

LEGAL NOTICE NO.

PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015

(No. 33 of 2015)

IN EXERCISE of the powers conferred by section 180 read with section 114A (3) of the Public Procurement and Asset Disposal Act, 2015, the Cabinet Secretary for the National Treasury and Economic planning makes the following Regulations—

**THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT)
REGULATIONS, 2023**

Citation. **1.** These Regulations may be cited as the Public Procurement and Asset Disposal (Amendment), Regulations, 2023.

Subleg. **2.** The Public Procurement and Asset Disposal Regulations, 2020 (in these Regulations referred to as the “principal Regulations”) are amended by inserting the following new regulation immediately after regulation 134—

Framework
contracting
arrangements.

134A (1) Pursuant to section 141(1) of the Act, an accounting officer shall apply framework contracting arrangements with respect to—

- (a) indefinite delivery contracts;
- (b) multiple awards of indefinite quantity;
and
- (c) multiple awards of definite quantity.

(2) An accounting officer shall apply framework contracting arrangements under sub regulation (1)(b) and (c) where—

- (a) the procuring entity determines that no single bidder is able to meet the full demand within the timeline given;
- (b) the risk to award to a single bidder may affect strategic service delivery;
- (c) national interest, national emergency or security is involved; or
- (d) the procuring entity is required to ensure maximum participation of citizen contractors, disadvantaged groups, small micro and medium enterprises.

(3) In applying the procedure for framework contracting arrangements for multiple awards under these Regulations, an accounting officer shall—

- (a) apply the procurement methods provided under section 92 of the Act;
- (b) make a justification based on the conditions for the use of multiple awards specified under sub regulation (2);
- (c) provide in the tender document the—
 - (i) intention to use multiple awards and the same specified in the invitation notice and award criteria;
 - (ii) maximum number of bidders to be considered for multiple awards of the goods, works or services;
 - (iii) estimated quantity required during the contract period;
 - (iv) prevailing circumstances of the subject procurement; and
 - (v) value of the contract;
- (d) evaluate the bids to identify the best valued bidder based on the criteria set in the tender document, which should be within the prevailing market price for standard goods works or services pursuant to section 54(2) and 54(2A) of the Act;
- (e) identify the bidders to be invited in the revision of the prices based on the ranking of the bids and subject to the number of bidders determined in the tender documents under sub regulation (c);
- (f) request the identified bidders to revise their tender price by submitting new prices and duly filled tender document;
- (g) ensure the revised prices under multiple award procedure shall not alter the quality,

specification and any other terms contained in the original tender;

- (h) apportion the contract quantity by—
 - (i) allocating sixty percent of the quantity to the best evaluated bidder, where award is to be made to two bidders;
 - (ii) allocating fifty percent of the quantity to the best evaluated bidder, where award is to be made to two bidders and there is tie on price;
 - (iii) allocating forty percent of the quantity to the best evaluated bidder where more than two but less than five bidders are to be awarded; or
 - (iv) allocating thirty percent of the quantity to be the best evaluated bidder where five or more bidders are to be awarded the contract and distribute the remaining quantity equally to the rest of the bidders.
- (i) ensure that a bidder that withdraws his bid or declines to match their price with the best evaluated bidder shall not forfeit the tender security but shall be disqualified from further consideration;
- (j) invite an equivalent required number from the responsive bidders who were ranked outside the minimum number to revise their prices accordingly where the number of bidders who accept to revise their prices is less than the number disclosed in the tender document; and
- (k) apportion the quantity proportionately, where the number of bidders who qualify for award is less than the number disclosed.

Made on.....2023

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Cabinet Treasury for National Treasury and Economic Planning.