (b) the Deputy Secretary to the Cabinet;
- (c) the Permanent Secretary responsible for works and supply;
- (d) the Permanent Secretary responsible for development planning;
- (e) the Director, Zambia National Tender Board;
- (f) the Managing Director, Zambia State Insurance Corporation Limited;
- (g) the Managing Director, Zambia Electricity Supply Corporation Limited;
- (h) the General Manager, Bank of Zambia;
- (i) the Company Secretary, ZCCM;
- (j) the Secretary, Zambia National Tender Board.

(2) There shall be a Vice-Chairman who shall be elected by the Central Tender Committee.

5. (1) The functions of the Central Tender Committee shall be to examine and authorise all procurement of goods, works and services for both Government and parastatal bodies whose value is above the limits authorised in these regulations for tender committees established by regulation 7, 11 or 16.

Functions of Central Tender Committee

(2) Without prejudice to the generality of sub-regulation (1) the functions of the Central Tender Committee shall be to-

- (a) invite and award running contracts on common user goods or services;
- (b) examine and authorise the variation of tender procedures for the tender committees established under these Regulations;
- (c) undertake and regulate registration of suppliers of goods, works and services.

6. (1) Except as otherwise provided for in these Regulations, the Central Tender Committee shall determine its own procedure.

Proceedings of Central Tender Committee

(2) The Central Tender Committee shall meet at such times and such places being not less than once in a month as the Chairman may determine.

(3) The Central Tender Committee shall cause minutes to be kept of the proceedings of every meeting and such minutes shall be transmitted to the Board as soon as practicable after the meeting at which they are confirmed.

(4) The Central Tender Committee may establish sub-committees and may appoint as members of such sub-committees, persons who are, or are not, members of the Central Tender Committee for any specific matter.

PART III PROVINCIAL TENDER COMMITTEESPART III

PROVINCIAL TENDER COMMITTEES

7. There is hereby established, in each province, a provincial tender committee for the procurement of goods, works and services in respect of provincial heads of expenditure falling under controlling officers designated as such in terms of section *four* of the Finance (Control and Management) Act.

Establishment of provincial tender committees
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8. (1) A provincial tender committee shall consist of the following members:

Composition of provincial tender committees

- (a) the Permanent Secretary for the Province, who shall be Chairman;
- (b) The Deputy Permanent Secretary for the Province, who shall be Vice-Chairman;
- (c) the head of the Provincial Accounting Unit;
- (d) the Provincial Agricultural Officer;
- (e) the Provincial Commissioner of Works;
- (f) the Provincial Education Officer;
- (g) the Provincial Marketing and Co-operative Officer;
- (h) the Provincial Medical Officer; and

- (i) two other members, other than civil servants, who are ordinarily resident in the province and who shall be appointed by the Board for a period not exceeding two years.

(2) The Supplies Officer, shall be appointed Secretary of the tender committee.

9. (1) The functions of a provincial tender committee shall be to invite and accept tenders relating to the procurement of goods, works and services for the Government within the limits provided for in Part VI.

Functions of provincial tender committees

(2) Without prejudice to the generality of sub-regulation (1), a provincial tender committee shall within limits provided for in Part VI of these Regulations invite and award running contracts on foodstuffs to be supplied to Government institutions whose expenditure heads fall under the control of the Provincial Permanent Secretaries.

(3) A provincial tender committee shall perform its functions in accordance with the provisions of Part VI and VIII.

10. (1) Except as provided for in these Regulations, a provincial tender committee shall determine its own procedure.

Proceedings of provincial tender committees

(2) A provincial tender committee-

- (a) shall meet at such times and such places being not less than once in a month as the Chairman may determine;
- (b) shall cause minutes to be kept of the proceedings of every meeting and such minutes shall be transmitted to the Board as soon as practicable after the meeting at which they are confirmed; and
- (c) may establish sub-committees and appoint as members, of such sub-committees persons who are, or are not, members of the provincial tender committee for the purpose of advising the committee on any specific matter.

PART IV PARASTATAL TENDER COMMITTEESPART IV

PARASTATAL TENDER COMMITTEES

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11. There is hereby established in the governing body of every parastatal body a parastatal tender committee. Establishment of parastatal tender committees

12. Notwithstanding regulation 11, where the physical structure of a particular parastatal body is too small to be able to constitute a tender committee in accordance with these Regulations, the Board shall prescribe the procedures to be followed by such a parastatal body. Small parastatal bodies

13. (1) A city or municipal council tender committee shall consist of the following members; Composition of parastatal tender committees

- (a) The Town Clerk, who shall be Chairman;
- (b) the Director of Administration, who shall be Vice-Chairman;
- (c) the Director of Finance;
- (d) the Director of Engineering;
- (e) the Director of Housing and Social Services;
- (f) the Director of Legal Services;
- (g) the Director of Public Health; and
- (h) two other members, other than members of the council, who are ordinarily, resident in the district, and who shall be appointed by the Board for a period of two years.

(2) The head of the section responsible for purchasing and supply in the council shall be appointed by the Secretary of the tender committee.

(3) A district council tender committee shall consist of the following members:

- (a) the District Executive Secretary, who shall be the Chairman;
- (b) the Deputy District Executive Secretary, who shall be the Vice-Chairman;

- (c) the Treasurer;
- (d) the Director of Works;
- (e) the District Education Officer;
- (f) the District Agricultural Officer,
- (g) the head of the District Co-operative Union;
- (h) one representative of the Security Forces; and
- (i) the Administrative Officer, who shall be the Secretary.

(4) The tender committees for parastatal bodies other than councils established under the Local Government Act shall consist of eight members appointed by the Board on the recommendations of the appropriate chief executives, three of whom shall be from outside the parastatal body. Cap. 281

(5) The chief executive of a parastatal body shall appoint the chairman of a tender committee established under sub-regulation (3).

(6) The vice-chairman of a tender committee established under sub-regulation (3) shall be appointed by the members of the tender committee.

14. (1) The functions of a parastatal tender committee shall be to invite tenders and authorise procurement of goods, works and services within the limits specified in Part VIII: Functions of parastatal tender committees

Provided that operating expenditure on goods and services which are not of a capital nature shall not be subject to the limits specified in Part VIII.

(2) Without prejudice to the generality of sub-regulation (1), a parastatal tender committee shall-

- (a) invite and award running contracts; and
- (b) examine and approve the variation of tender procedures.

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(3) A parastatal tender committee shall perform its functions in accordance with the provisions of Part VIII and IX.

15. (1) Except as provided for in these Regulations a parastatal tender committee shall determine its own procedure.

Proceedings of parastatal tender committees

(2) A parastatal tender committee shall meet at such times and places being not less than once in a month as the Chairman may determine.

(3) A parastatal tender committee may establish sub-committees which shall consist of persons who are, or are not, members of the committee for the purpose of advising the committee on any specific matter.

(4) A parastatal tender committee shall cause minutes to be kept of the proceedings of every meeting and such minutes shall be transmitted to the Board as soon as practicable after the meeting at which they are confirmed.

PART V MINISTRY TENDER COMMITTEESPART V

MINISTRY TENDER COMMITTEES

16. There is hereby established in each ministry of Government a tender committee for the procurement of goods and services.

Establishment of ministry tender committees

17. A ministry tender committee shall consist of-

Composition of ministry tender committees

- (a) the controlling officer, who shall be the Chairman;
- (b) an officer of at least deputy permanent secretary rank, who shall be Vice-Chairman;
- (c) the Head of the accounting unit;
- (d) the Head of the procurement unit;
- (e) the Heads of Departments; and
- (f) a senior supplies officer, who shall be the Secretary.

18. (1) The functions of a ministry tender committee shall be to invite and accept tenders relating to the procurement of goods and services for its ministry within the limits provided for in Part VI.

Functions of ministry tender committees

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(2) A ministry tender committee shall perform its functions in accordance with Part VI and Part IX.

19. (1) Except as otherwise provided for in these Regulations, a ministry tender committee shall determine its own procedure.

Proceedings of
ministry tender
committee

(2) A ministry tender committee shall meet at such times and such places as the Chairman may determine, but not less than once a month.

(3) A ministry tender committee shall cause minutes to be kept of the proceedings of every meeting and the minutes shall be transmitted to the Board as soon as practicable after the meeting at which they are confirmed.

20. The Board shall prescribe the procedure to be followed by a Government ministry or department where a tender committee has not been established in terms of Part III and this Part.

Procedure where
tender committee not
established in terms of
Parts III and V

21. (1) The tender procedures specified in these Regulations shall not apply to-

Tender procedures not
to apply to controlled
goods, services
purchased at official
price, etc.

- (a) goods and services which are to be procured at the official or controlled price from a Government or parastatal body or goods which are controlled in terms of price unless-
 - (i) the goods and services are to be obtained from outside Zambia; and
 - (ii) the goods are capital goods; and
- (b) goods and services which are to be obtained in accordance with an international agreement.

(2) Where the goods or services are procured in accordance with paragraph (a) of sub-regulation (1) the purchasing officer shall, at the time of ordering the goods or services, inform the relevant tender committee as to the-

- (a) description, unit, quantity and value of the goods ordered; or
- (b) type of services to be obtained and the cost thereof.

22. Where a dispute between a tender committee and a contractor arises and the two parties fail to resolve the dispute amicably, either of the parties may refer the dispute to the Board for a decision. Board to settle disputes

23. The Board shall delegate to a tender committee such of its functions relating to the procurement of goods and services as provided in these Regulations. Delegation to other persons

PART VI FINANCIAL LIMITS FOR GOVERNMENT PURCHASES

FINANCIAL LIMITS FOR GOVERNMENT PURCHASES

24. (1) Where the estimated value of goods or services for Government purchases- Financial limits for Government purchases

- (a) does not exceed fifty thousand kwacha informal tenders shall be invited and authorised for acceptance by a senior officer generally or specially designated for the purpose by the Controlling Officer;
- (b) exceeds fifty thousand kwacha but does not exceed two hundred thousand kwacha, informal tenders shall be invited and authorised for acceptance by the Head of Department with the approval of the Controlling Officer;
- (c) exceeds two hundred thousand kwacha but does not exceed five million kwacha, informal tenders shall be invited and authorised for acceptance by the Controlling Officer or the Permanent Secretary for a Province;
- (d) exceeds five million kwacha, but does not exceed twenty-five million kwacha, formal tenders shall be invited and authorised for acceptance by a ministry or provincial tender committee; or
- (e) exceeds twenty-five million kwacha, formal tenders shall be invited and authorised for acceptance by the Central Tender Board.

(2) The financial limits specified in sub-paragraph (1) shall be administered under the following conditions:

- (a) the estimated value shall include the total value of all items which can reasonably be obtained at any one time in one requisition or in one contract;
- (b) the supply or service shall not be sub divided or deliberately underestimated in order to bring the total value within the limits set in sub-paragraph (1); and

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- (c) procurement of the same type of goods or services within the limits given to controlling officers and their subordinate staff shall not be undertaken more than once in every three months.

(As amended by S.I. No. 132 of 1996)

25. Contracts for the supply of articles of a fragile or perishable nature shall, so far as may be practicable, be awarded to a supplier nearest to the point where the supplies are required. Perishable or fragile goods

26. Equipment including vehicles, machinery, tools and spares for Government, shall, as far as it is practicable, be obtained by the ministry responsible for works and supply. Special equipment

27. (1) A purchasing officer shall purchase from the Government Stores any items included in the approved current Stores Catalogue unless such items are not available. Purchase from Government Stores Department

(2) Where items are not available at Government Stores, a certificate of non-availability from Government Stores shall be obtained.

28. (1) A purchasing officer may place orders directly with suppliers at agreed rates under such contracts as may have been arranged either by the Central Tender Committee or a provincial tender committee. Running contracts at fixed prices

(2) Controlling Officers, purchasing officers and provincial Permanent Secretaries shall ensure that the fullest advantage is taken of running contracts.

PART VII FINANCIAL LIMITS FOR PURCHASES BY PARASTATAL BODIESPART VII

FINANCIAL LIMITS FOR PURCHASES BY PARASTATAL BODIES

29. (1) Where the estimated value of goods, works and services for a city or municipal council- Application of procurement limits in parastatal bodies

- (a) does not exceed fifty thousand kwacha, informal tenders shall be invited and authorised for acceptance by a senior officer generally or specially designated for that purpose by the Town Clerk;

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- (b) exceeds fifty thousand kwacha, but does not exceed two hundred thousand kwacha, informal tenders shall be invited and authorised for acceptance by the relevant Head of Department;
- (c) exceeds two hundred thousand kwacha, but does not exceed five million kwacha, informal tenders shall be invited and authorised for acceptance by a tender committee;
- (d) exceeds five million kwacha, but does not exceed twenty-five million kwacha, formal tenders shall be invited and authorised for acceptance by a tender committee; or
- (e) exceeds twenty-five million kwacha, formal tenders shall be invited and authorised for acceptance by the Central Tender Committee.

(2) Where the estimated value of goods, works or services for a district council-

- (a) does not exceed fifty thousand kwacha, informal tenders shall be invited and authorised for acceptance by a senior officer generally or specially designated for that purpose by the Secretary;
- (b) exceeds fifty thousand kwacha, but does not exceed two hundred thousand kwacha, informal tenders shall be invited and authorised for acceptance by the Secretary;
- (c) exceeds two hundred thousand kwacha, but does not exceed one million kwacha, informal tenders shall be invited and authorised for acceptance by a tender committee;
- (d) exceeds one million kwacha, but does not exceed ten million kwacha, formal tenders shall be invited and authorised for acceptance by a tender committee;
- (e) exceeds ten million kwacha, formal tenders shall be invited and authorised for acceptance by the Central Tender Committee.

(3) Where the estimated value of goods and services for parastatal bodies other than those provided for under sub-paragraphs (1), (2) and (4)-

- (a) does not exceed fifty thousand kwacha, informal tenders shall be invited and authorised for acceptance by a senior officer generally or specially designated for that purpose by the Chief Executive;
- (b) exceeds fifty thousand kwacha, but does not exceed two hundred thousand kwacha, informal tenders shall be invited and authorised for acceptance by the relevant Head of Department;

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- (c) exceeds two hundred thousand kwacha, but does not exceed twenty-five million kwacha, informal tenders shall be invited and authorised for acceptance by a tender committee;
- (d) exceeds twenty-five million kwacha, formal tenders shall be invited and authorised for acceptance by the Central Tender Committee.

(4) Where in ZCCM-

- (a) operating expenditure which is not of a capital nature, and the estimated value of goods or services-
 - i(i) does not exceed twenty-five million kwacha, tenders shall be invited and authorised for acceptance by any senior officer designated for the purpose by the Chief Executive;
 - (ii) exceeds twenty-five million kwacha, tenders will be invited and authorised for acceptance by the ZCCM tender committee;
- (b) capital expenditure involves Government funding or guarantees, and the estimated value for goods, works and services-
 - i(i) does not exceed twenty-five million kwacha, tenders shall be invited and authorised for acceptance by the ZCCM tender committee;
 - (ii) exceeds twenty-five million kwacha, formal tenders shall be invited and authorised for acceptance by the Central Tender Committee.

30. Contracts for the supply of articles of a fragile or perishable nature shall, so far as may be practicable, be awarded at the centre where the supplies are required.

Perishable or fragile goods

PART VIII GENERAL PROVISIONS FOR GOVERNMENT AND PARASTATAL BODIESPART VIII

GENERAL PROVISIONS FOR GOVERNMENT AND PARASTATAL BODIES

- 31.** When formal tenders are to be invited a tender committee shall ensure that-
- Formal tenders
- (a) there is a concise description of the goods or services required;
 - (b) an estimate of costs and completion time for building and construction works has been obtained;
 - (c) the point of delivery of goods or the place where work is to be performed is specified;
 - (d) the name and address of the office from which tender documents, detailed specifications or further particulars may be obtained has been specified;
 - (e) the closing date for receipt of tenders by the tender committee has been stated;
 - (f) the names of newspapers, trade papers, periodicals or other media in which it is suggested that tenders be further advertised has been specified; and
 - (g) written assurance has been obtained by the Controlling Officer or the Chief Executive, as the case may be, that funds have been voted for such project, works or services and such funds as are required to make stage payments shall be made available on time.
- 32.** Each application to a tender committee for the advertisement of a tender shall be accompanied by copies of the tender documents, specifications and other relevant particulars applicable to the type of tender.
- Documents for formal tenders
- 33.** (1) Each application to a tender committee for the advertisement of a tender shall be given a separate reference number by the tender committee
- Numbering of tenders
- (2) The reference number referred to under sub-regulation (1) shall identify the tender, and the tenderer shall quote it on all tender documents and print it on the envelop or other document in which formal tenders are submitted.
- 34.** (1) An offer to tender shall be in the form set out in the First Schedule.
- Date of submission of tenders
- (2) An offer to tender shall be submitted within a period of-
- (a) not less than four weeks after the date of publication of the invitation to tender, or
 - (b) not less than eight weeks after the date of publication of the invitation to tender in the case of tenders invited from outside Zambia.
- 35.** Where a Controlling Officer or Chief Executive intends to reduce the time allowed for tender under paragraph 34 he shall inform the appropriate tender committee and give full reasons, in writing, for the proposed reduction.
- Reduced time limit

36. (1) If, after the invitation to tender has been published, a Controlling Officer or Chief Executive wishes to have the published time limit extended, he shall inform the appropriate tender committee of his proposed date and give full reasons, in writing, for the extension. Extended time limit

(2) The extension, if granted, shall be published through the same media that published the original invitation to tender.

37. A tender received after the closing time shall be stamped, recorded in a register and returned to the tenderer concerned without being considered. Late tenders

38. (1) A notification of a withdrawal of a tender shall be in the form set out in the Second Schedule. Withdrawal of tenders

(2) A withdrawal of a tender shall only be valid if received before the closing time of the tender.

(3) A withdrawal of a tender received after the closing date shall be stamped, recorded in a register and returned to the tenderer concerned.

(4) The tender that was submitted and letter of withdrawal shall be announced at the public opening, after which, the withdrawn tender shall be declared non-responsive and recorded as such.

39. (1) All tenders shall be opened- Procedure etc., on opening of tenders

(a) by the Secretary of the tender committee or any person authorised by the tender committee in that behalf;

(b) in public, at the offices of the tender committee; and

(c) on a day, other than a public holiday, or the day following a public holiday.

(2) The tender committee shall scrutinise tenders for completeness and the following tenders shall be considered non-responsive:

(a) a tender submitted after the closing date;

(b) a tender sent by telex, telephone or telegraph;

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- (c) a tender not accompanied by tender security, where required;
 - (d) a tender with insufficient information concerning specifications, prices and delivery;
 - (e) unsolicited offers; or
 - (f) a tender upon which the tenderer has made revisions on his own after the tender opening.
- (3) Any person may attend to witness the opening of tenders.
- (4) The following procedure shall apply when tenders are being opened:
- (a) each priced page shall be embossed;
 - (b) the name of the tenderer and the tender number shall be announced; and
 - (c) the total tender price, quantity offered and delivery period shall be read out, but where unit prices are quoted these need not be announced.
- (5) A record of persons attending each tender opening and those who have tendered, shall be maintained.
- (6) Envelopes in which tenders and tender modifications are received shall be retained in a temporary file until all the awards have been made.

40. Tender documents shall state the following:

Tender documents

- (a) that the lowest or highest tender shall not necessarily be accepted;
- (b) that no tender shall be considered unless it is delivered to the tender committee by the closing date and time published and that this shall apply notwithstanding that the tender may be delayed in the post;
- (c) that tenders shall not be considered unless they comply fully with the advertised specifications and other requirements;
- (d) that tenderers shall be at liberty to tender for less goods or services than required only when the notice of tender so provides;
- (e) that each tender shall be submitted in a separate sealed envelope or other container to the tender committee and that the tenderer shall print the number of the advertised tender notice and a brief description of the goods, works or services being tendered for on the envelope or container;
- (f) that tenders for goods shall state-
 - (i) the country of manufacture and the name of the manufacturer of the goods;
 - (ii) for goods manufactured outside Zambia, whether the supply is offered from stocks on which import duty and value added tax have been charged or from stocks which will be directly imported free of duty and value added tax; if the former is the case, the value of goods on which import duty and value added tax have been calculated shall be stated;
 - (iii) if import duty and value added tax have been paid, either on the items offered or on the material imported for their manufacture, the amount of duty and value added tax paid shall be stated;

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- (iv) for goods tendered for by tenderers within Zambia, whether reserve stocks are held in Zambia and whether any kind of after sales service is available;
- (g) that the contractor shall be responsible for the safe arrival or delivery of supplies; and in order to mitigate his responsibility, if the contractor insures the supplies and any other liability under the contract, the cost of which shall be borne by him, than the contract price shall be deemed to be inclusive of all insurance charges;
- (h) that the contractor shall bear the full financial consequences of any material damage or personal injuries which, through his action or his agent's, may be suffered by himself, his agents or any third party during the performance of the contract, either on the contractor's premises, purchaser's premises or anywhere else;
- (i) that priced bills of quantities contained in a separate envelope endorsed with the tenderer's name shall be submitted together with the tender:
Provided that the lowest tenderer may still be asked to submit his bills if any are not received by the due date:
- (j) that for tenders that have been advertised, the rates set out in the Third Schedule shall be used as non-refundable tender document charges;
- (k) that tender and performance securities as set out in Part I and II of the Fourth Schedule shall be required on all procurement of goods and services in excess of twenty five million kwacha, and that performance securities shall be required on all building and construction works in excess of one hundred million kwacha; the tender securities shall be in the sum equal to two per cent of the amount of the tender and performance securities shall be equal to ten per cent of the contract price;
- (l) that tender securities shall be furnished by the date the tender is being opened and performance securities shall be furnished within fourteen days of the signing of the contract;
- (m) that failure to furnish tender security or performance security within the time specified shall constitute grounds for termination of the contract for default;
- (n) that tenders securities shall be returned to unsuccessful tenderers as soon as an award has been made; tender security or performance security submitted by a successful tenderer shall be retained until the tenderer has executed all his contractual obligations;
- (o) that the Secretary to the tender committee shall determine the validity of the tender security or performance security;
- (p) that the performance security shall be discharged by the purchaser and returned to the contractor not later than ninety days after the date of receipt of the goods or services by the consignee, in terms of the contract; and
- (q) that goods-
 - (i) manufactured in Zambia, i.e. goods whose cost of materials, labour and services constitute not less than forty per cent of the finished product, shall be given price preference of fifteen per cent;
 - (ii) imported and held in stock by merchants in Zambia shall be given price preference of five per cent; and
 - (iii) produced by small business enterprises with a paid up capital or two hundred and fifty thousand kwacha shall be given preference of twenty per cent.

41. (1) A tender committee shall ensure-

Tender evaluation

- (a) that the criteria used in evaluating tenders is fully consistent with information given in the tender documents;
- (b) that tenders are scrutinised for completeness in accordance with sub-paragraph (2) of paragraph 39; and
- (c) that the period, not exceeding twenty-one days, within which an evaluation report is to be submitted to it for consideration, is stated.

(2) Where an offer elapses as a result of a purchasing institution failing to meet the provisions of item (1) of sub-paragraph (1) and a revalidation of the offer is necessitated, the costs of the revalidation shall be met by the purchasing institution.

42. (1) Special formal tenders are those which shall not be advertised in the *Gazette* or in any other publication and for which tenders shall be invited from nominated firms in accordance with this paragraph.

Special formal tenders

(2) Except as specifically provided for in these Regulations, the requirements applying to formal tenders shall apply to special formal tenders.

(3) A tender committee may authorise special formal tenders or negotiations where-

- (a) there is a proclamation in force declaring a state of emergency or threatened emergency under the Constitution;
- (b) it is in the interest of public order, public safety or public security;
- (c) building works of a specialised or complex nature are involved, or equipment to be obtained is highly specialised;
- (d) the goods and services to be obtained are of a personal or professional nature;
- (e) services are to be rendered by an educational or training institution;
- (f) evidence is furnished that there are no other competing institutions or organisations in respect of the goods or services to be supplied or rendered and that the supplier is the sole franchise holder;

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- (g) the goods or services to be supplied or rendered are to be used in, or are in the nature of, research work;
- (h) equipment to be supplied is technical and is of a nature that requires standardisation and inter-changeability of parts; or
- (i) there has been no acceptable tender from all formal tenders previously invited.

43. Informal tenders shall be invited from at least three contractors or suppliers. Informal tenders

44. (1) Tender samples shall be- Tender samples

- (a) submitted as part of the tender, in the quantities, sizes and other details requested in the invitation to tender;
- (b) carriage paid;
- (c) received within seven days after the date set for opening of tenders if submitted separately from tender offers; and
- (d) evaluated to determine compliance with all characteristics listed in the invitation.

(2) Failure of samples to conform to all characteristics referred to in the invitation for tenders and failure to furnish samples by the time specified shall entitle a tender committee to reject the tender.

(3) Notwithstanding the other provisions of this regulation, the Secretary to the tender committee shall call for samples where the tenderer's offer is competitive.

45. Where it is not possible to avoid using a proprietary article as a sample, the tenderer shall make it clear that the proprietary article is displayed only as an example of the type or quality of the goods being tendered for and that competition shall not thereby be limited to that article only. Proprietary articles as samples

46. (1) Samples made up from materials supplied by a tender committee shall not be returned to the tenderer nor shall the tender committee be liable for the cost of making them. Tender committee sample materials

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(2) All samples produced from materials belonging to the tenderer which are not claimed by the tenderer within a period of three months from the date of the award of tender, shall be the property of the Board and shall be sent to the Director who shall dispose of them in such a manner as may be directed by the Board.

47. (1) The description of the goods or services in the tender invitations shall be clear and broad based. Product specifications

(2) Specifications issued by the Zambia Bureau of Standards or any other international standards being used shall be clearly stated.

(3) A brand name shall not generally be used when tenders are being invited.

(4) It shall be essential to indicate the brand name or quality of the article required; and words such as "or other article of comparable quality" shall be included in the invitation to tender.

48. When the value of goods or services exceeds one hundred million kwacha, tender documents shall include the following particulars: Financing of works contracts

- (a) how (for example, in terms of working capital and capital equipment) and to what extent the project shall be financed from the purchasing institution's own resources;
- (b) if finance from a foreign country is necessary the extent to which and how, the purchasing institution intends to raise funds in Zambia for the financing of the project both before and during the course of works;
- (c) if funds for the financing of the project are to be raised by foreign borrowing-
 - (i) the terms and conditions of such loans;
 - (ii) to what extent the purchasing institution will request repatriation of "progress" payments to cover the loans other than the repatriation of profits on the completion of a contract by the tenderer;
- (d) the proportion of the tender sum, in the case of works contracts expected to be paid out in foreign currency.

49. (1) Copies of all correspondence entered into with tenderers upon the subject of errors in their tenders between the time of opening of the tenders and the decision of a tender committee shall be sent to the Secretary of the tender committee with recommendations and comments thereon. Correspondence upon errors

(2) Except with the express permission of the Secretary to the tender committee no other communication shall take place with the tenderer upon the subject of his tender during this period.

50. (1) The successful tenderer shall be advised by letter or by telegraph of the receipt of notice of award, which notice shall include information relating to the invitation, description of the items, quantity, price and contract number.

Notification to
successful tenderer

(2) An advance notice of award may be given by the Secretary of the tender committee to the successful tenderer only where-

- (a) a tender is about to expire and it is necessary to issue an award promptly;
- (b) prompt action is necessary to give the contractor an opportunity to obtain materials;
- (c) delivery or performance is urgent and cannot await formal contract documents; or
- (d) prompt action is necessary to permit a contractor to proceed with preparation of necessary catalogue and other contract data.

(3) Advance notices shall be followed by formal contract documents as soon as possible.

(4) Telegraphic notices shall contain all of the information as directed by the tender committee and, in addition, a statement that written confirmation shall follow.

(5) Oral notices may be given only when circumstances surrounding the procurement or performance would not allow time for telegraphic notice, and shall include all information normally included in written notices and shall also include a statement that written confirmation shall follow.

(6) Where an award for a formal tender is made the Secretary to the tender committee shall publish a notice in the *Government Gazette* stating who has been awarded the tender.

51. Acceptance of any tender shall not be anticipated and orders shall not be placed until the necessary authority has been received from the tender committee.

Non-anticipation of
tenders

52. (1) Where it is necessary to amend or alter conditions or specifications or substitute samples after the original date for the submission of tenders, fresh tenders shall be invited so that all tenderers may have an equal opportunity of tendering on the new basis:

Amendment, alteration or substitution of samples, etc.

Provided that a Controlling Officer or Chief Executive may recommend and a tender committee may approve an increase or decrease in the number of articles involved without calling for fresh tenders.

(2) Where it is necessary to alter the substance of a tender after it has been accepted, a tender committee may authorise negotiations with the contractor within the general framework of the accepted tender, but any proposed variation of contract involving either an increase or a decrease of the tendered sum be submitted to the tender committee for approval.

53. (1) In periods of inflation, a price adjustment formula shall apply in order to arrive at a reasonable price.

Price adjustment formulae

(2) Tenderers shall quote on a present-day-value using price adjustment based on official statistics of Government agencies basis or United Nations agencies and the formula shall accommodate both rises and falls in price levels.

54. A Controlling Officer, a Chief Executive or a tender committee may request a contractor to submit invoices and other related documents for examination.

Invoice etc.

55. A successful tenderer shall within fourteen days from the date of the receipt of contract forms sign and submit the contract and where it is a tender requirement to provide security the security shall be issued within fourteen days of the date of signing of the contract.

Signing of contract

56. A letter of intent shall only be issued to a supplier or contractor after all the terms and conditions have been agreed upon by the tender committee.

Letter of intent etc.

57. Where the contract involves access to confidential information-

Tenders relating to public security

- (a) a Government ministry or department or body institution shall notify the contractor of the security classification of the contract and the elements thereof and of any subsequent revisions in such security classification;
- (b) the contractor shall, prior to the commencement of the contract, safeguard all classified elements of the contract and shall provide and maintain a system of strict security control within his own organisation; and
- (c) authorised representatives of the armed, security or police forces shall have the right to inspect, the procedures, methods and facilities utilised by the contractor or the compliance by the contractor with the security requirements under the contract.

58. The original tender documents and related correspondence of the successful tenderer shall be retained by the Ministry or parastatal body and a copy of the contract or agreement shall be forwarded to the Board and the relevant tender committee.

Disposing of contract documents

59. In contracts for the supply of goods which run for a considerable period, the requirements of which cannot accurately be estimated, provision shall be made in the contract for a variation in the quantity of the goods to be supplied by twenty-five per centum over or under the contract figure.

Variation in quantities

60. (1) Goods delivered shall be inspected, sampled and tested by the receiving Ministry or parastatal body and they shall not be accepted unless they comply with the stipulations of the contract.

Inspection of goods delivered

(2) Contracts shall contain a clause that the supplier shall be responsible for all costs and expenses incurred due to a justified rejection of his goods on the ground that they do not comply with the stipulation of the contract.

61. The Board shall prescribe general conditions of contract for Government and parastatal bodies which may, with the approval of the Board be varied generally or with references to a particular contract.

General conditions of contract

PART IX GENERAL PROVISIONS

GENERAL PROVISIONS

62. (1) Any person who-

Offences and penalties relating to tender documents

- (a) opens any envelope or other container in which a tender is contained, other than in the due and proper execution of his duties under these regulations;
- (b) burns, tears or otherwise destroys or partially burns, tears or destroys any tender; or
- (c) erases or does any other act which falsifies, or renders incomplete or misleading any tender;

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding thirty thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

The Laws of Zambia

(2) For the purpose of this regulation "tender" includes documents or things submitted together with the tender and which are relevant to the tender and which are in the possession of the Board, a tender committee or any other person authorised by the Board.

63. The Board may, in its discretion, direct that all tenders or any class of tenders shall be invited or approved only by the Board.

Tenders to be invited
and approved only by
board

64. Spent.

The Laws of Zambia

FIRST SCHEDULE

Regulation 34)

TENDER FORM

Date:.....

Contract No.

To:.....

(Name and Address of Purchaser)

Gentlemen.

Having examined the Conditions of Contract and Specifications including Addenda Nos. the receipt of which is hereby duly acknowledged, I (We)*(1), the undersigned, offer to supply and deliver..... in conformity with the said Drawings, Conditions of Contract and Specifications for the sum of, (b) or such other sums as may be ascertained herewith and made part of this tender.

I (We) undertake, if the tender is accepted, to commence delivery of the goods or services*(2) within (c) and to complete delivery of all the items specified in the Contract within (c) days calculated from date of receipt of your letter of Acceptance or letter of Credit.

If the tender is accepted I (We) will obtain the guarantee of a Bank in a sum not exceeding% (d) of the Contract sum for the due performance of the Contract.

I (We) agree to abide by this tender for a period of (c) days from the date fixed for tender opening and it shall remain binding upon me (us) and may be accepted at any time before the expiration of that period.

Until a formal contract is prepared and executed, this tender together with your written acceptance thereof in your notification or award shall constitute a binding contract between us.

I (We) understand that you are not bound to accept the lowest or any tender you may receive.

Dates this.....day of.....19.....

.....
Signature

.....
(In the Capacity of)

Duly Authorised to sign tender for and on behalf

.....

Witness.....

Address.....

.....
Signature

- (a) description of goods or services
- (b) total tender amount
- (c) number of days
- (d) percentage

* delete whichever is not applicable

The Laws of Zambia

SECOND SCHEDULE

(Regulation 38)

WITHDRAWAL OF TENDERS

"I of (address) being duly authorised in that behalf by and occupying the position of in (employer) whose tender is scheduled for opening on hereby withdraw that tender from consideration;.....

Signature.....

Telephone No.....

Date.....

The Laws of Zambia

THIRD SCHEDULE

(Regulation 43 (k))

1. NON-REFUNDABLE TENDER DOCUMENT CHARGES

Estimated Tender Cost

Tender Document Charges

	K
(a) Up to ten million Kwacha	2,000.00
(b) Each additional ten million Kwacha or part thereof	2,000.00
(c) All tenders above one billion Kwacha	200,000.00

2. COST OF POSTAGE OR HAND DELIVERY OF TENDER DOCUMENT

Where a prospective tenderer requests the Board to send the tender documents by post or by hand delivery, the tenderer shall be charged the actual cost of the postage on delivery.

The Laws of Zambia

FOURTH SCHEDULE

(Regulation 43 (I))

PART I

TENDER SECURITY FORM

WHEREAS (hereinafter called "the Tenderer") has submitted its tender dated for the supply of (hereinafter called "the tender")

KNOW ALL MEN by these presents that we of having our registered office at (hereinafter called "the Bank") are bound unto for which payment well and truly to be made to the said purchaser, the Bank binds itself, its successors and assigns by these presents.

Sealed with the Common Seal of the said Bank this day of 19.....

THE CONDITIONS of this obligation are:

- (a) if the tenderer withdraws its tender during the period of tender validity specified by the Tenderer on the Tender Form; or
(b) if the tenderer having been notified of the acceptance of its tenderer by the Purchaser during the period of tender validity;
(i) fails or refuses to execute the Contract Form, if required; or
(ii) fails or refuses to furnish the Performance Security, in accordance with the instructions to Tenderers,

We undertake to pay to the purchaser up to the above amount upon receipt of its first written demand without the purchaser having to substantiate its demand, provided that in its demand the purchaser will note that the amount claimed by it is due to it owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

..... (Signature of the Bank)

..... (Signature of the Witness)

Name of Witness:

Address of Witness:

.....

PART II

PERFORMANCE SECURITY FORM

The Laws of Zambia

To: (Name of Purchaser)

WHEREAS(Name of Supplier) hereinafter called "the Supplier" has undertaken in pursuance of Contract No.dated in 19..... to supply (Description of Goods and Services) hereinafter called "the Contract".

AND WHEREAS it has been stipulated to you in the said Contract that the Supplier shall furnish you with a Bank Guarantee by a recognised Bank for the sum specified therein as security for compliance with the Supplier's performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the Supplier a Guarantee:

THEREFORE, we hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of (Amount of Guarantee in words and Figures) and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract and without cavil and argument, any sum or sums within the limits of (Amount of Guarantee) as aforesaid, without your needing to prove to or show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the day of 19.....

Signature and Seal of the Guarantors

.....
.....
.....
.....

Date:

Address:

.....
.....

Endnotes

1 (Popup - Popup)

delete whichever is not applicable

2 (Popup - Popup)

delete whichever is not applicable