

Supplement to the Republic of Zambia Government

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 151 OF 1995

The Zambia National Tender Board Act

(Act No. 30. of 1982)

The Tender Regulations, 2000

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OFFENCES AND PENALTIES

IN EXERCISE of the powers contained in section twenty-seven of the Zambia National Tender Board Act, 1982, and on the recommendation of the Board, the following Regulations are hereby made:

PART I
PRELIMINARY

- Title 1. These Regulations may be cited as the Tender Regulations, 2000.
- Interpretation 2. In these Regulations, unless the context otherwise requires
“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;
- Cap 241 “Controlled Price” means a price of a commodity or service which is prescribed under the Control of Goods Act;
- Cap 347 “Controlling Officer” shall have the meaning assigned to it under section two of the Finance (Control and Management) Act;

“formal tender” means a tender which is advertised in the Gazette;

“informal tender” means a tender which is not advertised in the Gazette.

“non-responsive offer” means an offer whose contents do not conform with what is required in a tender document;
- Cap 281 “Parastatal body” means any Company, Management Board, Association or Statutory Body in which the Government has a interest and includes a city municipal or district council established under the Local Government Act and their subsidiaries;

“procurement and supplies unit” means a unit established under regulation 28;

“certified procurement unit” means a procurement unit which has been certified by the Zambia National Tender Board under regulation 30;

“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 Tender Committee in a running contract;

``Running Contract`` means a contract extending over a period of 12 months and above for an estimated 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, 16 or 20.

PART II

CENTRAL TENDER COMMITTEE

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| Establishment of Central Tender Committee | 3. | There is hereby established the Central Tender Committee which shall perform such functions of the Board as set out in these Regulations. |
| Composition of Central Tender Committee | 4. | <p>(1) The Central Tender Committee shall consist of the following members:</p> <ul style="list-style-type: none">(a) The Permanent Secretary responsible for financial management and accounting who shall be the Chairman;(b) The Deputy Secretary to the Cabinet responsible for administration;(c) The Permanent Secretary responsible for works and supply(d) The Permanent Secretary responsible for budget and economic affairs;(e) The Permanent Secretary responsible for agriculture;(f) The Permanent Secretary responsible for education;(g) The Permanent Secretary responsible for local government;(h) The Director General of the Zambia National Tender Board;(i) The Deputy Governor of the Bank of Zambia;(j) The Director-General of the Central Board of Health; |

(k) The Commissioner-General of the Zambia Revenue Authority; and

(l) the Secretary to the Zambia National Tender Board;

Functions of the
Central Tender
Committee

5. (1) The functions of the Central Tender Committee shall be to examine and where appropriate, 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, 16 or 20..
- (2) Without prejudice to the generality of sub-regulation (1) the functions of the Central Tender Committee shall be to:
- (a) examine and where appropriate, award running contracts on common user goods or services;
- (b) examine and where appropriate, authorise the variation of tender procedures for the tender committees established under these Regulations; and
- (c) undertake and regulate registration of suppliers of goods, works and services as may be determined from time to time.

Proceedings of
Central Tender
Committee

6. (1) Except as provided for in these Regulations the Central Tender Committee shall determine its own procedure;
- (2) The Central Tender Committee shall meet at such times and 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 soon 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.
- (5) The quorum at any meeting of the Central Tender Committee shall be two thirds of the members.
- (6) The Central Tender Committee shall communicate the decisions

including any refusal and the grounds for the refusal to the Chief Executive or the Controlling Officer within three days from the date of the meeting where such a decision is made.

- (7) In the absence of the Chairman, the members present shall elect one of their numbers as Chairman for the purpose of their meeting.

PART III

PROVINCIAL TENDER COMMITTEES

Establishment of
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.

Cap 347

Composition of
Provincial Tender
Committees

8.

- (1) A Provincial Tender Committee shall consist of the following members:
- (a) The Permanent Secretary for the Province, who shall be the Chairman;
 - (b) The Provincial Heads in charge of:
 - (i) Accounting Unit;
 - (ii) Agriculture;
 - (iii) Works;
 - (iv) Education;
 - (v) Health; and
 - (vi) Police.
 - (c) Two other members other than members of the provincial administration who are ordinarily resident in the Province and whose appointment shall be ratified by the Board for a period not exceeding two years.
 - (d) The Procurement or Supplies Officer, who shall be Secretary.
- (2) A Provincial Tender Committee may invite any person, whose presence is in its opinion desirable to attend and participate in the deliberations of the meetings of the committee, but such person shall have no vote.

Functions of
Provincial Tender
Committees

9. (1) The functions of a Provincial Tender Committee shall be to examine and where appropriate, authorise tenders relating to the procurement of goods, works and services for the Government within the limits provided for in Part VII.
- (2) Without prejudice to the generality of sub-regulation (1), a Provincial Tender Committee shall within limits provided for in Part VII of these Regulations examine and where appropriate, award running contracts on foodstuffs to be supplied to Government institutions whose expenditure heads fall under the control of the Provincial Permanent Secretary.
- (3) A Provincial Tender Committee shall perform its functions in accordance with provisions of Part VIII, IX and X.

Proceedings of
Provincial Tender
Committees

10. (1) Except as provided for in these Regulations, a Provincial Tender Committee shall determine its own procedure.
- (2) A Provincial Tender Committee:
- a) shall meet at such times and places being not less than once 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 soon 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 to advise on any specific matter.
- (3) The quorum at any meeting of a Provincial Tender Committee shall be two thirds of the members.
- (4) The Secretary of a Provincial Tender Committee shall communicate all decisions, including any refusal and the grounds for the refusal, to Heads of Departments or organizations within three days of such decision.
- (5) In the absence of the Chairman, the members present shall elect One of their member to be Chairman for the purpose of that Meeting.

PART IV

PARASTATAL TENDER COMMITTEES

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| Establishment of Parastatal Tender Committees | 11. | There is hereby established in of every parastatal body a Tender Committee |
| Small Parastatal Bodies | 12. | Notwithstanding Regulation 11, where the physical structure of a particular parastatal body is too small to be able to establish a tender committee in accordance with these Regulations, the Board shall prescribe the procedures to be followed by such a parastatal body. |
| Composition of Parastatal Tender Committees | 13. | <p>A Parastatal Tender Committee shall consist of eight members appointed by the Board, on the recommendation of the Chief Executive as follows:</p> <ul style="list-style-type: none">(a) The Chief Executive who shall be the Chairman;(b) Four members who shall be Heads of key Departments;(c) The Head responsible for purchasing;(d) Two shall be appointed from outside the parastatal body for a period not exceeding two years; and(e) A Purchasing or Supplies Officer who shall be the Secretary. |
| Functions of Parastatal Tender Committees | 14. | <ul style="list-style-type: none">(1) The functions of a Parastatal Tender Committee shall be to examine and where appropriate, authorise the procurement of goods, works and services within limits specified in Part VII provided that operating expenditure in the form of trading, shall not be subject to the limits specified in Part VII.(2) Without prejudice to the generality of sub-regulation (1), a Parastatal Tender Committee shall examine and where appropriate, award running contract.(3) A Parastatal Tender Committee, shall perform its functions in accordance with provisions of Part VIII, IX and IX. |

Proceedings
of Parastatal tender
Committees

15. (1) Except as provided for in these Regulations a Parastatal Tender Committee shall determine its own procedure.
- (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 soon after the meeting at which they are confirmed.
- (5) A Parastatal Tender Committee may invite any person, whose presence is in its opinion desirable to attend and to participate in the deliberations of the meeting of the committee, but such a person shall have no vote.
- (6) The Secretary of the Parastatal Tender Committee shall communicate all decisions to Heads of Departments or other organisations, including any refusal and the grounds for the refusal within three days of the decision.
- (7) The quorum at any meeting of a Parastatal Tender Committee, shall be two thirds of the members.
- (8) In the absence of the Chairman, the members present shall elect one of their member as Chairman for the purchase of that meeting

Establishment
of Sub-Committees

- (9) A Parastatal Tender Committee may establish sub-committees which shall consist of persons who are or are not members of the tender committee and delegate to such committees such of its functions relating to the procurement of goods, works and services as provided in these regulations.

PART V

MINISTRY TENDER COMMITTEES

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| Establishment of Ministry Tender Committees | 16. | There is hereby established in each Ministry of Government a tender committee for the procurement of goods, works and services. |
| Composition of Ministry Tender Committee | 17. | <p>A Ministry Tender Committee shall consist of:</p> <ul style="list-style-type: none">(a) the Controlling Officer, who shall be the Chairman;(b) the Head of the Accounting Unit;(c) the Head of the Procurement Unit;(d) the Heads of not more than four key Departments;(e) a purchasing or Supplies Officer, who shall be the Secretary.(f) two other members from outside the Ministry to be ratified by the Board shall be appointed for a period not exceeding two years. |
| Functions of Ministry Tender Committees | 18. | <ul style="list-style-type: none">(1) The functions of a Ministry Tender Committee shall be to examine and where appropriate, authorise tenders relating to the procurement of goods, works and services for its Ministry within the limits provided for in Part VIII.(2) A Ministry Tender Committee shall perform its functions in accordance with Part VIII, IX and Part X. |
| Proceedings of Ministry Tender Committees | 19. | <ul style="list-style-type: none">(1) Except as otherwise provided for in these Regulations, a Ministry Tender Committee shall determine its own procedure.(2) A Ministry Tender Committee shall meet at such times and places as the Chairman may determine.(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 soon after the meeting at which they are confirmed.(4) A Ministry 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. |

- (5) A Ministry Tender Committee may invite any person, whose presence is in its opinion desirable to attend and participate in the deliberations of the meeting of the committee but such person shall have no vote.
- (6) The quorum at any meeting of a Ministry Tender Committee, shall be two thirds of the members.
- (7) The Secretary of the Ministry Tender Committee shall communicate all decisions made including any refusal and the grounds for the refusal, made to the Heads of Departments of Government ministries or organisations within three days from the date of the decision.
- (8) In the absence of the Chairman, the members present shall elect one of their member as Chairman for the purpose of that meeting.

PART VI

DISTRICT TENDER COMMITTEES

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| Establishment of District Tender Committees | 20. | There is hereby established in each district a tender committee for the procurement of goods , works and services for Government. |
| Composition of District Tender Committees | 21. | <p>A District Tender Committee shall consist of:</p> <p>(a) the District Administrator, who shall be the Chairman;</p> <p>(b) the Head of the Accounting Unit;</p> <p>(c) the Head of the procurement Unit;</p> <p>(d) four Heads of Departments;</p> <p>(e) a Purchasing or Supplies Officer, who shall be the Secretary;</p> <p>(f) two other members other than members of the district administration who are ordinarily resident in the District who shall be appointed by the District Administrator and certified by the Board for a period not exceeding two years.</p> |
| Functions of District Tender | 22. | The functions of a District Tender Committee shall be to examine and where appropriate authorise tenders relating to |

Committees	the procurement of goods, works and services for Government within the limits provided for in Part VIII.
	A District Tender Committee shall perform its functions in accordance with Part VIII, IX and X.
Proceedings of the District Tender Committee	<p>23. (1) Except as otherwise provided for in these Regulations, a District Tender Committee shall determine its own procedure.</p> <p>(2) A District Tender Committee shall meet at such times and places not being less than once a month as the Chairman may determine.</p> <p>(3) A District Tender Committee shall cause minutes to be kept of the proceedings of every meeting and the minutes shall be transmitted to the Board soon after the meeting at which they are confirmed.</p> <p>(4) The quorum at any meeting of a District Tender Committee shall be two thirds of the members.</p> <p>(5) The Secretary of a District Tender Committee shall communicate all decisions, including any refusal and the grounds for the refusal, to Heads of Departments or organizations within three days of such decision.</p>
Procedure where no district tender committee established	24. The Board shall prescribe the procedure to be followed where a District Tender Committee has not been established.
Consultation under international agreements	25. The Controlling Officer or Chief Executive shall consult the Zambia National Tender Board on the procurement provisions under international agreements.
Tender procedures not to apply to controlled goods and services purchased at official price	<p>26. (1) The tender procedures specified in these Regulations shall not apply to 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:</p> <p style="padding-left: 40px;">(i) the goods and services are to be obtained from outside Zambia; and</p> <p style="padding-left: 40px;">(ii) the goods are capital goods; and</p> <p>(2) Where the goods or services are procured in accordance with</p>

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.

Settlement of disputes	27.	Where a dispute between a tender committee and a contractor arises and the two parties fail to resolve the dispute amicably, such disputes shall be resolved in accordance with Laws of Zambia.
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PART VII

PROCUREMENT AND SUPPLIES UNITS

Establishment of Procurement and Supplies Unit	28.	There is hereby established a Procurement and Supplies Unit in every, Parastatal, and Government Ministry, Province, and District a procurement and Supplies unit which shall consist of a Head and other staff.
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Functions of Procurement and Supplies Units	29.	The functions of the procurement and supplies units shall be: (a) to invite, receive, process and make recommendations on tenders; (b) to advise on procurement matters; (c) Secretariat to the tender committee
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Certification of Procurement and Supplies Unit	30.	The Board shall certify a procurement and supplies unit established under regulation 28 in accordance with the Fifth Schedule set out in Appendix II to these Regulations.
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PART VIII

FINANCIAL LIMITS

Financial limits for Informal tenders	31	Where the estimated value of goods, works or services to be purchased: (a) does not exceed three hundred thousand Kwacha informal tenders shall be examined and where appropriate authorised for acceptance by the Senior Officer designated for the purpose by the Controlling Officer or Chief Executive;
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- (b) exceeds three hundred thousand Kwacha but does not exceed two million, informal tenders shall be examined and where appropriate be authorised for acceptance by the Head of Department with the approval of the Controlling Officer or Chief Executive;
- (c) exceeds two million Kwacha but does not exceed five million informal tenders shall be examined and where appropriate authorised for acceptance by the Controlling Officer or Chief Executive;
- (d) exceeds five million Kwacha but does not exceed fifty million Kwacha informal tenders shall be examined and where appropriate authorised for acceptance by the District, Provincial, Parastatal or Ministry Tender Committee.

Financial Limits for formal Tenders

32.

(1) Without certified Procurement and Supplies Unit:

where the estimated value of goods, works or services to be purchased exceeds fifty million Kwacha formal tenders shall be examined and where appropriate authorised for acceptance by the Central Tender Committee.

(2) Category A certified Procurement and Supplies Unit:

(a) where the estimated value of goods, works or services to be purchased exceeds fifty million Kwacha but does not exceed three hundred million Kwacha formal tenders shall be examined and where appropriate authorised for acceptance by the District, Provincial, Parastatal or Ministry Tender Committee;

(b) where the estimated value of goods, works or services exceeds three hundred million Kwacha formal tenders shall be examined and where appropriate authorised for acceptance by the Central Tender Committee.

(3) Category B certified Procurement and Supplies Unit:

(a) where the estimated value of goods, works or services to be purchased exceeds fifty Kwacha million but does not exceed six hundred million Kwacha formal tenders shall be examined and where appropriate

authorised for acceptance by the District, Provincial, Parastatal or Ministry Tender Committee; and

(b) where the estimated value of goods, works and services to be purchased exceeds K600 million formal tenders shall be examined and where appropriate authorised for acceptance by the Central Tender Committee.

(4) Category C certified Procurement and Supplies Unit:

(a) where the estimated value of goods, works and services to be purchased exceeds K50 million but does not exceed K1 billion formal tenders shall be examined and where appropriate authorised for acceptance by the District, Provincial, Parastatal or Ministry Tender Committee; and

(b) where the estimated value of goods, works or services to be purchased exceeds K1 billion formal tenders shall be examined and where appropriate authorised for acceptance by the Central Tender Committee.

33. The financial limits specified in Regulations 31 and 32 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 Regulations 31 and 32; and

(c) procurement of the same type of goods and services within the limits given to Controlling Officers or Chief Executives and their subordinate staff shall not be undertaken more than once in every one months.

Prior Review by the Board

34. Any tender under the provisions of paragraph 32 (2) , (3), (4) shall be subject to the granting of a “No Objection” by the Zambia National Tender Board:

(a) the proposed tender documents and tendering process;
and

- (b) the review of evaluation and recommendations accepted by the tender committee prior to contract award.

PART IX

GENERAL PROVISIONS FOR GOVERNMENT AND PARASTATAL BODIES

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| formal tenders | 35 | <p>When formal tenders are to be invited a procurement and supplies unit shall ensure that:</p> <ul style="list-style-type: none"> (a) there is a concise description of the goods or services required; (b) an estimate of cost 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 and time for receipt of tenders by the Procurement and Supplies Unit 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 from 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. |
| Documents for formal tenders | 36. | <p>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.</p> |
| Numbering Tenders | 37. | <p>(1) Each application to a tender committee for the advertisement of a tender shall be given a separate reference number.</p> |

- (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 envelope or other document in which formal tenders are submitted.
- Submission of tenders 38. An offer to tender shall be in the form set out in the First Schedule hereto:
- An offer to tender shall be submitted within a period of
- (a) not less than four weeks after the date of publication of invitation; or
- (b) not less than eight weeks after the date of publication of the invitation to tender in the case of tenders International Competitive Bidding.
- Adjustment of time limit 39. (1) Where a Controlling Officer or Chief Executive intends to reduce the time allowed for tender under paragraph 34 he shall obtain authority from the appropriate tender committee.
- (2) 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.
- (3) The adjustment, shall be published through the same media that published the original invitation to tender.
- Late tenders 40. A tender received after the closing date and time shall be stamped, recorded in a register and returned to the tenderer concerned without being considered.
- Withdrawal of tenders 41. (1) Notification of withdrawal of a tender shall be in the form set out in the Second Schedule hereto.
- (2) Withdrawal of tender shall only be valid if received before the closing time of the tender.
- (3) A withdrawal of tender received after the closing date and time 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.

Procedure on opening
of tenders

42.

All tenders shall be opened:

- (a) by the Head of Procurement and Supplies Unit or any person authorised by him in that behalf;
 - (b) in public, at the offices of the Procurement and Supplies Unit; and
 - (c) on a day, other than a public holiday, or the day following a public holiday.
- (2) The Procurement and Supplies unit shall scrutinise tenders for completeness, and the following tenders shall be considered non-responsive:
- (a) a tender submitted after the closing date and time;
 - (b) a tender sent by telex, telephone, e-mail, fax or telegraph;
 - (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
- (3) Except for restricted tenders 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 delivery or completion 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.

Tender Documents 43.

Tender documents shall state the following:

- (a) that the lowest or highest tender shall not necessarily be accepted;
- (b) that no tender shall be considered unless it is placed in the tender box 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 specification and other requirements;
- (d) that tenderers shall be at liberty to tender for less goods, works 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 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 calculated 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 shall be stated;

- (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, then 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 agents; 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.
- (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 fifty 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 at least 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 in the same envelope as the bid and the performance shall be furnished within fourteen days of the signing of the contract.
- (m) that failure to furnish tender security shall constitute grounds for declaring a bid non responsive and failure to furnish performance security within the period specified shall constitute grounds for termination of contract;
- (n) that tender 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 Procurement and Supplies Unit 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) Domestic Preferences:
 - (i) goods 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) goods imported and held in stock by merchants in Zambia shall be given price preference of five per cent;
 - (iii) goods produced by small business enterprises with a paid up capital not exceeding fifteen million Kwacha shall be given price preference of twenty per cent; and
 - (iv) Local contractors shall be given a price preference of seven and half per cent.

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| Variation in Works Contract | 44. | <p>(1) Variations in works contracts shall not be allowed. However, where these are necessary, prior Board authority shall be obtained and variations shall not exceed fifteen percent of the original contract price.</p> <p>(2) A Controlling Officer may not extend the completion period for works contracts without prior tender committee authority.</p> |
| Tender Evaluation | 45. | <p>(1) A Procurement and Supplies Unit shall ensure:</p> <p style="padding-left: 40px;">(a) that the criteria used in evaluating tenders is fully consistent with information given in the tender documents;</p> <p style="padding-left: 40px;">(b) that tenders are scrutinised for completeness in accordance with Regulation 42 (2); and</p> <p style="padding-left: 40px;">(c) that the period, not exceeding twenty-one days, within which an evaluation report is to be submitted to it for consideration, is stated.</p> <p>(2) Where an offer elapses as a result of a purchaser failing to meet the provisions of Regulation 45 (1) and a revalidation of the offer is necessitated, the costs of the revalidation shall be met by the purchaser.</p> |
| Withdrawal of tenders | 46. | <p>(1) Special formal tenders are those which shall not be advertised in the <i>Gazette</i> or in any other publication and for which tenders shall be invited from nominated firms in accordance with this Regulation.</p> <p>(2) Except as specifically provided for in these Regulations, the requirements applying to formal tenders shall apply to special formal tenders.</p> <p>(3) A tender committee may authorise special formal tenders or negotiations where:</p> <p style="padding-left: 40px;">(a) there is a proclamation in force declaring a state of emergency or threatened emergency under the Constitution;</p> <p style="padding-left: 40px;">(b) it is in the interest of public order, public safety or public security;</p> |

- (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 or that the supplier is the sole franchise holder;
- (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.

- | | | |
|----------------------------------|-----|--|
| Procedure, on opening of tenders | 47. | Informal tenders shall be invited from at least three contractors or suppliers. |
| Tender Documents | 48. | <p>(1) Tender samples shall be:</p> <ul style="list-style-type: none"> (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. <p>(2) Failure of samples to substantially conform to characteristics stipulated in the invitation for tenders shall entitle the Procurement and Supplies Unit to reject the tender</p> |

- (3) Notwithstanding the other provisions of this Regulation, the Procurement and Supplies Unit shall call for samples where the tenderer's offer is competitive.
- Proprietary articles as samples 49. (1) 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.
- Sample materials 50. (1) Samples made from materials supplied by the Purchaser shall not be returned to the tenderer nor shall the Purchaser be liable for the cost of making them.
- (2) All samples belonging to the tenderer which are not claimed by the tenderer within a period of three months from the date of the award of the tender, shall be the property of the Purchaser and shall be sent to the Controlling Officer or Chief Executive who shall dispose of them in such a manner as may be directed by the Tender Committee.
- Product Specification 51. (1) The description of the goods or services in the tender invitations shall be clear and broad based.
- (2) Specifications issued by the Zambia Bureau of Standards or any other international standards being used shall be early stated.
- (3) A brand name shall not generally be used when tenders are being invited.
- (4) If it shall be essential to indicate the brand name or quality of the article required; then words such as "or other article of equivalent or comparable quality" shall be included in the invitation for tender.
- Perishable or Fragile goods 52. 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.
- Special equipment 53. (1) Equipment including vehicles, machinery and tools for a Government, shall as far as it is practicable, be obtained by the Ministry responsible for Works and Supply.

- Purchase from Government Stores Department 54. (1) A Purchasing Officer shall purchase from the Government Stores Catalogue any items included in the approved current Stores unless such items are not available.
- (2) Where items are not available at Government Stores, a certificate on non-availability from Government Stores shall be obtained.
- Financing of contracts 55. When the value of goods works, or services exceeds one hundred million Kwacha, tender documents shall include the following particulars:
- (a) how (for example, in terms of working capital and capital equipment) and to what extent the project shall be financed from the purchaser's own resources;
- (b) if finance from a foreign country is necessary the extent to which and how, the purchaser intends to raise funds in Zambia for the financing of the project both before and during the course of the contract;
- (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 purchaser 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 contract sum expected to be paid out in foreign currency.
- Correspondence upon errors 56. (1) 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 form part of the evaluation report and recommendation to the tender committee.
- (2) Except with the express permission of the secretary to the tender committee no other communications shall take place with the tenderer upon the subject of his tender during this period.

Notification
to successful
tenderer

- 57.
- (1) The successful tenderer shall be advised by letter award, which notice shall include information relating to the invitation, description of the items, quantity price and contract number.
 - (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 document; 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. Advance notices shall contain all of the information directed by the tender committee and, in addition, a statement that written formal contract document shall follow.
 - (4) Oral notices may be given only when circumstances surrounding the procurement or performance would not allow time for written notice and shall include all information normally included in written notices and shall also include a statement that written confirmation shall follow.
 - (5) A letter of intent shall only be issued after all the terms and conditions have been agreed by the tender committee.
 - (6) Where an award for a formal tender is made the secretary of the tender committee shall publish a notice in the *Government Gazette* stating who has been awarded the tender.

Non-anticipation
of tenders

- 58.
- 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.

Amendment, alteration or substitution of samples , etc	59.	<p>(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.</p> <p>Provided a Controlling Officer or Chief Executive may recommend and a tender committee may approve fifteen increase or decrease in the number of articles involved without calling for fresh tenders.</p> <p>(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 shall be submitted to the tender committee for approval.</p>
Price Adjustment formulae	60.	<p>(1) For contracts exceeding one year, price adjustment formula shall apply.</p> <p>(2) Tenderers shall quote on a present-day-value using price adjustment based on official statistics of Government agencies or United Nations agencies and the formula shall accommodate both rises and falls in price levels.</p>
Invoice etc.	61.	A Controlling Officer, or Chief Executive may request a contractor to submit invoices and other related documents for examination.
Signing of contract	62.	A successful tenderer shall within fourteen days from the date of the receipt of contract forms sign and the purchaser shall submit a and copy of the signed contract shall be submitted to the Board soon thereafter.
Validity of authority	63.	Any tender authority given by the Board or a tender committee shall be valid for a period of six months.
Tenders Relating to public security	64.	<p>Where the contract involves access to confidential information:</p> <p>(a) a Government ministry or department or Parastatal Body shall notify the contractor of the security classification of the contract and the elements thereof</p>

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.

Retention of contract documents 65.

The original tender documents and related correspondence of the successful tenderer shall be retained by the Purchaser.

Variation in Quantities 66.

In contracts for the supply of goods which run for a period of twelve months 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 cent over or under the contract figure.

Inspection of Goods delivered 67.

- (1) Goods delivered shall be inspected, sampled and tested by the Purchaser and they shall not be accepted unless they comply with the stipulations of the contract.

- (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 stipulations of the contract.

General Conditions of contract 68.

The Board shall prescribe general conditions of contract for Government and Parastatal Bodies. The tender committees shall approve special conditions of contract.

PART X

OFFENCES AND PENALTIES

Offences and penalties relating to tender documents 69.

- (1) Any person who:
 - (a) opens an envelope or other container in which a tender is contained, other than in the due and proper execution of his duties under these regulations; or

- (b) burns, tears or otherwise 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.

- (2) Any Controlling Officer or Chief Executive or member of a tender committee who fails to comply with provisions of Section *eighteen* of the Act;

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

- (3) Any person who:
 - (a) varies the decision of the Board or any tender committee without its approval;
 - (b) awards contract or commits Government or parastatal to expenditure when not authorised to do so; or
 - (c) enters into a contract when sufficient funds are not available and not voted for;

Shall be guilty of an offence and liable upon conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding ten years or to both.

- 70. It shall be an offence for any person or persons or any committee other than a Procurement and Supplies Unit to:

- (1) invite a tender when not authorised to do so by these Regulations; or
- (2) receive and accept tenders when not authorised to do so by these Regulations;

Shall be liable upon conviction to a fine not exceeding five thousand) penalty units to imprisonment for a term not exceeding one year or to both.

3. (i) evaluate tenders when not authorised to do so; or
- (ii) fail to comply with evaluation criteria; or
- (iii) misrepresent facts during evaluation in order to influence the outcome of the evaluation; or
- (iv) fail to execute bid security requirement; or
- (v) Communicate with bidders during evaluation when not authorised to do so by these Regulations.

Shall be liable upon conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding two years or to both

- (4) (i) fail to disclose interest in a particular matter under consideration; or
- (ii) communicate the award of contract when not authorise to do so by these Regulations.

Shall be liable upon conviction to a fine not exceeding thirty thousand penalty unit or to imprisonment for a term not exceeding three year or to both.

- (5) (i) fail to verify whether the works, goods or services comply with specification of the contract, resulting in financial loss to Government or Parastatal; or
- (ii) fail to obtain an equivalent Bank Guarantee when making an advance payment; or
- (iii) fails to ensure that performance security is furnished.

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.

- (6) (i) fail to execute a contract when tender authority has been granted; or
- (ii) fail to ensure that a supplier or contractor meets his obligation to a contract, resulting in financial loss.

Shall be liable upon conviction to a fine not exceeding forty thousand) penalty units or to imprisonment for a term not exceeding four years or to both.

- (7) award an in informal tender without obtaining quotations from at least three (3) suppliers without justifiable reasons.

Shall be liable upon conviction to a fine not exceeding one thousand) penalty units or to imprisonment for a term not exceeding six months or to both.

72.

Tenders to be approved only by the Board

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

Revocation of S.I. No. 151 1995 73.

The Tender Regulations, 1995, are hereby revoked.

**FIRST SCHEDULE
(Regulation 34)**

**TENDER FORM
(GOODS AND SERVICES)**

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)*, the undersigned, offer to supply and deliver.....(a) 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) *undertaken, the tender is accepted, to commence delivery of the goods or services* within.....(c) and to complete delivery of all the items specified in the Contract within..... (c) calculated from date of receipt of your Letter of Acceptance or letter of Credit.

If the tender is accepted I (We) *will obtain a guarantee in the 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.

Dated this.....day of.....20...

Signature:

.....

(In the Capacity of)

Duly authorised to sign tender for and on behalf of:

.....

Witness (Name).....

Address.....

Signature:.....

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

* delete whichever is not applicable

SECOND SCHEDULE
(Regulation 41)

WITHDRAWAL OF TENDERS

TENDER TITLE

TENDER NO.

"I.....of (address) FAX E-Mail 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 form from consideration."

Signature.....

Telephone No.....

Date.....

APPENDIX I
(Regulation)

THIRD SCHEDULE
(Regulation 40)

1. Non-Refundable Tender Document Charges

Estimated Tender Cost	Tender Document Charges
	(K)
a) up to fifteen million Kwacha	2,000.00
b) each additional ten million Kwacha or part thereof	2,000.00
c) all tenders above two billion Kwacha	400,000.00

2. Cost of Postage or Hand Delivery of Tender Document

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

APPENDIX II
(Regulations 28)

FIFTH SCHEDULE
(Regulation 30)

CERTIFICATION OR CAPACITY RATING CRITERIA FOR A PROCUREMENT UNIT

1. The certification or capacity rating criteria to be used by the Zambia National Tender Board for a procurement unit shall include the following:
 - (1) The human resources and skills relating to:
 - a) the employment of professionally qualified personnel;
 - b) the training and skills development; and
 - c) on job experience and performance.
 - (2) The administrative and operational procedures in use including the organisation structure of the procurement unit.
 - (3) The physical structure, materials and resources such as:
 - a) adequate office space;
 - b) availability of requisite office machinery;
 - c) operating budget of the unit; and
 - d) vehicles.
 - (4) The duties and experience such as:
 - a) the ability to coordinate and supervise purchasing functions or;
 - b) coordinating and managing tender committee operations and activities according to established tender regulations and purchasing standards;
 - c) carrying out informal purchasing and management with a track record or successful use of guide to informal tender procurement;
 - d) carrying out formal tenders;
 - e) undertaking international purchases and contracts;
 - f) carrying out procurement under donor supported projects.

- (5) The extent to which the services rendered to client institutions were satisfactory; and
 - (6) Total spend and impact of activities of the unit on the institution.
2. The following shall be minimum requirements for certifying procurement units under the following categories:

CATEGORY A

shall call for formal tenders whose estimated cost valued up to does not exceed one hundred million Kwacha with the following minimum rating criteria:

- (i) employment of at least one fully qualified procurement professional;
- (ii) availability of adequate office space, requisite office equipment and operating budget;
- (iii) experience in coordinating and supervision of purchasing functions and proven track record of successful use of Guidelines to Informal tender procurement; and
- (iv) management of tender committee operations and activities in accordance with Regulations.

CATEGORY B

Shall call for formal tenders whose estimated cost does not exceed two hundred and fifty million Kwacha with the following minimum rating criteria:

- (i) employment of at least two fully qualified procurement professional;
- (ii) availability of adequate office space, requisite office equipment, transport and operating budget;
- (iii) experience in coordinating and supervision of purchasing functions and proven track record of:
 - (a) successful use of Guidelines to Informal tender procurement; and

- (b) preparation of tender documentation for goods.
- (v) management of tender committee operations and activities in accordance with the Tender Regulations; and
- (vi) The preparation and issue of contract documents including contract administration.

CATEGORY C

Shall call for formal tenders whose estimated cost does not exceed six hundred million Kwacha with the following minimum rating criteria:

- (i) employment of 3 to 5 fully qualified procurement professionals;
- (ii) availability of adequate office space, office equipment, transport and operating budget;
- (iii) experience in coordinating and supervision of purchasing functions and prove tract record of:
 - (a) successful use of Guidelines to informal tender procurement;
 - (b) effective use of guidelines to Formal Tender procurement of goods, services and works;
 - (c) the preparation of tender documents of a complex nature; and
 - (d) the preparation, issue and administration of contracts.
- (iv) management of tender committee operations and activities in accordance with the Tender Regulations; and
- (v) the extent to which the services rendered to client institutions were satisfactory.

**FOURTH SCHEDULE
(Regulation 43 (K))**

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 Guarantor ") are bound
unto (Name of Purchaser).....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 Guarantor this.....
day of..... 120.....

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) refuses to accept his corrected bid sum; or
- c) if the tenderer having been notified of the acceptance of its tender 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
all of the three 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 Guarantor not later than the above
date.

.....
(Signature of the Guarantor)

.....
(Signature of the Witness)

Name of Witness:.....

Address of Witness:.....

PART II

PERFORMANCE SECURITY FORM

To:.....(Name of Purchaser)

WHEREAS.....(Name of Supplier)
hereinafter called "the Supplier" has undertaken in pursuance of Contract No.....
.....dated.....in 20.....to supply (Description
of Goods and Services).....hereinafter called "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 approve to or show
grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the.....Day of.....20.....

Signature and Seal of the Guarantors

.....
.....

Date:.....

Address:.....