



REPUBLIC OF GHANA

**PUBLIC PROCUREMENT
REGULATIONS, 2022
(L.I. 2466)**

PUBLIC PROCUREMENT REGULATIONS, 2022

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IN exercise of the power conferred on the Minister responsible for Finance and in consultation with the Board of the Authority by section 97 of the Public Procurement Act, 2003 (Act 663), these Regulations are made this 6th day of September, 2022.

*General Provisions on Procurement***Environmentally compliant and sustainable procurement**

1. (1) A head of entity shall ensure that a tenderer complies with section 2 of the Act with regards to environmentally and socially sustainable procurement.

(2) In furtherance of subregulation (1), the head of entity shall require a tenderer to comply with

- (a) the environmental protection laws and policies; and
- (b) policies on the promotion of sustainable development.

Established commercial practice

2. The head of entity shall ensure that

- (a) the established commercial practice for procurement is a verifiable practice for procurement;
- (b) the necessary procurement procedure is applied for a particular procurement in the context of the procurement; and
- (c) ~~the established commercial practice does not detract from~~ any of the core objectives of procurement under the Act including
 - (i) judicious and economic use of resources;
 - (ii) fairness and impartiality;
 - (iii) transparency;
 - (iv) efficiency; and
 - (v) environmental and social sustainability.

Corporate manner of decision making by an entity

3. (1) In furtherance of subsection (2) of section 16 of the Act, a head of entity shall ensure that decisions on procurement are taken in a corporate manner by

- (a) undertaking procurement through the required procurement structure; and

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- (b) making decisions by
 - (i) unanimous vote; or
 - (ii) a simple majority vote.

(2) Where there is equality of votes, the chairperson shall have a casting vote.

Role of head of entity

4. (1) A head of entity may, when taking a procurement decision, take one of the following actions in respect of a tender evaluation report under consideration:

- (a) approve the tender evaluation report
 - (i) and initiate the process for contract award within the specified threshold; or
 - (ii) subject to clarification or amendment;
- (b) reject the tender evaluation report with reasons; or
- (c) refer the tender evaluation report to the appropriate approving authority for concurrent approval.

(2) The head of entity shall, when taking a decision in respect of a tender under consideration,

- (a) act in a manner that is
 - (i) fair and candid; and
 - (ii) in accordance with the due process of the Act and these Regulations; and
- (b) ensure that the decision is not
 - (i) arbitrary;
 - (ii) capricious; or
 - (iii) biased by resentment, prejudice or personal dislike.

Restriction on role of head of entity

5. (1) Subject to regulation 4, the role of a head of entity in a procurement process is restricted to

- (a) the review and approval of a recommendation for a procurement contract award;

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- (b) participation as chairperson or a member of the entity in a meeting of an entity tender committee or tender review committee;
 - (c) the review of a decision on a complaint with regard to procurement; and
 - (d) the execution of a contract on behalf of the entity.
- (2) The head of entity shall not be a member of an evaluation panel.

Role of head of entity in contract administration

6. A head of entity shall ensure that

- (a) the contract administration aspect of the procurement is outlined during the planning stage of the procurement process;
- (b) systems are put in place or instituted for monitoring contract performance and reporting
 - (i) changes in scope and variations;
 - (ii) processing of payments;
 - (iii) resolution of claims and the settlement of disputes;
 - (iv) termination of contract, if any;
 - (v) contract records management;
 - (vi) management of applicable securities, bonds and guarantees;
 - (vii) evaluation of contract performance; and
 - (viii) contract close-out.

Declaration of conflict of interest

7. (1) A public officer shall not place himself or herself in a conflict of interest situation.

(2) A conflict of interest exists where a public officer places himself or herself in a position where the personal interest of the public officer conflicts or is likely to conflict with the performance of the functions of that person as a public officer.

(3) A conflict of interest includes the performance of a function of a public officer for personal gain or benefit, contrary to the obligation and duty of that person to act in the public interest.

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(4) The category of relationships that constitute a conflict of interest include a

- (a) spouse;
- (b) sibling;
- (c) parent; or
- (d) child.

(5) The following persons are required to complete a No Conflict of Interest Declaration as set out in Form 1A of the First Schedule:

- (a) a head of entity or a person acting for or on the instructions of the head of entity;
- (b) a member of an entity tender committee;
- (c) a member of an evaluation panel; and
- (d) a member of a tender review committee.

(6) A person who becomes aware of a conflict of interest during the procurement process shall declare the existence of the conflict of interest in a form as set out in Form 1B of the First Schedule.

(7) Where a head of entity makes a declaration under subregulation (6), the functions of the head of entity under the Act and these Regulations shall be performed by the entity tender committee which shall nominate one of the members of the entity tender committee to chair the proceedings.

(8) A person referred to in subregulation (5) shall not participate in the deliberations and a decision related to a particular tender in which that person has a conflict of interest, unless the entity tender committee, the evaluation panel or the tender review committee decides otherwise by a majority vote.

(9) A person who contravenes subregulation (8) commits an offence and is liable on summary conviction to a fine of not more than two thousand, five hundred penalty units or to a term of imprisonment of not more than five years or to both.

*Procurement Unit***Establishment and composition of procurement unit**

8. (1) In furtherance of subsection (1) of section 19 of the Act, the head of entity shall constitute a procurement unit with a minimum of two members.

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(2) The head of entity shall ensure that the membership of the procurement unit comprises

- (a) the head of the procurement unit who shall not be the head of the entity concurrently; and
- (b) any person other than the head of entity, appointed by the head of entity.

(3) The Authority shall issue administrative guidelines to specify the educational qualification and years of experience required for personnel in a procurement unit.

Functions of procurement unit

9. (1) The procurement unit shall assist the head of entity in the performance of procurement functions of the entity.

(2) Without limiting subregulation (1), the procurement unit shall

- (a) co-ordinate and prepare procurement plans;
- (b) receive and review approved procurement requests to ascertain that
 - (i) the proposed procurement is within the approved procurement plan; and
 - (ii) budgeted funds are available for the specified procurement activity;
- (c) ensure that funds are committed before the execution of a contract;
- (d) co-ordinate the preparation of the following documentation:
 - (i) specification requirements;
 - (ii) terms of reference;
 - (iii) bills of quantities;
 - (iv) drawings;
 - (v) short-lists;
 - (vi) advertisements;
 - (vii) pre-qualification documents; and
 - (viii) any other document required for the tendering process;
- (e) co-ordinate the process of opening of a tender;
- (f) prepare formal records of tender opening;
- (g) participate in evaluation activity of the panel;

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- (h) co-ordinate the preparation of evaluation reports;
 - (i) prepare submissions for approval of award by the appropriate authority in accordance with the threshold set out in the Second and Third Schedules to the Act;
 - (j) maintain and update the database of suppliers, contractors and consultants;
 - (k) participate in negotiations with consultants or other tenderers where expressly permitted in the Act or these Regulations;
 - (l) prepare notification of awards and contracts;
 - (m) arrange for the publication of notices of contract awards;
 - (n) prepare and issue tender rejection and tenderer debriefing letters;
 - (o) prepare contract variations and modifications;
 - (p) assist with the inspection and acceptance of goods, works and services and where necessary, using a member of the user department to conduct a technical inspection; and
 - (q) maintain records of the procurement process.
- (3) The procurement unit shall, in the performance of the functions of the procurement unit, liaise with
- (a) the originating officer, or
 - (b) the end-user department that initiated the procurement,
- to ensure that the procurement meets the requirements of the tender.

*Entity Tender Committee***Powers of entity tender committee**

10. An entity tender committee may take one of the following actions in respect of a tender evaluation report under consideration:

- (a) approve the tender evaluation report in order to initiate the process for the award of the contract within the specified threshold;
- (b) refer the submission of the tender evaluation report to the appropriate approving authority for concurrent approval;
- (c) approve the tender evaluation report subject to clarification or amendment; or
- (d) reject the tender evaluation report with reasons in writing.

*PUBLIC PROCUREMENT REGULATIONS, 2022***Restriction on powers of entity tender committee**

11. An entity tender committee shall not

- (a) modify a submission that includes in particular, recommendations for a contract award; or
- (b) reject a submission without written justification.

Disclosure of interest by member of entity tender committee

12. Where a member of an entity tender committee has a conflict of interest in respect of a specific tender, that member shall

- (a) declare the interest in the tender and complete a conflict of interest declaration form as set out in Form 1B of the First Schedule; and
- (b) not participate in the deliberations or any decision-making process of the entity tender committee.

Decision of entity tender committee

13. (1) A decision of an entity tender committee shall be made on the basis of a simple majority of votes cast.

(2) Where there is equality of votes on a decision, the chairperson of the entity tender committee shall have a casting vote.

(3) The result of the voting shall be recorded in the minutes of the entity tender committee with a statement of the reason for the decision ~~made and submitted to the head of entity.~~

(4) The secretary of the entity tender committee shall record minutes of each entity tender committee meeting which shall include

- (a) the record of attendance;
- (b) a list of each submission considered;
- (c) the decision made for each submission, that includes
 - (i) issues discussed;
 - (ii) the reasons for the rejection of a submission;
 - (iii) clarification or amendment to which the approval is subject;
 - (iv) conflict of interest declared by a member; and
 - (v) dissenting opinion among the members of the entity tender committee.

*PUBLIC PROCUREMENT REGULATIONS, 2022***Restriction on membership of entity tender committee**

14. A staff of an entity shall not serve on the entity tender committee and an evaluation panel for the same procurement.

Notice of meeting of entity tender committee

15. A head of entity shall

- (a) prepare an annual schedule of meetings for an entity tender committee; and
- (b) serve notice of the schedule on each member of the entity tender committee at the beginning of each year.

*Evaluation Panel***Composition of evaluation panel**

16. (1) A head of entity shall constitute an evaluation panel for a specific procurement as and when necessary.

(2) The evaluation panel shall comprise a minimum of three persons and a maximum of seven persons who shall not be members of the entity tender committee with

- (a) at least one person with requisite knowledge of the matter to which the procurement relates;
- (b) persons with requisite experience of the evaluation of tenders generally and tenders of a similar nature in particular; and
- (c) persons who to the best of the knowledge of the head of entity, do not have conflict of interest in respect of the procurement.

(3) The membership of the evaluation panel shall be selected from at least three of the following categories:

- (a) persons with the relevant technical knowledge of the subject matter of the procurement from within or outside the entity;
- (b) the end user department;
- (c) persons with procurement and contracting skills;
- (d) persons with financial management expertise; and
- (e) persons with legal expertise.

(4) The head of entity may appoint a staff of the procurement unit as a member of the evaluation panel but a member of the entity tender committee shall not be a member of the evaluation panel.

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(5) A member of a tender review committee shall not participate in the evaluation of a tender subject to review by the tender review committee.

Disclosure of interest by member of an evaluation panel

17. Where a member of an evaluation panel has a conflict of interest in an evaluation of tender, that member shall

- (a) declare the interest in the tender as set out in the Form 1B of the First Schedule; and
- (b) not participate in the deliberations in respect of that submission.

Evaluation of tender and evaluation report

18. (1) An evaluation of a tender shall be carried out

- (a) solely on the basis of information provided by a tenderer in response to the evaluation criteria provided in the tender documents or request for proposal documents; and
- (b) without recourse to any extrinsic evidence or influence by a person, an entity or any other criteria not set out in the tender document.

(2) An evaluation panel shall prepare an evaluation report for each evaluation conducted.

(3) Each member of the evaluation panel who participated in the conduct of the evaluation shall sign the evaluation report prepared.

*Review of Tender Evaluation Report***Review of tender evaluation report by tender review committee**

19. (1) A tender review committee may take one of the following actions in respect of a tender under consideration:

- (a) approve the tender evaluation report in order to initiate the process for the award of a procurement contract within the specified threshold;
 - (b) approve the tender evaluation report subject to clarification or amendment; or
 - (c) reject the tender evaluation report with reasons in writing.
- (2) The tender review committee shall not
- (a) modify a tender evaluation report that includes recommendations for a contract award; or
 - (b) reject a submission without the justification for the rejection.

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(3) The approval of the recommendation for the award of the procurement contract shall be made

- (a) only on the basis of information and evaluation criteria provided in the tender documents or request for proposal documents, and
- (b) without recourse to any extrinsic evidence influenced by personal or political preferences.

(4) Where a member of the tender review committee has a conflict of interest in a tender, the member shall

- (a) declare the interest in the tender as set out in Form 1B of the First Schedule; and
- (b) not participate in the deliberation or decision-making process of the tender review committee in relation to that tender.

Decision of tender review committee

20. (1) A decision of a tender review committee shall be by

- (a) unanimous vote; or
- (b) a simple majority vote.

(2) Where there is equality of votes, the chairperson of the tender review committee shall have a casting vote.

(3) The result of the vote shall be recorded in the minutes of the meeting of the tender review committee.

(4) The tender review committee shall provide an explanation and justification of the reasons for a rejection of a tender evaluation report to assist the entity to remedy a defect in the submission before the tender evaluation report is re-submitted to the tender review committee.

(5) Each decision of a tender review committee that includes reasons for a rejection shall be recorded in the minutes of the meeting of the tender review committee and submitted in writing to the head of entity.

(6) Except in the case of the Central Tender Review Committee, each written communication from a tender review committee shall be signed by the chairperson or by a person to whom responsibility is delegated.

(7) The secretary to the Central Tender Review Committee shall sign each written communication from the Committee.

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(8) A tender review committee may withdraw concurrent approval granted to a procurement entity where the tender review committee establishes

- (a) that the information provided by the procurement entity, which formed the basis of the concurrent approval was falsified; or
- (b) the manipulation or misrepresentation of
 - (i) qualification information;
 - (ii) the offer price;
 - (iii) the evaluated price; or
 - (iv) the discount offer.

(9) The tender review committee shall, before withdrawing a concurrent approval granted to a procurement entity, communicate the findings established under subregulation (8) to the procurement entity and the Authority.

*Procurement Rules***Procurement plan**

21. A head of entity shall take steps to align the procurement plans of the entity with the annual budget approved by Parliament, the Ministry of Finance or governing board as the context requires where there is a variation between the budget and the procurement plan of the entity.

Environmentally qualified tenderer

22. (1) A tenderer is deemed to be environmentally qualified if the tenderer complies with environmental laws and policies.

(2) An entity may specify the requisite documentation to be submitted in a tender to meet the requirements of an environmentally compliant tender.

Qualification of joint venture or consortium

23. Where a tenderer is a joint venture or consortium of firms, the tender qualification requirements shall specify whether the qualification criterion applies individually or collectively.

Recommendation to suspend a supplier, contractor or consultant

24. (1) An entity that seeks to suspend a supplier, contractor or consultant shall submit detailed information on the basis of the recommendation to suspend a supplier, contractor or consultant to the Authority.

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- (2) The Authority shall, upon receipt of the request,
 - (a) within ten days give notice in writing to the supplier, contractor or consultant of
 - (i) the recommendation of the suspension; and
 - (ii) the right to a hearing; and
 - (b) request the supplier, contractor or consultant to submit a written justification as to why the supplier, contractor or consultant should not be suspended within fourteen days after the receipt of the notice.
- (3) The Authority may suspend a supplier, contractor or consultant from participation in public procurement for a period of not less than one year and not more than five years.
- (4) A decision by the Authority to suspend a supplier, contractor or consultant shall be
 - (a) in writing; and
 - (b) published on the website of the Authority.
- (5) The Authority shall, within five days after taking the decision, issue a notice that indicates the effective date and duration of the suspension to be served on the supplier, contractor or consultant.
- (6) A supplier, contractor or consultant shall not participate in any public procurement proceedings during the period of the suspension, but the supplier, contractor or consultant shall continue the performance of a contract already awarded.
- (7) The Authority shall
 - (a) maintain a list of suspended suppliers, contractors or consultants; and
 - (b) update the list monthly.
- (8) The Authority shall publish the list of suspended suppliers, contractors and consultants on the website of the Authority.

Prequalification proceedings for goods and works

25. (1) An entity that pursues prequalification for goods and works shall consider

- (a) the size or complexity of the works;
- (b) the design of the equipment or industrial plant; and

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- (c) the limited number of firms likely to meet the qualification to tender.
- (2) Prequalification proceedings shall not include
 - (a) pre-registration; and
 - (b) invitations to a potential vendor for the use of price quotation or the restricted tendering method of procurement.

Commencement of new tender process

26. An entity shall not start a new tender process or re-start a tender process after the cancellation of a tender without a revision of the original tender document.

Notice of acceptance

27. (1) Where a tenderer is successful, an entity shall issue a notice of acceptance as set out in the Second Schedule, to the successful tenderer, indicating an intention of the entity to enter into a contract with the tenderer.

(2) A notice issued under subregulation (1) shall not be construed as the formation of the contract.

Publication of award of contract

28. (1) An entity shall publish a notice of award of contract as set out in the Third Schedule on the website of

- (a) the entity; and
- (b) the Authority.

(2) An entity shall, within four weeks of the signing of the contract, publish a notice of contract award for goods, works and technical services for a procurement method other than price quotation on the website of the Authority.

(3) An entity shall publish a notice of contract award through price quotation annually.

(4) An entity shall publish a notice of contract award for consultancy services not later than four weeks after the signing of the contract.

*Framework Agreements***Use of framework agreement**

29. (1) Where a framework agreement is envisaged in furtherance of paragraph (d) of section 34A of the Act, it shall be stated in the invitation for tender or quotation.

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(2) An entity may use a framework agreement for any of the following procurement methods specified in the Fifth Schedule to the Act:

- (a) price quotation;
- (b) national competitive tendering;
- (c) international competitive tendering;
- (d) restricted tendering;
- (e) single source procurement; or
- (f) any of the methods for the selection of a consultant.

(3) A framework agreement shall establish the general terms that govern a procurement contract that may be awarded during a specified period and include the following:

- (a) the price,
- (b) the quantities envisaged, and
- (c) the terms and conditions applicable to the call-off contract.

(4) A framework agreement shall be for a term of not more than three years in each instance.

Circumstances under which a framework agreement is appropriate

30. The use of framework agreement is appropriate under the following circumstances:

- (a) where goods can be procured off-the-shelf or are of common use with standard specifications;
- (b) where the goods are frequently ordered based on the same or similar requirements, or set of specifications;
- (c) where technical services are of a simple and non-complex nature and may be required from time to time by the same agency or multiple agencies;
- (d) where the actual demand may not be known at the outset and delivery is to be made when a requirement arises;
- (e) where various sections or units of a procurement entity require the same items;
- (f) where different entities intend to procure the same goods, works or technical services and aggregating the demand could lead to a trade discount;
- (g) where no single firm is considered to have sufficient capacity to deliver the full scope of goods or services required;

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- (h) where vendor managed inventory is critical; and
- (i) where the product is of a critical nature to safeguard the quality of the product.

Types of framework agreements

31. (1) A framework agreement may take the following forms:

- (a) a single supplier framework agreement; or
- (b) a multiple supplier framework agreement.

(2) For purposes of subregulation (1), "supplier" means a potential party to a procurement contract with a procuring entity including a goods supplier, a works contractor and a technical services provider.

Establishment of framework agreement

32. (1) A framework agreement shall be established as the first stage of a two-stage contracting process and shall

- (a) be concluded after a tendering process in accordance with the Fifth Schedule to the Act to select contractors, suppliers or consultants to be considered at the call-off stage; and
- (b) involve the issue of a specific call-off contract to a contractor, a supplier or a consultant based on the terms established in paragraph (a).

(2) For purposes of paragraph (a) of subregulation (1),

- (a) each offer shall be backed by a tender securing declaration in a form provided by the Authority which is valid for the term of the framework agreement;
- (b) the client shall have the option to debar a prequalifying contractor, supplier or consultant for the period specified in the tender securing declaration;
- (c) a competitive tender for a framework agreement shall be evaluated on the basis of the cost of estimated quantities to be procured during the contracting period;
- (d) the tendering process shall result in the selection of a single supplier or multiple suppliers to be considered for the award of a contract at the call-off stage; and
- (e) the framework agreement with the selected supplier shall be subject to approval in accordance with the Second and Third Schedules to the Act.

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(3) For purposes of paragraph (b) of subregulation (1), where a framework agreement is signed with

- (a) a single supplier, the purchaser shall issue a call-off contract using the prices or pricing mechanism set out in the framework agreement or as adjusted by the agreed price adjustment formula, if applicable and any changes in legislation; and
- (b) multiple suppliers, the call-off contract shall be concluded through a secondary process.

(4) The secondary process under paragraph (b) of subregulation (3) shall follow any of the following options as set out in the signed framework agreement:

- (a) competitive quotations through mini-competition;
- (b) direct selection based on location; and
- (c) direct selection based on balanced division supply.

(5) A performance guarantee shall be provided for a call-off contract which is above the threshold for price quotation.

*Restricted Tendering***Number of tenderers in restricted tendering**

33. For purposes of restricted tendering in furtherance of section 38 of the Act, an entity shall invite a minimum of three suppliers or contractors and a maximum of six suppliers or contractors where the objective is to reduce the time and cost required to examine a large number of tenders.

Notice of award of contract for restricted tender

34. For the purpose of subsection (2) of section 39 of the Act, an entity shall publish a notice of award of contract for a restricted tender on the website of the Authority within four weeks after the signing of the contract.

Withdrawal of approval for restricted tendering

35. (1) Where a procurement contract is awarded and the Authority determines that the conditions under which an approval for restricted tendering was granted have not been complied with by an entity, the Authority may withdraw the approval for restricted tendering.

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(2) The reasons for the withdrawal of the approval include

- (a) misrepresentation; or
- (b) a change in scope of goods, works or technical services.

(3) An entity that fails to comply with a condition under which the Authority granted an approval for restricted tendering and the non-compliance results in the withdrawal of the approval under subregulation (1) commits an offence and is liable on summary conviction to a fine of not more than two thousand, five hundred penalty units or to a term of imprisonment of not more than five years or to both.

(4) The approval for the use of restricted tendering shall be deemed to have lapsed at the end of the applicable financial year on the 31st of December for Central Management Agencies, Ministries, Departments and Agencies and Metropolitan, Municipal and District Assemblies specified in Schedules 1A and 1B of the First Schedule to the Act.

(5) Subregulation (4) does not apply to state-owned enterprises for which restricted tendering approvals shall lapse within one year of the date of the approval.

(6) An entity shall

(a) re-apply to the Authority to renew the validity of the approval that has lapsed; and

(b) provide reasonable justification for the renewal.

(7) The Authority shall charge an administrative fee for processing the renewal of the validity of the approval that has lapsed.

*Single Source Procurement***Application for single source procurement**

36. (1) For the purpose of section 41 of the Act, an application for a single source procurement by an entity shall

- (a) provide appropriate justification corresponding to the provision that is selected under subsections (1) and (2) of section 40 of the Act;
- (b) provide the cost estimates of the proposed procurement;
- (c) provide an assessment of the cost reasonableness of the procurement; and
- (d) state the applicable terms of the contract based on the Standard Tender documents listed in the Sixth Schedule to the Act.

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(2) An application for a single source procurement under subregulation (1) shall be supported by the following documentation:

- (a) the name of the proposed company;
- (b) the professional and technical qualifications and competence of the company;
- (c) evidence of the ability of the company to mobilise financial resources to undertake a project, where applicable;
- (d) equipment and other physical facilities of the company;
- (e) evidence of the managerial capability, reliability and experience in the procurement object and reputation of the company;
- (f) the personnel to perform the procurement contract;
- (g) evidence of financial solvency;
- (h) confirmation that the company has fulfilled the obligations of the company to pay taxes and social security contributions; and
- (i) a list of directors or officers of the company who have not
 - (i) been convicted of any criminal offence related to their professional conduct;
 - (ii) made false statements or misrepresentation as to their qualification to enter into a procurement contract within a period of ten years before the commencement of the procurement proceedings; or
 - (iii) been disqualified due to an administrative suspension or disbarment proceedings.

(3) The Authority shall respond to the application for use of single source procurement method within twenty-eight days after the receipt of the application.

Withdrawal of approval for single source procurement

37. (1) The Authority may at any stage after the grant of approval for the use of single source procurement, withdraw the approval if the Authority determines that the conditions under which the approval was granted have not been complied with.

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(2) The reasons for the withdrawal of approval by the Authority shall include

- (a) misrepresentation; or
- (b) change in scope of
 - (i) functional requirement specifications of goods;
 - (ii) works; or
 - (iii) technical services.

(3) Approval for use of single source procurement by the Authority shall be deemed to have lapsed at the end of the applicable financial year.

(4) An entity shall re-apply to the Authority for approval for use of single source procurement where the approval has lapsed.

(5) The Authority shall charge an administrative fee for processing of an application for renewal under subregulation (4).

*Fees for Restricted and Single Source Tender***Application and processing fees for restricted and single source tender**

38. (1) The Authority shall publish on the website of the Authority fees approved by the Ministry responsible for Finance for the processing of applications for the use of restricted tender and single source procurement methods.

(2) The application fee shall not be

- (a) prohibitive so as to deter an entity from seeking approval for use of the restricted tender or single source procurement methods; or
- (b) passed on by the entity to the single source tenderer or the tenderer included in a restricted tender.

*Request for Quotation***Procedure for request for quotation**

39. (1) For the purpose of section 43 of the Act, an entity shall prepare a written request for quotation using the template for quotation issued by the Authority.

(2) The request for quotation shall include the necessary information to enable a tenderer

- (a) participate in the procurement proceedings; and
- (b) submit a quotation that is responsive to the needs of the entity.

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- (3) The request for quotation shall include
- (a) instructions on the conduct of the procurement process such as
 - (i) the preparation and submission of quotation; and
 - (ii) information on the evaluation of quotation and award of contract;
 - (b) instructions on any documents required to be submitted with the quotation such as a
 - (i) certified copy of the tenderers business registration or ownership; and
 - (ii) tax clearance certificate;
 - (c) a description of the goods, works or services required;
 - (d) information on the methodology and criteria for the evaluation of quotations;
 - (e) the form and type of contract to be awarded;
 - (f) the applicable terms and conditions of contract;
 - (g) information on the right of the tenderer to appeal under the administrative review process; and
 - (h) the policy of the Government on fraud and corruption that includes the suspension of a tenderer.

(4) The minimum time period between a request for quotation and the deadline for submission of a quotation is seven days.

(5) Where the value of the lowest evaluated tender is more than the threshold established in the Fifth Schedule to the Act for price quotation, the entity shall seek the approval of the entity tender committee before proceeding with the award.

Supplier database

40. (1) The Authority shall publish on the website of the Authority a list of suppliers, contractors and technical service providers through any of the following procedures:

- (a) advertisement for the inclusion of qualified suppliers, contractors and technical service providers in the list of suppliers of the Authority;
- (b) credible data from other entities; and
- (c) market surveys and physical or online surveys.

(2) The list of suppliers and the reasons for the inclusion of a supplier, contractor or technical service provider shall be kept by the Authority.

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(3) The Authority shall update the list of suppliers at least, annually.

(4) An entity may develop a database of suppliers for that entity from the list of suppliers published by the Authority.

(5) An entity shall keep the reasons for the inclusion of a supplier, contractor or technical service provider in the database of the entity as part of the record of procurement proceedings.

(6) An entity is not obliged to invite a quotation from a supplier, contractor or technical service provider included in the database of that entity.

(7) A supplier to be engaged by an entity shall be registered on the database of suppliers of the Authority.

*Tendering Procedures***Publication of invitation for national competitive tendering**

41. (1) The requirement for an entity to publish an invitation for national competitive tendering in a newspaper of national circulation shall be satisfied by

- (a) a minimum of one insertion in at least one daily newspaper of national circulation; and
- (b) publication on the website of the Authority.

(2) The period for the submission of a tender shall be calculated from the date of the first publication in a newspaper of national circulation or the day of first publication on the website of the Authority whichever is earlier.

(3) Where the amount of the lowest evaluated tender for national competitive tendering exceeds the threshold set out in the Fifth Schedule to the Act, an entity shall seek approval from the appropriate tender review committee before proceeding.

Prequalification of tenderer

42. (1) For the purpose of sections 47 and 48 of the Act, an entity shall advertise an invitation to prequalify to tender for a specific contract or group of similar contracts in the same manner as a competitive tender.

(2) The scope of the contract and a detailed statement of the requirements for qualification shall be provided in the qualification document to be made available to an interested tenderer.

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(3) An entity shall conduct a formal opening of applications for prequalification.

(4) An evaluation panel shall undertake a formal evaluation of the capability of each supplier against the criteria stated in the prequalification document.

(5) A tenderer who meets the stated prequalification criteria shall be invited by the entity to participate in the specific tender.

(6) The entity shall inform each applicant of the outcome of a prequalification process and an applicant who fails to meet the prequalification criteria shall be given the reason for the failure, after which there shall not be any further correspondence with the applicant.

Compliance with standard tender documents

43. For the purpose of section 50 of the Act, an invitation to tender and an invitation to prequalify shall be in accordance with the latest version of standard tender documents and standard prequalification documents issued by the Authority.

Use of standard tender documents

44. Subject to section 50 of the Act, an entity shall seek the prior written approval of the Authority before using other standard tender documents of a development partner.

Provision of tender documents

45. (1) An entity shall ensure that the relevant tender documents are available to be issued to a tenderer before the tender is published.

(2) The entity shall maintain adequate quantities of tender documents to ensure the availability of the tender documents until the deadline for submission of a tender for a particular procurement has lapsed.

Clarification, modification and submission of a tender document

46. (1) For the purpose of section 51 of the Act, a supplier or contractor who requests for clarification of a tender document from an entity shall ensure that the request is received by the entity

- (a) in the case of a national competitive tender, not later than ten days before the deadline for the submission of a tender;
- and

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- (b) in the case of an international competitive tender, not later than fourteen days before the deadline for the submission of a tender.
- (2) The entity shall respond to the request for clarification of the tender documents
 - (a) in the case of a national competitive tender, not later than seven days before the deadline for the submission of a tender; and
 - (b) in the case of an international competitive tender, not later than ten days before the deadline for the submission of a tender.
- (3) An entity may extend the deadline for the submission of a tender after receipt of a request for clarification of the tender documents and the issuance of a response to the request.

*Tender Documents***Tender documents to be in English**

47. Further to section 52 of the Act, an entity shall request a tenderer to supply the following tender documents in English:

- (a) letter of tender;
- (b) completed schedules, priced bill of quantities, technical and financial proposals;
- (c) tender security or tender-securing declaration;
- (d) alternative tenders, if permitted by the requirements of the tender;
- (e) written confirmation that authorises the signatory of the tender to commit the tenderer; and
- (f) a copy of the joint venture agreement or the letter of intent to execute a joint venture agreement where applicable should the tender be successful.

Supporting documents to be in English

48. (1) A tenderer shall submit an English translation of the following supporting documents to a tender where, the documents are not in the English Language:

- (a) corporate information of the tenderer;

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- (b) information on the qualification and capacity of the tenderer to perform the contract if the tender is accepted;
- (c) written information that establishes the eligibility of the tenderer to tender;
- (d) documentary evidence that any goods, materials and related services to be supplied by the tenderer are from an eligible source; and
- (e) documentary evidence that the goods and related services conform to the tender documents.

(2) The English translation of the supporting documents shall be certified by a licensed company that provides translation services.

*Submission of Tender***Loss or delay of a tender**

49. An entity shall not be held liable for the loss or delay in the delivery of a tender transmitted by mail or courier.

Disclosure of details of a tender

50. An entity shall not disclose the number or identity of tenders received before the tender opening, except to a public official who requires the information as part of the official duty of that public official.

Recording of details of tender

51. (1) An entity shall record the receipt of a tender on two separate forms as follows:

- (a) a form to record the details of tenders received before the deadline for the submission of a tender; and
- (b) a form to record the details of tenders received after the deadline for the submission of a tender.

(2) A tender received after the deadline for the submission of a tender shall not be opened during tender opening but recorded as a late tender and returned to the tenderer unopened.

(3) An entity that is unable to bear the cost of returning the tender to the tenderer may notify the tenderer by electronic mail or other correspondence and request the tenderer to arrange for the collection of the tender at the cost to the tenderer.

*PUBLIC PROCUREMENT REGULATIONS, 2022***Tender securities**

52. (1) For the purpose of section 55 of the Act, an entity may request for tender security in any of the following forms and in accordance with guidelines issued by the Authority:

- (a) banker's draft;
- (b) tender security form issued by a financial institution or insurance company; or
- (c) tender securing declaration signed by the tenderer, accepting that in the event of withdrawal or modification of a tender during the period of validity of the tender, the tenderer will be suspended for the period of time specified in the tender document.

(2) A requirement for a tender security may be stated in the tender documents as a lump sum of money which shall be equivalent to an amount not exceeding two per cent of the estimated cost of the procurement.

(3) An entity shall not request tender security under the price quotation method

- (a) for goods, works and technical services; and
- (b) in the selection of a consultant.

(4) In furtherance of section 55 of the Act, a tender security shall

- (a) conform to the requirements of the invitation to tender;
- (b) accompany the tender; and
- (c) be consistent with the wording of the tender security form provided in the tender document.

*Tender Examination and Evaluation***Opening of tender**

53. (1) For the purpose of section 56 of the Act, the head of entity shall constitute a committee of at least three persons to oversee the tender opening process.

(2) The chairperson and two other members of the committee shall initial the tender and each attachment that includes any samples provided by the supplier.

(3) A tenderer shall not amend the tender submitted in any way or provide any additional documents during the tender opening.

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(4) The tender opening process shall be conducted in one sitting and shall not be suspended or postponed after the process has started.

(5) The record of tender opening shall follow the format provided in the standard evaluation format provided in the Sixth Schedule to the Act.

(6) An opened tender shall be secured until the evaluation.

Examination of tender

54. An evaluation panel shall examine tenders to determine the responsiveness of a tender in accordance with the verification, eligibility, tender security and completeness requirements in regulations 55 to 57.

Verification of tender

55. Verification of a tender shall include the confirmation of

- (a) a signed letter of submission by the managing director or authorised representative of the managing director;
- (b) validity of tender;
- (c) a signed joint venture agreement, where applicable;
- (d) an authorisation from the supplier or manufacturer if the tenderer is an agent; and
- (e) any documentation required by the supplier or manufacturer.

Eligibility of tenderer

56. (1) A tenderer is deemed eligible where

- (a) the tenderer is pre-qualified;
- (b) the tenderer and where applicable, members of a joint venture, are from an eligible country;
- (c) goods and services originate from an eligible country; and
- (d) the tenderer meets the statutory requirements provided in the tender documents.

(2) An eligibility test for plant and equipment, shall be applied only to the finished product offered in the tender and to the major and clearly identifiable components of the product.

Completeness of tender

57. (1) A tender that does not meet the qualification of a tenderer shall be considered non-responsive.

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- (2) A tender may be rejected where
- (a) a page is missing in the original copy of a tender; and
 - (b) there is a discrepancy in a model number or other designation of critical supply items.

Substantial responsiveness

58. (1) For the purpose of section 58 of the Act, a tender shall be deemed to be substantially responsive where it meets the tender security, verification, eligibility and completeness requirements in regulation 52 and regulations 55 to 57.

(2) A tender that does not meet the tender security, verification, eligibility and completeness requirements in accordance with regulation 52 and regulations 55 to 57 shall not be examined further by the evaluation panel.

Grounds for rejection of tender

59. The following shall be grounds for the rejection of a tender during evaluation:

- (a) failure by the tenderer to respond to the substantive requirements of the tender;
- (b) submission of an alternative offer where the submission of the alternative offer is not permitted under the tender;
- (c) phasing of the contract start-up, delivery, installation, or construction that does not conform to the required critical dates or progress markers;
- (d) subcontracting a substantially different value or manner than what is permitted under the tender;
- (e) failure to assume a specific obligation or liability required under the tender such as the obligation for a performance guarantee and insurance coverage; and
- (f) failure to accept a key condition of the tender that includes a provision on the applicable law, taxes, duties and the dispute resolution procedures.

Clarification, waiver and correction of a substantially responsive tender

60. An entity may clarify, waive or correct a non-conformity, error or omission that does not constitute a material deviation where the tender is determined to be substantially responsive.

*PUBLIC PROCUREMENT REGULATIONS, 2022***Evaluation of tender**

61. (1) Further to section 59 of the Act, the evaluation process of a tender shall follow the procedure set out in the instruction to the tenderer in the tender document.

(2) A discount offered as a percentage of the tender price shall be applicable only to a priced item and not to an un-priced item such as a provisional sum, prime cost sum and contingency.

(3) The evaluation panel shall prepare an evaluation report in accordance with the standard tender evaluation form as set out in the Sixth Schedule to the Act.

Margin of preference

62. (1) A margin of preference as specified in the Fourth Schedule is allowed under national competitive tendering and international competitive tendering for goods and works for

- (a) a domestic contractor or supplier; and
- (b) domestically produced goods.

(2) A margin of preference shall not be granted to a

- (a) domestic company wholly owned by a non-citizen;
- (b) domestic company owned in the majority by a non-citizen;

or

- (c) a non-citizen supplier for the procurement of goods.

Repeat tender qualification

63. (1) A repeat tender qualification shall be applied during the evaluation of a tender to confirm that the tenderer who submitted the lowest evaluated responsive tender is qualified to execute the proposed contract.

(2) The qualification criteria for a repeat tender shall be the same as the qualification criteria indicated in the original tender document.

Prohibition of negotiation with a supplier or contractor

64. (1) Except in the case of single sourcing, a procurement entity shall not conduct negotiations with one tenderer at a time to obtain a satisfactory contract.

(2) The procurement entity may proceed to negotiate with the next ranked lowest evaluated tenderer only where negotiations with the first ranked lowest evaluated tenderer has failed.

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(3) The negotiations may seek to review the scope of the contract in a manner that will have a positive impact on the expected outcome of the procurement without a change in the unit rates of the tenderer.

Notice of acceptance of a tender

65. (1) The entity may issue a notice of acceptance for a tender but this shall not constitute a binding contract between the entity and the tenderer to whom the notice of acceptance is issued.

- (2) A notice of acceptance of a tender shall
- (a) be construed as an intention to negotiate a binding contract for the procurement;
 - (b) include confirmation that the requisite warrant and where applicable, the purchase order generated from the Ghana Integrated Financial Management Information System have been obtained by the entity;
 - (c) set out the terms and conditions to be complied with by the tenderer for entry into force of the procurement contract; and
 - (d) state the deadline for the satisfaction of the conditions.

*Methods and Procedures to Engage the Services of a Consultant***Default method for competitive selection of a consultant**

66. (1) An entity shall apply the Quality and Cost Based Selection Method as the default competitive method for the selection of a consulting firm.

(2) Other methods may be used where appropriate as prescribed in Part Six of the Act.

Notice of expression of interest

67. (1) A notice of invitation for expression of interest shall be published on the website of the Authority and in a daily newspaper of nationwide circulation, for each competitive selection method that includes

- (a) quality and cost-based selection;
- (b) quality based selection;
- (c) consultant's qualification selection;

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- (d) fixed budget selection;
- (e) least cost selection; and
- (f) individual consultant selection.

(2) The minimum time allowed for the submission of an expression of interest requested in a notice for a consultant shall be fourteen days after the date the first advertisement was published.

(3) The evaluation of the expression of interest may be based on a descriptive assessment or the points based assessment of the following criteria:

- (a) general experience of the firm;
- (b) specific experience of the firm; and
- (c) experience of key personnel.

Shortlist of consultants

68. (1) In the case of the Consultant's Qualification Selection Method, the selection shall be limited to one consultant.

(2) An entity that intends to use a single sourced consultant shall invite the proposed consultant to submit a technical and financial proposal for consideration before the grant of the approval for single sourcing by the Authority.

Criteria for the evaluation of proposals for the selection of a consultant

69. (1) The normal range of points to be allocated for each criterion for evaluation and qualification of key personnel in the evaluation of a proposal shall be in accordance with the Fifth Schedule.

(2) The proposed points may be adapted to specific circumstances and shall be indicated in the request for proposals.

Choice of selection procedure

70. The method for the selection of each consultant shall be as provided in the Fifth Schedule to the Act.

Receipt of technical and financial proposals

71. (1) The head of entity shall constitute a committee to oversee the opening process for proposals.

(2) The technical and financial proposals submitted to an entity shall be opened in the presence of a tenderer who chooses to attend.

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(3) The committee shall examine the envelopes containing the technical and financial proposals to confirm that every requirement related to the marking and sealing of envelopes has been met and the envelopes have not been tampered with.

(4) The committee shall sign the technical and financial proposals envelopes as received and place the envelopes containing the technical and financial proposals unopened in a secured room.

(5) The financial proposals shall only be opened after approval of the technical evaluation report by the appropriate review body.

(6) Minutes of the opening shall be

(a) signed by the chairperson of the committee and the recorder;
and

(b) made available to the tenderers upon a written request.

Evaluation of proposals

72. (1) The head of entity shall take delivery of the evaluation report and refer the evaluation report to the entity tender committee if the proposed contract is above the threshold of the head of entity.

(2) The entity tender committee shall deliberate on the technical evaluation report and refer the technical evaluation report to the appropriate tender review committee if the proposed contract is above the threshold of the entity tender committee.

(3) The evaluation report shall be prepared using the standard evaluation format for the selection of a consultant published by the Authority.

Selection procedure where price is a factor

73. (1) Price shall be a factor under the following selection methods:

(a) quality and cost based selection;

(b) fixed budget selection; and

(c) least cost selection.

(2) The entity shall invite the firms that passed the minimum technical score to the opening of financial proposals after the approval of the technical evaluation report.

(3) The financial proposals shall be handed over to the evaluation panel for evaluation while the original is kept under lock and key.

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(4) The evaluation panel shall carry out the evaluation in accordance with the criteria spelt out in the request for proposals.

Selection procedure where price is not a factor

74. Price shall not be a factor under the following selection procedures:

- (a) quality based selection;
- (b) consultant's qualification selection;
- (c) single source selection; and
- (d) selection of individual consultants.

Selection of individual consultant

75. (1) The selection of an individual consultant shall be based on the qualification of that individual.

(2) The following processes shall be undertaken to determine the qualification of an individual consultant:

- (a) review of the curriculum vitae of the individual;
 - (b) an interview; or
 - (c) both a review and an interview as may be necessary.
- (3) The use of an individual consultant may be justified where
- (a) teams of personnel are not required;
 - (b) additional outside professional support is not required; and
 - (c) the experience and qualification of the individual are the major requirements.

*Complaints and Administrative Review***Review by procurement entity**

76. A complaint submitted to an entity shall contain the following information:

- (a) name, address, phone number and email of the contact person to receive communication and other notices;
- (b) a clear and detailed statement of the complaint with times and dates;
- (c) a statement of how the complainant has been adversely affected and the remedy or relief sought; and
- (d) any other relevant document and background information.

*PUBLIC PROCUREMENT REGULATIONS, 2022***Contents of complaint for administrative review**

77. For the purposes of subsection (1) of section 79 of the Act, a complaint for administrative review shall contain the following:

- (a) the name, address, phone number and electronic mail of the contact persons to receive communication and other notices;
- (b) a clear and detailed statement of the complaint with times and dates;
- (c) a statement of how the complainant has been adversely affected and the remedy or relief sought; and
- (d) any other relevant documents and background information.

Procedure for administrative review

78. (1) The Authority shall, upon receipt of a complaint for administrative review, follow the procedure set out in subregulations (2) to (9).

(2) The Board shall notify a participating supplier, contractor or consultant of the submission of a complaint and commence review proceedings of the complaint within fourteen working days after the date of receipt of the complaint.

(3) The complaint shall be referred to the Legal and Administrative Review Committee which shall consider the complaint and make recommendations for consideration by the Board.

(4) The Board shall constitute a Legal and Administrative Review Committee pursuant to section 7 of the Act to resolve complaints in accordance with section 80 of the Act.

(5) The Legal and Administrative Review Committee consists of not less than five and not more than seven members.

(6) The Board shall determine the membership of the Legal and Administrative Review Committee.

(7) The qualifications and expertise of the members of the Legal and Administrative Review Committee shall reflect the circumstances of complaints submitted to the Board.

(8) The Legal and Administrative Review Committee shall operate in accordance with an operation manual approved by the Board within six months after the entry into force of these Regulations.

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(9) The Legal and Administrative Review Committee may convene a hearing to receive evidence from a relevant party as necessary.

*Disposal of Stores, Vehicles, Plants and Equipment***Authority to dispose**

79. (1) The board of survey constituted under subsection (1) of section 83 of the Act shall comprise a minimum of three persons.

(2) The head of entity or any member of the entity tender committee shall not qualify to be a member of the board of survey of an entity.

(3) The board of survey shall follow the procedures provided in the board of survey forms in the performance of the functions of the board of survey to deal with unserviceable, obsolete and surplus items.

Period for disposal of unserviceable stores, vehicle, plant and equipment

80. An entity may

- (a) subject to the prior written approval of the Minister, dispose of vehicles after seven years of use or two hundred thousand kilometres of travel, whichever is earlier;
- (b) dispose of computers, printers, photocopiers, scanners and other similar equipment after five years of use; and
- (c) dispose of construction plant and equipment after ten years of use.

Disposal by public transfer

81. In furtherance of paragraph (a) of section 84 of the Act, the procedure for disposal by transfer to public entities is as follows:

- (a) recommendation by a board of survey for disposal by transfer to a public entity;
- (b) publication of an invitation for an expression of interest on the website of the Authority or in a newspaper of national circulation or both;
- (c) evaluation of expressions of interest and recommendation for transfer to a beneficiary entity; and
- (d) agreement with the recipient entity with or without financial adjustment, formal transfer of ownership and removal from the premises of the entity carrying out the disposal.

*PUBLIC PROCUREMENT REGULATIONS, 2022***Disposal by public tender**

82. In furtherance of paragraph (b) of section 84 of the Act, the procedure for disposal by sale by public tender is as follows:

- (a) recommendation by a board of survey for a sale by public tender;
- (b) publication of invitation for tender on the website of the Authority or in a newspaper of national circulation or both;
- (c) evaluation of tender and recommendation for award; and
- (d) agreement with the recommended tenderer, formal transfer of ownership and removal from the premises.

Disposal by auction sale

83. In furtherance of paragraph (c) of section 84 of the Act, the procedure for disposal by sale by public auction is as follows:

- (a) recommendation by board of survey for sale by public auction; and
- (b) auction carried out in accordance with the Auction Sales Act, 1989 (P.N.D.C.L. 230).

Disposal by destruction, dumping or burying

84. In furtherance of paragraph (d) of section 84 of the Act, the procedure for the disposal by destruction, dumping or burying is as follows:

- (a) recommendation by a board of survey for disposal by destruction, dumping or burying;
- (b) approval obtained from the appropriate environmental agency; and
- (c) destruction, dumping or burying in accordance with guidelines of the Environmental Protection Agency.

*Miscellaneous Matters***Public access to legal text**

85. Administrative rulings or directives of general application shall be published on the website of the Authority within a maximum of fourteen days from the date of issue.

*PUBLIC PROCUREMENT REGULATIONS, 2022***International obligations**

86. The Authority shall respond to a request for review of a particular procurement procedure within twenty-one days after receipt of a request from the procurement entity.

Use of procurement agents

87. (1) A procurement agent may be engaged under the following circumstances:

- (a) solely by a procurement entity or by procurement entities acting together to achieve the benefits of economies of scale for a particular procurement; and
- (b) for projects funded by a funding agency where the funding agreement requires the engagement of a procurement agent.

(2) The procurement agent shall be engaged in accordance with the Act.

(3) The agreement between the procurement entity and the procurement agent shall be lodged with the Authority.

Interpretation

88. In these Regulations, unless the context otherwise requires,

“conflict of interest” includes the exercise of the functions of a public official for personal gain or benefit, contrary to the obligation and duty to act in the public interest;

“domestically produced goods” mean the production of goods by a domestic supplier within the country;

“electronic mail” means an electronic record used or intended to be used as a mail message between the originator and addressee in an electronic communication as provided in section 144 of the Electronic Transactions Act, 2008 (Act 772);

“eligible country” means the list of countries from which suppliers and contractors are not restricted from submitting tenders for a particular procurement;

“environmentally and socially sustainable” means the adaptation and integration of precautionary and social principles and considerations related to the environment in the decision-making processes;

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- “environmental protection laws” include the Environmental Protection Agency Act, 1994 (Act 490), the Environmental Impact Assessment Regulations, 1999 (L.I. 1652) and guidelines issued by the Environmental Protection Agency;
- “established commercial practice” means practices and standards defined and codified by internationally recognised procurement associations and professional bodies;
- “evaluation panel” means a group of persons selected to evaluate tenders in accordance with the evaluation criteria stated in the tender document, and the preparation of evaluation reports for submission to an approving authority;
- “margin of preference” means a technique applied in the evaluation of a tender that permits the entity to accord a more favourable treatment to some suppliers or contractors or goods that are usually domestic suppliers or contractors or domestically produced goods in comparison with others;
- “material deviation” means variations in the requirements of a tender which if accepted will not fulfill the purpose for which the tender is required or would prevent a fair comparison with tenders that are properly compliant with the tender documents and may be in the nature of
- (a) unacceptable time schedules, where it is stated in the tender document that time is of the essence;
 - (b) unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; or
 - (c) unacceptable counterproposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty;
- “notice of acceptance” means a written notice from the entity to a tenderer accepting the terms of a tender subject to the fulfillment of prescribed conditions prior to the entry into force of the procurement contract;
- “obsolete” includes any item of stores, plant and equipment which is rendered incapable of further effective use by development in technology, incompatibility with associated

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items or where the annual maintenance and breakdown costs can be certified to exceed thirty percent of the estimated cost of a new replacement item;

“procurement agent” means a person or firm engaged by an entity to administer the procurement of specified goods, works and services on behalf of the entity in accordance with these Regulations and the terms of a written agreement;

“procurement process” means the successive stages resulting in the procurement of goods, works and services including planning, choice of method, evaluation, award, and contract administration;

“procurement structure” includes the head of entity, procurement unit, entity tender committee, the evaluation panel and the tender review committees;

“responsive tender” means a tender that conforms to each term, condition, and specification of the tender documents without material deviation;

“surplus” means any stores item which has not moved for a period in excess of two years or any item of plant or equipment which has remained unused for a period in excess of one year, and where no potential use for the item can be envisaged within the entity;

“tender” includes a quotation and a proposal;

“tender opening committee” means an ad hoc committee constituted by the head of entity to conduct the opening of tenders;

“unserviceable” means

- (a) any item of stores, vehicles, plant and equipment that cannot be used for the intended purpose in its present condition and is beyond economic repair; and
- (b) classification as beyond economic repair which is determined on the basis that repair costs are certified to cost more than fifty per cent of the current market price of a new replacement item; and

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“user department” means the division or project unit of the procurement entity which initiates procurement proceedings and is the user of the goods, services or works procured.

*PUBLIC PROCUREMENT REGULATIONS, 2022***FIRST SCHEDULE****FORM 1A - DECLARATION OF NO CONFLICT OF INTEREST**
(regulation 7(5))

Declaration of No Conflict of Interest [pursuant to sections 4, 18, 19,
20A and 20F of the Act and regulation 7(5)]

I,, *(insert name)* hereby
declare that, to my knowledge, I have no conflict of interest in respect of
any contractor(s)/supplier(s)/consultant (s) *(delete as appropriate)* who has
/have submitted a tender for this contract, including persons or members
of a consortium, or subcontractor(s) proposed.

I confirm that if I discover during the consideration of this tender that
such a conflict exists or might exist, I shall declare it immediately to the
Chairperson of the *(*** insert name of
relevant committee, panel, board).*

In the event that such conflict is confirmed by the Chairperson, I agree to
cease participating in the *(*** insert appropriate activity)*

Date:

Signature:

Position:

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FORM 1B - DISCLOSURE OF INTEREST

(regulations 7(6), 12(a), 17(a) and 19(4)(a))

Disclosure of Conflict of Interest by (e.g. Head of Entity/Members of Evaluation Panel/Entity Tender Committee/Tender Review Committee/Public Procurement Authority Board *(delete as appropriate)* (pursuant to sections 4, 18, 19, 20A and 20F of the Act and regulation 7(4))

Date :

To the Chairperson of the (name of panel /committee)

Address of Panel/Committee

Dear Sir/Madam,

DISCLOSURE OF CONFLICT OF INTEREST FOR

.....(*insert tender name and number*)

The above subject matter refers.

I write to disclose that I have a direct/indirect interest in the above mentioned tender per section of the Public Procurement Act, 2003 (Act 663) and regulation of the Public Procurement Regulations, 2022 (L.I.).

[INSERT DESCRIPTION AND NATURE OF INTEREST]

I understand that conflict of interest under the Public Procurement Regulations, 2022 (L.I.) includes "the performance of a function of a public official for personal gain or benefit, contrary to the obligation and duty of the person to act in the public interest" or a relationship that includes a spouse, sibling, parent or child.

I therefore withdraw from the procurement proceedings related to the above-mentioned tender under evaluation.

Yours faithfully,

.....

[Name of Panel/Committee/Board member]

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SECOND SCHEDULE

NOTICE OF ACCEPTANCE FORM FOR GOODS, WORKS
AND TECHNICAL SERVICES*(regulation 27(1))*NOTICE OF ACCEPTANCE OF TENDER (pursuant to section 65
of the Act and regulation 27(1) of L.I.)*(The letter should be in the form of the letterhead paper of the Procurement
Entity)*

.....[Date]

To..... [name of the Supplier]

..... [address of the Supplier]

Subject: Notice of Acceptance of Tender

This is to notify you that your Tender dated for
execution of the contract for
[name and identification number of the Tender] in the amount of
..... [amount in words], as corrected in accordance
with the Instruction to Tenderers is hereby accepted.

This Notice of Acceptance of Tender does not constitute the formation
of contract.

The formation of contract will be subject to the fulfillment of the following
conditions:

- (a) Furnishing of a Performance Security in the amount of
GHC..... [amount of *Performance Security in figures*,
i.e 5% - 10% [name of the successful Tenderer's Tender Price]
and send it to us within twenty-eight (28) days of the
receipt of this Notice of Acceptance of Tender.
- (b) Confirmation by the Client/Employer that the requisite
expenditure warrants and where applicable, the purchase
order generated from the Ghana Integrated Financial
Management Information System have been obtained.

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- (c) [Insert any other condition precedent to the contract].
- (d) Signing of a formal contract.

You are hereby requested to proceed with the fulfillment of Performance Security and Signing of Contract within twenty-eight (28) days of receipt of this letter. Failure to comply with the fulfillment of Performance Security and Signing of Contract within the time will constitute the grounds for forfeiture of Tender Security.

If you so require you may proceed with the processing of the bank guarantee for the advance payment (*delete if not applicable*)

Authorised Signature:

Name and Title of Signatory:

Name of Agency:

Address for correspondence:

*PUBLIC PROCUREMENT REGULATIONS, 2022***THIRD SCHEDULE****NOTICE OF CONTRACT AWARD**
*(regulation 28 (1))***(Letterhead of Procurement Entity)****NOTICE OF CONTRACT AWARD** *(pursuant to sections 31 and 39 (2)
of the Act and regulation 28 (1))*

IN PURSUANCE OF SECTIONS 31 AND 39 (2) OF THE PUBLIC
PROCUREMENT ACT, 2003 (ACT 663) AND REGULATION 28 OF
L.I. TAKE NOTICE THAT THE
(insert the name of the project for goods/works/services) ISSUED ON
..... *(insert date of issue of tender)* HAS BEEN
AWARDED TO *(insert the name of the contractor/
supplier/consultant that won the tender).*

Date:

Signature:

Name:

Title of Head of the Procurement Entity:

*PUBLIC PROCUREMENT REGULATIONS, 2022***FOURTH SCHEDULE****MARGIN OF PREFERENCE CRITERIA***(regulation 62 (1))**[pursuant to section 60 of the Act and regulation 62]*

The margin of preference is an adjustment made to the tender price during bid evaluation for

- (a) a domestic contractor or supplier; or
- (b) domestically-produced goods.

The objective is to make the tender price for domestic contractors or suppliers and domestically-produced goods more competitive during tender evaluation.

The following price adjustments apply:

100% Ghanaian-owned supplier for Goods

- (a) a margin of preference of 15% shall be granted during tender evaluation; and
- (b) an additional margin of preference of 15% shall be granted for goods manufactured in Ghana or 10% for goods assembled in Ghana.

51% - 99% Ghanaian-owned supplier for Goods

- (a) a margin of preference of 10% shall be granted during tender evaluation for a supplier with a majority shareholding owned by citizens; and
- (b) an additional margin of preference of 15% shall be granted for goods manufactured in Ghana or 10% for goods assembled in Ghana.

*PUBLIC PROCUREMENT REGULATIONS, 2022***Domestic Contractor for Works**

A margin of preference of 15% shall be granted during bid evaluation for a contractor registered and incorporated under the laws of Ghana, having majority shareholding by Ghanaians and not subcontracting more than 50 per cent of the total value of works to foreign contractors.

Joint Venture between Domestic Contractor and Foreign Contractor for Works

A margin of preference of 5% shall be granted during bid evaluation for a Joint Venture between a domestic contractor and a foreign contractor.

Summary of provisions for Margin of Preference**Goods**

	Manufactured in Ghana	Assembled in Ghana
100% Ghanaian-owned supplier	30% (15% + 15%)	25% (15% + 10%)
51% - 99% Ghanaian-owned supplier	25% (10% + 15%)	20% (10% + 10%)

Works

100% Ghanaian-owned contractor	15%
Joint Venture between Domestic Contractor and Foreign Contractor	5%

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FIFTH SCHEDULE

**POINTS FOR THE EVALUATION OF KEY PERSONNEL IN
THE EVALUATION OF A CONSULTANT**
(regulation 69 (1))

Evaluation Criteria	Points
Specific experience of the consultants related to the assignment	[5-10]
Adequacy of the proposed work plan and methodology in responding to the terms of reference	[20-50]
Qualification and competence of the key staff for the assignment including membership of professional bodies	[30-50]
Suitability of the transfer of knowledge programme (training)	[0-10]
<i>(where applicable)</i> Local participation as reflected by nationals among key staff presented by foreign and local consultants	[10-15]
Consideration of health, environmental, social, security and sustainability issues	[0-5]
Total Points	100

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KEN OFORI-ATTA

Minister responsible for Finance

Date of *Gazette* notification: 27th October, 2022.

Entry into force: 5th December, 2022.

PRINTED BY GHANA PUBLISHING COMPANY LIMITED (ASSEMBLY PRESS), ACCRA
Website: www.ghanapublishing.com E-mail: info@ghanapublishing.com Tel: 0302-664338/9