

PART V – ALTERNATIVE PROCUREMENT PROCEDURES

Use of restricted tendering.

53. (1) A procuring entity may use restricted tendering only if the conditions provided in sections 29(3) and 73(2) of the Act are satisfied.

(2) A procuring entity that conducts procurement using the restricted tendering method shall be subject to the procurement thresholds set out in the First Schedule.

Procedure for restricted tendering.

54. (1) Save as is otherwise provided in this Regulation, the procedure for open tendering set out in the Act and these Regulations shall, for the purposes of section 73(1) of the Act, apply *mutatis mutandis* to restricted tendering.

(2) A procuring entity shall, for the purpose of identifying pre-qualified contractors pursuant to section 73(2) (a) of the Act, use the pre-qualification procedures set out in Regulations 23,24 and 25 or otherwise as permitted under section 32 of the Act.

(3) Where restricted tendering is used pursuant to section 73(2) (b) of the Act, the procuring entity shall invite tenders from at least ten persons selected from the list maintained under Regulation 8 (3) (a).

(4) Where restricted tendering is used pursuant to section 73(2) (c) of the Act, the procuring entity shall invite tenders from all the known suppliers of the goods, works or services.

(5) The minimum time for the preparation of tenders for the purposes of section 73 of the Act shall be a period of fourteen days.

Request for proposals.

55. (1) A procuring entity that conducts procurement using the request for proposals method pursuant to section 76 of the Act shall be subject to the procurement thresholds set out in the First Schedule.

(2) The notice inviting expressions of interest prepared by the procuring entity pursuant to section 78 of the Act shall give a minimum period of fourteen days for tenderers to submit their expressions of interest.

Terms of reference.

56. For the purposes of section 79(b) of the Act, the terms of reference prepared by a procuring entity shall set out-

- (a) the background including the reasons necessitating the procurement ;
- (b) the objects to be achieved by the procurement;
- (c) the output expected from the person awarded the tender;
- (d) the qualifications necessary for a person to be awarded the tender.

Preliminary evaluation of proposals.

57. The procedure for preliminary evaluation of open tenders set out in Regulation 47 shall apply to evaluation of proposals under section 82 of the Act.

Procedure for negotiation.

58.(1) A procuring entity shall not enter into any negotiations pursuant to section 84 of the Act until the tender committee has approved the successful proposal.

(2) The negotiations shall be conducted by at least two members of staff of the procuring entity appointed by the accounting officer or the head of the procuring entity on the recommendation of the procurement unit.

(3) The members of staff conducting the negotiations under paragraph (2) shall prepare a report of the negotiations and submit it to the tender committee for decision making.

(4) The report prepared under paragraph (3) shall form part of the records of the procurement

Request for quotations.

59. (1) A procuring entity that conducts procurement using the request for quotations method pursuant to section 88 of the Act shall be subject to the procurement thresholds set out in the First Schedule.

(2) For the purpose of determining the persons to be given a request for quotations under section 89 of the Act, a procuring entity shall-

- (a) prepare a list of qualified persons
 - (i) selected from the list maintained under Regulation 8(3)(a) ;
 - (ii) from its own knowledge of the market ;
- (b) submit the list prepared under paragraph (a) to the

tender committee for approval; and

- (c) ensure a fair and equal rotation amongst the persons on the list kept under paragraph (a) in respect to giving the requests for quotations.

Submission of quotations.

60. A request for quotations prepared by a procuring entity under section 89(2) (d) of the Act shall set out –

- (a) a requirement that quotations be submitted in sealed envelopes; and
- (b) the mode of delivery of the sealed envelopes to the procuring entity.

Opening and evaluation of quotations.

61. (1) The opening, evaluation and comparison of quotations shall be carried out jointly by the procurement unit and the user department of the procuring entity.

(2) Where the procurement unit is of the view that the successful quotation is higher than the prevailing market price, the procurement unit shall reject the quotations and repeat the process by giving a fresh request for quotations to a set of new persons in the list approved by the tender committee under Regulation 59(2) (b).

(3) Pursuant to section 30 (3) of the Act the procurement unit shall not accept a quotation under section 89(4) of the Act if the quotation is above the prevailing real market price.

Direct procurement.

62. (1) A procuring entity that conducts procurement using the direct procurement method pursuant to section 74 of the Act shall be subject to the procurement thresholds set out in the First Schedule.

(2) Where a procuring entity uses direct procurement, the procuring entity shall record the reasons upon which it makes a determination that the relevant condition set out in section 74 of the Act has been satisfied.

(3) A procuring entity shall, within fourteen days after the notification of the award of the contract, report any direct procurement of a value exceeding five hundred thousand shillings to the Authority.

(4) The procedure for negotiations for proposals set out in Regulation 58 shall apply *mutatis mutandis* to negotiations relating to direct procurement pursuant to

section 75(a) of the Act.

(5) A procuring entity shall not enter into a contract under section 75 (c) of the Act unless it is satisfied that the offer-

- (a) meets the requirements of the procuring entity as specified under paragraph (2); and
- (b) is at the prevailing real market price.

Low value procurement.

63.(1) For the purposes of section 90 (2) of the Act, a procuring entity may use a low value procurement procedure only 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 First Schedule;
- (b) no benefit would accrue to the procuring entity in terms of time or cost implications if the procuring entity uses requests for quotations or any other procurement method;
- (c) the procedure is not being used for the purpose of avoiding competition;
- (d) the use of the procedure has been recommended by the procurement committee after a market survey

(2) The following procedure shall apply in respect to low value procurement-

- (a) the procurement unit shall procure the goods, works or services from a reputable outlet or provider through direct shopping;
- (b) an original invoice or receipt for the low value procurement of goods, works or services and the price paid shall be obtained and signed by the person undertaking the procurement.

Use of specially permitted procedures.

64. (1) For purposes of section 92 of the Act, the Authority may allow the use of specially permitted procedure-

- (a) where exceptional requirements make it impossible, impracticable or uneconomical to comply with the Act and these Regulations, or

- (b) where the market conditions or behavior do not allow effective application of the Act and these Regulations, or
- (c) for specialized or particular requirements that are regulated or governed by harmonized international standards or practices

(2) A procuring entity shall-

- (a) first obtain the approval of its tender committee; and
- (b) submit the proposal and all the tender documents to the Authority for approval before proceeding with the procedure.

(3) The Authority shall maintain a register of all specially permitted procedures allowed

(4) the Authority shall issue detailed guidelines for concessioning or public private partnership

Award of contract.

65. All contract award decisions shall be taken by the appropriate award authority, in accordance with the levels of Authority specified in the First Schedule.

Notification of the award.

66. (1) A procuring entity shall, upon rejecting unsuccessful tenders return any tender securities and any unopened financial proposals.

(2) Where so requested by an unsuccessful tenderer, a procuring entity shall, within fourteen days after a request, provide written reasons as to why the tender, proposal or application to be pre-qualified was unsuccessful.

(3) The reasons given under paragraph (2) shall not contain any information on any other tender other than information that is publicly available from tender openings or published notices.