



**COMESA**

**COUR DE JUSTICE**



محكمة العدل

**COURT OF JUSTICE**

**COMMON MARKET FOR EASTERN AND  
SOUTHERN AFRICA**

**COMESA COURT OF JUSTICE PROCUREMENT RULES, 2022**

## **COMESA COURT OF JUSTICE PROCUREMENT RULES**

### **PREAMBLE**

**HAVING REGARD** to Article 38 of the Common Market for Eastern and Southern Africa ('COMESA') Treaty empowering the COMESA Court of Justice ('the Court') to make rules to regulate the detailed conduct of business of the Court;

**RECOGNISING** the need to ensure the proper procurement of goods, works or services, by the Court;

**CONSIDERING** the importance of effective procurement of goods, works or services;

and

**NOW, THEREFORE**, the COMESA Council of Ministers hereby adopts these Procurement Rules, in the Arabic, English and French languages, all languages being authentic.

# COMESA COURT OF JUSTICE PROCUREMENT RULES

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CHAPTER I  
GENERAL PROVISIONS

Rule 1

Title

These Rules may be cited as the COMESA Court of Justice Procurement Rules (hereinafter referred to as the "Rules").

Rule 2

Definitions

In these Rules, unless the context otherwise requires-

**"administrative review panel"** means an ad hoc body constituted to independently review and determine potential or actual complaints by tenderers about a breach of duty by the Court;

**"agreement"** means a specific contract with terms and conditions that are legally enforceable;

**"application for review"** means an application made to the Administrative Review Panel by a supplier who is dissatisfied by a decision of the Registrar on a complaint;

**"audit trail"** means a set of records that provide documentary evidence of the sequence of activities that have resulted in a specific procurement decision;

**"award of contract"** means the notification by the Court to a qualified bidder that is determined to be substantially responsive to the solicitation package and is of the lowest evaluated cost;

**"bid"** means a tender, an offer, a proposal, or price quotation given in response to a bidding or solicitation document;

**"bidder"** means a natural or legal person submitting or seeking to submit a bid;

**"bidding or solicitation documents"** means the documents issued to invite offers from prospective suppliers to submit bids or proposals to provide the required goods, services or works;

**"bid security"** means a financial security provided by a bidder to guarantee that the bidder will not withdraw his bid prior to award of contract;

**"Bureau"** means a subcommittee of the COMESA Council of Ministers, comprising the current Chairperson, the Deputy Chairperson and the Rapporteur;

**"coercive practice"** means a practice impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tendering process to influence improperly its activities, or affect the execution of a contract;

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“collusive practice” means an undisclosed arrangement between two or more bidders designed to artificially alter the results of the tendering procedure to obtain a financial gain or other benefit;

“COMESA” means the Common Market for Eastern and Southern Africa;

“COMESA dollar” means the Unit of Account for the COMESA Court of Justice as determined by the COMESA Council under Article 74 of the Treaty; The COMESA dollar is equivalent to One United States Dollar;

“competitive method” means a procedure by means of which different alternatives for the procurement of goods, services or works are compared, to identify the option that is most favourable to the organization;

“complaint” means any objection or other manifestation of disagreement presented in writing by a supplier during any phase of the procurement process;

“consulting services” refer to services of a professional nature provided by consultants using their skills to study, design, organize, and manage projects, advise clients, and when required build their capacity;

“contract” means all types of agreements, regardless of what they may be called for the procurement of supplies, services, consultants and works;

“Contracts Committee” means the committee established under Rule 61 of the Financial Rules;

“corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value for personal gain to influence the action of the Court in the procurement process or in contract execution;

“Council” means the COMESA Council of Ministers;

“Court” means the COMESA Court of Justice established under Article 7 of the Treaty;

“donor” means an Institution providing external funding to the Court;

“disposal” means the sale of stores whether excess, surplus, obsolete or salvage property by the Court or under the authority of the Court and includes the transfer by way of donation, abandonment or destruction of such stores or property;

“dispute” means a disagreement concerning the legal rights and obligations of contracting parties which, if not settled by mutual agreement, must be referred to a neutral third party for resolution;

“eligible bidder” means a bidder from eligible source countries who are entitled to bid following an established criterion stated in the bidding documents;

“Evaluation Committee” means a committee established from time to time to open, examine, and evaluate bids received within the deadline for submission of tenders;

“Financial Rules” means the Financial Rules and Regulations of the Court;

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**“Framework Agreement or Contract”** means a contract between a procuring entity and a supplier that is established for a defined period of time for specific goods or services at prescribed prices or pricing provisions and with no legal obligation to order any minimum or maximum quantity;

**“fraudulent practice”** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Court in the procurement process or the execution of a contract, to obtain a financial gain or other benefit to avoid prejudice to the Court;

**“goods”** means equipment, machinery, parts, supplies, and other materials which a supplier is required to supply to the Court under contract, including installation, transport, maintenance, or similar obligations related to the supply of the goods if their value does not exceed that of the goods themselves;

**“invitation to Bid”** means all documents, whether attached or incorporated by reference, utilized for soliciting bids;

**“judge”** means a judge of the Court appointed under Article 20 of the Treaty;

**“lowest evaluated bid”** means a bid which is substantially responsive to commercial and technical aspects in the solicitation package and determined to be lowest in the cost comparison based on evaluation factors;

**“member state”** means a Member State of COMESA;

**“non-consulting services”** means any services other than consultancy services or services incidental to the supply of goods or the execution of works;

**“open tendering”** means the tendering process whereby any interested bidder may bid;

**“President”** means the Judge President of the Court designated under Article 20 of the Treaty;

**“procurement”** means the formal process of acquisition of goods, works or services;

**“Procurement Committee”** means the Committee established under Rule 60 of the Financial Rules;

**“Prohibited Practices”** means corrupt, fraudulent, collusive or coercive practices including theft;

**“proposal or offer”** means a written response by a bidder to a request for proposal for consulting services;

**“purchase description”** means the words used in a solicitation to describe the goods, services, consultants or works to be purchased and includes specifications attached to, or made part of, the solicitation;

**“pre-qualification procedure”** means a procedure by which bidders are invited to demonstrate their qualifications prior to, and as a condition for, being invited to tender or submit proposals;

**“procurement process”** means the entire procurement cycle starting from identification of need through to the completion of the contract;

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“request for quotation” means a written form of selected bidding for an invitation to quote for goods, services or works of relatively small value;

“regional competitive tender” means an invitation to tender advertised in the Member States and to which a supplier domiciled in the Member States is eligible to participate;

“Registrar” means the Registrar of the Court appointed under Article 41 of the Treaty;

“responsive” in respect to a bidder means a person who has submitted a bid which conforms in all respects to the invitation for bids;

“restricted competitive bidding” means competitive bidding by direct invitation without open advertisement;

“restricted tendering” means the tendering process whereby only those invited by the Court may submit a bid;

“services” means any object of procurement or disposal other than goods and includes professional, non-professional and commercial types of services as well as goods which are incidental to but not exceeding the value of those services;

“shopping” means a simplified form of competitive procurement that only require written price quotations;

“standard” means a characteristic or set of characteristics for an item which for reasons of quality level or compatibility with other products is generally accepted by the manufacturers and users of that item as a required characteristic for all items of that type;

“standard bidding documents” means templates that include mandatory requirements, terms and conditions customized to fit the specific requirements for goods, works or services, and the procurement method undertaken;

“standstill period” means the period bidders can initiate a review procedure;

“substantial amount” means large in size, number, or amount;

“tender” means a sealed bid or offer document submitted in response to an invitation to tender and containing detailed information on requirements and terms associated with a potential contract;

“tender opening date” means a date and a time designated by the Court for the opening of tenders;

“tenderer” means a person submitting a tender or a bid;

“value for money” means the optimization of total cost of ownership and quality needed to meet the user’s requirements, while taking into consideration potential risk factors and resources available;

“supplier” means a person under contract with the Court to supply goods, works or services;

“works” means the construction, repair, renovation or demolition of buildings, roads or other structures, installation of equipment and materials, decoration, as well as services incidental to works; and

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“writing” means any expression consisting of words or figures which can be read, reproduced, and subsequently communicated, and includes information which is transmitted and stored by electronic means.

### Rule 3

#### Authority and Scope of Application

- (1) These Rules shall apply to all transactions for the -
  - (a) procurement of goods, works and services by the Court using resources appropriated to the Court through budgetary processes, except where Council has decided otherwise;
  - (b) procurement of goods, works and services by the Court using resources from a funding agency whose regulations allow use of these Rules; and
  - (c) disposal by the Court of stores and equipment which are unserviceable, obsolete, or surplus.
- (2) The COMESA Secretariat Procurement Rules and Regulations, as amended from time to time, shall apply to all matters not expressly provided for in these Rules with regard to the specific gap identified, in order to achieve the intended result.

### Rule 4

#### Out of Scope

Where a donor may require procurement procedures different from these Rules with respect to programmes funded by the donor, the Procurement Rules of the donor shall prevail.

### Rule 5

#### Purpose of Rules

The purpose of these Rules is to-

- (a) ensure consistency in the administration of procurement processes and purchasing decisions by the Court;
- (b) ensure that the Court obtains value for money in all its procurement activities;
- (c) ensure that procurement is conducted through a process that is open, efficient, and cost-effective; and
- (d) minimize risk exposure while maintaining flexibility in procurement activities:

Provided that the Court may adopt appropriate e-procurement systems.

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## Rule 6

### Guiding Principles

The Court shall ensure that its procurement processes are in accordance with internationally recognised practices using the following guiding principles-

- (a) economy and efficiency to achieve quality, cost effectiveness and timely delivery in procurement;
- (b) equitable, fair and open competition giving all eligible/qualified bidders an opportunity to participate;
- (c) accountability and cost-effective use of funds;
- (d) transparency of procurement process; and
- (e) giving due consideration to the interest of the Court when exercising the procurement functions of the Court.

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**CHAPTER II**  
**ORGANISATION OF PROCUREMENT**

**Rule 7**

**Institutional Organisation for Procurement**

- (1) The following Committees shall control, regulate, advise on, and supervise the procurement of goods, works and services the -
- (a) Procurement Committee;
  - (b) Contracts Committee;
  - (c) Tender Evaluation Committee; and
  - (d) Administrative Review Panel.
- (2) The composition and role of the Tender Evaluation Committee, the Procurement Committee, the Contracts Committee, and the Administrative Review Panel respectively, shall be as set out in the First Schedule of these Rules as amended from time to time.

**Rule 8**

**Division of Roles and Responsibilities for Procurement Processes**

The Registrar shall ensure key roles for preparation of procurement documentation, review and approval, and authorisation shall be performed as far as it is practicable by different members of staff.

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### CHAPTER III

#### BASIC PROCUREMENT RULES

##### Rule 9

##### Accessibility to the Rules

The Court shall promptly make these Rules accessible free of charge upon request.

##### Rule 10

##### General Standards for Supplier Eligibility

- (1) To participate in procurement, suppliers shall meet the following criteria -
  - (a) possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement function, reputation, and the personnel, to perform the contract;
  - (b) have the legal capacity to enter into the contract;
  - (c) not be insolvent, in receivership, bankrupt or in the process of being wound up, their business activities have not been suspended, and they are not subject to any other legal proceedings that may affect their eligibility;
  - (d) have fulfilled their obligations to pay taxes and social security contributions, and for that purpose, documentary evidence to be provided by a foreign bidder to demonstrate that it meets the criterion in this sub-rule may consist of a written declaration to that effect by the bidder;
  - (e) not have offered any inducement to an employee of the Court directly or through their employees and agents; and
  - (f) such other criteria as the Court considers appropriate.
- (2) The Court may require suppliers to provide such appropriate documentary evidence or other information as it may deem useful to satisfy itself that the bidders are qualified in accordance with the criteria referred to in sub rule (1).
- (3) Any requirement established under this Rule shall be set forth in the pre-qualification documents, if a pre-qualification procedure is chosen, and otherwise in the tender documents or other documents for solicitation of proposals and shall apply equally to all suppliers.
- (4) The Court shall evaluate the qualifications of suppliers in accordance with the criteria and procedures set forth in the documents referred to in sub rule (3).
- (5) The Court shall disqualify suppliers if it finds at any time that the information submitted concerning the qualifications of the bidder was materially inaccurate or materially incomplete.

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## Rule 11

### Right to Inspect Place of Business

The Court may, as part of due diligence, at reasonable times, inspect the place of business of the supplier to verify the information submitted and to ascertain the supplier's capacity to perform a contract to be awarded by the Court.

## Rule 12

### Specifications

- (1) Specifications shall be-
  - (a) based on a clear and accurate statement of the relevant quality characteristics and performance requirements; and
  - (b) drafted to permit the widest possible competition and where possible be based on international standards, where such exist, or otherwise recognised national standards.
- (2) The use of brand names or other references that would discriminate among suppliers shall be avoided.
- (3) If use of brand names is necessary to clarify the nature of the product requirements, the tender documents shall state that products of equal or higher quality would be acceptable.
- (4) Where the specification prescribes the use of the latest design improvements or materials, care shall be taken in drafting specifications to ensure that they are not restrictive or exclusive.
- (5) The Court shall, when necessary, seek technical support from external sources in the preparation of specifications.

## Rule 13

### Availability of funds

The Court shall, before commencing a procurement procedure, ensure that sufficient funds have been set aside in its budget to pay for any amounts due under the resulting contract.

## Rule 14

### Rejection of Bids

- (1) The Court shall reserve the right to reject a bid or proposal without legal recourse, to request for substantiation or clarification of information received where-

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- (a) the bid or proposal is received past the due date and time as specified in the solicitation document;
  - (b) the bid or proposal received is not responsive to the content of the solicitation;  
and
  - (c) the solicitation has been cancelled for business reasons by the Court.
- (2) When bids or proposals are rejected, the Court shall provide written notification to the participating bidders or offerors.
- (3) The Court shall incur no liability towards bidders solely by virtue of invoking sub-rule (1).

### Rule 15

#### Cancellation of a Solicitation

- (1) The Court shall reserve the right to cancel a solicitation without legal recourse at any time during the solicitation and evaluation process, and prior to contract award under any of the following conditions-
- (a) the basis for the original solicitation no longer exists;
  - (b) the technically qualified bids exceed cost estimates by a substantial amount;
  - (c) there is a lack of competition;
  - (d) the specification is materially revised;
  - (e) there is a lack of responsive tenders;
  - (f) the procurement requirement can be met by a substantially less expensive goods;  
and
  - (g) there is evidence of collusion among bidders.
- (2) If the decision to cancel the tender process is taken before the closing date, tenders received shall be returned unopened to the tenderers submitting them.
- (3) The Court shall have the right to cancel an award without liability to the bidder or offeror, except the return of any deposit, guarantee or other security, at any time before a contract has been fully executed by all parties.

### Rule 16

#### Ownership of Tenders

The Court shall retain tenders and proposals received with no obligation to return them to tenderers except in the case of any of the following circumstances-

- (a) cancellation of tender procedure;



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(b) rejection of tenders before the closing date; or

(c) late submission of a bid.

#### Rule 17

##### Acceptance of One Responsive Bid

- (1) Where only one offer is received or where only one responsive offer is received in response to a competitive bid solicitation, the bidding process may be considered valid provided that-
  - (a) the tender was satisfactorily advertised;
  - (b) the criteria were not unduly restrictive;
  - (c) the award criteria are met including bidder's capability and experience, adherence to specifications or terms of reference, proposed methodology among other specified technical aspects; and
  - (d) prices are reasonable in comparison to market value and within budgeted estimates.
- (2) The Court shall cancel and reissue the bid solicitation to attract more bidders where it is satisfied that-
  - (a) the offer does not represent fair value; or
  - (b) the poor response is due to lack of effective competition.

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CHAPTER IV  
ETHICAL CONDUCT

Rule 18

Prohibited Practices

- (1) Tenderers, suppliers, contractors, and consultants shall observe the highest standard of transparency and integrity during the procurement, execution, and implementation of contracts.
- (2) The Court shall reject a proposal submitted by a bidder or terminate the bidder's contract, if it is established that the bidder has engaged in prohibited practices.

Rule 19

Conflict of Interest

- (1) Staff members shall avoid conflicts of interest and make procurement decisions with integrity and objectivity, free from any personal considerations or benefits.
- (2) Staff members directly responsible for purchasing, and those on the Tender Evaluation Committee, shall declare any personal or family interest, involvement, or financial relationship with a supplier that might impair objectivity or freedom of judgment.
- (3) Committee members shall sign a conflict-of-interest declaration disclosure form at the bid opening, bid evaluation meetings and Procurement Committee meetings.
- (4) Procurement staff and Tender Evaluation Committee members shall not take part in the procurement process if a conflict exists.
- (5) Consultants or other service providers shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultant or service provider.
- (6) A supplier shall be disqualified if it submits more than one bid, either individually or as a joint venture partner in another bid, except
  - (a) for permitted alternative bids; or
  - (b) where a supplier is a sub-contractor in more than one bid.
- (7) A supplier or consultant hired to provide services for the design and development of a project shall be disqualified from subsequently providing services for the implementation of the same project.
- (8) A bidder found to have an undisclosed conflict of interest with the Court, or with a competing bidder, shall be disqualified from participating in a tender.

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## Rule 20

### Confidentiality and Accuracy of Information

- (1) Throughout the duration of the supplier selection process and until the results of that process are officially announced by the Officer responsible for Procurement, no information about offers or the evaluation process may be divulged by any individual involved in the selection process to any other individual within or outside the Court, not involved in the evaluation or selection process.
- (2) A staff member shall be subject to disciplinary action if they -
  - (a) fail to maintain confidentiality of information gained during the procurement process; or
  - (b) provide misleading information.

## Rule 21

### Unsolicited Submissions

- (1) The Court shall reject unsolicited submissions for goods, works and services and advise the offeror of the rejection in writing.
- (2) Such unsolicited submissions shall remain unopened and be destroyed or returned to the offeror, at its own cost, if so requested.

## Rule 22

### Debarment of Suppliers

- (1) A supplier shall be debarred from doing business with the Court where-
  - (a) the supplier is found to have engaged in prohibited practices before or after the award of the contract;
  - (b) there has been failure in the performance of contracts awarded by the Court within the last two years; or
  - (c) the supplier fails to comply with Court procurement guidelines and procedures.
- (2) The period for debarment is three years after which the Court may lift the sanction.

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## CHAPTER V

### CHOICE OF PROCUREMENT PROCEDURE

#### Rule 23

##### Procurement Procedure

- (1) Except as otherwise provided in this Chapter, the Court shall use regional competitive bidding as the preferred procedure of procurement.
- (2) The Court shall use competitive bidding or tendering in order to provide all eligible prospective bidders with timely and adequate notification of the Court's requirements and an equal opportunity to bid for the required goods, works, and non-consulting services.
- (3) Where Competitive Bidding is not the most appropriate method of procurement, other methods of procurement may be used pursuant to Rules 24-29.
- (4) The Court shall plan its procurement in a rational manner, and no procurement requirements for a given quantity of goods or services shall be split up with the intention of avoiding a procurement procedure stated in these Rules.

#### Rule 24

##### International Competitive Bidding

- (1) International Competitive Bidding shall be used whenever in open regional tendering an effective competition cannot be obtained unless foreign suppliers are invited to tender.
- (2) International Competitive Bidding shall comply with the following requirements-
  - (a) the invitation to tender and the tender documents shall be advertised in the manner provided in Rule 35(1) to ensure sufficient circulation to attract competition;
  - (b) the invitation to tender shall be in the Arabic, English and French Languages;
  - (c) the time allowed for submission of tenders shall be sufficient for the invitation to reach bidders and for enabling them to prepare and submit tenders;
  - (d) technical specifications shall to the extent compatible with regional requirements, be based on international standard or standards widely used in international trade;
  - (e) bidders shall be permitted to express their tenders; and any security documents to be presented by them in a currency widely used in international trade and stated in the tender documents;
  - (f) general and special conditions of contract shall be of a kind generally used in international trade; and

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(g) bidders from Member States shall be accorded a ten percent preference.

## Rule 25

### Restricted Competitive Bidding

- (1) Restricted Competitive Bidding may be used where-
  - (a) there are only a limited number of suppliers; or
  - (b) there are other exceptional reasons that justify departure from full competitive bidding procedures.
- (2) Under restricted competitive bidding, the Court shall seek bids from a list of potential suppliers or contractors broad enough to ensure competitive prices; such list shall include all suppliers or contractors when there are only a limited number.
- (3) In all respects other than advertisement, Competitive Bidding procedures shall apply, including the publication of the contract award.
- (4) Restricted competitive tendering procedures shall be the same as those in open tendering, except that the:
  - (a) invitation to tender shall be addressed to a limited number of qualified bidders selected in a non-discriminatory manner, and the number of bidders invited shall be, if possible, sufficient to ensure effective competition and shall not in any event be less than three;
  - (b) tender documents shall include the information provided in Rule 36, giving bidders adequate time to submit bids;
  - (c) time allowed for preparation of tenders shall not be less than the minimum number of days stated in the Second Schedule of these Rules; and
  - (d) Court may decide, depending on the circumstances, if tender security shall have to be submitted or not.

## Rule 26

### Direct Procurement or Single Sourcing

- (1) The Court may use direct procurement or single sourcing as opposed to a standard competitive process in the following exceptional circumstances where-
  - (a) offers for identical products and services have been obtained competitively within a reasonable period;
  - (b) an extension to an existing contract for additional goods, works, or non-consulting services of a similar nature is required, provided that:
    - (i) the prices and conditions offered remain competitive; and

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- (ii) the value does not exceed 25% of the original contract;
  - (c) the equipment required is proprietary, there is only one source and no alternative exists;
  - (d) there is need to standardise upon existing equipment and to achieve compatibility in spare parts;
  - (e) the contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee;
  - (f) an upgrade of existing software is only available from the producer of the software who sells on a direct basis only;
  - (g) a formal solicitation has not produced satisfactory results within a reasonable prior period;
  - (h) time is of the essence and only one known source can meet the Court's needs within the required timeframe;
  - (i) there is no competitive marketplace for the requirement, such as where a monopoly exists, where prices are fixed by legislation or government regulation;
  - (j) the proposed procurement contract is for the purchase or lease of real property;  
or
  - (k) urgent delivery is required because of an emergency or disaster.
- (2) When the Court engages in direct procurement, it shall prepare a description of its needs and any special requirements as to quality, quantity, terms and time of delivery.
  - (3) The Court shall be free to negotiate with the sole bidder.
  - (4) The Court shall after an agreement for procurement is reached issue a contract signed by both parties.
  - (5) Single source selection of consultants shall be approved by the Registrar depending on the threshold.
  - (6) Single source selection may be appropriate only if it represents a clear advantage over competition-
    - (a) for tasks that represent a natural continuation of previous work carried out by a consultant. This shall be subject to satisfactory performance in the initial assignment which must have been awarded on a competitive basis;
    - (b) in emergency cases, such as in response to disasters and for consulting services required during the period of time immediately following the emergency; or
    - (c) when only one supplier is qualified or has experience of exceptional worth for the assignment.

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## Rule 27

### Request for Quotations or Shopping

- (1) The Court may use Shopping procedures for contracts of a small value for-
  - (a) readily available off-the-shelf items;
  - (b) standard specification goods; and
  - (c) routine and other minor works.
- (2) Shopping shall require written price quotations from at least three suppliers or contractors, including foreign suppliers or contractors wherever possible.
- (3) The request shall contain a clear statement of the requirements of the Court as to quality, quantity, terms and time of delivery as well as other special requirements.
- (4) The bidders shall be given adequate time, as prescribed in the Second Schedule of these Rules, to prepare their quotations.
- (5) A purchase order shall be placed with the bidder who meets the requirements of the Court and who quotes the most competitive price.

## Rule 28

### Low Value Procurement

- (1) The Court may use the Low Value Procurement method when procuring-
  - (a) low value, off-the shelf items;
  - (b) simple works or services of standard specifications which are not procured on a regular or frequent basis; and
  - (c) simple works or services of standard specifications which are not covered in a Framework Agreement.
- (2) The Court may use the low value procurement method if-
  - (a) the estimated cost of the goods, works or services being procured per item is less than or equal to the prescribed maximum value as set out in the Second Schedule of these Rules;
  - (b) no benefit would accrue to the Court in terms of time or cost implications if it uses requests for quotations or any other procurement method; or
  - (c) the procedure is not being used for the purpose of avoiding competition.
- (3) The procurement unit shall procure the goods, works or services from a reputable outlet or provider through direct shopping using a local purchase order.
- (4) The Officer in charge of Procurement shall obtain an original invoice or receipt showing the item and price paid for the low value procurement.

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## Rule 29

### Framework Agreements

- (1) The Court may enter into Framework Agreements or contracts to procure commonly required, high-volume goods, works or services that are required continuously or repeatedly by the Court over a set period of time if-
  - (a) the required quantity of goods, works or non-consultancy services cannot be determined at the time of entering into the agreement; and
  - (b) the procurement value is within the thresholds prescribed under the Second Schedule in these Rules.
- (2) Framework Contracts shall be used to ensure a reliable source of supply for goods and services at a competitive price, in accordance with pre-defined terms and conditions.
- (3) A Framework Contract shall include fixed prices or a clause for price adjustment.
- (4) Payment shall be made on the basis of the works, services, or goods actually delivered or performed.
- (5) The Procurement Department or Unit in consultation with the User Department or Unit will-
  - (a) identify specific procurements that would benefit from framework contracts by examining annual values and numbers of orders for related procurements;
  - (b) prepare detailed specifications of requirements, a bidding document with objective criteria such as quality, technical capacity, delivery period or periods of completion and price, and draft advertisement;
  - (c) invite a tender for each annual requirement, subdivided into lots as appropriate and subject to an indefinite quantities' clause;
  - (d) follow standard procedures for the opening, evaluation and award of contract; and
  - (e) award the contract to the supplier who has submitted the best bid on the basis of the award criteria established in the tender.
- (6) The duration of the contract shall be determined in the bidding document but shall not exceed two years;
- (7) Subject to performance, the contract may be renewed once for a period not exceeding one year but the total contract duration should not exceed three years after which a new procurement process shall be advertised.
- (8) The Court may enter into a framework agreement with one or more suppliers for the same product or service.

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## CHAPTER VI

### TENDERING AND CONTRACTING PROCEDURES

#### Rule 30

##### Preparation of Bidding Documents

- (1) The text of the tender document shall be clear, comprehensive, and well-drafted without ambiguity in order to ensure a successful tendering process.
- (2) The invitation document shall inform potential bidders of the-
  - (a) precise description of the goods, works or services required;
  - (b) rules or instructions for the tendering process;
  - (c) evaluation criteria and methodology that will be applied;
  - (d) qualification criteria that will be applied; and
  - (e) type and conditions of the proposed contract.

#### Rule 31

##### Types of Bidding Documents

- (1) The method of procurement used shall determine the type, size, and complexity of bidding document to be used to invite offers from prospective bidders.
- (2) The Court shall use one of the following standard bidding documents when soliciting for offers from suppliers-
  - (a) Request for Quotation Form;
  - (b) Request for Proposals; or
  - (c) Invitation to Bid.

#### Rule 32

##### Request for Quotation Form

- (1) A Request for Quotation Form shall be used to seek competitive offers for goods, works or services that are straightforward, readily available, and easily specified.
- (2) The Request for Quotation Form shall provide detailed specifications of what is to be purchased, details of delivery dates and location, the terms and conditions and any other required criteria.
- (3) The Court shall use a standard Request for Quotations Form for requesting offers from suppliers to ensure that the correct information is provided.

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- (4) A request for quotations shall not be confirmation of an order and no contractual obligations shall have been entered into at this stage.

### Rule 33

#### Request for Proposals

- (1) A Request for Proposals shall be the bidding document for consultancy services and shall be used-
- (a) where requirements for services cannot be expressed quantitatively and qualitatively at the time of solicitation; or
  - (b) for the purchase of complex consultancy services where the requirements may be met in a variety of ways.
- (2) The Court shall use Request for Proposals to procure services requiring external technical and professional expertise beyond the Court's internal capacity such as advisory and review services, feasibility studies, design, construction supervision, management, and related services, and technical or special studies provided by either individuals or suppliers.
- (3) Requests for Proposals for consulting services shall be based on a two-envelope system.

### Rule 34

#### Invitation to Bid

- (1) Invitation to Bid shall be used to invite suppliers and contractors to submit a bid for the provision of goods, works or non-consulting services which-
- (a) are simple; and
  - (b) can be expressed well quantitatively and qualitatively at the time of solicitation.
- (2) The bids for the provision of goods, works and non-consulting services requested under this Rule, shall be based on a two-envelope system, where the financial and the technical components of a bid are submitted in two documents.
- (3) Invitations to Bids may take the form of one of the following:
- (a) Standard Bidding Document for Goods or services; or
  - (b) Standard Bidding Document for Works.

### Rule 35

#### Invitation to Tender

- (1) An Invitation to Tender shall be advertised on the websites of COMESA, the Court, and Member States.

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- (2) The Invitation to Tender shall include the following-
- (a) the name and address of the Court;
  - (b) a brief description of the goods, works or services to be obtained, including the desired limit for delivery or completion;
  - (c) the means and conditions for obtaining the tender documents and the place from which they may be obtained;
  - (d) the place and deadline for the submission of tenders; and
  - (e) the place and time for opening of tenders, along with an announcement that tenderers or their authorized representatives are allowed to attend the opening of tenders.

### Rule 36

#### Tender Documents

- (1) Tender documents shall include the following-
- (a) the name or nature of the contract and the location of the work;
  - (b) the goods, services or works to be supplied or performed;
  - (c) instructions for the preparation and submission of tenders;
  - (d) the place and address to which tenders must be sent, the deadline for tender submission and the date, hour, and place of opening, as well as an announcement that tenderers or their authorised representatives are allowed to attend the opening;
  - (e) forms of tender and, where applicable, required bid tender security and format;
  - (f) the arrangements for any security required for advance payments;
  - (g) the number of copies to be submitted with original tender;
  - (h) conditions of contract, general and special;
  - (i) minimum qualifications that bidders must meet;
  - (j) the period during which the tender must remain valid;
  - (k) the criteria for evaluation of tenders and award of the contract;
  - (l) contact information for obtaining tender documents and for seeking clarifications;
  - (m) the mode, and deadline of requesting clarifications;
  - (n) payment method and terms offered, whether alternative payment methods and terms will be allowed and, if so, how the terms will affect bid evaluation; and

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(o) a reservation to the effect that the Court may reject all tenders at any time prior to the acceptance of a tender.

(2) The time allowed for advertisement, preparation, and submission of tenders under each procurement procedure shall be as prescribed in the Second Schedule of these Rules.

### Rule 37

#### Provision of Tender Documents

Tender documents shall be made available to bidders in the manner specified in the invitation to tender, at a price not exceeding the cost of production and delivery to bidders.

### Rule 38

#### Site Visits and Pre-bid Conference

- (1) The Court shall provide reasonable access to project sites for visits by prospective bidders.
- (2) For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-bid conference may be arranged whereby potential bidders may meet with representatives of the Court to seek clarifications.
- (3) Minutes of the conference shall be provided to all prospective bidders and posted on the Court's website, with a copy included in the record of the procurement.

### Rule 39

#### Amendment to Tender Documents

- (1) At any time prior to the deadline for submission of tenders, the Court may, on its own initiative or in response to an inquiry by a bidder having purchased the tender documents, amend the tender documents by issuing an addendum.
- (2) The addendum shall become an integral part of the tender documents and any addendum shall be communicated within fourteen working days to all bidders having obtained or purchased the tender documents.
- (3) Where it becomes necessary to amend the tender documents, and less than one-third of the time allowed for preparation of tenders remains until the closing date, the Court shall postpone the closing date by the same number of days, depending on the procurement object.

### Rule 40

#### Tender Security

- (1) The Court may include in the tender documents a condition that tenders shall be accompanied by security in the form of a deposit or tender guarantee to prevent

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irresponsible and frivolous tenders provided that the security remains within the limits specified in the tender documents.

- (2) When used, the bid security shall be in the amount, form and format specified in the solicitation documents and shall be issued by a reputable bank or financial institution selected by the bidder.
- (3) The bid security shall remain valid for a sufficient time beyond the validity period of the bids, to provide reasonable time for the Court to act if the security is to be called.
- (4) The bid security shall be released to unsuccessful bidders once the contract has been signed with the winning bidder except-
  - (a) where a bidder withdraws its bid during the period of bid validity;
  - (b) where a bidder does not accept certain corrections to its bid;
  - (c) where an otherwise successful bidder fails to sign the contract; or
  - (d) where the successful bidder fails to provide the performance security within the time specified in the bidding documents.

#### Rule 41

##### Performance Security

- (1) If performance security is required, the supplier or contractor shall provide security for performance of the contract within a specified period of time of contract signature, in specified amount that corresponds with a percentage of the total contract value.
- (2) The proceeds of the security shall become payable to the Court in the event the supplier or contractor fails to perform its obligations under the contract.
- (3) The Court shall return the performance security to the supplier or contractor after certification by Final User of completion of the supplier's performance obligations under the contract, including any warranty obligations, if applicable.

#### Rule 42

##### Submission and Receipt of Tenders

- (1) Tenders shall be submitted in writing, signed and in a sealed envelope, to the place, and before the deadline stated in the invitation to tender.
- (2) The Court shall provide in an open and accessible place, a securely tied box which shall be clearly labelled "Tender Box" to which a tenderer may deliver a tender.
- (3) The tender box shall be constructed in such a manner that it shall be capable of having two locks whose keys shall be kept by different officers and the duplicates of such keys shall be kept in a safe deposit by the Registrar or by a person authorized by the Registrar.

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- (4) Every tender delivered by hand shall be placed in the tender box by the tenderer or his representative.
- (5) A tender received by post shall be deposited in a tender box immediately upon receipt but in the event of any such tender received by post being opened by mistake, by the Court staff generally authorized to open mail, the fact of such opening shall be recorded on the envelope by such staff before placing it in the tender box.
- (6) Bulky bid documents shall be received by the Procurement Unit staff in exchange for a signed receipt showing the date and time of submission and the name of the officer receiving the bid.
- (7) The receiver will be responsible for storing the bid in a secure room or manner until bid opening and shall place a copy of the receipt in the tender box to ensure that the bid is taken into account during bid opening.
- (8) A tender received after the deadline for submission shall be rejected.

#### Rule 43

##### Opening of Tenders

- (1) The place and time for bid opening shall be specified in the invitation to tender.
- (2) The Court shall open all bids at the stipulated time and place.
- (3) The time for the bid opening shall be the same as for the deadline for receipt of bids or within seven days of the deadline.
- (4) Subject to sub-rule (5), all bids shall be opened publicly in a manner that an interested party is able to attend in person.
- (5) Bids received after the time stipulated shall not be considered.
- (6) The name of the bidder and total amount of each bid shall be read aloud and recorded in a tender opening register.

#### Rule 44

##### Tender Examination and Evaluation Process

- (1) The examination and tender evaluation process shall be clearly described in the solicitation documents.
- (2) Where information contained in a tender is unclear, the Tender Evaluation Committee may seek clarification of the information from the bidder, but no change in the substance of the tender, including changes in price, shall be sought, offered, or permitted.

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- (3) The bid price read aloud at the bid opening shall be adjusted to correct any arithmetical errors and for the purpose of evaluation, adjustments may be made for any quantifiable nonmaterial deviations.
- (4) Bidders shall be notified in writing of any arithmetic corrections made and requested to agree to the corrections in writing.
- (5) A tenderer who rejects the corrections made by the Tender Evaluation Committee pursuant to sub-rule (3) shall withdraw the tender and forfeit the tender security.
- (6) The Tender Evaluation Committee may regard a tender as substantially responsive if it conforms to all the instructions, requirements, terms and conditions of the invitation document without material deviation, reservation or omission.
- (7) The Court shall not accept a tender when-
  - (a) the tenderer does not accept a correction of an arithmetical error made pursuant to sub-rule (3); or
  - (b) the tender is not responsive.
- (8) The Tender Evaluation Committee shall evaluate and compare the tenders that have been held substantially responsive in order to ascertain the successful tender, as defined in sub-rule (11), and in accordance with the procedures and criteria set forth in the tender documents, but no criterion shall be used that has not been set forth in the tender documents.
- (9) The technical responsiveness factors other than price to be used for determining the lowest evaluated bid shall be given a relative weight in the evaluation provisions in the bidding documents.
- (10) A proposal shall be considered unsuitable and shall be rejected at the technical evaluation stage if it does not respond to the terms of reference or it fails to achieve a minimum technical score of 70% which condition must be stated in all Requests for Proposals.
- (11) The bid with the lowest evaluated price, but not necessarily the lowest submitted price, shall be selected for award.
- (12) The Tender Evaluation Committee shall prepare a detailed report on the evaluation and comparison of bids, setting forth the specific reasons on which the recommendation is based for the award of the contract.
- (13) A member participating in the Tender Evaluation Committee shall not serve as a member of the Procurement Committee or the Contracts Committee.
- (14) The Tender Evaluation Committee members may attend the Procurement Committee and Contract Committee meetings as observers only on invitation by the Chairperson of either Committee.

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## Rule 45

### Notification of Award and Signing of Contract

- (1) The Court shall, upon the evaluation of the tender process, notify the successful tenderer in writing that its tender has been accepted, and simultaneously notify the other tenderers of the tender result.
- (2) The notification of award to the successful tenderer shall specify the time, not being less than twenty-one days, within which the contract shall be signed.
- (3) Where a successful tenderer is unable to accept the award, the Court shall before the expiry of the period of validity or extension thereof, notify the second lowest evaluated tenderer that its tender has been accepted.
- (4) Where the award of contract is subject of a review under the provisions of Rule 55 and the Registrar or the Administrative Review Panel fails to render a decision within the period stipulated under that Rule, the Registrar shall not advise the successful tenderer to proceed with the services, or delivery of the goods until the complaint has been resolved.

## Rule 46

### Debriefing

- (1) The solicitation documents shall specify that a bidder may request an explanation from the Court to ascertain the grounds on which its bid was not selected.
- (2) The Court shall provide an explanation as to why the bid was not selected, in writing or in a debriefing meeting.
- (3) The requesting bidder shall bear all costs of attending a debriefing meeting.

## Rule 47

### Standstill Period

- (1) The standstill period shall begin after the unsuccessful bidders are notified of the award decision and shall be at least ten days.
- (2) A contract shall not be signed during the standstill period.
- (3) Where the standstill period is over, and there is a review in progress, the contract shall not be awarded.
- (4) The bid evaluation and approval process shall continue while a complaint is being considered at any level, but the Notification of Award shall not be issued until a final decision on the complaint has been received.
- (5) At the end of the Standstill Period, the Court shall proceed to award the contract in accordance with its decision to award, as communicated through the Notification of Intention to Award, if no complaint has been received from an unsuccessful bidder.

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## Rule 48

### Contract Effectiveness

- (1) Where both parties have signed the contract, the legal effectiveness of the contract may depend on any of the following conditions -
  - (a) receipt of the advance Payment Guarantee, where advance payment is required;
  - (b) provision of Performance Guarantee by the Court, if required; or
  - (c) issuance by the Court of an acceptable Letter of Credit to the supplier, where agreed mode of payment is by Letter of Credit.
- (2) The contract shall not enter into force before the conditions specified in sub-rule (1) are fulfilled.
- (3) The solicitation documents shall specify the conditions for contract effectiveness in the contract conditions.

## Rule 49

### Publication of the Award of Contract

- (1) The Court shall publish on its website the award of contract, indicating the name of the Supplier, Contractor or Consultant to which the contract was awarded, and the price, duration and scope of the contract.
- (2) The publication may be done quarterly and in the format of a summarised table covering the previous period.

## Rule 50

### Terms and Methods of Payments

- (1) Payment shall be in accordance with the international commercial practices applicable to the specific Goods, Services and Works.
- (2) Contracts for non-consulting services shall provide for full payment on the satisfactory performance of the deliverables specified in the contract.
- (3) Contracts for the supply of goods shall provide for full payment on the delivery and satisfactory inspection, of the contracted goods except-
  - (a) when there are multiple deliveries, and payments will be made on completion of each delivery; or
  - (b) for contracts involving installation and commissioning, in which case a portion of the payment may be made after the supplier has complied with all its obligations under the contract.

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- (4) Contracts for works may provide for-
  - (a) mobilisation advance fee of not more than thirty percent of the contract price after contract signing;
  - (b) regular progress payments against certified invoices based upon the partial completion of work; and
  - (c) reasonable retention amounts to be released upon compliance with the contractor's obligations under contract.
- (5) Progress payments may be made for consulting services contract where payments are tied to specific milestones and deliverables as follows-
  - (a) ten percent upon receiving the inception report;
  - (b) thirty percent upon receiving the draft report;
  - (c) sixty percent upon submission of a final report of a standard and quality acceptable to the Court, provided that where a report is subject to adoption by Council, ten percent of the fee shall be paid upon submission by the consultant of the final report to the Council.
- (6) Bidding documents shall specify the payment method and terms offered, whether alternative payment methods and terms will be allowed, and, if so, how the terms will affect bid evaluation.

#### Rule 51

##### Conditions for Advance payment and Progress Payments

- (1) Progress payments or advance payments may be considered if any of the following conditions are met-
  - (a) adequate security for the advance payment is ensured;
  - (b) the Court receives value commensurate with the amount of the payment;
  - (c) there is to be a long duration for contract performance; or
  - (d) there is a tradition or practice of receiving progress payments or advance payments from the purchaser in a particular industry or segment of industry.
- (2) The bidding documents shall specify the arrangements for any security required for advance payments.

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## Rule 52

### Record of Proceedings

- (1) The Court shall create and maintain full and accurate records for each contract documenting all steps in the procurement process and all events that occur during the life of the contract.
- (2) Records and files shall be kept in electronic or paper-based format provided that the information contained within is kept confidential by the Court.
- (3) For each procurement proceeding, the file shall contain-
  - (a) a brief description of the goods, works or services to be procured;
  - (b) the names and addresses of suppliers that submitted tenders, proposals, or quotations;
  - (c) the name and the address of the winning bidder;
  - (d) the evaluation criteria stipulated and applied, and a summary of the evaluation and comparison of tenders, proposals or quotations received;
  - (e) information on any decision to suspend or cancel proceedings after having been initiated; and
  - (f) the grounds for the procurement procedure used.
- (4) The record concerning any proceeding shall, on request and once the proceedings have resulted in a contract or have otherwise been terminated, be made available to bidders who participated in the proceedings at their own cost.
- (5) Unless required by an order of a competent court, the Court shall not disclose information where the disclosure-
  - (a) is contrary to law or would impede law enforcement;
  - (b) is not in the public interest;
  - (c) would prejudice legitimate commercial interests of the parties, or would inhibit fair competition; and
  - (d) relates to the examination and evaluation of tenders, proposals or quotations and the actual content of tenders, proposals, or quotations, other than in the summary form referred to in sub-rule 3(d) of this Rule.

## Rule 53

### Document Retention Period

The Court shall retain records and documents regarding procurement for a period of seven years from the date of concluding any procurement proceeding, except where they are the subject of a dispute, litigation or an audit.

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## Rule 54

### Procurement of Second-Hand Goods

- (1) The Court may, in exceptional circumstances, procure second-hand goods when they are considered to provide the most economical and efficient means of satisfying the objectives of the project.
- (2) A procurement package for goods shall not mix second-hand goods with new goods.
- (3) The technical requirements or specifications shall describe the minimum characteristics of the goods that may be offered second-hand.
- (4) Where the Court decides to procure second-hand goods, the simplified bidding documents shall set out-
  - (a) clear specifications that provide acceptable standards;
  - (b) performance requirements of the goods to be procured;
  - (c) clear criteria on how bids will be evaluated; and
  - (d) for complex goods, any inspection requirements and requirements for assessment and certification of the residual life of the goods by recognised licensed entities.
- (5) The warranty and defect liability provisions in the contract shall be written or adapted to apply to second-hand goods.

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**CHAPTER VII**  
**PROTESTS AND CHALLENGES**

**Rule 55**

**Administrative Review**

- (1) Where the Court is alleged to have breached a duty imposed by these Rules, a bidder who claims to have suffered, or risks suffering loss or damage as a result of the breach, may seek administrative review under the provisions of Rule 56.
- (2) The following shall not be subject to review provided for in sub rule (1)-
  - (a) the choice of a procurement procedure pursuant to Chapter IV; and
  - (b) a decision by the Court under Rule 14 to reject all tenders, proposals or quotations.
- (3) Once the Court has concluded and signed a contract with the successful tenderer, a complaint against an act or omission in the process leading up to that stage shall not be entertained through administrative review.
- (4) Where a contract has not been concluded and a complaint is being considered at any level, the bid evaluation and approval process may continue but the Notification of Award shall not be issued until a final decision on the complaint has been received.

**Rule 56**

**Submission of Complaints to the Court**

- (1) Following the transmission of the Notification of Intention to Award, a bidder may submit a complaint within ten days of becoming aware of the circumstances giving rise to the complaint.
- (2) The bidder shall submit a complaint to the Registrar who shall-
  - (a) acknowledge, in writing, receipt of the complaint within three days;
  - (b) consider the subject matter of the complaint and decide whether to reject the complaint or to implement any corrective action; and
  - (c) issue a written decision to the bidder within ten days of receipt of the complaint, stating either the reasons for the rejection of the complaint or advising what corrective action has been or will be taken.
- (3) Where the bidder is not satisfied with the decision of the Registrar, the bidder may apply for a review of the decision to the Administrative Review Panel within ten days of receipt of the decision by the Registrar.

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## Rule 57

### Disposal of Review by the Review Panel

- (1) A bidder who having not received any timely decisions or who is not satisfied with the decision of the Registrar under Rule 56 (2) and (3), may apply for a review in a sealed envelope or electronically via email marked "Confidential" and addressed to the Chairperson of the Administrative Review Panel, at the Court's mailing address.
- (2) The application for review shall contain-
  - (a) details of the relevant procurement process;
  - (b) details of the provisions of the procurement regulations or bidding procedures alleged to have been breached;
  - (c) details of the alleged act or omission;
  - (d) documentary evidence; and
  - (e) a registration fee of one percent of the contract price, in the form of a bank cheque in favour of the Court.
- (3) The Administrative Review Panel shall not hear the application for review where it-
  - (a) is not accompanied by the correct fee;
  - (b) has no evidence of a basis in fact;
  - (c) has been filed outside the required time limits;
  - (d) relates to contract implementation, not award; and
  - (e) relates to qualifications of a competing bidder.
- (4) Upon receipt of the application for review, the Administrative Review Panel, shall give notice of the application to the Court, unless it dismisses it on formal grounds.

## Rule 58

### Procedure after Acceptance of Application for Review

- (1) The Administrative Review Panel shall notify interested bidders of the application for review and forward to the Court, information and arguments received from the bidders.
- (2) Except where the Administrative Review Panel dismisses the application for review, it may grant the following remedies-
  - (a) declare the legal rules or principles that govern the subject matter of the application;

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- (b) require the Court, where it has acted or proceeded in an unlawful manner, or reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;
  - (c) annul in whole or in part an unlawful act or decision, other than, where the act or decision resulted in bringing the procurement contract into force;
  - (d) reverse an unlawful decision or substitute the decision with its own decision, other than where the decision resulted in bringing the procurement contract into force; or
  - (e) order that the procurement proceedings be terminated.
- (3) The Administrative Review Panel shall, within twenty-one days from the date of the notice prescribed under Rule 56(3) hear the complaint and issue a written decision, stating the reasons for the decision and the remedies, if any.
- (4) The decision of the Administrative Review Panel shall be final.
- (5) The Administrative Review Panel shall communicate its decision to the parties concerned in writing or in person upon their election.

#### Rule 59

#### Complaints Register

The Court shall maintain a Complaints Register in which brief information of all complaints and the decisions taken shall be recorded.

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CHAPTER VIII

DISPOSAL OF STORES AND EQUIPMENT

Rule 60

Authority to Dispose and Disposal Procedures

Surplus goods shall be disposed of in accordance with Rule 7 to Rule 72 of the COMESA Court of Justice Financial Rules.

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**CHAPTER IX**  
**AMENDMENT, AUTHENTICITY AND COMMENCEMENT**

**Rule 61**

**Amendment of Rules**

These Rules may be reviewed or amended by the Council on the recommendation of the Court.

**Rule 62**

**Authenticity of Rules**

- (1) These Rules are authentic in the official languages of the Court.
- (2) In the event of conflict, the English version shall prevail.

**Rule 63**

**Entry into Force**

These Rules or any amendments shall take effect on the approval of the Council.

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## FIRST SCHEDULE

### COMPOSITION AND ROLE OF THE PROCUREMENT COMMITTEE

The Committee shall be composed of five members as follows:

Chairperson	Officer responsible for Finance or representative
Permanent members	Assistant Registrar; An officer from Procurement Unit (as Secretary)
Other members	Two other members to be appointed by the Registrar, one of whom shall possess the necessary technical expertise on an ad hoc basis
Quorum	Four members including Chairperson

**Voting:** The Secretary shall not vote. Decisions shall be taken by simple majority. In case of a tie, the Chairperson shall have a second or casting vote.

**Role and Responsibility:** The role and responsibility of the Procurement Committee shall be to -

- (a) make recommendations to the Registrar on award of contracts through open regional tender, Restricted Competitive Bidding or direct procurement where the contract value exceeds COMESA Dollar 30,000 but not more than COMESA Dollar 150,000;
- (b) consider any amendment, modification, or renewal of a contract previously reviewed by the Procurement Committee, where the modification increases the originally approved contract value by not more than twenty percent or the delegation of authority of the Registrar, whichever amount is lower; and
- (c) consider the cases falling outside the thresholds for direct contracting provided in the Second Schedule and on an exceptional basis, the Procurement Committee will consider exceptions and recommend for subsequent approval by the Registrar, if so required.

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## COMPOSITION AND ROLE OF THE CONTRACTS COMMITTEE

The Committee shall be composed of seven members as follows:

Chairperson	A technical Officer nominated by the Member State that is the Chair of the Bureau of the Council.
Permanent members	Assistant Registrar (as Secretary), the Officer responsible for Finance and the Officer responsible for Administration and Human Resources
Other members	Two technical Officers nominated by the Member States that are the Vice Chair and Rapporteur of the Bureau of the Council, respectively.  One technical Officer nominated by the Host Country of the Court.
Quorum	Five members including Chairperson

**Voting:** The Secretary shall not vote; decisions shall be taken by simple majority. In case of a tie, the Chairperson shall have a second or casting vote.

**Role and Responsibility:** The role and responsibility of the Contracts Committee shall be to:

- (a) approve award of contracts that exceed a value of COMESA Dollar 150,000 during the term of the contract including any optional extension periods; and
- (b) approve any amendment, modification, or renewal of a contract previously awarded by the Contracts Committee where the modification increases the originally approved contract value by not more than twenty percent or the delegation of authority of the Registrar, whichever amount is lower.

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*[Signature]*

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**COMPOSITION AND ROLE OF THE TENDER EVALUATION COMMITTEE**

**Membership Structure:** - Shall be constituted on an ad hoc basis and composed of five members comprising of a chairperson, a secretary and an odd number of voting members appointed by the Registrar.

Chairperson	An Officer who possesses the technical capacity necessary to give an informed opinion on the subject matter
Permanent members	An Officer from Finance Unit; Officer from the Procurement Unit (as Secretary)
Other members	Representative of the relevant technical unit and representative of user groups
Quorum	Four members including Chairperson

**Voting:** The Secretary shall not vote; decisions shall be taken by simple majority. In case of a tie, the Chairperson shall have a second or casting vote.

**Role and Responsibility of Committee:** The role and responsibility of the Committee shall be to-

- (a) open the tenders in public at the place and time fixed in the tender document;
- (b) verify that suppliers and their offers satisfy the requirements of the solicitation documents;
- (c) evaluate offers according to the evaluation criteria predefined in the solicitation document;
- (d) co-ordinate the obtaining of additional information or clarifications; and
- (e) prepare an evaluation report of tenders received describing the score of the competing Submissions and ranking the Submissions from best to worst, in order to establish a competitive range of most responsive Submissions.

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## COMPOSITION AND ROLE OF THE ADMINISTRATIVE REVIEW PANEL

**Membership Structure:** - Shall be constituted on an ad hoc basis and composed of three members appointed by the Registrar, one of whom shall be nominated Chairperson.

The Panel shall be made up of one member from each of the following groups-

- (a) well-reputed specialist in legal matters, preferably experienced in procurement related legal issues;
- (b) well-reputed specialist having relevant technical expertise and experience in public procurement issues relating to goods, works or intellectual and professional services; and
- (c) well-reputed expert in procurement and contract management practices having experience in handling complaints and disputes.

The Registrar shall nominate a Secretary to the Administrative Review Panel.

**Voting:** - Decisions shall be taken by simple majority.

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SECOND SCHEDULE

DELEGATION OF FINANCIAL AUTHORITY

- (a) Contracts or purchases up to COMESA Dollar 7,500 may be authorised by the Officer responsible for Finance;
- (b) Contracts or purchases up to COMESA Dollar 30,000 shall be authorised by the Registrar;
- (c) Contracts or purchases of a value exceeding COMESA Dollar 30,000 but not exceeding COMESA Dollar 150,000 shall be authorized by the Registrar on recommendation of the Procurement Committee; and
- (d) Contracts or purchases of a value exceeding COMESA Dollar 150,000 shall be authorised by the Registrar upon the approval of the Contracts Committee.

PROCUREMENT PROCEDURE

(1) The following procedures will apply to procurement of goods, non-consulting services and works:

Procurement Levels (COMESA Dollar)	Requirement
(a) Under 501	Low value procurement
(b) 501 to 15,000	Request for quotations Direct procurement
(c) 15,001 to 20,000	Restricted Competitive Bidding Framework Contract Direct procurement
(d) 20,001 to 70,000	Open Regional Tender Restricted Competitive Tender Framework Contract
(e) 70,001 to 500,000	Open Regional Tender Restricted Competitive Tender
(f) Over 500,000	Open International Tender

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(2) The following procedures will apply to procurement of consultancy services using Request for Proposals:

Procurement Levels (COMESA Dollar)	Requirement
a) Up to 10,000	Request for Quotations Direct procurement Framework Contract
b) 10,001 to 30,000	Restricted Competitive Bidding Framework Contract Direct Procurement
c) 30,001 to 70,000	Open Regional Tender Restricted Competitive Bidding
d) 70,001 to 500,000	Open Regional Tender
e) Over 500,000	Open International Tender

\* Low-value services of short duration of one - ten days (translation, interpretation, short studies, training, etc) may not require Request For Proposals and can use a minimum of three quotations.

**MINIMUM TIMESCALES TO IMPLEMENT PROCUREMENT PROCEDURES**

Advertisements	Days
Open Regional Tender	28
International competitive tenders	42
Expression of interest	14
<b>Time Limits</b>	
Restricted Competitive Bidding	21
Request for quotations	7
Direct Procurement	7

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