

## **ETHICAL STANDARDS FOR SUPPLIERS**

### **1. INTRODUCTION**

All suppliers engaged in the supply of goods, works and services are expected to demonstrate the highest standards of professionalism in their performance and conduct because of the direct impact that public procurement has on the socio-economic development of the country. Therefore, suppliers are expected to adhere to the highest principles of ethical conduct.

### **2. PURPOSE**

This booklet has been prepared to provide practical, straightforward, and clear guidance to suppliers on how they should conduct themselves in the performance of their duties. The provisions of the Public Procurement and Disposal of Public Assets Act, 2017 (hereinafter referred to as the Act) and the Public Procurement Regulations, 2004 (hereinafter referred to as the Regulations)<sup>1</sup> have been explained and simplified to make them user friendly to suppliers. However, it is still advisable that suppliers should have recourse to the full text of the provisions as provided in the Act and the regulations.

The booklet also prescribes possible sanctions for non-adherence to these Ethical Standards.

### **3. APPLICATION AND SCOPE**

All suppliers engaged to supply goods, works and services through public procurement shall adhere to the ethical standards during the whole procurement process. .

### **4. ISSUE AND AMENDMENT**

This booklet has been issued by the Public Procurement and Disposal of Assets Authority under the Act and the Regulations. The booklet will be amended accordingly whenever there are changes to the Act and the Regulations.

Any comments on this booklet should be submitted to the Public Procurement and Disposal of Assets Authority. The address is:

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<sup>1</sup> Copies of the Act, Regulations and Ethical Standards can be accessed at ODPP's website

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## 5.0 DEFINITIONS

- 5.1. "Ethics"** means moral principles that control or influence a person's behavior. The ethical standards contained in the Public Procurement Act, 2003 and the Regulations set out rules and principles of good behaviour for suppliers.
- 5.2. "Bidder"** means any participant or potential participant in procurement proceedings.
- 5.3. "Supplier"** means a physical or judicial person that provides goods, or services. For the purpose of this booklet, the word supplier also means bidder.
- 5.4 "Corrupt practices"** means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 5.5 "Collusive practices"** means any illicit act conducted between suppliers to fix a price and selling conditions e.g. quantities; or one supplier having so many companies in the same line of business and those companies competing for the same business.
- 5.6 "Coercive Practices"** means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.
- 5.7 "Fraudulent practices"** means a misrepresentation of facts in order to influence a procurement process or the execution of a contract, and includes collusive practices among bidders, whether prior to or after bid submission.

## **6.0 ETHICAL STANDARDS**

The following are the ethical standards that shall be observed by suppliers.

### **6.1 Corrupt Practices**

Suppliers shall not commit or abet corrupt practices. Engaging in these acts or practices results in loss of public funds<sup>2</sup>.

### **6.2 Inducement**

Suppliers shall not be engaged in any acts of inducement that may influence decision making in procurement process such as offering or giving anything of value to influence the action of a public official in the procurement process or in contract execution.

### **6.3 Collusive Practices**

Suppliers shall not engage in collusive acts prior to or after bid submission, in order to establish bid prices at artificial, non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

Suppliers shall not collude with fellow suppliers and public officials concerning the formulation of terms of reference or bidding documents or bills of quantities or conniving to interfere with the participation of competing bidders with the intention of depriving a procuring entity of the benefits of free and open competition.

### **6.4 Coercive Practices**

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<sup>2</sup> Money paid by suppliers through corruption will always be recovered by the supplier indirectly through inflated invoices, poor quality or delays in service delivery.

Suppliers shall not harm or threaten to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.

### **6.5 Gifts and Hospitality**

Suppliers shall not offer gifts or hospitality directly or indirectly, to staff of a procuring entity that might be viewed by others as having an influence on a public procurement decision.

### **6.6 Confidentiality**

Suppliers shall respect the confidentiality of information received in the course of performance of a contract and shall not use such information for any other purpose.

### **6.7 Conflict of interest**

Suppliers must at all times avoid any conflict of interest and the appearance of impropriety in carrying out their duties. Individuals who served as procurement officers or who exercised some other authority in procurement related activity on behalf of a procuring entity shall not:

Participate in any manner either as an officer, employee, agent or representative of a supplier, in any negotiations or technical discussions leading to the award, modification, or extension of a contract for such procurement;<sup>3</sup> or

Participate personally or substantially on behalf of a supplier in the performance of such contract.

### **6.8 Honesty**

Suppliers shall ensure that all the goods, works and services provided are of the highest quality and that they comply with or exceed the specifications in the contract.

### **6.9 Mis-representation**

Suppliers shall ensure that all information given prior to, during and after the entire procurement process is accurate, unambiguous and not designed to mislead decision making in the procurement process.

### **6.10 Fraudulent Practices**

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<sup>3</sup> For example if a supplier is involved in designing a building or road etc the same supplier shall not participate in bidding for the resultant tender unless specifically allowed in the bid document.

Suppliers shall not misrepresent or deliberately omit facts in order to influence a procurement process or contract execution.

Suppliers shall not engage in deceptive financial practices, such as double billing, under-pricing of bids with a view to recouping costs and profit by way of variation or other improper financial practices.

### **6.11 Reporting unethical conduct**

Suppliers shall immediately report<sup>4</sup> any violations of the ethical standards to the Public Procurement and Disposal of Assets Authority and relevant law enforcement authorities.<sup>5</sup>

## **7.0. SANCTIONS**

Suppliers shall strictly comply with these ethical standards. The following sanctions shall be imposed for non-compliance:

### **7.1 Disqualification**

A supplier shall be disqualified from a procurement proceeding if he offers any inducement or attempt to influence procurement decisions<sup>6</sup> or is in breach of the ethical standards prescribed.

### **7.2 Debarment**

The Director of the Public Procurement and Disposal of Assets Authority shall exclude a supplier from participating in public procurement and the supplier may remain debarred for up to two (2) years if he commits a prescribed misconduct<sup>7</sup>.

### **7.3 Prosecution**

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<sup>4</sup> Section 18 (3) of the Act

<sup>5</sup> Anonymous reports are accepted. Provisions of the Corrupt Practices Act, Section.... on protection of whistleblowers also applies to reports made under this ethical standard.

<sup>6</sup> Reference Section 18(4) of the Act

<sup>7</sup> Reference Section 20 of the Act and Regulations 190,191 and 192

Suppliers who do not comply with the ethical standards may, in addition to debarment, be prosecuted under the Act, the Corrupt Practices Act<sup>8</sup>, and any other written law in force in Malawi.

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<sup>8</sup> Reference, Section 18 (3) and (4) of the Act and Section .....of the Corrupt Practices Act