

**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**

**2014 No. 14.**

**THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS  
(CONTRACTS) REGULATIONS 2014**

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

## 2014 No. 14.

### **The Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2014.**

*(Under section 96 of the Public Procurement and Disposal of Public Assets Act, 2003)*

IN EXERCISE of the powers conferred upon the Minister responsible for finance by section 96 of the Public Procurement and Disposal of Public Assets Act, 2003, on the recommendation of the Authority and with the approval of Parliament, these Regulations are made this 6th day of February, 2014.

#### PART I—PRELIMINARY

##### **1. Title and commencement.**

(1) These Regulations may be cited as the Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2014.

(2) These Regulations shall come into force on the 3rd day of March, 2014.

##### **2. Interpretation.**

In these Regulations, unless the context otherwise requires—

“Act” means the Public Procurement and Disposal of Public Assets Act, 2003.

#### PART II—AWARDING A CONTRACT

##### **3. Adjudication and award of contract.**

(1) After evaluation and any negotiation process, a procurement and disposal unit shall submit to the contracts committee, a recommendation to award a contract.

(2) The contracts committee shall consider the recommendation and make a decision to award the contract.

(3) An award of contract by the contracts committee shall not be a contract binding a procuring and disposing entity to a provider.

#### **4. Notice of best evaluated bidder.**

(1) A procuring and disposing entity shall, within five working days after the decision of the contracts committee to award a contract—

- (a) deliver a copy of the notice of best evaluated bidder to all bidders who participated in the bidding process;
- (b) display a notice of best evaluated bidder on the notice board of the procuring and disposing entity; and
- (c) send a copy of the notice of best evaluated bidder to the Authority for publication on the website of the Authority.

(2) A notice of best evaluated bidder shall not amount to a contract.

(3) The notice of best evaluated bidder shall state—

- (a) the name of the best evaluated bidder;
- (b) the proposed total contract price and, where any scores were awarded during the evaluation process, the total score of the best evaluated bidder;
- (c) the date of the notice;
- (d) that a procuring and disposing entity shall not award a contract during a period of ten days from the date of the notice;
- (e) the expiry date of the period specified in paragraph (d); and
- (f) the unsuccessful bidders and the stage at which their bids failed or were eliminated.

(4) A procuring and disposing entity shall obtain proof of delivery of the notice of best evaluated bidder to all bidders.

(5) The notice of best evaluated bidder shall be displayed on the procurement and disposal notice board of the procuring and disposing entity and the website of the Authority until the day following the expiry of the period specified in regulation 5.

- (6) This regulation shall not apply to—
- (a) micro procurement;
  - (b) direct procurement; or
  - (c) procurement in emergency situations, irrespective of the procurement method used.

**5. Period during which no further action may be taken.**

(1) A procuring and disposing entity shall not take any action on the contract award until the lapse of ten days after the date of display of the notice of the best evaluated bidder under regulation 4.

(2) Where the decision to award a contract is changed within the time specified in subregulation (1), the ten days shall be deemed to commence on the date of display of the new notice of the best evaluated bidder.

- (4) This regulation shall not apply to—
- (a) micro procurement;
  - (b) direct procurement; or
  - (c) procurement in emergency situations, irrespective of the procurement method used.

**6. Debriefing bidders.**

(1) After signing a contract, the procuring and disposing entity shall at the request of a bidder give the bidder a written debrief stating the reasons for the success or failure of the bids.

- (2) A debrief shall—
- (a) state the name of the best evaluated bidder and the evaluated price of the bid;

- (b) where any scores were awarded during the evaluation process, provide a breakdown of the scores awarded against each criterion, for the best evaluated bidder and, where applicable, the scores awarded to the bid of the unsuccessful bidder; and
- (c) in the case of an unsuccessful bidder—
  - (i) state the evaluated price of the bid;
  - (ii) state at the stage of the evaluation at which the bid was rejected; and
  - (iii) provide brief details of any material deviation, reservation or omission that led to the rejection of the bid or state the relative weakness of the bid.

(3) The debrief shall be unique to each bidder and shall not provide details on any other bids, other than the information required by subregulation (2) or that is otherwise publicly available.

(4) The debriefing of bidders shall not apply to micro procurement, direct procurement or direct selection.

## **7. Procedure for awarding contract.**

(1) A procuring and disposing entity shall not issue a contract document, purchase order, or other communication in any form, conveying acceptance of a bid that binds a procuring and disposing entity to a contract with a provider, until—

- (a) the contracts committee makes a decision to award the contract;
- (b) the accounting officer confirms that the contract price is not higher than the market price established prior to the commencement of the procurement process;
- (c) the period specified in regulation 5 expires, following the notice of best evaluated bidder;

- (d) the accounting officer confirms that the procurement is not subject to any administrative review;
- (e) the full amount of the funding for the period of the proposed contract is committed; and
- (f) all relevant agencies, including, the Attorney General make the necessary approval of the contract.

(2) Notwithstanding subregulation (1), in an emergency situation or for micro procurement, the accounting officer may sign a contract without—

- (a) a decision by the contracts committee, where the contracts committee is unable to meet;
- (b) a notice of best evaluated bidder; or
- (c) applying the period specified in regulation 5.

## **8. Commitment of funds.**

(1) A procuring and disposing entity shall not enter into a contract until the accounting officer confirms in writing that the required funds have been committed for the proposed contract.

(2) subregulation shall (1) not apply where—

- (a) payment to a provider shall be effected in a subsequent financial year;
- (b) in the case of a framework contract, funds are committed at the time of issue of each specific call off order; or
- (c) the Secretary to the Treasury confirms in writing that the required funding shall be made available in accordance with a specified schedule of payment.



(3) Where payment to a provider extends to more than one financial year, an accounting officer shall make financial provision for the payment, in the budgets submitted to the Secretary to the Treasury, for the duration of the contract.

(4) In the case of a framework contract, the accounting officer shall ascertain that—

- (a) the minimum payment guaranteed to the provider is committed prior to the award of contract;
- (b) sufficient funds are budgeted for in a financial year to cover the full cumulative costs of all call off orders anticipated for the year; and
- (c) the funds required for each call off order are committed prior to the release of the call off order.

(5) Where the Secretary to the Treasury confirms that the required funds shall be available in accordance with subregulation (2)(c), the accounting officer shall make the necessary adjustments to the current and future budgets and comply with any other instructions issued by the Secretary to the Treasury.

## **9. Commitment of total cost of acquiring requirement.**

(1) An accounting officer shall ascertain that the total cost of acquiring a procurement requirement is committed before entering into a contract.

(2) The total cost of acquiring a requirement shall include—

- (a) the total contract price;
- (b) contingencies, including the anticipated contract variations or permitted exchange rate fluctuations; and
- (c) other incidental costs, not included in the contract price, but for which a procuring and disposing entity shall be liable, including local clearance, inland delivery and import taxes or duties.

(3) In the case of a contract for supplies using an INCOTERM term, where the procuring and disposing entity is responsible for paying additional costs, the procuring and disposing entity shall ascertain that the additional costs are included in the total cost of acquiring the requirement before entering into the contract.

- (4) The additional costs referred to in subregulation (3) include—
- (a) freight costs;
  - (b) local clearance and delivery costs;
  - (c) insurance costs;
  - (d) taxes, duties and levies due on importation;
  - (e) inspection costs; and
  - (f) any other costs.

**10. Contract.**

- (1) A contract shall—
- (a) clearly identify the obligations of each party;
  - (b) correlate all payments by a procuring and disposing entity with the corresponding input, obligation or deliverables by a provider, in a specific identifiable and measurable manner;
  - (c) provide effective supervision arrangements, where required;
  - (d) provide adequate monitoring and cost control measures, where required;
  - (e) include adequate and clear delivery, acceptance and handover or commissioning arrangements, where required; and
  - (f) the procedure and right of the parties to terminate the contract.

(2) A contract document shall be in accordance with the form of contract specified in the bidding document.

(3) A person signing the contract shall initial all the pages of the contract.

(4) At least three originals of the contract shall be produced and a procuring and disposing entity and a provider shall each get an original signed by both parties.

## **11. Formation of a contract.**

(1) A procuring and disposing entity shall not enter into a contract until all the requirements of regulation 5 are complied with.

(2) A contract shall be formed when the contract is signed and issued by a procuring and disposing entity.

## **12. Performance security.**

(1) A performance security shall be required to protect the procuring and disposing entity against non performance of a contract.

(2) The bidding documents shall state the requirement for a performance security.

(3) The amount of performance security shall be specified in guidelines issued by the Authority.

(4) Notwithstanding subregulation (3), in the case of framework contracts, the performance security shall be equivalent to ten percent of the value of a call off order.

(5) A performance security shall be—

- (a) in a format provided by the Authority and included in the bidding documents;
- (b) in a form and from an institution that is acceptable to the Bank of Uganda in accordance with guidelines issued by the Authority; and
- (c) valid for the period prescribed in the bidding documents.

(6) Where a provider is required to provide a performance security, a bid security from that provider shall not be released until a satisfactory performance security is received and verified by the procuring and disposing entity and the contract is signed.

(7) A performance security shall not be released by a procuring and disposing entity until all the obligations of the provider which are subject to the performance security are fulfilled.

(8) A performance security may cover warranty obligations, if stated in the bidding documents.

### **13. Effecting the contract.**

(1) A contract shall become effective as specified in the contract, but may depend upon the fulfillment of one or more conditions, including—

- (a) a procuring and disposing entity receiving a performance security;
- (b) a procuring and disposing entity receiving an advance payment guarantee;
- (c) a provider receiving an advance payment; or
- (d) a provider receiving an acceptable letter of credit.

(2) A procuring and disposing entity shall fulfill all its obligations when the contract becomes effective.

(3) A procuring and disposing entity shall terminate a contract where a provider—

- (a) fails or refuses to sign a contract without due cause;
- (b) fails to provide the required performance security within the specified time; or
- (c) fails to fulfill any other condition of the contract.

(4) Where a procuring and disposing entity cancels a procurement process or terminates a contract under subregulation (3), the procuring and disposing entity shall award the contract to the next best evaluated bidder.

### PART III—TYPES OF CONTRACTS.

#### **14. Choice of contract.**

(1) A procuring and disposing entity shall, determine the contract type appropriate for a procurement or disposal after taking into account—

- (a) the nature of the procurement or disposal requirement;
- (b) the need to minimise risk for a procuring and disposing entity;
- (c) the need to maximise value for money for a procuring and disposing entity;
- (d) the likelihood of any delays or unforeseen circumstances requiring contract extensions, or variations of change of orders; and
- (e) the need for effective contract management and cost control.

(2) A procuring and disposing entity shall use any of the types contracts specified in this Part and may for that purpose combine more than one types of contract.

#### **15. Lump sum contract**

(1) A lump sum contract shall include fixed price determined in accordance with these Regulations.

(2) A lump sum contract shall include interim or stage payments.

(3) Payment for a lump sum contract shall be linked to clearly specified outputs or deliverables, which include—

- (a) deliveries of supplies, evidenced by the appropriate delivery documentation;

- (b) reports;
- (c) drawings;
- (d) bills of quantities;
- (e) activity schedules; and
- (f) any other outputs or deliverables appropriate to a contract.

**16. Time-based contract.**

(1) Payment for a time-based contract shall be based on agreed hourly, daily, weekly, or monthly fees for nominated personnel or a certain type or grade of personnel and reimbursable items using actual expenses or agreed unit prices.

(2) Payment rates for personnel shall include salary, social costs, overhead costs, fee or profit and, special allowances.

(3) Reimbursable items include—

- (a) subsistence, such as per diem or housing;
- (b) transport, which may be international or local;
- (c) monies for mobilisation and demobilisation;
- (d) services and equipment such as vehicles, office equipment, furniture and supplies;
- (e) office rent;
- (f) insurance;
- (g) printing of documents;
- (h) surveys;
- (i) training, if it is a major component of the assignment; and
- (j) any other appropriate items.

(4) A time-based contract shall include a maximum amount of total payments to be made including any contingency allowance for unforeseen work and duration.

(5) A time-based contract shall include interim or stage payments.

### **17. Admeasurement contract.**

(1) Under an admeasurement contract, works shall be split into various items and the quantity of each item needed to complete the assignment shall be estimated and indicated in the bidding document.

(2) A bidder shall price each work item by indicating a unit rate for each item in the bill of quantities.

(3) The initial total contract price shall be calculated by multiplying the unit rate by the estimated quantity to give a total for each item, and then calculating the sum of the line item totals.

(4) The actual work done shall be measured during the performance of the contract and shall be finally reconciled upon completion of the contract.

(5) Payment shall be made for the actual quantity of work performed.

(6) An admeasurement contract shall include fixed prices or price adjustment.

(7) An admeasurement contract shall include interim or stage payments.

### **18. Framework contract.**

(1) Under a framework contract, a bidder shall indicate the unit rate for each item.

(2) A procuring and disposing entity shall indicate the estimated quantity or value of a procurement where this is possible or necessary to obtain competitive bids, but shall not make a commitment to purchase the full quantity or value.

(3) Notwithstanding subregulation (2), a procuring and disposing entity shall make a commitment to purchase a minimum quantity or value or to purchase all similar requirements from a successful bidder, where this is necessary or preferable in order to obtain competitive prices.

(4) A framework contract shall state the arrangements for obtaining specific requirements during the period of the contract, using placement of “call-off” or delivery orders where appropriate.

(5) Payment shall be made on the basis of the works, services or supplies actually delivered or performed.

(6) A framework contract shall include fixed prices or price adjustment.

#### **19. Percentage based contract.**

(1) A percentage based contract shall clearly define the total cost from which the percentage is to be calculated.

(2) A bidder shall be required to indicate the fee rate as a percentage of the total cost of the procurement requirement.

(3) A percentage contract shall include—

- (a) a fixed target cost;
- (b) the minimum or maximum fees;
- (c) sliding scales of the fees, related to the value of the subject of the contract; or
- (d) incentive fees, related to any savings made through economic design, discounts obtained, cost reductions or similar fees.

#### **20. Cost reimbursable contract.**

Under a cost reimbursable contract, a procuring and disposing entity shall pay a provider—



- (a) for the actual cost of the works, evidenced by receipts and other appropriate documentation; and
- (b) a fee or profit to be agreed upon and specified in the contract.

**21. Target price contract.**

Under a target price contract, a procuring and disposing entity shall pay the provider for the actual cost of the works, evidenced by receipts and other appropriate documentation and a fee, profit or agreed percentage of any cost savings below the target price.

**22. Retainer contract.**

Payment for a retainer contract shall include a flat fee—

- (a) which represents the total payment due, irrespective of the level and amount of services provided during the prescribed period; or
- (b) as a retainer for the prescribed period plus a pre-agreed unit rate for services provided.

**23. Success fee contract.**

(1) Payment for a success fee contract, shall be a—

- (a) pre-agreed amount linked to the successful completion of a target or event;
- (b) percentage of a predetermined amount or proceeds; or
- (c) a basic flat rate, which is not linked to the successful completion of a particular task, event or action.

(2) A success fee contract shall describe the nature of the success to which a success fee shall be applicable and the timescale in which the task, event or action shall be achieved.

**24. Types of contracts for supplies.**

(1) A procuring and disposing entity shall use a lump sum contract for supplies where the specification, required quantity and delivery schedule of a contract are known.

(2) A procuring and disposing entity shall use framework contract for supplies—

- (a) which are needed repeatedly or continuously over a period of time, including stationery, office supplies, food stuffs and spare parts;
- (b) where there are logistical and procurement reasons for having the requirement available on a call off basis; or
- (c) where the arrangement would reduce procurement costs or lead times.

(3) A procuring and disposing entity shall obtain the consent of the Authority to procure supplies using another type of contract other than the ones stated in this regulation.

**25. Scope of contracts for supplies.**

A contract for supplies shall clearly indicate the scope of the responsibilities of a provider under the contract, which may include—

- (a) supply and delivery of supplies, in accordance with the specified INCOTERM;
- (b) installation and commissioning of supplies;
- (c) training in use, maintenance or repair of the supplies; and
- (d) provision of after-sales services, including the supply and delivery of consumables and spare parts and servicing, maintenance, repair, calibration and modification of equipment.

## **26. Delivery terms.**

(1) Delivery terms for supplies shall be in accordance with the INCOTERMS.

(2) A contract shall specify the INCOTERMS to be used for delivery.

## **27. Freight and delivery.**

(1) The freight and delivery requirements for each procurement requirement shall be specified in the bidding documents by stating the delivery terms using the appropriate INCOTERMS.

(2) A contract shall state the required mode of transportation and freight.

(3) A procuring and disposing entity shall state its address clearly as the consignee address.

## **28. Packing, packaging, marking and labeling.**

(1) A procuring and disposing entity shall state in the contract, the minimum packing and packaging criteria and the requirements for labeling and marking of packages, where applicable.

(2) A procuring and disposing entity shall state in the contract, that packing standards shall withstand rough handling, storage and protection against the effects of moisture, where applicable.

## **29. Insurance for supplies.**

(1) A procuring and disposing entity shall specify in the contract the required level of insurance against loss, damage and theft.

(2) A procuring and disposing entity shall state in the contract whether a bidder is required to arrange insurance and shall include the cost of insurance using the appropriate INCOTERM.

(3) Where a provider is required to arrange insurance in the name of a procuring and disposing entity, the bidding documents and contract shall state that the minimum insurance coverage shall be one hundred and ten percent of the delivered cost, covering Institute of Cargo Clauses (A), including “all risks” “warehouse to warehouse”, “strikes”, “war” and “civil commotion”.

### **30. Export and import licences.**

(1) A procuring and disposing entity shall specify in the contract the responsibility for export and import licences, or similar documentation or formalities, using the appropriate INCOTERMS.

(2) Where a procuring and disposing entity wishes to vary the provisions of INCOTERMS, the revised provisions shall be clearly stated in the contract.

(3) A procuring and disposing entity shall state in the contract that each party shall provide assistance to the other, to obtain the necessary export or import licences.

### **31. Inspection and testing for supplies.**

(1) A contract for supplies shall specify whether a procuring or disposing entity may inspect or test supplies during manufacture, prior to shipment, on delivery or prior to acceptance, in order to verify their technical quality, quantity, packaging or any other detail.

(2) Inspection and testing shall include an independent technical inspection or testing conducted under the internal quality control procedures of the provider.

(3) The requirement for inspection shall take into account—

- (a) the technical complexity of the supplies;
- (b) the quantity and value of the supplies;
- (c) the estimated cost, delay or other effect of receiving the wrong quantity or sub-standard or damaged supplies to a procuring and disposing entity;
- (d) the cost of inspection; and
- (e) the internal quality control procedures of the provider.

(4) Where inspection is required, the contract shall indicate—

- (a) the type of inspection or test to be performed and the standards to be met;
- (b) the location where the inspection or test is to be performed;
- (c) the person to carry out the inspection or test;
- (d) when inspection or testing is to be performed;
- (e) the notification or documentation required from a provider;
- (f) the party to pay for the cost of the inspection, including the cost of facilities, labour, apparatus and materials and whether the cost should be included in the bid;
- (g) that samples required for inspection shall be provided at no additional cost;
- (h) the arrangement and cost for any re-inspection required; and
- (i) any other relevant details.

(5) A contract shall describe the obligations and responsibilities of the provider relating to inspection.

(6) Where a third party provider is required to inspect supplies, the services shall be contracted following the appropriate procurement method and rules for the procurement of services.

(7) Where inspection or testing consists of the internal quality control procedures of the provider, the procuring and disposing entity may, if so specified in the contract, send a representative to witness the internal tests or request copies of the reports from the tests.

### *Contracts for non-consultancy services*

## **32. Types of contracts for non-consultancy services.**

(1) A procuring and disposing entity shall use a lump sum contract for non-consultancy services where the terms of reference and the required input or period of performance of a contract, are known.

(2) A procuring and disposing entity shall use a framework contract for non-consultancy services—

- (a) where there is a need to have non-consultancy services “on call” and the extent and timing of the requirement including repairs and servicing of equipment cannot be defined in advance; or
- (b) for non-consultancy services, which are needed repeatedly or continuously over a period of time and having the requirements available on a “call off” basis would reduce procurement costs or lead times.

**33. Insurance and indemnity for non-consultancy services.**

(1) A procuring and disposing entity shall ascertain that—

- (a) all procurement requirements for non-consultancy services are adequately and appropriately indemnified against—
  - (i) damage, loss or injury to person or property arising from the services provided; and
  - (ii) any actions, suits, claims, demands, costs and expenses occasioned by negligent or breach of statutory duty by a provider; and
- (b) a provider maintains adequate professional liability and insurance coverage against negligent performance.

(2) A procuring and disposing entity shall state in the bidding documents and contract, the insurance and indemnity required for procurement for services and shall require a bidder to include the costs of the insurance and indemnity in the bid.

(3) A procuring and disposing entity shall take out the insurance required by law and any other appropriate insurance.

### **34. Property for non-consultancy contracts.**

A procuring and disposing entity shall specify, in a contract for non-consultancy services—

- (a) the ownership of all property purchased, produced, developed or used during implementation of the contract;
- (b) the obligations of a provider regarding the custody and care of property of the procuring and disposing entity, occupied or used during implementation of a contract;
- (c) arrangements for temporary handover and return of all property of a procuring and disposing entity occupied or used during implementation of a contract; and
- (d) arrangements for the handover, if appropriate, of all property purchased during implementation of a contract.

#### *Contracts for works*

### **35. Types of contracts for works.**

(1) A procuring and disposing entity shall use a lump sum contract for buildings and other forms of construction where the works are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions, such as hidden foundation problems, is unlikely.

(2) A procuring and disposing entity shall use an admeasurement contract for buildings and other forms of construction where the works are not well defined or are likely to change in quantity or specification, and where encountering difficult or unforeseen site conditions, such as hidden foundation problems, is likely.

(3) A procuring and disposing entity shall use a framework contract where the quantity of works is not defined and where—

- (a) there is a need to have works “on call” and the extent and timing of the requirement cannot be defined in advance; or

(b) requirements are needed repeatedly or continuously over a period of time and having the requirement available on a “call off” basis would reduce procurement costs or lead times.

(4) A procuring and disposing entity shall use a cost reimbursable contract—

(a) for emergency works, where there is insufficient time to calculate the full costs involved; or

(b) for high risk works, where it is more economical for a procuring and disposing entity to bear the risk of price variations than to pay a provider to accept the risk or where a provider does not accept the risk.

(5) A procuring and disposing entity shall use a target price contract where—

(a) a target price is agreed; and

(b) cost savings may be achieved by offering an incentive payment to a provider for any cost savings below the target price.

(6) A procuring and disposing entity shall obtain the consent of the Authority to use another type of contract for works, other than the ones specified in this regulation.

### **36. Scope of contracts for works.**

(1) A contract for works shall clearly indicate the scope of work and the responsibility for the design.

(2) A contract for works may be—

(a) a standard contract, where the works are fully designed by a procuring and disposing entity or a consultant prior to bidding and a provider is responsible for construction only;



- (b) a design and build contract, where a provider is responsible for the design and construction of the works based on the parameters of a procuring and disposing entity; or
- (c) a turnkey contract, where a provider is responsible for the design, engineering, supply, installation of equipment and the complete construction, based on the performance specifications of a procuring and disposing entity, except where a procuring and disposing entity is responsible for the design and engineering, and invites bids for a single contract for the supply and installation of all the works and supplies required for the project component.

(3) A procuring and disposing entity shall use a management contracting contract where appropriate, subject to the regulations governing the procurement of services.

(4) A procuring and disposing entity shall obtain the consent of the Authority to use a contract for works, whose scope is outside this regulation.

### **37. Insurance and indemnity for works.**

(1) A procuring and disposing entity shall ascertain that all procurement requirements for works are adequately and appropriately insured, from the commencement of the works to the end of the defects liability period, for events which are due to the risks of a provider, including—

- (a) loss of or damage to the works, plant, materials, equipment, property; and
- (b) personal injury or death.

(2) Insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

(3) A procuring and disposing entity shall state the insurance required in the bidding documents and the contract and shall require a bidder to include the costs of insurance in the bid.

**38. Property for works contracts.**

A contract for works shall clearly state—

- (a) the procedure for the transfer of the completed works to a procuring and disposing entity, including the transfer of title and the documentation of the transfer;
- (b) the ownership of the property on site during the implementation of a contract;
- (c) the obligations of a provider in relation to the custody and care of the property of a procuring and disposing entity, occupied or used during the implementation of a contract; and
- (d) arrangements for the temporary handover and return of all property of a procuring and disposing entity, occupied or used during the implementation of the contract.

PART IV—CONTRACT PRICING AND PAYMENT.

**39. Contract pricing.**

(1) A procuring and disposing entity shall place a contract based on fixed prices, for a procurement requirement that is to be completed within eighteen months from the placement of the contract.

(2) Notwithstanding subregulation (1), a contract for a requirement that is to be completed within eighteen months shall provide for price adjustment in the case of—

- (a) rapidly rising prices; or
- (b) significant price fluctuations in the case of imported goods due to the changes in foreign currency.

(3) For the purposes of subregulation (2), the submission to the contracts committee shall include the justification for recommending the price adjustment.

(4) A procuring and disposing entity shall place a contract with price adjustment provisions for a procurement requirement that will not be completed within eighteen months from the placement of a contract.

(5) The Authority shall provide a procuring and disposing entity with advice on internationally accepted practices, in relation to price adjustment for differing procurement requirements.

#### **40. Application of price adjustment.**

(1) A procuring and disposing entity shall include a price adjustment provision in a contract extending beyond eighteen months, where it is more economical for a procuring and disposing entity to accept the inflation risk than to pay an additional cost for the supplier to accept the risk.

(2) Where a price adjustment provision is included in a contract, the method for calculating adjustments, and any restrictions or conditions on adjustments, shall be clearly stated in the bidding documents and in the contract.

(3) A price adjustment shall be calculated using a predefined formula, which shall separate the total price into components, such as labour, equipment, materials, and fuel, adjusted by price indices specified for each component.

(4) Where the payment currency is different from the currency of the source of the input and corresponding index, a correction factor shall also be applied in the formula, to avoid incorrect adjustment.

(5) The formula, price indices, correction factors and base date for application shall be clearly stated in the bidding documents and in the contract.

(6) The formula and price indices shall be appropriate to the type of procurement and source of the inputs and shall use industry standards wherever possible.

(7) Where there is an industry standard or where an appropriate formula is not available, a procuring and disposing entity shall use the sample formula in Schedule 1.

#### **41. Payment terms.**

(1) A contract shall specify the payment terms to apply to the contract, including—

- (a) the payment method;
- (b) the payment structure;
- (c) the payment documents;
- (d) the payment period; and
- (e) the currency of the payment.

(2) Where a bidder proposes alternative payment terms, the bidder shall include the full cost of the terms in the bid price.

#### **42. Payment method.**

(1) A procuring and disposing entity shall agree with a provider on the method of payment for a contract.

(2) The method of payment shall be comprehensively defined in a contract and shall indicate the person to pay any costs associated with the agreed method.

#### **43. Payment structure.**

(1) A procuring and disposing entity shall state in the contract, the structure of the payment to be made.

(2) The payment structure and amount of payment for each procurement requirement shall be determined by best practices.

(3) The amount of payment shall be proportionate to the required output or deliverables.

(4) A payment structure may include—

- (a) advance payments;
- (b) stage payments, which shall be linked to specific deliverables or milestones and which may be stated in percentage terms of the defined amount or in specific amounts;
- (c) regular interim payments, which shall be based on general progress or the work performed and may relate to a specified time period or a measurement of work performed;
- (d) a retained payment, which shall be linked to a specific contract event, such as installation or warranty.

(5) The payment structure shall be proportionate to the output or deliverables specified under subregulation (4) (b) and (c).

#### **44. Advance payment.**

(1) A procuring and disposing entity may make an advance payment for—

- (a) mobilisation or start up costs for the provision of works or services; or
- (b) the provision of supplies, such as items that have to be specially or custom manufactured.

(2) Where an advance payment is consistent with best practices, an advance payment security specified in regulation 47, shall be required and the requirement for a payment security shall be stated in the bidding documents and in the contract.

(3) A procuring and disposing entity shall not make an advance payment exceeding thirty percent of the contract price.

(4) An advance payment shall be—

(a) recovered from subsequent interim payments made to a provider, which shall be subject to a percentage deduction equal to the percentage paid as advance payment; or

(b) specified as a particular milestone for stage payments.

#### **45. Interim or stage payment.**

(1) Where an interim or stage payment is permitted, a procuring and disposing entity shall comply with the following conditions—

(a) the payment shall be linked to specific and verifiable deliverables, contract event, time period, or work which should be stated in the bidding documents and the resulting contract;

(b) individual payments shall not exceed the cost or value of the deliverable, period or work to which the payment relates; and

(c) the procuring and disposing entity shall require the provision of a payment security if, during the delivery of the works, services or supplies, risk or title remains with the provider.

(2) Where a payment security is required under subregulation (1)(c), a procuring and disposing entity shall comply with regulation 47.

#### **46. Retained payment.**

(1) A procuring and disposing entity shall determine the works or services for which payment may be retained and state in the contract—

(a) the percentage or amount of the total contract value to be retained;

- (b) the period or the event at which the retention is to be released; and
- (c) the documents that shall prove or certify the period or event relating to the release.

(2) A provider may be permitted to substitute a payment security for a retained payment, in accordance with these Regulations.

#### **47. Payment security.**

(1) Payment shall not be made to a provider under a contract for works, services or supplies, without receipt of the deliverables specified in the contract.

(2) Notwithstanding subregulation (1), payment shall be made to a provider before receipt of deliverables specified in the contract, after obtaining an appropriate payment security.

(3) The bidding documents and contract shall state the requirement for a payment security.

(4) A payment security shall—

- (a) be in a format provided by the Authority which shall be included in the bidding documents;
- (b) be in a form and from an institution that is acceptable to the Bank of Uganda;
- (c) be valid for a prescribed period beyond the expected final date of completion of a contract or expected release date; and
- (d) where appropriate, allow for the progressive reduction of the secured sum, where a successive payment is released against the secured sum.

(5) The period in subregulation (4)(c) shall be determined taking into account the circumstances of a procurement requirement and the likelihood of extensions or delays to the final completion date.

(6) The validity period for a payment security for procurement for works shall be for three to six months after the final expected transaction date.

(7) The validity period for a payment security for procurement for services or supplies shall be for one to three months after the final expected transaction date.

(8) A payment security shall be released by a procuring and disposing entity upon the expiry of the term of the security or upon the reduction of the secured sum to zero, whichever is later.

(9) The proposed release of a payment security shall be communicated to a provider and returned in accordance with the instructions of the provider.

#### **48. Payment documents.**

(1) A procuring and disposing entity shall clearly state in the contract, the documents against which each payment shall be made.

(2) A payment document shall include a document certifying or proving—

- (a) the delivery or receipt of the works, services or supplies in accordance with the terms of the contract;
- (b) the content of the consignments delivered;
- (c) the insurance coverage of the delivered items;
- (d) the successful inspection of the delivered items;
- (e) the origin or eligibility of the delivered items;
- (f) payment of costs specified in a contract, such as duties, levies or taxes that may be due and payable by a provider on the delivered items;



- (g) the acceptance of installation or commissioning of the delivered items by a user;
- (h) the receipt or acceptance of reports, manuals, guides, or other documents;
- (i) the actual time period worked;
- (j) the actual works or services completed;
- (k) the payment of sums due to sub-contractors; or
- (l) the actual sums paid for reimbursable costs, such as air tickets.

(3) A payment request from a provider shall require an original invoice from the provider certifying the payment due.

#### **49. Payment to a provider.**

(1) The payment for any sum of money due under a contract shall only be made in the name of the provider stated in the contract.

(2) The payment shall not be made to any person other than a provider, unless the provider requests and confirms in writing the details of the recipient of the payment.

(3) The period for payment shall be thirty days from certification of invoices, except where this is varied in the special conditions of contract.

(4) Payment shall be made in the currency stated in the contract.

#### **50. Delays in payment.**

(1) Where a payment request contains errors or discrepancies or is supported by incorrect or incomplete documentation or is not in accordance with the terms of a contract, the payment request shall not be certified and shall be returned to the provider, specifying the reasons for the rejection.

(2) A provider whose payment request is rejected shall be entitled to present a new or amended payment request, which shall be treated as the original payment request.

(3) Notwithstanding subregulation (1), where a procuring and disposing entity queries any part of a payment invoice from a provider, the procuring and disposing entity shall pay the unchallenged portion of the invoice to the provider.

## PART V—CONTRACT MANAGEMENT

### **51. Contract management**

(1) The accounting officer or a person appointed by the accounting officer from the user department, shall manage the contract.

(2) The procurement and disposal unit shall provide a copy of the contract to the person appointed by the accounting officer to manage the contract.

(3) Upon receipt of a contract, the contract manager shall prepare a contract management plan using Form 49 in Schedule 2, and forward a copy to the to the procurement and disposal unit for purposes of monitoring.

(4) Where a contract manager or user department has any reservation or difficulty with the terms or conditions of the contract, the contract manager shall discuss and resolve the reservation or difficulty with the procurement and disposal unit.

### **52. Appointment of contract manager.**

(1) A user department shall nominate to the accounting officer, a member of the user department, with appropriate skills and experience, or who is supervised by a member of the user department who has the appropriate skills and experience, to be appointed as contract manager.

(2) Where a contract is of high value or is complex or forms part of a larger project, the accounting officer shall assign the contract to a contract management team, which shall have the same responsibilities as a contract manager.

(3) A contract may be managed by a body or person outside the procuring and disposing entity, supervised by the user department.

### **53. Responsibilities of contract manager.**

(1) A contract manager shall—

- (a) manage the obligations and duties of the procuring and disposing entity specified in the contract; and
- (b) make certain that the provider performs the contract in accordance with the terms and conditions specified in the contract.

(2) In the case of a time-based contract, the contract manager shall closely monitor the progress of the contract and ascertain that the payments claimed by the provider are appropriate and in accordance with the contract terms.

(3) For the purposes of subregulation (1), a contract manager shall—

(a) ascertain that—

- (i) a provider meets all performance or delivery obligations in accordance with the terms and conditions of a contract;
- (ii) a provider submits all the required documentation in accordance with the terms and conditions of a contract;
- (iii) a procuring and disposing entity meets all the payment and other obligations in accordance with the terms and conditions of a contract;
- (iv) there is adequate cost, quality and time control, where appropriate;
- (v) there is compliance with the Act, these Regulations, guidelines and best practices;

- (vi) all contract obligations are complete before closing the contract file; and
- (vii) all contract management records are kept and archived as required;
- (b) issue any required variations or change orders, in accordance with the terms and conditions of a contract;
- (c) provide full details of a required contract amendment to the procurement and disposal unit and obtain the approval of the contracts committee before issuing any amendment;
- (d) Manage the handover or acceptance procedures;
- (e) provide full details of any proposed termination of a contract to the procurement and disposal unit and obtain the approval of the accounting officer prior to termination;
- (f) appraise the performance of the provider and report on the performance of the provider to the procurement and disposal unit; and
- (g) submit a monthly report on the progress or completion of the contract to the accounting officer and give a copy to the procurement and disposal unit.

(4) The procurement and disposal unit shall every three months prepare and submit to the accounting officer a report on all contracts signed by the procuring and disposing entity, highlighting the problems encountered in managing the contracts.

#### **54. Change orders to contracts.**

(1) Subject to subregulation (2), a procuring and disposing entity may at any time after signing the contract issue a change order to the provider, in accordance with the contract, requiring the provider to make changes within the general scope of the contract in—

- (a) the drawings, designs, or specifications;
- (b) the method of shipment or packing;
- (c) the place of delivery;
- (d) time of performance or duration of the contract; or
- (d) the related services to be provided by the provider.

(2) A procuring and disposing entity shall not issue a change order under this regulation which increases the cost of the contract beyond 0.1 percent in the case of a single change or 1 percent in the case of cumulative change orders, of the original contract price.

(3) A change order shall be issued by the contract manager.

(4) A change order shall not be issued to the provider without the approval of the accounting officer.

### **55. Contract amendment.**

(1) A change in the contract which increases the price of the original contract beyond 0.1% in the case of a single change or 1% cumulatively shall be effected by amending the contract.

(2) The price to be charged by a provider for any related services that might be needed but which were not included in the contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the provider for similar services.

(3) Notwithstanding subregulation (2) a contract amendment for additional quantities of the same items shall use the same or lower unit prices as the original contract.

(4) A single contract amendment shall not increase the total contract price by more than fifteen percent of the original contract price.

(5) Where a contract is amended more than once, the cumulative value of all contract amendments shall not increase the total contract price by more than 25 percent of the original contract price.

(6) A contract amendment shall not be issued to a provider without—

- (a) commitment of the full amount of funding of the amended contract price over the required period of the revised contract;
- (b) obtaining approval from the contracts committee; and
- (c) obtaining approval from other concerned bodies including the Attorney General.

(7) The approval of the other concerned bodies including the Attorney General required under subregulation (6) shall be obtained after approval of the amendment by the contracts committee.

## **56. Termination of contract.**

(1) Where the contract manager or a procurement and disposal unit is satisfied that a contract should be terminated, the contract manager or the procurement and disposal unit shall submit a recommendation for termination with a copy of the contract to the accounting officer.

(2) A recommendation for termination of a contract shall state—

- (a) the name of a provider and the procurement reference number;
- (b) reasons for the termination;
- (c) the actions taken to avoid termination, where applicable;
- (d) the contractual grounds for the termination;
- (e) the costs, if any, resulting from the termination; and
- (f) any other relevant information.

(3) The decision to terminate a contract shall be taken by the accounting officer, after consulting the Attorney General.

(4) Where a contract is terminated, a procuring and disposing entity shall, where appropriate, inform the Authority of the provider involved, the reasons for the termination and recommend the suspension of the provider.

## SCHEDULE 2

*Regulation 40(7)*

### **PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT, 2003**

#### **SAMPLE PRICE ADJUSTMENT FORMULA**

Prices payable to the provider, as stated in the contract, shall be subject to adjustment during performance of the contract to reflect changes in the cost of labour and material components in accordance with the formula:

$$\Delta P = P_0 \left( a + b \frac{L_1}{L_0} + c \frac{M_1}{M_0} \right) - P_0$$

in which:

$\Delta P$  = adjustment amount payable to the provider.

$P_0$  = contract price (base price).

a = fixed element representing profits and overheads included in the contract price and generally in the range of five (5) to fifteen (15) percent.

b = estimated percentage of labour component in the contract price.

c = estimated percentage of material component in the contract price.

$L_0, L_1$  = labour indices applicable to the appropriate industry in the country of origin on the base date and date for adjustment, respectively.

$M_0, M_1$  = material indices for the major raw material on the base date and date for adjustment, respectively, in the country of origin.

The coefficients a, b, and c shall be specified by the procuring and disposing entity in the bidding documents. The sum of the three coefficients should be one (1) in every application of the formula.

The bidder shall indicate the source of the indices and the base date indices in his bid.



Base date = thirty (30) days prior to the deadline for submission of the bids.

Date of adjustment = \_\_\_\_\_ weeks prior to date of shipment (representing the mid-point of the period of manufacture).

The above price adjustment formula shall be invoked by either party subject to the following further conditions:

- (a) Price adjustment will be applied only if the resulting increase or decrease is more than \_\_\_\_ percent of the Contract Price.

*[Two (2) percent would be an acceptable percentage.]*

- (b) No price adjustment shall be allowed beyond the original delivery dates unless specifically stated in the extension letter. As a rule, no price adjustment shall be allowed for periods of delay for which the provider is entirely responsible. The procuring and disposing entity will however be entitled to any decrease in the prices of the supplies and services subject to adjustment.

- (c) The total adjustment under this clause shall be subject to a ceiling of plus or minus \_\_ percent of the contract price.

*[Ten (10) percent would be an acceptable percentage.]*

- (d) If the currency in which the contract price  $P_0$  is expressed is different from the currency of origin of the labour and material indices, a correction factor will be applied to avoid incorrect adjustments of the contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.

No price adjustment shall be payable on the portion of the contract price paid to the provider as advance payment.