

STATUTORY INSTRUMENTS SUPPLEMENT

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

2023 No. 104.

**THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
(NEGOTIATIONS) REGULATIONS, 2023**

ARRANGEMENT OF REGULATIONS

Regulation

1. Title and commencement.
2. Membership of negotiations team.
3. Preparations for negotiations.
4. Minutes of negotiations.

STATUTORY INSTRUMENTS

2023 No. 104.

The Public Procurement and Disposal of Public Assets (Negotiations) Regulations, 2023

(Made under sections 96(1) and 96A of the Public Procurement and Disposal of Public Assets Act, 2003)

IN EXERCISE of the powers conferred upon the Minister responsible for finance by sections 96(1) and 96A of the Public Procurement and Disposal of Public Assets Act, 2003, in consultation with the Minister responsible for the Kampala Capital City Authority and the Minister responsible for local governments, and on the recommendation of the Authority, these Regulations are made, this 26th day of September, 2023.

1. Title and Commencement.

(1) These Regulations shall be cited as the Public Procurement and Disposal of Public Assets (Negotiations) Regulations, 2023.

(2) These Regulations shall come into force on the 5th day of February, 2024.

2. Membership of negotiations team.

(1) The Procurement and Disposal Unit shall recommend to the Contracts Committee, for approval, the membership of a negotiations team.

(2) The number of the members of a negotiations team shall depend on the value and complexity of the procurement requirement, but shall in all cases be a minimum of three members.

(3) The members of a negotiations team shall be of an appropriate level of seniority, experience and skills, appropriate for the value and complexity of the procurement requirement.

(4) A member of the user department and a member of the Evaluation Committee that evaluated the bid for which negotiations are to be carried out may be a member of the negotiations team.

(5) The Accounting Officer and a member of the Contracts Committee of the procuring and disposing entity that intends to carry out negotiations with a bidder shall not be members of the negotiations team.

(6) A member of the negotiations team may be external to the procuring and disposing entity, where the required skill or experience is not available within the procuring and disposing entity, or where a person who would be a member has a conflict of interest in the procurement for which negotiations are to be carried out.

(7) For the purposes of subregulation (3), the skills shall include—

- (a) negotiation skills;
- (b) procurement and contracting skills;
- (c) financial management skills; and
- (d) technical skills relevant to the subject of the procurement.

(8) Every member of the negotiations team shall sign the Code of Ethical Conduct specified in Schedule 5 to the Act.

(9) The members of the negotiations team shall select from amongst themselves a chairperson who shall—

- (a) chair the meetings of the negotiations and carry out the negotiations in accordance with these Regulations;
- (b) manage the communication between the negotiations team and the bidder or any other person or body;
- (c) cause the preparation of the report of the negotiations.

3. Preparations for negotiations.

(1) Where the Evaluation Committee recommends that the procuring and disposing entity may carry out negotiations with the

bidder with the best evaluated bid, the Evaluation Committee shall prepare a negotiations plan, which shall—

- (a) specify the issues for which negotiations are to be held and the objectives to be achieved; and
- (b) wherever possible, quantify the objectives and set the limits within which negotiations team is permitted to hold negotiations with the bidder.

(2) For the purposes of subregulation (1) (a), where a competitive procurement method is used, the negotiations shall be carried out for purposes of—

- (a) minor alterations of the technical details of statements of requirements;
- (b) reduction of quantities of the procurement requirement;
- (c) minor amendments to the special conditions of a contract;
- (d) agreement of the delivery or works schedules;
- (e) the proposed methodology or proposed staffing; or
- (f) the inputs required from the procuring and disposing entity.

(3) For the purposes of subregulation (1) (a), where the direct procurement method or the Quality Based Selection evaluation method is used, the negotiations shall be carried out for purposes of—

- (a) alterations to the technical details of the statement of requirements;
- (b) reduction of scope of quantities of the procurement requirement;
- (c) amendments to the special conditions of a contract;
- (d) agreement of the delivery or works schedules;
- (e) the proposed methodology or proposed staffing;
- (f) the inputs required from the procuring and disposing entity; or

(g) the total bid price and its constituent costs.

(4) Where the direct procurement method is used and only one bid is received, negotiations with the single bidder shall only be conducted where the Contracts Committee approves the recommendation of the Evaluation Committee for contract award to the single bidder, subject to negotiations being carried out.

(5) For the purposes of subregulation (4), the procuring and disposing entity shall request the single bidder to provide the financial or administrative basis for pricing, which may include a detailed breakdown of all costs and the basis for the pricing.

(6) The Contracts Committee shall approve the negotiations plan prior to the negotiations.

(7) Negotiations with the bidder with the best evaluated bid shall only be conducted after the Contracts Committee approves the recommendation, of the Evaluation Committee, of the bidder with the best evaluated bid and the recommendation that negotiations may be carried out with the bidder with the best evaluated bid.

(8) The Procurement and Disposal Unit shall, in writing, notify the bidder of the following—

- (a) the date, time and venue of the negotiations and request the bidder to confirm attendance;
- (b) the objective of the negotiations;
- (c) the profiles of the personnel of the bidder to attend the negotiations and that that the bidder is to bear the costs to be incurred by the bidder, for the duration of the negotiations;
- (d) that the bidder is to confirm the impartiality of the negotiations team and that there is no conflict of interest between the bidder and a member of the negotiations team.

(9) For the purposes of subregulation (8) (c), the bidder may appoint a representative to attend the negotiations or may request the procuring and disposing entity that the negotiations may be carried out using electronic means of communication.

4. Minutes of negotiations.

(1) The negotiations team shall prepare a record of the meeting of the negotiations, which shall be signed by the bidder or the authorised representative of the bidder and which shall be submitted to the Procurement and Disposal Unit.

(2) The record shall indicate whether the objectives of the negotiations plan have been substantially achieved or not.

(3) The negotiations team may in the record of the negotiations, recommend that the procuring and disposing entity should reject the best evaluated bid.

(4) The Procurement and Disposal Unit shall submit the recommendation of the negotiations team to the Contracts Committee for consideration.

(5) The Contracts Committee may approve the recommendation of the Evaluation Committee or reject the recommendation.

(6) Where the Contracts Committee rejects the recommendation of the negotiations team, the Contracts Committee may—

- (a) request the Procurement and Disposal Unit to revise the objectives of the negotiations and the negotiations team to hold further negotiations with the bidder, based on the revised objectives; or
- (b) request further negotiations on specific objectives.

(7) Where negotiations are held under subregulation (9), the procuring and disposing entity shall inform the bidder of the reasons for the termination of the negotiations.

(8) The record of the negotiation shall not commit the procuring and disposing entity to any arrangements or agreements.

MATIA KASAIJA,
Minister of Finance, Planning and Economic Development.