

PART III-GENERAL PROCUREMENT RULES

Pre-qualification procedures.

23. (1) Where the procuring entity conducts a pre-qualification procedure pursuant to the Act, it shall publish an invitation to candidates to submit applications to be pre-qualified.

(2)The invitation referred to in paragraph (1) shall include-

(a) the name, address and contact details of the procuring entity;

(b)an outline of the procurement requirement, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;

(c)statement of the key requirements and criteria to pre-qualify;

(d) instructions on obtaining the pre-qualification documents, including any price payable and the language of the documents; and

(e)instructions on the location and deadline for submission of applications to pre-qualify.

Prequalification documents.

24.(1) A procuring entity shall promptly issue pre-qualification documents to all candidates who request them and shall maintain a record of all candidates to whom documents are issued.

(2) The pre-qualification document shall contain all the information necessary for the potential candidates to prepare and submit applications to be pre-qualified.

(3) Without prejudice to the generality of paragraph (2), such information shall include-

(a)the name, address and contact details of the procuring entity;

(b)details of the procurement requirements, including the nature and quantity of goods, works or services and the location and timetable for delivery or performance of the contract;

(c)instructions on the preparation of applications to pre-qualify, including any standard forms to be submitted and the documentary evidence and

information required from candidates;

(d) instructions on the sealing, labelling and submission of applications to pre-qualify, including the location and deadline for submission; and

(e) information on how applications will be evaluated.

(4) The procuring entity shall allow the candidates at least fourteen days to prepare and submit their applications to be pre-qualified.

(5) The procuring entity shall promptly respond to all requests for any clarification relating to the pre-qualification document where such requests are received before the deadline for submission.

Approval of pre-qualified candidates.

25. (1) The procuring entity shall, in writing, record the results of its evaluation of applications for pre-qualification using the evaluation criteria in the pre-qualification documents and shall state which candidates were found to be qualified and the reasons why any candidates were not qualified.

(2) The record of results prepared under paragraph (1) shall be submitted to the tender committee for approval.

(3) The procuring entity shall invite tenders from only the persons who have been pre-qualified under this regulation.

Limitations of contracts with employees

26. For the purposes of section 33(2) of the Act, a relative is limited to a spouse or 2 child.

Procurement approvals.

27. (1) Subject to the Act, all approvals relating to any procedures in procurement shall be in writing and properly dated, documented and filed.

(2) No procurement approval shall be made to operate retrospectively to any date earlier than the date on which it is made.

(3) No procurement approval shall be made by a person exercising delegated authority unless such delegation has been approved by the accounting officer.

(4) A procuring entity shall maintain specimen signatures of all persons authorised to make approvals within the procurement process.

(5) Responsibility for each approval made in the procurement procedure shall rest with both the person who delegates the authority and the person to whom the approval authority is delegated.

Preferences and reservations.

28. (1) For the purposes of section 39(8) of the Act, the threshold below which exclusive preference shall be given to citizens of Kenya, shall be the sum of –

- (a) fifty million shillings for procurements in respect of goods or services;
- (b) two hundred million shillings for procurements in respect of works.

(2) The margin of preference-

- (a) for the purposes of section 39(8) (b) (i) of the Act, shall be fifteen percent of the evaluated price of the tender;
- (b) for the purposes of section 39(8) (b) (ii) of the Act, shall be-
 - (i) six percent of the evaluated price of the tender where the percentage of shareholding of the locals is less than twenty percent; and
 - (ii) eight percent of the evaluated price of the tender where the percentage of shareholding of the locals is less than fifty one percent but above twenty percent

Tender documents.

29. (1) The standard tender documents for purposes of section 29 (4) of the Act shall be as set out in the Third Schedule to these Regulations.

(2) Pursuant to section 9(c) (i) of the Act, the Authority shall avail the standard tender documents to procuring entities.

Manuals by the Authority.

30. Pursuant to section 9(c)(i) of the Act, the Authority may, in consultation with specific procuring entities, develop internal procurement manuals, administrative guidelines and

best practices manuals specific to such entities consistent with the Act and these Regulations.

Variations to contracts.

31. For the purposes of section 47(b) of the Act, any variation of a contract shall be effective only if-

- (a) the price variation is based on the prevailing consumer price index obtained from Central Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya;
- (b) the quantity variation for goods and services does not exceed ten percent of the original contract quantity;
- (c) the quantity variation for works does not exceed fifteen per cent of the original contract quantity; and
- (d) the price or quantity variation is to be executed within the period of the contract.

Contract termination.

32. (1) A contract document shall specify the grounds on which the contract may be terminated and specify the procedures applicable to termination.

(2) The procurement unit shall obtain the approval of the tender committee which authorised the original contract, prior to terminating the contract and the request for approval shall clearly state-

- (a) the reasons for termination;
- (b) the contractual grounds for termination; and
- (c) the cost of terminating the contract.

Format of procurement documents.

33. (1) The Authority shall issue guidelines on the format of procurement documents to be adopted for approvals and the documentation of the procurement procedure.

(2) The Authority may issue standard forms by which a procuring entity shall carry out specific procurement procedures.

(3) The documents shall be clear and bear references to the procurement requirement, dates and signatures of authorizing officers.

(4)The Authority may, from time to time, issue circulars and guidelines on the content of procurement documentation.

Additional procurement records.

34. (1) For the purposes of section 45(2) (h) of the Act, the following documents shall be treated as part of the procurement records-

(a)where the procurement or the disposal requirement involves feasibility studies and surveys directly carried out or accepted by the procuring entity in order to prepare the tender documents, the reports and other documents resulting from these studies and surveys;

(b) all receipts for the sale of tender documents, request for clarifications and clarifications issued by the procuring entity;

(c)records of any negotiations;

(d)end of activity report as may be stipulated by the Authority.

(2) The Authority may issue guidelines relating to the use, record management, filing and storage of procurement documentation.

(3) A procuring entity shall maintain an individual file for each procurement requirement containing all information documents and communications relating to that procurement proceeding and such file shall be marked with the relevant procurement reference number.