

PART IV –OPEN TENDERING

Open tendering.

35. A procuring entity that conducts procurement using the open tender method shall be subject to the procurement thresholds set out in the First Schedule.

Time for international tendering.

36. For the purposes of section 71(c) of the Act, the minimum period of time between advertisement and deadline for submission of international tenders shall be thirty days.

Threshold for national advertising.

37. For the purposes of section 54(2) of the Act, the threshold for national advertising shall be as set out in the First Schedule.

Additional information to be contained in tender documents.

38. For the purposes of section 52 (3) (k), the tender documents shall contain-

- (a) a statement whether tenders which do not conform precisely to the description of requirements, but which meet the objectives of the procurement in an alternative manner, may be permitted and the manner in which such tenders shall be evaluated;
- (b) instructions on the sealing, labeling and submission of tenders, including the location and deadline for submission of tenders and procedures for the withdrawal, modification or replacement of tenders;
- (c) any applicable preference programs and the margin of preference and the manner in which such preference will be applied in the evaluation;
- (d) the procedures and criteria to be used in cases where a procuring entity decides to invite tenders in two separate phases for the purposes of carrying out the respective technical and financial evaluation of the same tender;
- (e) the procedure and criteria to be used to evaluate and compare the tenders as set out in regulations 46 to 52.

Fee for tender documents.

39. (1) Pursuant to section of A procuring entity may, pursuant to section 56 (2) of the Act, charge a fee not exceeding five thousand shillings for copies of tender or pre-qualification documents.

(2) In arriving at the fee payable under paragraph (1), a procuring entity shall only have regard to the costs related to

printing, copying, and distribution or of converting the documents into electronic form.

(3) Where the tender documents are obtained electronically, the fee payable under paragraph (2) shall be paid at the time of submission of the tender.

(4) Where tender documents are sold, the procuring entity may allow potential tenderers to inspect the documents, prior to purchasing the document.

Time for preparing tenders.

40. The minimum time for the preparation of tenders for the purposes of section 55 (1) of the Act shall be a period of twenty one days.

Tender security.

41. (1) The amount of any tender security under section 57 (2) of the Act shall be expressed either as a fixed amount or as a percentage of the estimated value of the contract and shall not in either case exceed two percent of the estimated value of the contract.

(2) In determining the amount of tender security under paragraph (1), a procuring entity shall take into account-

- (a) the cost to tenderers of obtaining a tender security;
- (b) the estimated value of the contract; and
- (c) the risk of tenderers failing to fulfill the conditions of their tenders.

(3) The tender security to be provided under section 57 of the Act shall be in any of the following forms only-

- (a) cash;
- (b) a bank guarantee;
- (c) such insurance company guarantee as may be approved by the Authority;
- (d) a letter of credit.

(4) No tender security shall be accepted under the Act unless such security is valid for a period of at least thirty days after the expiry of the tender validity period.

(5) The procuring entity shall, where it extends the tender validity period, request the tenderers' to extend the period of validity of their tender securities.

(6) A procuring entity may, where it deems necessary, verify the authenticity of any tender security.

Period of validity of tenders.

42. (1) The period of validity of a tender shall be stated in calendar days from the date of opening of the tender.

(2) For purposes of this regulation, a calendar day includes any day of the week including Saturday, Sunday and a public holiday.

Inquiries relating to tender documents.

43. (1) Where a tenderer makes an inquiry relating to the tender documents under section 53(2) of the Act, the procuring entity shall promptly reply in writing.

(2) The reply under paragraph (1) shall be copied to all tenderers and shall include a description of the inquiry but without identifying the source.

(3) The procuring entity shall not be bound to reply to inquiries received after the deadline for submitting inquiries stipulated in the tender documents.

Form of tender box.

44. A procuring entity shall, for purposes of section 58(4) of the Act, ensure that-

- (a) a tender box has two locks;
- (b) the keys for each lock are kept by a different officer; and
- (c) the tender box remains locked until the time for tender opening.

Opening of tenders.

45. (1) Pursuant to section 60 (5) (b) of the Act, the total price of the tender-

- (a) may not be read out where a tender consists of numerous items that are quoted for separately;
- (b) shall not be read out where a tender is preceded by a technical evaluation and such tender has not met the technical evaluation criteria.

(2) Where a tenderer fails a technical evaluation under paragraph (1) (b) a procuring entity shall return the financial

proposal unopened.

(3) A tender opening committee shall, where applicable, record in the tender opening minutes whether any sample has been submitted in respect of any tender.

Period for
evaluation of
tenders.

46. A procuring entity shall, for purposes of section 66 (6) of the Act, evaluate the tenders within a period of thirty days after the opening of the tender.

Preliminary
evaluation of
open tenders.

47. (1) Upon opening of the tenders under section 60 of the Act, the evaluation committee shall first conduct a preliminary evaluation to determine whether-

- (a) the tender has been submitted in the required format;
- (b) any tender security submitted is in the required form, amount and validity period;
- (c) the tender has been signed by the person lawfully authorised to do so;
- (d) the required number of copies of the tender have been submitted;
- (e) the tender is valid for the period required;
- (f) all required documents and information have been submitted; and
- (g) any required samples have been submitted.

(2) The evaluation committee shall reject tenders, which do not satisfy the requirements set out in paragraph (1).

Non-responsive
tenders to be
rejected.

48. (1) A procuring entity shall reject all tenders, which are not responsive in accordance with section 64 of the Act.

(2) the classification of a deviation from the requirements as minor under section 64(2) (a) of the Act shall be applied uniformly and consistently to all the tenders received by the procuring entity.

Technical
evaluation.

49. (1) Upon completion of the preliminary evaluation under Regulation 47, the evaluation committee shall conduct a technical evaluation by comparing each tender to the technical requirements of the description of goods, works or services in

the tender document.

(2) The evaluation committee shall reject tenders which do not satisfy the technical requirements under paragraph (1).

Financial
valuation.

50. (1) Upon completion of the technical evaluation under Regulation 49, the evaluation committee shall conduct a financial evaluation and comparison to determine the evaluated price of each tender.

(2) The evaluated price for each bid shall be determined by-

(a) taking the bid price, as read out at the bid opening;

(b) taking into account any corrections made by a procuring entity relating to arithmetic errors in a tender;

(c) taking into account any minor deviation from the requirements accepted by a procuring entity under section 64(2) (a) of the Act;

(e) where applicable, converting all tenders to the same currency, using a uniform exchange rate prevailing at the date indicated in the tender documents;

(f) applying any discounts offered in the tender;

(g) applying any margin of preference indicated in the tender documents

(3) Tenders shall be ranked according to their evaluated price and the successful tender shall be the tender with the lowest evaluated price in accordance with section 66(4) of the Act.

Evaluation report.

51. (1) An evaluation report prepared under section 66(5) of the Act shall include-

(a) a summary of all the tenders received and opened;

(b) the results of the preliminary evaluation under Regulation 47;

(c) the results of the technical evaluation under

Regulation 49;

- (d) reasons why any tenders were rejected;
- (e) details of any minor deviations accepted under section 64 of the Act and the way in which such deviations were quantified and taken into account in the evaluation and comparison of the tenders;
- (f) the evaluated price of each tender, showing any discounts, corrections or adjustments to the tender price and any conversion to a common currency;
- (g) the ranking of the tenders each according to its total evaluated price;
- (h) the results of any confirmation of qualification conducted under Regulation 52; and
- (i) a recommendation to award the contract to the lowest evaluated tender;
- (j) such other recommendation as may be necessary.

(2). The evaluation report prepared under paragraph (1) shall be considered by the tender committee, prior to awarding the contract or taking any other action in relation to the procurement as may be necessary.

Confirmation of qualifications.

52.(1) Where so indicated in the tender documents, a procuring entity may, prior to the award of the tender, confirm the qualifications of the tenderer who submitted the lowest evaluated responsive tender, in order to determine whether the tenderer is qualified to be awarded the contract in accordance with section 31(1) of the Act.

(2) Where so indicated in the tender documents, if the lowest evaluated tenderer is determined under paragraph (1) not to be qualified in accordance with the Act, the tender shall be rejected and a similar confirmation of qualifications conducted on the tenderer who submitted the next lowest evaluated responsive bid.