



**CODE OF CONDUCT FOR
PROCUREMENT OFFICERS,
PUBLIC OFFICERS, BIDDERS
AND SUPPLIERS**

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PREFACE

SERVING WITH INTEGRITY

The Public Service is responsible for providing timely, high quality and cost effective services to the nation. To achieve this, it must have public officers who are professional, and who will observe a high standard of integrity, impartiality and transparency in the performance of their duties. An ethical Public Service is an important component of good governance.

The Public Service continues to change and adapt as the needs of our society change, but it must do so from strength and security, rooted in its traditional values and applying them to the challenges of the modern world.

The development of this Code of conduct recognises, explicitly, that within the restructuring and modernising programme currently underway in the public procurement sector, there is a need to reinstate and promote core values within the Public Service and the private sector. This Code sets out a framework within which public officers, especially those involved in public procurement, bidders and suppliers must work. The Code governs their behaviour and standards. The procurement process must be clear, open, well understood and applied equally to all parties to the process.

This Code also plays an important part in developing a positive character of public officers, the aim being ultimately to promote good governance and improve the image of the Public Service. Officials conducting public procurement need to be able to demonstrate that their decisions are fair and equitable, and made in accordance with the law and conditions of contract.

Procurement must, therefore, be conducted with probity in mind to enable the public and the private sector to deal with each other on the basis of mutual trust and respect. Adopting an ethical and transparent

approach enables business to be conducted fairly, reasonably and with integrity. Ethical behaviour also enables procurement to be conducted in a manner that allows all participating suppliers and bidders to compete as equally as possible.

I, therefore, expect public officers, suppliers and bidders to conform to this Code of conduct and promote its compliance. Members of the general public are encouraged to access this Code and report any behaviour that breaches this Code to ZPPA.

The public trust must at all times be upheld.

H.E. Edgar C. Lungu
President of the Republic of Zambia

FOREWORD

OBTAINING VALUE FOR MONEY

The scale and value of expenditure involved in the public procurement sector demands strict ethical behaviour in transacting business. This requires a strengthening of the ethics framework that guides all public officers, bidders and suppliers involved in the procurement processes. Code of conduct will not only deter corruption, conflict of interest and injustice in the public procurement system but, it will also protect the vast majority of honest, hardworking and conscientious public officers, bidders and suppliers.

Value for money is the core principle underpinning public procurement, incorporating ethical behaviour and the ethical use of resources. The application of the highest ethical standards will help ensure the best achievable procurement outcome. It entails more than just getting the best price as ethics are important when considering value for money. Ethical behaviour and good probity practices enhance the procuring entities reputation in the marketplace.

This increases business confidence in public procurement and is likely to maximize the number of suitable responses for future tenders. Equally important is the ethical behavior of bidders and suppliers which if observed, increases their chances of completing the assignment successfully and, therefore, the possibility of winning more tenders in the future.

This Code incorporates measures from the Public Procurement Act, No. 12 of 2008 and best international practices in public procurement. It provides a single point of reference for key responsibilities and standards of ethical conduct.

The Government expects that all those involved in the public procurement process will abide by the provisions of this Code. The Chief Executive Officers should ensure that the Code is not only upheld

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throughout their organisations, but above all, they should lead by example by observing it.

I call upon all public officers, bidders and suppliers to familiarise themselves thoroughly with this Code.

Hon Alexander Chikwanda
Minister of Finance & ZPPA Board Chairperson

MESSAGE FROM THE DIRECTOR GENERAL UNDERPINNING INTEGRITY WITH EFFECTIVE OVERSIGHT

The Zambia Public Procurement Authority is established under the **T**Public Procurement Act, No. 12 of 2008 as an independent regulatory body with responsibilities for policy, regulation, standard setting, compliance and performance monitoring, professional development and information management and dissemination in the field of public procurement. To effectively carry out these functions and ensure the successful implementation of Government projects and programmes, the Authority must be staffed by professional public officers that are principled and who serve with integrity. Further, other public officers that are involved in the public procurement process, bidders and suppliers must lend integrity to the entire process.

It is well accepted that successful implementation of Government projects and programmes depends on how well they have been conceived, designed, tendered, contracted and supervised which has a bearing on the technical and ethical skills of those involved in the whole process.

While it is appreciated that there is a need for a good working relationship between buyers and suppliers for the delivery of quality public services, ethical standards must be maintained at all times by all parties involved in the public procurement process. This Code sets appropriate boundaries for ethical behaviour. Therefore, officers directly engaged in public procurement and those in a position to influence decisions in public procurement, to any extent, should formally commit themselves to adhering to this Code.

This Code complements existing laws, regulations and regional guidelines and regulations, such as the Public Procurement Act, 2008, Anti-Corruption Act 2012, Ministerial and Parliamentary Code of Conduct Act, the Public Interest Disclosure (Protection of Whistle Blowers) Act, 2010 and the COMESA Directive and Regulations. For ease of reference relevant extracts from these laws are set out in Annex 2. This Code of conduct

officers, procurement officers, bidders and suppliers is intended to enhance the values and prescribe acceptable standards of conduct as stipulated in these laws, regulations and Directives so as to improve productivity and boost credibility in the public procurement system.

Perceptions should not be overlooked when considering ethics and probity. It is important not only to do the right thing, but also to be seen to be doing the right thing. The public should be confident that officials conducting procurement will maintain a professional relationship that stands up to public scrutiny.

This Code is a resourceful "pick-me-up" booklet. I hope you, as public officers, procurement officers, bidders and suppliers find this Code useful and that together we will be able to raise the values and ethics in public procurement to a higher level.

Dr. Chibelushi M. Musongole
Director General

A. VISIONS IMPACTING PUBLIC PROCUREMENT

GOVERNMENT'S VISION FOR THE PUBLIC SERVICE

The Public Service must be made up of men and women who possess a high degree of professionalism, integrity and an ability to assist the country's leadership to set standards in the management of the human and material resources in order to achieve effective good government.

VISION OF THE ZAMBIA PUBLIC PROCUREMENT AUTHORITY

To regulate and control public sector procurement in order to ensure value for money for the public good.

B. RATIONALE AND BASIS OF THE CODE

The Public Service is responsible of providing timely, high quality and cost effective services to the nation. To achieve this, it must have public officers who are professional, and who will observe a high standard of integrity, impartiality and transparency in the performance of their duties. An ethical Public Service is an important component of good governance and as such those involved in public procurement must at all times carryout their responsibilities with the highest sense of probity.

This Code has been developed by the Authority to guide public officers, bidders and suppliers who are directly involved in public procurement and public officers who are in a position to influence public procurement decisions, to carry out their functions and responsibilities in an ethical manner.

The following principles and rules were used to develop this Code:

- *Ethical Principles:* these are general statements indicating the use of a **professional** approach in the conduct of public procurement responsibilities;
- **Ethical Rules:** these typically take the form of "do's and don'ts" in specific reference to exercising **probity** when carrying out the procurement function;

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- *Practice Principles*: these are general statements about how to achieve what is intended for the good of the user department or public; and
- *Practice Rules*: these are specific guideline relating to professional practice, such as dealing with conflict of interest.

Every public procurement officer is bound by this Code which forms part of that officer's conditions of service.

It shall be a condition of all contracts that a bidder or supplier has read and agrees to be bound by the terms of this Code.

Part 1

PRELIMINARY

PROMULGATION

This Code of conduct for public officers involved in public procurement, bidders and suppliers is promulgated by the Zambia Public Procurement Authority pursuant to section seventy-two of the Public Procurement Act No.12 of 2008.

1.0 INTERPRETATION

- 1.1** In this Code of conduct, unless the context otherwise requires'
- "Authority"** means the Zambia Public Procurement Authority established under section five of the Act;
 - "bidder"** means a person or group of persons that offers to provide goods, works or services in response to an invitation from a procuring entity and includes, where applicable, a potential bidder and applicant to pre-qualify;
 - "casual gift"** means any conventional hospitality, on a modest scale or unsolicited gift of modest value, offered to a person in recognition or appreciation of that person's services, or as a gesture of goodwill towards that person, and includes any inexpensive seasonal gift offered to staff or associates by a public or private body or a private individual on festive or other special occasions, which is not in any way connected with the performance of a person's official duty so as to constitute an offence under any law;
 - "collusive practices"** means a scheme or arrangement between two or more bidders, with or without the knowledge of the procuring entity, designed to establish bid prices at artificial, non-competitive levels;
 - "corrupt practice"** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public officer in the procurement

- process or in contract execution;
- "Director - General"** means the person appointed as such under section seven of the Act;
- "due diligence"** means the assessment of a bidder or supplier's technical, financial and management capabilities and the bidder's or supplier's governance record to effectively execute a contract;
- "economic operator"** means a person doing business in the private sector;
- "fraudulent practice"** means a misrepresentation or omission of facts in order to influence a procurement process or execution of a contract;
- "gratification"** means any corrupt payment, whether in cash or in kind, any rebate, bonus, deduction or material gain, benefit, amenity, facility, concession or favour of any description and any loan, fee, reward, advantage or gift, or any other thing obtained as a result of the corrupt misuse or abuse of public funds or property, other than a casual gift;
- "illegal activity"** means an activity carried out which, under any written law in the Republic, amounts to crime;
- "procurement"** means acquisition by purchase, rental, lease, hire purchase, licence, tenancy, franchise or any combination thereof;
- "procurement cycle"** means the procedures, processes and stages to be followed for public procurement as prescribed by the Act and Public Procurement Regulations, 2011;
- "procurement officer"** means a public officer that is directly involved in public procurement or who is in a position to influence a decision in the public procurement process;
- "public funds"** has the meaning assigned to it in the Public Finance Act, No. 15 of 2004 and includes funds donated to a governmental organisation;
- "public office"** includes an office the emoluments of which are a charge on or paid out of the revenues of the Republic;
- "public officer"** means a person holding or acting in any public

office;

"Public Service Regulations" means any regulation issued by the Public Service Commission regulating the terms and conditions for employment in the Public Service, including any regulations dealing with the code of conduct of public officers;

"the Act" means the Public Procurement Act, No. 12 of 2008;

"this Code" means this Code of conduct for public officers, Procurement Officers, bidders and suppliers; and

"supplier" means a contractor, consultant, service provider or a natural person or incorporated body that is party to a contract with a procuring entity for the provision of goods, works or services.

- 1.2 For the avoidance of doubt any word or expression used in this Code which is not defined herein but defined in the Act and the Public Procurement Regulations, 2011 shall have the meaning assigned to that word or expression in the Act or the Regulations.

2.0 APPLICATION

- 2.1 This Code applies to all procurement officers, public officers directly involved in the public procurement process and who are in a position to influence a decision in the public procurement process, and bidders and suppliers.
- 2.2 This Code applies to procurement of goods, works and services that are governed by the Act.

3.0 PRINCIPLES GOVERNING THIS CODE

The following principles shall apply to this Code:

- Accountability** to establish clear lines of responsibility in Decision-making structures;
- **Responsiveness** to citizens of the country;
- **Professionalism** to improve individual and system performance;
- **Transparency** to ensure that procedures and policies are understood by public officers, bidders and suppliers;
- Integrity** to ensure that duty is carried out within the framework of the law and due recognition are given to the fundamental rights, freedoms and duties specified in the Constitution;
- Impartiality** to ensure public officers do not display partiality as a result of personal or family ties or of gender, race, religion, disability or ethnic background, and that they serve the public with respect and fairness and make choices solely on merit;
- **Competition** to attract high-quality national and international partners investing in meeting the Government's needs through contracts;
- **Review and Appeal rights** to redress meritorious grievances of bidders and suppliers.

4.0 OBJECTIVES OF THIS CODE

To maintain and enhance values that inspire trust and confidence in the integrity of public officers, procurement officers, bidders and suppliers the following are the objectives of this Code:

To set out the standards of correct conduct expected of public officers, procurement officers, bidders and suppliers during and after the public procurement process;

To provide general guidance to public officers, procurement officers, bidders and suppliers in their relationships and dealings with each other and the general public;

To enhance performance of public officers, procurement officers, bidders and suppliers;

- To maximise the use of resources and obtain best value, quality and services from the public procurement process;
- To promote good governance; and
- To enhance the credibility of the public procurement system.

5.0 RESPONSIBILITIES

- 5.1** This Code forms part of the conditions of employment in the Public Service. All public officers are responsible for ensuring that they comply with this Code and that they exemplify, in all their actions and conduct, the values of public service.
- 5.2** Public officers, procurement officers, bidders and suppliers are responsible for ensuring that they comply with this Code.
- 5.3** Public officers, procurement officers, bidders and suppliers must follow relevant laws of Zambia including other regulations, rules, circulars or instructions applicable, when carrying out their responsibilities relating to public procurement.
- 5.4** Bidders and suppliers must respond to the Government's solicitations in an honest, fair and comprehensive manner, accurately reflect their capacity to satisfy the requirements stipulated in the bidding documents or contract documents, and submit bids and enter into contracts only if they will fulfill all obligations of the contract.
- 5.5** Bidders and suppliers must alert the relevant procuring entity to Any factual errors that they discover in bid solicitations.
- 5.6** The Government has obligations as laid down in the Constitution of Zambia and institutionalised by the relevant laws, of which some extracts have been included in this Code.

Part II

ACHIEVING INTEGRITY IN PUBLIC OFFICE

6.0 PRINCIPLES ATTACHING TO PUBLIC SERVICE

Public officers and procurement officers shall be guided in their work and professional conduct by a balanced framework of public service values, best practices in public procurement and the ethical and practice principles underpinning this Code. The intention is to preserve, promote and further enhance the core values of the Public Service. A public officer and procurement officer is obliged to serve the public with integrity and impartially and, as such, all public officers dealing with procurement matters and procurement officers are required to observe the following principles to the fullest extent possible:

- **Serving the public interest:** maintain and strengthen the public's trust and confidence in public institutions, by demonstrating the highest standards of professional competence, efficiency and effectiveness, uphold the Constitution and the laws, and seek to advance the public good at all times;
- **Transparency and accountability:** use powers and resources for the public good, in accordance with the law and Government policy. Be prepared to be accountable for the decisions made and justify official decisions and actions to a relevant authority, or publicly, as appropriate in the circumstances;
- **Integrity:** make decisions and act without consideration of private interests. As Public Service is a public trust, the improper use of a Public Service position for private advantage is a serious breach of professional integrity;
- **Legitimacy:** administer the laws and Government policy, and exercise legitimate administrative authority under delegation.

- That power and authority must be exercised impartially and without fear or favour, for its proper public purpose as appropriate in the circumstances;
- **Fairness:** make official decisions and take action in a fair and equitable manner, without being affected by bias or personal prejudice, taking into account only the merits of the matter, and respect the rights of affected citizens;
- **Responsiveness:** as agents and employees of the elected Government of the day, serve the legitimate interests and needs of the Government, public organisations, other civil servants, and citizens in a timely manner, with appropriate care, respect and courtesy; and
- **Efficiency and effectiveness:** obtain best value in expenditure of public funds, efficiently use public assets and avoid waste and extravagance in the use of resources in public programmes and official activities.

7.0 EXPECTED STANDARDS

A public officer and procurement officer must, in the performance of duty, observe, abide by and attain the following standards:

7.1 Highest standards of service delivery by:

- a) conscientiously, honestly and loyally serving the people, Government of the day and other public institutions;
- b) always acting within the law; and
- c) performing official duties with diligence and productivity in mind.

7.2 Highest standards of behaviour at work by:

- a) responding to the public promptly and compassionately; and
- b) treating superiors, colleagues and members of the public with dignity and respect.

7.3 Highest standards of probity by:

- a) acting responsibly, never seeking to use improper influence; b) abiding by guidelines in respect of offers of gifts or other benefits as stipulated in this Code;
- c) avoiding conflict of interest and revealing any personal interest, if any, that may impinge or might reasonably be deemed by others to impinge on official business dealings with the private sector; and
- d) not using or attempting to use official positions to secure unwarranted privileges or exemptions for oneself or others.

7.4 Highest standards of ethical behaviour by:

- a) not using the authority of office for personal gain; and
- b) seeking to uphold and enhance the reputation of the Government at home and abroad by:
 - (I) maintaining an impeccable standard of integrity in all business relationships both inside and outside the public service;
 - (ii) fostering the highest possible standards of competence; and
 - (iii) optimizing the use of resources in order to provide the maximum benefit to Zambia.

8.0 EXPECTED CONDUCT

A public officer and a procurement officer must, in the performance of official duties, conduct themselves with the highest sense of probity by ensuring the following:

8.1 Confidentiality and accuracy of information

- a) do not release official information that comes into ones possession in the course of official duties, except as provided for by laws, regulations and written directives;
- b) respect the confidentiality of information received in the course of one's official duties and never use such information for personal gain;
- c) information given in the course of official duties shall be true and fair and not designed to mislead;
- d) give honest and impartial advice without fear or favour;
- e) do not engage oneself in loose talk and make unguarded statements;
- f) endeavour to pursue a course of conduct which will not raise suspicion among the public that you are likely to be engaged in acts that are in violation of the public trust; and g) strive to ensure that the value of transparency in Government is upheld while respecting the need for confidentiality as required bylaw.

8.2 Competition

- a) avoid any business arrangement that might prevent the effective operation of fair competition;
- b) use the most competitive methods for procurement of goods, works and services; and
- c) do not discriminate nor practice favouritism against any person when performing ones official duties.

8.3 Business gifts and hospitality

- a) do not accept business gifts from current or potential bidders or suppliers unless such gifts are casual gifts; and
- b) refrain from any hospitality that might be viewed by others as

having an influence in making a procurement decision as a result of accepting that hospitality.

8.4 Public assets and records

- a) safeguard public property/assets entrusted to you;
- b) ensure that no damage, loss or misappropriation occurs in the process of asset procurement, storage, utilisation and disposal; and
- c) do not, without the permission of the person immediately in charge, wilfully remove from office premises, destroy or alter, public records.

8.5 Illicit enrichment

Do not engage in illicit enrichment or corrupt practices such as the following:

- a) the solicitation, acceptance, offer or grant, directly or indirectly, by or to oneself, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for oneself or for another person or entity, in exchange for any act or omission in the performance of official duties;
- b) the fraudulent use or concealment of property derived from any of the acts referred to in (a) above; and
- c) participation in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in (a) above.

9.0 MEASURES RELATING TO CONFLICT OF INTEREST

- 9.1** A public officer and procurement officer must arrange their private affairs in a manner that will prevent conflicts of interest between ones private interests and official duties.

- 9.2** A public officer and a procurement officer must ensure -
- a) fundraising for charitable organizations are authorised in accordance with the Public Service Regulations;
 - b) all casual gifts, hospitality or other benefits that may have a real or apparent influence on their objectivity in carrying out their official duties or that may place them under obligation to the donor are rejected. This includes free or discounted admission to sporting and cultural events arising out of an actual or potential business relationship directly related to official duties; and
 - c) that you do not step outside your official role to assist private entities or persons in their dealings with the Government where this would result in preferential treatment to the entities or persons;
- 9.3** A public officer or procurement officer must avoid or withdraw from activities or situations that would place one in real, potential or apparent conflict of interest with official duties due to ownership of assets, liabilities, case relating or other such circumstance.
- 9.4** A public officer or procurement officer must avoid outside employment or other activities which might subject oneself to demands incompatible with official duties or cast doubt on one's ability to perform official duties objectively.
- 9.5** Without limitation on the generality of the foregoing, bidders and suppliers, and any of their affiliates, shall be considered to have a conflict of interest and shall not be contracted, under any of the following circumstances (**examples**):
- a) a firm that has been engaged by the procuring entity to provide goods, works or services other than consulting services for a project, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the

preparation or implementation of a project, shall be disqualified from subsequently providing goods, works or services other than consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation. For the purpose of this paragraph, services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery;

- b) a Consultant (including its Personnel and Sub-Consultants) or any of its affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant to be executed for the same or for another procuring entity. For example, a Consultant hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and a Consultant assisting a Client in the privatization of public assets shall not purchase, nor advise purchasers of, such assets. Similarly, a Consultant hired to prepare Terms of Reference for an assignment should not be hired for the assignment in question;

- c) a Consultant (including its Personnel and Sub-Consultants) that has a business or family relationship with a member of the procuring entity's staff who is directly or indirectly involved in any part of-
 - (i) the preparation of the Terms of Reference of the assignment;

 - (ii) the selection process for such assignment; or

 - (iii) supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to

the procuring entity throughout the selection process and the execution of the Contract.

MEASURES RELATING TO GIFTS AND INVITATIONS

- 9.6** Every public officer or procurement officer must consider each of the following before accepting any casual gift, regardless of the nature of the gift received:
- a) report the gifts immediately to one's hierarchical superior in order to avoid any suspicion;
 - b) mention the gift in a specific document in the procurement file, including the origin, nature and destination of the goods delivered or to be delivered, nature of the services provided or to be provided or works contracted or to be contracted, in order to guarantee traceability in case of subsequent challenge or audit;
 - c) use the gift, to the extent possible, for the benefit of the entire office (for example, passing a box of chocolates, sharing calendars or distributing pens); and
 - d) request a supervisor's advice in case of doubt, as to what is acceptable or not and on the steps to take.
- 9.7** Gifts or invitations that do not fall within the framework described in paragraph 10.1 must also be recorded in the procurement file, with the name of the company or person concerned, and returned to the sender with an official letter of which a copy is left in the procurement file.
- 9.8** Invitations to receptions or promotional, cultural, sporting or charitable events are subject to the same rules specified in paragraph 10.1. Being on holiday is no defense against the rules defined in this Code. Public officers and procurement officers must in no case solicit such invitations from a bidder, supplier or economic operator.

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- 9.9** Any participation in an activity in the course of duty must be assessed in light of the context. In the case of participation at a professional seminar for one or more days, for example, the procuring entity must pay the cost of registration and the public officer or procurement officer must be given subsistence allowance.
- 9.10** Participation in visits or trips will only be justified on purely professional grounds. The costs of travel and accommodation must be covered by the procuring entity.

10.0 POST EMPLOYMENT MEASURES

- 10.1 When leaving the public service a former procurement officer undertake to minimize the possibility of real, apparent or potential conflicts of interest between ones new employment and ones most recent responsibilities in public office
- 10.2 A former procurement officer in executive positions or equivalent and two levels below, and others where specified, for a period of one to two years after leaving office, must not-
- a) Accept appointment to a board of directors of, or employment with, entities with which one had significant official dealings during the period of one year immediately prior to the termination of public service;
 - b) make representations on behalf of persons to any department or organization with which one had significant official dealings during the period of one year immediately prior to the termination of public service; or
 - c) give advice to clients using information that is not available to the public concerning the programs or activities of the ministries statutory bodies, district councils or departments where one was employed or with which one had a direct and substantial relationship.

Part III

INFORMATION AND CONDUCT OF PROCUREMENT OFFICERS DURING PROCUREMENT CYCLE

11.0 PRINCIPLES ATTACHING TO PUBLIC PROCUREMENT

Procurement officers shall at all times be guided by the Public Procurement Act, 2008, the Public Procurement Regulations 2011 and best international practices in public procurement. Regulation 3 of the Public Procurement Regulations 2011 sets out the following fundamental principles for good public procurement which must be observed by all procurement officers:

- transparency;
- competition;
- economy;
- efficiency;
- fairness;
- value for money; and
- accountability.

11.1 Transparency and accountability in public procurement

Transparency and accountability are principles often used to refer to fundamental pillars of integrity of the procurement system. These notions often apply throughout the procurement process and their development and implementation are critical to the success of the procurement system and to public perception that public procurement serves the public interest. In this respect procurement officers should, throughout the procurement cycle, uphold these principles.

11.2 Ethical and practice principles

Ethical behaviour, and good probity practices enhance the procuring entity's reputation in the marketplace. This increases business confidence in public procurement processes, and is likely

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to maximize the number of suitable responses for future tenders. Throughout the procurement cycle, procurement officers must exhibit responsible behaviour and strive for transparent and collegial decisions. The following ethical and practice principles shall be observed and adhered to by a procurement officer during every stage of the procurement cycle:

- a) obtain value for money by ensuring the best achievable procurement outcome;
- b) do not use confidential and/or market sensitive information provided to the procuring entity as part of a tender process, either for the material benefit of the official or for another person;
- c) employ procedures which are fair, non-discriminatory and transparent;
- d) use standard conditions of contract;
- e) set requirements which are clear, using performance and international specifications where possible;
- f) rationalise user department's needs and aggregate demand to facilitate economic manufacture;
- g) use long term (e.g. one year) contracts as much as possible to encourage investment;
- h) develop good working relationships and trust between procurement officers, bidders and suppliers;
- i) preserve the highest standards of honesty, integrity, impartiality and objectivity;
- j) be fair, efficient, firm and courteous;
- k) comply with the highest professional standards in the award of contracts, in accordance with the law and international standards;
- l) provide clear performance specifications where possible to encourage innovation;
- m) refer, where possible, to international or other approved standards;
- n) provide potential bidders with all information necessary to respond to the invitation to bid in sufficient time to enable a

- considered response;
- o) manage the bidding process in a way that minimises burdens on bidders and suppliers;
 - p) show clearly, within the bidding documents, the criteria to be used for the evaluation of applicants to bid and for the contract award - and use only those criteria for making decisions;
 - q) include, within the contract, specification clear procedures for performance measurement, contract variations and dispute settlement;
 - r) debrief bidders after the contract has been awarded;
 - s) comply fully with the terms of the contract including the terms of payment;
 - t) comply with the highest professional standards in the management of the contract;
 - u) respond promptly, courteously and efficiently to enquiries and complaints; and
 - v) should not disregard the disqualified suppliers list.

12.0 STANDARDS OF CONDUCT AND INFORMATION

Procurement officers serve the public by acquiring goods and services, and contracting for works, required to achieve the policies of the Government. A public officer commits to upholding the democratic, professional and ethical standards attaching to the public service. It is therefore, imperative that the following are observed and adhered to at all times:

12.1 Public procurement management

12.1.1 A public officer shall -

- a) in performing public procurement activities, from defining requirements through to contract administration and closure of the procurement file, adhere to the laws, regulations and

- policies established by the Government relating to public procurement;
- b) note section 31 (1) (g) of the Public Finance Act, No. 15 of 2004 which provides for the surcharge of any public officer who, through any act of wilful default or gross negligence of duty makes improper decisions which result in loss of public moneys or property;
 - c) comply with the requirements of **ETHICS, HONESTY and EFFICIENCY** provided for in all relevant laws and regulations, including Public Service Regulations and additional guidelines, which prescribe for the proper management of public resources and the affairs of the Nation;
 - d) not participate as a bidder or supplier in the public procurement of the procuring entity by which the public officer is employed, and the same applies to the officer's close relative;

12.1.2 Any person who served as a procurement officer or participated in the approval of any procurement activity with respect to a public procurement must not -

- a) participate in any manner, as an officer, employee, agent or representative of a supplier, in any negotiations or technical discussions leading to the award, modification or extension of the contract for such procurement; or
- b) participate personally or substantially on behalf of a supplier in the performance of such a contract.

12.1.3 The restriction in paragraph 13.1.2 shall remain in effect for the duration of the procurement proceeding and contract.

12.2 Information and conduct during pre-tendering phase

12.2.1 Procurement officers may need to establish contacts with the private sector. Procurement officers benefit from acquiring technical familiarity with the goods, services and works within

their competence in order to more efficiently and effectively draft tender requirements and evaluate bids received.

- 12.2.2** Procurement officers may accept requests from economic operators for meetings. They may also request a meeting, provided this will enhance their knowledge of the market. To improve their knowledge, beyond the internet or available official documents procurement officers may attend exhibitions or fairs to obtain information on the characteristics of a competitive market.
- 12.2.3** Economic operators are interested to know the ministry, statutory body, department or district council and the procurement opportunities being offered by the procuring entity. To encourage such exchanges, joint exhibitions or forums should be encouraged with the professional partners (local chambers of commerce, professional associations, labor unions etc.).
- 12.2.4** In the above context, the information that may be exchanged or disclosed is as follows:
- a) information on completed procedures, when a contract has been awarded, subject to the protection of industrial and commercial confidential information; and
 - b) the description of the organisation and the activity of the procurement services and other administrations involved in the process.
- 12.2.5** In order to maintain equal treatment of bidders and suppliers, information on the estimated value of a project or the scheduled date of the consultation, etc., must not be disclosed.
- 12.2.6** Any communication or information on a draft contract may be disclosed only through the advertising or publication procedures defined in the Act and Public Procurement Regulations, 2011.

- 12.2.7** The drafting of the statement of requirements must only be done by the procuring entity, in order to avoid gearing the requirements to a specific offer.

12.3 Information and conduct during tendering phase General

- 12.3.1** The Public Procurement Regulations, 2011 govern the conditions for achieving equality of treatment among bidders and suppliers and the transparency of procedures.

- 12.3.2** To avoid any risk of favoritism or suspicion, when potential bidders come to the procuring entity to obtain the bidding documents, those papers must be delivered by a public officer or procurement officer not involved in that particular procurement process, or who has no information on the proposed contract.

Procurement methods

- 12.3.3** The choice of procurement method is critical to the success of the procurement action. The differences between the methods are significant in terms of formality, level of competition, duration and complexity for bidders and procuring entity. The choice should be made with these factors in mind, with a view to maximizing competition to the greatest extent possible, as such a procurement officer must:

- a) try to find the most competitive method of procurement under the circumstances;
- b) keep good records and documents in the procurement file and the basis for the procurement method chosen;
- c) not split up procurement to justify a small exception from competition; and

- d) not use direct source (single) procurement to avoid competition or favour a particular bidder.

Qualification of bidders

12.3.4 Procurement integrity depends upon the award of public contracts to qualified bidders, those who are professionally competent, financially sound, and technically capable of performing the contract in a timely manner, as such procurement officers must:

- a) use pre-qualification procedures, qualification procedures, pre-bid conference, and post-qualification procedures, where appropriate, to ensure the Government has successful competition among well-qualified bidders and suppliers;
- b) follow established fair and objective suspension and debarment procedures to preclude the participation of bidders and suppliers whose fraud, bribery or other misconduct has been established; and
- c) not use pre-qualification procedures for the sole purpose of restricting competition or favouring a particular bidder or supplier.

Preparation of bidding documents

12.3.5 Bidding documents are the backbone of the procurement process. They constitute the best effort of a procuring entity to summarize the technical and procedural requirements for the submission of bids by eligible and interested suppliers. When preparing bidding documents, a procurement officer must:

- a) prepare clear and detailed bidding documents;
- b) make use of standard bidding documents, wherever possible, tailored to the particular circumstances of the procurement in question;

- c) make sure that the scope of work, terms of reference and evaluation criteria are clearly presented;
- d) provide sufficient time for bidders to respond to the invitation to bid; and
- e) not fail to describe any term and condition concerning the qualification and eligibility of bidders.

Evaluation of Bids

12.3.6 The evaluation of bids in a fair and careful manner to determine the lowest evaluated responsive bid is a fundamental feature of the procurement process. Procedures for bid evaluation are extensively provided for in the Act and Public Procurement Regulations, 2011 and must be spelt out in detail in the bidding documents and complied with by all procurement officers and others involved in the evaluation process.

12.3.7 In evaluation of bids, members of the evaluation committee must:

- a) apply the bid opening and examination procedures as described in the bidding documents;
- b) apply the evaluation criteria of the bidding documents strictly;
- c) award the contract to the best evaluated bidder;
- d) not introduce procedures which are not prescribed;
- e) not introduce unjustified or subjective evaluation criteria; and
- f) not reject bids on unjustified grounds.

Works contracting

12.3.8 Works contracting is the largest, most complex, and most visible procurement activity in the public sector. It is important that procuring entities organize the activity in

careful detail and apply the Act, Public Procurement Regulations, 2011 and internationally recognised best practices in contractor selection and contract administration.

12.3.9 In works contracting, a procurement officer shall:

- a) prepare and implement a Procurement Plan in accordance with the Act and Public Procurement Regulations, 2011;
- b) employ good designers;
- c) prepare and issue clear bidding documents and designs;
- d) apply the correct qualification criteria for contractors;
- e) apply the proper bid opening and evaluation procedures;
- f) not reject bids and award the contract on unjustified grounds;
- g) award the contract to the best evaluated bidder;
- h) provide the required authorisations and assistance to the contractor;
- i) employ qualified supervision consultants or carry out appropriate supervision; and
- j) make timely payments to the contractor.

Procurement of consulting services

12.3.10 Consulting assignments, which are of an intellectual nature, are carried out over a wide spectrum of sectors, including infrastructure, the environment, financial sector modernization, privatisation and system integration. When engaging consultants, procuring entities must follow appropriate procedures as specified in the Act and Public Procurement Regulations, 2011, as such a procurement officer must:

- a) develop and administer the selection procedures in a careful manner to assure technical quality and impartiality;

- b) ensure to structure the procedure so that conflict of interest, and the appearance of conflict of interest, are avoided;
- c) allow consultants to study alternatives and recommend solutions, technologies, and products from a range of possible suppliers and contractors in the best interest of the user department; and
- d) not allow the consultants' independence and freedom from ties or affiliations lead to compromise or bad business judgment or advice.

12.4 Information and conduct during post-award phase

12.4.1 All decisions taken by a public officer must be based exclusively on the provisions in the contract as previously agreed, particularly with regards to the definition and application of penalties.

12.4.2 Supervision and management of contract performance require collegiality and a paper trail of decisions, particularly with respect to penalties, certification of performance and amendments to the contract.

12.4.3 Relations established with economic operators under public procurement contracts may not serve as a pretext for any private contracting.

12.4.4 A public officer must:

- a) hold post-award conferences with the successful bidder, where necessary, and devise a specific contract management plan;
- b) adhere to the mode of payment as prescribed in the contract;
- c) monitor progress, including determination of extent of performance accomplishment, periodically according to the work plan and inspections done and testing of quality;

- d) arrange possession of, and access to, site;
- e) manage the financial aspects of contract management, including payments to suppliers, budgetary and cost accounting aspects; and
- f) organise files related to contract management, preparing periodic reports for the procuring entity and the Authority on the implementation of the contract.

12.5 Information and conduct at all phases of procurement cycle

12.5.1 Regardless of the position occupied, and under all circumstances, procurement officers must exhibit good judgment and responsibility. A procurement officer is obliged to inform all correspondents that the officer is subject to this Code and cannot deviate from it.

12.5.2 All bidding documents and public procurement contracts and other documents relating to the formation of those contracts must incorporate clauses:

- a) prohibiting payment of a contingency fee by any party to the contract to a person to whom the Parliamentary and Ministerial Code of Conduct Act applies, except in accordance with that Act;
- b) prohibiting corruption, collusion, bid-rigging or any other anti-competitive activity in the procurement process;
- c) requiring that a bidder on a contract for the performance of work, the supply of goods or the rendering of services make a declaration that the bidder has not committed an offence under the Public Procurement Act, Financial **Intelligence** Services Centre Act, Ant-Corruption Act or Public Finance Act;
- d) requiring the bidder's consent to publicly disclose basic information about a public procurement contract;
- e) requiring a bidder to disclose any conflict of interest;

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- f) requiring a contractor to secure any advance payments made by a procuring entity; and
- g) requiring the contractor's consent that the Government may cancel the procurement contract in the event of non-compliance with this Code.

12.5.3 A bidder or supplier bidding on a competitive tender or awarded a non-competitive contract must certify that the bidder or supplier meets the requirements of this paragraph.

Part IV

ETHICS AND CONDUCT FOR BIDDERS AND SUPPLIERS

13.0 ETHICAL BEHAVIOUR

Ethical behavior on the part of bidders and suppliers increases their chances of completing the assignment successfully and therefore the possibility of winning more tenders in the future.

13.1 Ethical and practice principles and rules

The following ethical and practice principles and rules shall be observed and adhered to by all bidders and suppliers during every stage of the procurement cycle:

- a) maintain integrity and independence in their business or professional judgment and conduct;
- b) comply with both the letter and the spirit of-
 - (i) the Laws of Zambia and regulatory guidance.
 - (ii) accepted business practices in commercial markets,
 - (iii) contractual conditions.
- c) avoid associations with businesses and organizations which are in conflict with this Code;
- d) do not refuse to sign a contract or furnish a performance security as provided in the bidding documents;
- e) comply with a bid securing declaration;
- f) strive to provide goods, works, and services of high quality and accept full responsibility for all goods, works and services provided;
- g) perform or substantially perform all contractual obligations; and
- h) comply with the professional standards of their industry or of any professional body of which they are members.

13.2 Conflict of interest

13.2.1 Bidders and suppliers shall not accept contracts which would

constitute a conflict of interest with any prior or current contract with any procuring entity.

13.2.2 Bidders and suppliers must disclose to all concerned parties those conflicts of interest that cannot reasonably be avoided or escaped.

13.2.3 Bidders and suppliers must disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the procuring entity, or that may reasonably be perceived as having this effect.

13.3 Confidentiality and accuracy of information

13.3.1 Information given by bidders and suppliers in the course of procurement processes or the performance of contracts shall be true, fair and not designed to mislead.

13.3.2 Bidders and suppliers shall respect the confidentiality of information received in the course of performing a contract and shall not use such information for personal gain.

13.4 Gifts and hospitality

Bidders and suppliers must not offer gifts or hospitality, directly or indirectly, to a public officer or procurement officer that might be viewed by others as having an influence on a public procurement decision.

13.5 Influence

13.5.1 Bidders and suppliers must not influence the action of a procurement officer in the procurement process or in contract execution.

13.5.2 Bidders and suppliers must not misrepresent facts in order to influence a procurement process or the execution of a contract to the detriment of the procuring entity.

13.5.3 Bidders and suppliers must not ask a procurement officer or any other public officer to do anything which is inconsistent with the Act, Public Procurement Regulations, 2011, public procurement circulars and guidelines or this Code.

13.6 Fraudulent practices and conduct

Bidders and suppliers must not -

- a) abet or collude with other businesses and organisations with the intention of depriving a procuring entity of the benefits of free and open competition;
- b) connive to interfere with the participation of other bidders;
- c) enter into business arrangements that might prevent the effective operation of fair competition; or
- d) engage in deceptive, fraudulent, collusive, coercive or financial practices, such as corruption, double billing, price fixing, under-pricing or other improper financial practices. e) interfere or influence the procurement process, bidding process and evaluation process

14.0 RESPECT FOR RESPONSIBILITIES OF PROCUREMENT OFFICERS

14.1 To help ensure that the entire procurement process conforms to the highest standards of ethical conduct, bidders and suppliers must avoid any action that would jeopardize current or former procurement officers' ability to respect their obligations under the Act, Public Procurement Regulations, 2011 and this Code

14.2 Bidders and suppliers must not engage procurement officers in activities that might subject procurement officers to demands

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incompatible with their official duties or cast doubt on their ability to perform their duties objectively.

- 14.3 Bidders and suppliers must not hire directly, or through a third party, former procurement officers during their one-year cooling-off period where this would constitute a violation of post-employment measures under this Code.

Part V

SAFEGUARDS, CONSEQUENCES AND REPORTING OF UNETHICAL CONDUCT

15.0 BID COMPLAINT PROCEDURES

An essential feature of the public procurement system is the adjudication of complaints. The bid complaint procedure is the remedial feature of public procurement law, based on clear objectives of transparency, fairness, efficiency and integrity. This system provides assurances to the public of the transparency and integrity of the public procurement system.

15.1 Complaints

15.1.1 The Authority has jurisdiction to conduct inquiries into complaints by a bidder or supplier who is aggrieved with a decision made by a procuring entity or approvals authority.

15.1.2 A bidder or supplier may challenge a procurement entity's or an approvals authority's decision that the bidder or supplier believes has not been made in accordance with the requirements of the Act or Public Procurement Regulations, 2011.

15.1.3 Potential bidders who believe they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts, may lodge a formal complaint with the Authority which may review all aspects of the procurement action taken, up to and including contract award.

15.2 Procedural safeguards

15.2.1 Public procurement procedural safeguards to bidder complaints rest upon three core interrelated pillars (Educate, Facilitate, Investigate). The three pillars are interdependent, and each is linked to multiple aspects of public procurement.

15.2.2 Paragraph 14.0 depicts the context within which the Authority's inspectorate unit and review and appeals panel should conduct their operations.

15.3 Ethical and practice principles and rules

The following ethical and practice principles and rules shall be observed by a public officer conducting investigations of the public procurement process and procedures or undertaking bid complaint reviews or appeals:

- **Independence:** operate at arm's-length from other public institutions;
- **Impartiality:** do not be a lobbyist for suppliers or bidders nor an apologist for public institutions;
- **Helpfulness:** share best practices and demystify the complexities of the public procurement process review or appeals process;
- **Knowledgeable:** understand procurement policies, the law, procedures, trends and good practices in public procurement so as to effectively investigate, review or adjudicate appeals;
- **Responsiveness:** address the needs of bidders, suppliers and procuring entities to reach a desired merit based solution;
- **Part of the solution:** identify systemic concerns, and make balanced and useful recommendations to strengthen public procurement activities and solve complaints;
- **Confidentiality:** do not disclose any information acquired in the course of official duties to unauthorised persons; and
- **Honesty:** give honest and impartial advice and make all information relevant to an investigation, review or appeals decision available to the parties concerned and the Director-General in accordance with the Public Procurement Regulations, 2011.

16.0 CONDUCT EXPECTED OF PUBLIC OFFICERS

- 16.1** A public officer conducting investigations of the public procurement process and procedures or undertaking bid complaint reviews or appeals shall comply with the required procedures under Part VIII of the Act and Part XIV of the Public Procurements Regulations, 2011.
- 16.2** A public officer investigating complaints from bidders or suppliers and those who sit on the review panel or hears appeals shall review and process complaints from bidders or suppliers with the objective of solving the complaints quickly and efficiently and endeavour to give immediate relief to the complainant.
- 16.3** A public officer in the inspectorate unit of the Authority shall review the practices of procuring entities for acquiring goods, works and services to assess their fairness, openness and transparency and make appropriate recommendations to the Authority and relevant procuring entity for the improvement of those practices, thereby minimising the incidences of bidder or supplier complaints.
- 16.4** A public officer shall provide assurance that the review or appeal process is conducted in a fair, open, transparent and compliant manner.
- 16.5** A public officer or procurement officer who witnesses or has knowledge of wrongdoing relating to the public procurement process shall refer the matter for review or investigation and for corrective action by the Director- General.
- 16.6** A public officer or procurement officer who witnesses or has knowledge of wrongdoing in the workplace shall refer the matter for resolution, in confidence and without fear of reprisal, to the senior officer designated for the purpose or to the Director-General.

16.7 A public officer or procurement officer shall not retaliate against bidders or suppliers because they reported wrongdoing.

17 CONSEQUENCES OF NON-COMPLIANCE

17.3 Sanctions

17.3.1 Failure to comply with any of the legislation referred to in this Code is subject to the penalties provided for in the applicable legislation.

17.3.2 This Code has specifically provided for certain activities and practices which are criminal offences under the Act and Public Procurement Regulations, 2011 and which attract penalties under the Act and Regulations for their contravention and other laws.

17.3.3 Failure to comply with this Code is subject to the sanctions provided for under the Act, which are as follows:

Procurement officers

- a) disciplinary proceedings;
- b) suspension from employment;
- c) demotion;
- d) surcharge;
- e) transfer or refusal of transfer;
- f) summary dismissal; or
- g) any other recommendation that the Authority may consider appropriate.

Bidders or suppliers

- a) suspension of bidder or suppliers from participating in any public procurement proceeding for a minimum period of one year and a maximum period of five years;

- b) permanent debarment of a bidder or supplier from participating in any procurement proceeding.

18 REMEDIES

The review or appeals panel may grant one or more of the following remedies in accordance with the Public Procurement Regulations, 2011:

- a) prohibit a procuring entity from acting or deciding unlawfully or from following an unlawful procedure, and require the procuring entity to act or to proceed in a lawful manner or to reach a lawful decision;
- b) annul in whole or in part an unlawful act or decision of the procuring entity;
- c) require the payment of compensation for any reasonable costs incurred by the bidder or supplier who submitted the complaint in connection with the procurement proceedings as a result of an unlawful act or decision of the procuring entity;
- d) order that the procurement proceedings be terminated;
- e) recommend to the procuring entity that a contract be terminated; or
- f) refer the matter or person for prosecution by relevant arms of the Government.

19 REPORTING UNETHICAL CONDUCT

19.1 Members of the public, public officers and procurement officers may report unethical conduct of any public officer, procurement officer, bidder or supplier directly to the Authority or the chief executive officer of the procuring entity.

19.2 Where a public officer or procurement officer believes that they are being required to act in any way which is inconsistent with this Code or any law, they shall refrain from performing the given directive and report the matter to the appropriate authorities.

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- 19.3 A public officer or procurement officer who is aggrieved by the decision or action of an immediate supervisor shall follow the established Public Service Regulations relating to disputes and settlement procedures in seeking redress.

ANNEX 1

LIST OF RELEVANT LAWS

- The Public Procurement Act No. 12 of 2008;
- The Public Procurement Regulations, No.63 of 2011;
- The Anti-Corruption Act No.3 of 2012;
- The Public Interest Disclosure (Protection of Whistle Blowers) Act, 2010; and
- The Electronic Communication and Transaction Act, 2009.

ANNEX 2

KEYCONTACTS AND INQUIRIES

**The Director General
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**The Director General
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Fax: 0211 237 828, 237 797, 237 842
Email: infor@acc.gov.zm
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Secretary to the Cabinet, Cabinet Office
Ridgeway, LUSAKA
Tel: 0211 253 476

**The Permanent Secretary
Ministry of Finance**
Tel: 021 255185/251135/257373

General Enquiries
Any enquires can also be addressed to the Chief Executive officer of a procuring entity

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