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S T A T U T O R Y I N S T R U M E N T S

2019 No. 18.

THE PUBLIC PRIVATE PARTNERSHIPS REGULATIONS, 2019

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S T A T U T O R Y I N S T R U M E N T S

2019 No. 18.

The Public Private Partnerships Regulations, 2019

(Made under section 51 of the Public Private Partnerships Act, 2015)

IN EXERCISE of the powers conferred upon the Minister responsible for finance by section 51 of the Public Private Partnerships Act, 2015, these Regulations are made this 7th day of February, 2019.

1. Title

These Regulations may be cited as the Public Private Partnerships Regulations, 2019.

2. Interpretation

In these Regulations unless the context otherwise requires—

“Act” means the Public Private Partnerships Act, 2015;

“committee” means the Public Private Partnerships Committee established under section 5 of the Act;

“corrupt or dishonest practices” includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in any process or action under these Regulations;

“value for money” means the optimal benefit of a private partnership to a Contracting Authority, defined in terms of the cost, quality and quantity of the project and the risk transferred to the private party.

3. Procurement of private party

(1) The procurement of a private party for a public private partnership shall be made using the open bidding method.

(2) The restricted bidding and direct procurement methods shall only be used where it is not possible to use the open bidding method.

(3) The procurement of a private party for a public private partnership shall take into account the bidder that achieves value for money for the duration of the project.

Open bidding

4. Prequalification

(1) A Contracting Authority shall prior to inviting invitation for bids using the open bidding method, invite prospective bidders to apply for qualification to implement a project.

(2) The Contracting Authority shall invite prospective bidders using a request for prequalification which shall be by a notice in at least two newspapers of wide national circulation and on the website of the Contracting Authority and where necessary, using mass media of international circulation.

(3) The notice of the request for prequalification shall contain—

- (a) a brief description of the intention of the Contracting Authority to undertake the project;
- (b) the address where interested private parties may obtain a copy of the request for prequalification, the dates and times during which the request for prequalification is available and the cost, if any, of obtaining a copy;
- (c) the date, time and place for submissions of the request for prequalification to the Contracting Authority, and
- (d) the obligations of the private party in the implementation of the project.

(4) A Contracting Authority shall in the request for prequalification indicate—

- (a) the project to be procured and the outputs required by the Contracting Authority;

- (b) the terms and conditions of issuance of the prequalification documents;
- (c) the purpose of issuing the request for prequalification;
- (d) the contents of the request for prequalification;
- (e) the bidding process to be used;
- (f) the instructions for the preparation and submission of the prequalification documents, including the address for submission;
- (g) the required technical qualifications, financial requirements, experience and the laws to be complied with;
- (h) the evaluation criteria to be used to prequalify bidders including the minimum technical and financial criteria and experience required of the bidders;
- (i) that the private party shall be required to transfer knowledge to Ugandan nationals and shall have a plan for the inclusion of Ugandan nationals in the implementation of the project;
- (j) the method of submission to be used and the date by which the submission is to be made;
- (k) that a prospective bidder may request for clarification on the prequalification process and the time period during which the clarification may be requested for;
- (l) where necessary, a notice for a prequalification meeting; and
- (m) any other information that the Contracting Authority may deem necessary for the project.

(5) A Contracting Authority shall provide the prequalification documents to any prospective bidder, on the payment of the fee, which shall be specified in the notice.

5. Clarification of request for prequalification

(1) A prospective bidder may request for clarification on the request for prequalification and the Contracting Authority shall respond to any request for clarification.

(2) The response by a Contracting Authority shall be communicated to all the prospective bidders to which the Contracting Authority provides prequalification documents and shall include a description of the clarification but shall not identify the source of the request.

(3) Where a request for prequalification has a defect which cannot be corrected using a clarification, a Contracting Authority may amend the request for prequalification or issue another request for prequalification to all the prospective bidders.

(4) A request for clarification and the response by the Contracting Authority shall be done within the time periods that shall be specified in the prequalification notice and documents.

(5) For the purposes of subregulation (3), the Contracting Authority may extend the time period for submission of applications for prequalification.

6. Prequalification meetings

(1) A Contracting Authority may hold a prequalification meeting with the prospective bidders to clarify key issues in relation to the request for prequalification.

(2) A prequalification meeting shall be held within the time period specified in the prequalification notice and documents.

(3) A Contracting Authority may, based on the agreement of the prequalification meeting, amend the request for prequalification or issue another request for prequalification to all prospective bidders.

(4) For the purposes of subregulation (3), the Contracting Authority may extend the time period for submission of applications for prequalification.

7. Evaluation of applications for prequalification

(1) The accounting officer shall appoint an Evaluation Committee to evaluate the applications for prequalification.

(2) The Evaluation Committee shall receive, register and evaluate the applications for prequalification and develop a short list of prequalified bidders based on the criteria specified in the prequalification documents in accordance with **regulation 4 (4)(h)**.

(3) The Evaluation Committee shall make its decision by a simple majority vote.

(4) The Evaluation Committee may request a prospective bidder to clarify the information provided in the application for prequalification or to submit additional documentation to clarify the information provided and shall give the prospective bidder reasonable time to respond to the request.

(5) The Evaluation Committee shall prepare, for the Contracting Authority, an evaluation report of the prequalification which shall include a list of the prequalified bidders.

(6) The Contracting Authority shall publish the list of the prequalified bidders in at least two newspapers of wide national circulation and on the website of the Contracting Authority and shall, in writing, notify each prospective bidder of the prequalified bidders.

8. Disqualification of bidder

A prospective bidder may be disqualified at the prequalification stage, where the bidder—

- (a) submits false, inaccurate or incomplete information in relation to the qualification of that bidder;
- (b) colludes, connives or is in any way involved in corrupt or dishonest practices; or
- (c) fails to meet the evaluation criteria.

9. Alterations of specifications of project

(1) A Contracting Authority may, based on the applications for prequalification, alter the specifications of a project, but the alteration shall not disqualify any prequalified bidder.

(2) The Accounting Officer shall inform the prequalified bidders of the altered specifications within seven days of the alterations.

(3) Where a Contracting Authority alters the specifications of a project, the Contracting Authority shall invite bids for the project based on the altered specifications.

10. Request for bids

(1) A Contracting Authority shall invite bids from the prequalified bidders using an invitation to bid and bidding documents.

(2) The invitation to bid and the bidding documents shall be provided to all prequalified bidders.

(3) The invitation to bid and the bidding documents shall include—

- (a) information related to the project, necessary for the preparation and submission of bids;
- (b) specifications of the project including the technical and financial conditions to be met by the bidders;
- (c) specifications of the works, level of services, performance indicators and any other requirements the Contracting Authority and the concerned competent authorities may consider necessary including the safety, security and environment preservation measures to be met by the prequalified bidders;
- (d) the plan to be used to transfer knowledge to Ugandan nationals and to include Ugandan nationals in the implementation of the project;

- (e) where required, a notice for a pre bid meeting;
- (f) a copy of the draft public private partnership agreement;
- (g) the evaluation criteria and method to be used to evaluate the bids including, where applicable, the scoring system to be applied;
- (h) the forms and documents to be submitted by the prequalified bidders;
- (i) the form and value of the bid security to be submitted by the prequalified bidders;
- (j) the deadline and place for submission of the bidding documents;
- (k) the validity period of the bids;
- (l) information on the competitive dialogue procedure, where this is to be used;
- (m) where the bidding documents are to be collected from;
- (n) where applicable, the price of the bidding documents;
- (o) the circumstances under which a bid may be rejected; and
- (p) any other information that the Contracting Authority may deem necessary for the project.

11. Confirmation of fulfilment of qualification criteria

(1) A Contracting Authority may require each prequalified bidder to demonstrate the qualifications of the prequalified bidder, in accordance with the criteria used for prequalification.

(2) A Contracting Authority may disqualify a prequalified bidder who fails to demonstrate the qualifications of that prequalified bidder, where the bidder is requested to do so.

12. Clarification and amendment of bidding documents

(1) The bidding documents shall state that a prequalified bidder may seek clarification on the bidding documents and shall state the date by which clarification may be sought.

(2) Clarification on a request for bid shall be requested for, and issued, in accordance with the requirements for request for bids in the bidding documents.

(3) A Contracting Authority shall issue clarifications, in writing, to the prequalified bidder who makes the request and to all the other prequalified bidders and shall include in the clarification, a description of the request, without identifying the source of the request.

(4) Where the bidding documents or the request for bids has a defect which cannot be corrected using a clarification, a Contracting Authority may—

- (a) amend the bidding documents or the request for bids; or
- (b) issue other bidding documents or request for bids to all the prequalified bidders.

(5) For the purposes of subregulation (4), the Contracting Authority may extend the time period for submission of bids.

13. Pre bid meeting

(1) A Contracting Authority may hold a pre bid meeting to allow prequalified bidders seek clarification on a project and to clarify the key issues of the project to the prequalified bidders, including the specifications and initial preliminary conditions of the project.

(2) A Contracting Authority shall, where necessary, alter a bidding document based on the agreement of a pre bid meeting.

(3) Where a Contracting Authority alters bidding documents, the Contracting Authority may extend the period for submission of bids, if the alterations introduce significant variations to the original project requirements.

(4) The extension of the period for submission of bids shall be communicated to all the prequalified bidders.

14. Extension of time for submission of bids

(1) The Contracting Authority may, at any time before the expiry of the time for submission of bids, extend the time period for submission of bids.

(2) Notwithstanding subsection (1), a Contracting Authority shall extend the time period for submission of bids where—

- (a) only one valid bid is received, except where the Contracting Authority determines that wider competition cannot be achieved by extending the time for submission of bids; or
- (b) there are extraordinary circumstances or a natural calamity that necessitates the extension of the period for submission.

(3) The advertisement of an extension of time for submission of bids shall be made in a manner similar to the request for bid.

15. Submission of bids

(1) A bid shall be submitted in the manner specified in the request for bids and a bid shall not be received or registered by a Contracting Authority where the bid is not delivered at the place specified in the request for bids or by the specified date or time.

(2) A Contracting Authority shall keep the bids received, securely.

(3) A bidder shall submit with the bid, a bid security as may be determined by the Contracting Authority based on the project cost, as may be specified in the bid documents.

(4) A Contracting Authority shall, within thirty days of the announcement of the successful bidder return the bid securities of the other bidders.

(5) The bid validity period shall be specified in the bidding documents and a bid shall be deemed to be valid during the period.

(6) A Contracting Authority may at any time request the bidders to extend the validity period of the respective bids.

Evaluation

16. Evaluation of bids

(1) Achieving value for money for the duration of the project shall be the basis for the evaluation of the bids received by a Contracting Authority.

(2) The Evaluation Committee shall preserve the confidentiality of an evaluation process and shall not be influenced or directed by any person regarding the evaluation of a bid, except in accordance with the Act or these Regulations.

(3) The Evaluation Committee may request a bidder to clarify the information provided in the bid or to submit additional documentation to clarify the information provided and shall give the bidder reasonable time to respond to the request.

(4) The Evaluation Committee shall evaluate the bids within thirty working days, from the date of the opening of the technical bids.

17. Evaluation of technical bids

(1) The Evaluation Committee shall apply the criteria for evaluating technical bids specified in the tender documents to evaluate the technical bids but shall not compare one bid against another bid.

(2) Where the Evaluation Committee applies a scoring system, it shall rank the technical bids in accordance with the score each bid attains after the evaluation.

(3) The Evaluation Committee shall determine that a technical bid meets the minimum compliance and quality requirements set out in the bidding documents and where the requirements are not met, the bidder shall be disqualified from the process.

(4) Where the Evaluation Committee assesses and determines that a technical bid does not meet the criteria specified in the bidding documents, the respective financial bid shall be returned to the bidder unopened.

18. Opening of financial bids

(1) The financial bids shall be opened at a time and at a place designated for that purpose by the Evaluation Committee.

(2) The financial bids shall be opened after the technical bids are evaluated and all the bidders whose technical bids are evaluated as successful shall be invited to the session at which the financial offers are opened.

(3) The Evaluation Committee shall maintain an attendance register and a bidder or a representative of a bidder who attends the session for opening financial bids shall sign the attendance register.

(4) The Evaluation Committee shall at the session where the financial bids are to be opened, confirm to the bidders present that each of the envelopes containing a financial bid is sealed.

(5) The Chairperson of the Evaluation Committee shall announce the value of each financial bid at the session for opening financial bids.

19. Evaluation of financial bids

(1) The Evaluation Committee shall evaluate the financial bids in accordance with the criteria in the bid documents.

(2) The Evaluation Committee shall, where applicable for the evaluation of the financial bids, give due consideration to—

- (a) the bid that offers the lowest tariff, toll, fee or charge at the start of the operation of the project, where the request for bid specified a parametric formula for periodical tariff adjustment;

- (b) the bid that offers the lowest present value for tariffs, tolls, fees and charges for the duration of the public private partnership agreement, where the request for bid does not specify a parametric formula for periodical tariff adjustment;
- (c) the bid that offers the lowest present value for payments from the Government;
- (d) the bid that offers the lowest present value for a Government subsidy to be provided for the period covered by the public private partnership agreement;
- (e) the bid that offers the highest present value for the payments to be made to the Contracting Authority including concession fees, lease or rental payments, fixed or guaranteed payments or variable payments and percentage shares of revenues for the period covered by the public private partnership agreement; and
- (f) the other evaluation criteria specified in the request for bidding documents.

20. Rejection of bids

(1) An Evaluation Committee may reject a bid which does not comply with the requirements of these Regulations or of the bidding documents.

(2) Where the Evaluation Committee rejects a bid, the Contracting Authority shall in writing notify the bidder of the reason for rejecting the bid, including, where applicable, the particulars of non compliance with the requirements of these Regulations or the bidding documents.

(3) Where the Evaluation Committee rejects a technical bid, the Evaluation Committee shall return the financial bid, which shall not be opened and the bid security to the concerned bidder.

(4) Where the Evaluation Committee rejects all the bids on grounds of non-compliance, the bidding process shall be terminated and all action in relation to the request for bids shall cease.

21. Evaluation Report

(1) The Evaluation Committee shall prepare a report of the evaluation process and submit the report and its recommendations to the Contracting Authority within ten working days of the completion of the evaluation.

(2) Where the Evaluation Committee and the Contracting Authority determine that two or more of the bids received are feasible for the project, and the Contracting Authority is not able to determine a preferred bidder, the Contracting Authority may request those bidders to submit other offers for the project which shall be considered as the final offer of these respective bidders.

(3) Where the Accounting Officer has objection with the recommendations of the evaluation team, the Accounting Officer shall inform the Evaluation Committee and specify the particulars of the objection.

(4) The Evaluation Committee shall consider the objections of the Accounting Officer and may, subject to the evaluation criteria applied in relation to the bids, review its decision and independently recommend another bid as the preferred bid.

22. Notification of evaluation to private party

(1) The private party whose bid is determined to be the preferred bid on evaluation, shall be notified of the decision of the Contracting Authority within the period specified for the validity of the bid.

(2) The notice under subregulation (1) shall state that the decision is subject to negotiations to be conducted between the Contracting Authority and the preferred bidder.

(3) The Contracting Authority shall notify the other bidders of the decision of the Contracting Authority and request the second and third ranked bidders to extend the validity of their respective bids pending the completion of negotiations with the preferred bidder.

23. Negotiations

(1) After completion of the selection process as required under these Regulations, the Contracting Authority shall invite the preferred bidder for negotiations regarding the public private partnership agreement.

(2) The Contracting Authority shall conduct negotiations with the preferred bidder within twenty one days from the date of notification of the decision of the Contracting Authority under regulation 22 (1).

(3) The negotiations shall be on the terms and conditions of the public private partnership agreement and any other issues that the Contracting Authority may deem appropriate including, the technical and financial terms of the public private partnership agreement.

(4) The negotiations and the resolution of the parties to the negotiations shall not result in an increase in the price of the project and shall not affect—

- (a) the terms and conditions which are specified as non-negotiable in the bidding documents;
- (b) the financial structure of the public private partnership agreement; and
- (c) the conditions in respect of which there were no reservations raised by the bidder in the bid.

(5) Where the negotiations with the preferred bidder are not successful, the Contracting Authority shall enter into negotiations with the second ranked bidder and where the negotiations with the second ranked bidder are not successful, with the third ranked bidder.

(6) This regulation shall apply to negotiations with the second ranked bidder and the third ranked bidder, as the case may be.

24. Award of contract

(1) The accounting officer shall, in accordance with the requirements of the Act and any other law, sign a public private partnership agreement with the private party who is determined to be the preferred bidder after negotiations conducted under regulation 23.

(2) A Contracting Authority shall, after the public private partnership agreement is signed, publish in at least two newspapers of national circulation and using electronic media, the following information—

- (a) the nature of the project;
- (b) the scope of the project;
- (c) the private party that is to execute the project;
- (d) the net present value of the project;
- (e) the value and the tariff of the project; and
- (f) the duration of the project.

(3) For the avoidance of doubt, a Contracting Authority may at any stage of the procurement process, before signing a public private partnership agreement under subregulation (1), disqualify a prospective bidder, bidder or preferred bidder, as the case may be, where the Contracting Authority determines that that prospective bidder, bidder or preferred bidder—

- (a) submitted false, inaccurate or incomplete information; or
- (b) colluded, connived or was in any way involved in corrupt or dishonest practices.

Restricted bidding

25. Restricted bidding

(1) A Contracting Authority may, obtain bids without open advertising, using the restricted bidding method.

(2) The restricted bidding method shall be used where –

- (a) there is an urgent need for a project and using the open bidding method would cause delays; or
- (b) only a limited number of private parties are able to implement the project.

(3) A Contracting Authority that intends to use the restricted bidding method shall submit to the Committee, with the feasibility study report, the justification for using the restricted bidding method, a format of the invitation to tender and the bidding documents to be used by the Contracting Authority and a list of at least two and not more than five prospective bidders.

(4) Where the restricted bidding method is used on the ground that only a limited number of private parties are able to implement the project, the Contracting Authority shall include all the prospective bidders on the shortlist.

(5) The Contracting Authority shall prior to issuing the bidding documents, publish a notice of restricted bidding on the website of the Contracting Authority which shall—

- (a) state the subject matter of the project;
- (b) state that restricted bidding is to be used on the ground that only a limited number of private parties are able to implement the project;

- (c) provide the shortlist of potential private parties; and
- (d) make a request to any other providers who are able to implement the project to submit to the Contracting Authority, applications requesting to participate.

(6) For the avoidance of doubt, these Regulations shall, where applicable, apply to the restricted bidding method.

Direct procurement

26. Direct Procurement

(1) A Contracting Authority may use the direct procurement method where circumstances do not allow the use of the open bidding method or the restricted bidding method.

(2) The direct procurement method shall be used where—

- (a) there is an urgent need for a project and using the open bidding method or the restricted bidding method would cause delays;
- (b) the project is for national defense, national security or health issues; or
- (c) only one private party is capable of implementing the public private partnership.

(3) A project qualifies for health issues under subregulation (2) (b), where there is an emergency, including an urgent or unforeseeable circumstance which gives rise to the health issue.

(4) A Contracting Authority that intends to use the direct procurement method shall submit to the Cabinet, a request for authorization to use the direct procurement method.

(5) Where the Cabinet rejects the request to use the direct procurement method, the Contracting Authority shall procure the private party using either the restricted bidding method or the open bidding method.

(6) For the avoidance of doubt, these Regulations shall, where applicable, apply to the direct procurement method.

HON. MATIA KASAIJA
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