

**MEMORANDUM  
OF  
UNDERSTANDING**



## **INTRODUCTION**

**WHEREAS** the Directorate on Corruption and Economic Crime (hereinafter referred to as "DCEC") is established under Section 3(1) of the Corruption and Economic Crime Act Cap [08:05] in order to, *inter alia*, control and deal with corruption and economic crimes in the country;

**WHEREAS** the Public Procurement and Asset Disposal Board (hereinafter referred to as "PPADB") is established under Section 10 of the Public Procurement and Asset Disposal Act Cap. [42:08] in order to, *inter alia*, regulate public procurement;

**WHEREAS** the Competition Authority is established under Section 4 of the Competition Act of 2009 with the responsibility of prevention of, and redress for, anti-competitive practices in the economy, and the removal of constraints on the free play of competition in the market of which Section 2 and Section 25 expressly define and prohibit "bid-rigging";

**AND WHEREAS** under Section 73 of the Competition Act, there is a general expectation for regulators to establish a mechanism through which they can maintain regular contact regarding the exercise of their respective responsibilities.

**NOW THEREFORE**, the Parties agree to conclude this Memorandum of Understanding (hereinafter referred to as the "Memorandum" as follows:

### **1. BASIS OF THIS MEMORANDUM**

- 1.1 Public procurement is an important part of national economic development, including job creation, wealth distribution and development of competitive entrepreneurship in an economy.

- 1.2 Competitive public procurement can be distorted, restricted or distorted by corruption, deception, fraud, collusive tendering or bid-rigging.
- 1.3 There is no one institution that has unilateral capacity to efficiently and effectively investigate, analyse and successfully prosecute cases of fraud, deception, collusion, etc in public procurement and there is thus need to cooperate and share information to successfully curb bid-rigging.
- 1.4 The Memorandum does not limit the DCEC, PPADB or the Competition Authority from taking any steps to establish other Memoranda with any other relevant institutions that may be relevant to their functions as well as to specifically deal with fraud, deception, collusion, etc in public procurement as may be consistent with the legislations that establish their existence.

## 2. SCOPE OF COOPERATION AND INFORMATION SHARING

- 2.1 The Parties will endeavour to inform each other in advance of regulatory changes or other material events that may have a significant impact on their joint operations or activities as herein described.
- 2.2 Areas of coordination, cooperation or information sharing will include, but not limited to:
- a) Providing each other with relevant information on an investigation when requested by the other Party/ies or proactively by any Party without a request being made, which information is detailed under Article 3 below.
  - b) Assisting each other with investigation, research and analysis of cases that one Party may be engaged in.



- c) Joint training sessions for officers dealing directly with matters pertinent to this Memorandum.
- d) Consulting each other on a regular basis on matters of mutual interest.
- e) To seek clarification from each other on any media reports that may be related to matters connected with or incidental to the Memorandum.
- f) Avail to each other non-confidential parts of an investigation and results thereof.
- g) Appear in Court or other judicial and quasi-judicial bodies as expert witness or to provide evidence in relation to their specific competency, or jointly prosecute an offence of mutual interest.
- h) Each Party will be assumed to bear their own costs and factor the aspects of this Memorandum in their respective budgets.

2.3 To the extent possible, all requests for information will be in writing and signed by the Chief Executives of the Parties or their designated officers, of which the request will specify:

- a) The information sought by a member Party.
- b) A general description of the matter which is the subject of the request and the purpose for which the information is sought.
- c) The desired time period for reply and, where appropriate, the urgency thereof.

2.4 In any urgent situations, the Parties will endeavor to notify each other of the urgency situation and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of the efforts to address the urgent situation. During Urgent Situations, requests for information may be made in any form, including orally by designated officers, provided such communication is confirmed in writing at an opportune time.

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- 2.5 Where an action by any Party to this Memorandum requires the policy guidance or other governing body, the usual extra-ordinary processes to arrange for adhoc or special decisions shall be followed with the urgency the matter would deserve.
- 2.6 Where joint investigations are carried out, the Parties involved will consult each other before either of them issues a media release concerning a transaction covered by this Memorandum.
- 2.7 Where a Party seeks the assistance of the others in a case to provide evidence in any proceedings before a Court, the fees for the appearance of any officer as a witness will be borne by the Party calling the witness. The fees will be as per the witness tariffs prescribed by Government from time to time.

### 3. RESPONSIBILITIES OF THE PARTIES

#### 3.1 COMPETITION AUTHORITY

To the extent possible, and within the spirit of Article 2 of this Memorandum, the Competition Authority will endeavour to assist with information regarding:

- (a) The fixing of a purchase or selling price or any other trading conditions by enterprises involved in tendering.
- (b) Bid rigging in all its forms by enterprises involved in tendering and procurement.
- (c) Current international best practices in combating bid-rigging competition case law on bid rigging from tender design and evaluation criteria.
- (d) Analysis of tenders for possible identification of collusion/rigging.



- (e) Any suspicions of bid-rigging that is, corruption related suspicions to the DCEC and competition related suspicions to the Competition Authority.
- (f) Any other information as the Competition Authority may find useful to share with the PPADB and/or DCEC.

### 3.2 PPADB

To the extent possible, and within the spirit of Article 2 of this Memorandum, the Public Procurement and Asset Disposal Board will endeavour to assist with information regarding:

- (a) Tender documentation required pursuant to a tender investigation.
- (b) Securing of procurement specialists to assist in investigations and prosecution of procurement related matters.
- (c) Contractor related information as may be in the Contractor Registration database.
- (d) The update of Government policies on procurement.
- (e) Any other information as the PPADB may find useful to share with the Competition Authority and/or DCEC.

### 3.3 DCEC

To the extent possible, and within the spirit of Article 2 of this Memorandum, the Directorate on Corruption and Economic Crime will endeavour to assist with information regarding:

- (a) The investigation of any enterprise involved in the tendering and/or procurement process.
- (b) Any relevant information about the collusion activities of an enterprise involved in the tendering and/or procurement process to the Competition Authority.
- (c) Any other information as the DCEC may find useful to share with the Competition Authority and/or the PPADB.

#### 4. HANDLING OF CONFIDENTIAL INFORMATION

- 4.1 Each Party will endeavour to maintain the public confidence in terms of whistle-blowers and other sources of information, which will not be unnecessarily disclosed to any Party and cooperation in any way will not be expected to be dependant on knowledge of the source of the information.
- 4.2 Where confidential information is required by a judicial or quasi-judicial organ, the disclosure will be made in conformity with the direction given by the presiding decision maker/adjudicator and the rules that generally govern their sittings.
- 4.3 While information exchanged may be used by any Party in their enforcement activities, such information must be protected by the relevant Statutory confidential clauses.
- 4.4 This Memorandum will be a public document and thus may be quoted generously by any Party to the Memorandum.
- 4.5 Unless otherwise expressly stated, all information sought or exchanged will be deemed to be usable by the receiving Party according to the legal framework establishing them.

#### 5. ESTABLISHMENT OF JOINT WORKING COMMITTEE

- 5.1 A Joint Working Committee ("the Committee") constituted by representatives of the Parties as nominated by the Parties will be established pursuant to this Memorandum and will function on an on-going basis.



5.2 Functions of the Committee will include:

- a) Management and facilitation of meetings and cooperation and consultation in respect of matters dealt with by each regulator in terms of this Memorandum.
- b) Proposition, when necessary, of any amendment of or supplementation to this Memorandum.
- c) Advisory services to the senior management of the Parties on issues affecting efficient and effective cooperation and implementation of the Memorandum and solutions thereto.

5.3 Any matter connected to or incidental to the Memorandum.

6. **IMPLEMENTATION AND ENFORCEMENT**

It will be incumbent upon the Chief Executive Officers of the Parties to this Memorandum to ensure that each Party carries out its obligations as agreed, and commits to undertaking to implement, the commitments under this Memorandum.

7. **SHARING RESOURCES**

The Parties may, under certain circumstances, share each other's available resources in order to bring the provisions of this Memorandum into full effect; provided such a process is reasonable, will not compromise the respective security of the Parties and does not contravene any statute with which the Parties must conform.



## 8. STATUTORY LIMITATIONS

8.1 The provision of, or request for, information under this Memorandum may be denied:

- a) Where compliance would require a Party to act in a manner that would violate the applicable law;
- b) Under circumstances where there is an imminent risk to national security or other overriding public interest; or
- c) When compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where prejudice to the investigation is likely to outweigh the adverse effects of denying the information.

8.2 No provision of this Memorandum will give rise to the right on the part of any person, entity or government authority other than the Parties herein, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this Memorandum.

## 9. VARIATION OF THE MEMORANDUM

Any variation of this Memorandum will have no legal effect and will not be binding on the Parties unless reduced to writing and signed by persons authorized to act on behalf of the Parties.

## 10. COMMENCEMENT OF THE MEMORANDUM

This Memorandum will come into operation on the date on which it is signed by persons authorized to act on behalf of the Parties.

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*[Signature]*  
DTP

*[Signature]*  
MRL

**11. DURATION OF THE MEMORANDUM**

This Memorandum will remain in operation until it is changed or repealed by all Parties hereto, acting jointly.

**12. DOMICILIUM CITANDI ET EXECUTANDI**

The Parties choose the following addresses as their respective *domicilium citandi et executandi* for purposes of this Memorandum:

**THE DIRECTORATE ON CORRUPTION AND ECONOMIC CRIME**

**CONTACT PERSON: THE DIRECTOR**

Plot 1212 Molosiwa Road

Private Bag 00344

Gaborone

Tel: 3914002

Fax: 3913508/390782

**THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BOARD**

**CONTACT PERSON: THE EXECUTIVE CHAIRPERSON**

Plot 8913 Maakgadigau Way

Gaborone West Industrial Site

Gaborone.

Tel: +267 390 6853

Fax: +267 390 6822

**THE COMPETITION AUTHORITY**

**CONTACT PERSON: THE CHIEF EXECUTIVE OFFICER**

PLOT 50664, FAIRGROUNDS OFFICE PARK

PRIVATE BAG 00101

GABORONE

TEL: +267 393 4278

FAX: +267 312 1013

EMAIL: [competitionauthority@gmail.com](mailto:competitionauthority@gmail.com)


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THIS MEMORANDUM OF UNDERSTANDING is made  
this... 23<sup>RD</sup> ... Day of ... NOVEMBER ... Two Thousand and  
Eleven by the duly authorized representatives of the Parties whose  
signatures appear below and is intended to reflect the position reached by  
the Parties hereto.

**For and on behalf of the DCEC**


SIGNED by 

Full Name: Rose Nunu Seretse

In the presence of

WITNESS: 

Name: Botlhale Makghegenene

Signature: 

Address: P1 Bag 00344 Gaborone

Occupation: Deputy Director - Policy

**For and on behalf of PPADB**

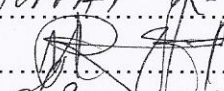
SIGNED by 

Full Name: BRIDGET POPPY JOHN

In the presence of

WITNESS:

Name: MOFFAT R. LUBINDA

Signature: 

Address: P1 Bag 0058 Gaborone

Occupation: Local Secretary - PPADB



For and on behalf of COMPETITION AUTHORITY


SIGNED by 

Full Name: TITULA KAIRA

In the presence of

WITNESS:.....

Name: 

Signature: 

Address: COMPETITION AUTHORITY

Occupation: DIRECTOR LEGAL & ENFORCEMENT