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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. 13.

**THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
(DISPOSAL OF PUBLIC ASSETS) 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. 13.

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

(Made under section 96(1) of the Public Procurement and Disposal of Public Assets Act, 2003, Act No 1 of 2003).

IN EXERCISE of the powers conferred upon the Minister responsible for finance by section 96(1) 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 (Disposal of Public Assets) Regulations, 2014.

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

2. Disposal planning.

(1) For the purposes of disposal planning, an accounting officer shall, in each financial year, cause the public assets of a procuring and disposing entity to be reviewed, to identify the public assets to be disposed of in the following financial year.

(2) A procuring and disposing entity may use the board of survey or a user department to identify the public assets to be disposed of.

(3) For the purposes of maximizing competition and achieving value for money, a procuring and disposing entity shall group the public assets to be disposed of in contracts or lots.

(4) In order to reduce the administration and transaction costs, a procuring and disposing entity shall dispose of as many public assets as possible at a given time, where the public auction disposal method is to be used.

(5) A procuring and disposing entity may pool public assets for purposes of common disposal.

3. Initiation of disposal requirements and approval for disposal.

(1) A User Department or the appropriate department of a procuring and disposing entity that is responsible for the management of public assets, shall initiate a process for disposal of a public asset by making a request for disposal of the public asset to the accounting officer.

(2) A User Department may initiate a process for disposal of public assets where the board of survey recommends for the disposal of a public asset.

(3) A User Department or the appropriate department of a procuring and disposing entity that is responsible for the management of public assets which initiates a disposal process shall in the request for disposal, clearly indicate the public asset to be disposed of.

(4) The accounting officer of a procuring and disposing entity shall approve a request for disposal prior to the commencement of the disposal process.

(5) Every disposal process shall—

(a) have a reference number, allocated using the referencing system in the guidelines; and

(b) be identified by the reference number of the asset in the assets register of the procuring and disposing entity.

(6) The request and approval of the disposal of a public asset shall be made by the User Department or the appropriate department of a procuring and disposing entity that is responsible for the management of public assets and the accounting officer, respectively, using Form 28 in the Schedule.

PART II—CONDITIONS AND RULES FOR DISPOSAL OF PUBLIC ASSETS
Conditions and rules for public bidding

4. Conditions for use of public bidding.

Public bidding shall be used as a method of disposal where—

- (a) the asset is located in a remote area;
- (b) the asset has a geographically dispersed potential market;
- (c) the sale has end-user or export restrictions;
- (d) conditions need to be attached to the sale of the asset; or
- (e) post-bid negotiations may be required.

5. Rules for disposal of public assets by public bidding.

(1) The Procurement and Disposal Unit, shall make a request to the Contracts Committee, for the use of the public bidding method using Form 29 in the Schedule.

(2) The Contracts Committee shall state its decision of the Form submitted under subregulation (1).

(3) A procuring and disposing entity shall solicit for bids to dispose of a public asset by public bidding by publishing an invitation notice to the public.

(4) The invitation notice to the public shall be published in at least one newspaper of national circulation and may be communicated to the public using any other appropriate media, which offers an efficient means of communicating with potential bidders and which increases competition.

(5) The invitation notice shall be displayed on the procurement and disposal notice board of the procuring and disposing entity and on the website of the Authority.

(6) The invitation notice shall indicate that an interested bidder shall obtain the bidding documents from a procuring and disposing entity.

(7) The bidding documents for disposal by public bidding shall indicate—

- (a) a description of the public asset to be disposed of;
- (b) the documentation required for bidding;
- (c) the eligibility requirements;
- (d) the procedure for signing and authorising bids;
- (e) the number of copies of bids to be submitted, which shall include one original bid, marked ‘ORIGINAL’, and a specified number of copies, of the bid marked ‘COPY’;
- (f) the following instruction for labeling the envelope—
 - (i) the reference number of the disposal process;
 - (ii) the name of the bidder;
 - (iii) the words “WITHDRAWAL” or “REPLACEMENT” where a bid is withdrawn or replaced, respectively; and
 - (iv) the words “NOT TO BE OPENED BEFORE THE DATE AND TIME OF BID OPENING”;
- (g) that the public asset is sold on an “as is, where is” basis or the alternative basis for sale;
- (h) the location of the public asset and the arrangements for a potential bidder to inspect the public asset;
- (i) the requirement for a bid security, where necessary;

- (j) that the substance of a bid including changes in price shall not be sought, offered or permitted after bid closing;
- (k) the deadline for submission of bids and the location and method for submission bids;
- (l) the arrangements for opening the bids;
- (m) the qualification required of the bidders;
- (n) the method to be used to evaluate the bids and to award the contract for disposal;
- (o) the conditions of the sale;
- (p) the payment procedure and handing over arrangements; and
- (q) that the risk and cost of dismantling and removing the public asset is to be the responsibility of the successful bidder.

(8) The bidding documents shall be drafted using the format issued by the Authority.

(9) The bidding documents may be sold and where the bidding documents are sold, they shall be sold at a price that covers the costs of copying and issuing the documents.

(10) A procuring and disposing entity shall record the issue or sale of bidding documents using Form 30 in the Schedule.

(11) The minimum bidding period shall be fifteen working days.

(12) The bids shall be evaluated using the “price only” methodology.

(13) A procuring and disposing entity may hold negotiations with the successful bidder.

(14) Where the successful bidder fails to pay the contract price in accordance with the terms of the contract, the procuring and disposing entity shall terminate the contract and make an offer for sell to the next highest bidder.

Conditions and rules for public auction

6. Conditions for use of public auction

(1) A public auction shall be used where—

- (a) there is a large number of potential bidders for the public asset;
- (b) the value of the asset is low;
- (c) more than one public assets are to be disposed of and the assets are at one location; or
- (d) an on site auction is arranged to avoid transport costs.

(2) Where the public auction method is used, the sale shall be at a reserve price.

7. Rules for disposal of public assets by public auction

(1) The Procurement and Disposal Unit shall make a request to the Contracts Committee, for the use of the public auction method using Form 31 in the Schedule.

(2) The Contracts Committee shall state its decision on the Form submitted under subregulation (1).

(3) A procuring and disposing entity shall solicit for bids to dispose of a public asset by public auction, by publishing an invitation notice to the public.

(4) The invitation notice to the public shall be published in at least one newspaper of national circulation and may be communicated to the public using any other appropriate media, which offers an efficient means of communicating with potential bidders and which increases competition.

(5) The invitation notice shall be displayed on the procurement and disposal notice board of the procuring and disposing entity and on the website of the Authority.

(6) A procuring and disposing entity shall appoint an auctioneer to conduct a public auction on behalf of the procuring and disposing entity and hand over the public asset for disposal to the auctioneer.

(7) The auctioneer shall issue a receipt to the procuring and disposing entity for the public asset received from the procuring and disposing entity.

(8) A procuring and disposing entity shall allow a period of at least ten working days for the potential bidders to inspect the public asset to be auctioned, which shall be between the date of publication of the invitation notice to the public and the date of the public auction.

(9) Bidding at a public auction shall be made orally.

(10) The procedure for bidding at a public auction shall be specified by the auctioneer.

(11) The auctioneer shall not hold negotiations with any bidder.

(12) The auctioneer shall at the public auction announce the successful bidder who shall immediately after the announcement pay at least fifty percent of the contract price.

(13) The successful bidder shall within five working days from the date of the public auction, pay the balance of the contract price to the procuring and disposing entity.

(14) Notwithstanding anything in this regulation, a public asset shall not be handed over to a bidder until the full contract price is paid and received by the procuring and disposing entity.

8. Appointment of auctioneer.

(1) The auctioneer to be appointed by a procuring and disposing entity to conduct a public auction on behalf of the procuring and disposing entity shall be an auctioneer licenced under the Auctioneers Act, Cap 270.

(2) The auctioneer shall be procured in accordance with the relevant procurement rules and methods in the Act.

(3) In procuring an auctioneer, a procuring and disposing entity shall take into account—

- (a) the commission rate of the auctioneer;
- (b) the location of the auctioneer and cost of transporting the asset to be disposed of;
- (c) the facilities of the auctioneer;
- (d) the ability of the auctioneer to achieve optimum returns;
- (e) the performance record and integrity of the auctioneer; and
- (f) the viability of the business of the auctioneer.

(4) The auctioneer appointed under this regulation shall provide a performance security in the format required by the procuring and disposing entity.

Conditions and rules for direct negotiations

9. Conditions for use of direct negotiations.

Direct negotiations shall be used where national security, public interest, health and safety issues, legal and human rights issues or environmental considerations are served, when a sale is made to a particular bidder.

10. Rules for disposal of public assets by direct negotiations.

(1) The Procurement and Disposal Unit shall make a request to the Contracts Committee, for the use of the direct negotiations method using Form 32 in the Schedule.

(2) The Contracts Committee shall state its decision on the Form submitted under subregulation (1).

(3) Where a public asset is to be disposed of through direct negotiations, a procuring and disposing entity shall obtain a valuation for the public asset before the negotiations are conducted.

(4) A procuring and disposing entity shall solicit for bids to dispose of a public asset by direct negotiations by issuing bidding documents.

(5) The bidding documents shall be drafted using the format issued by the Authority.

(6) The minimum bidding period for disposal by direct negotiations shall be three working days.

(7) The bids shall be evaluated using the “price only” methodology.

(8) A procuring and disposing entity may hold negotiations with the successful bidder.

(9) Where the successful bidder fails to pay the contract price in accordance with the terms of the contract, the procuring and disposing entity shall terminate the contract and dispose of the asset using another appropriate method of disposal.

Conditions and rules for sale to public officers

11. Conditions for use of sale to public officers.

(1) Sale to a public officer shall be used for the disposal of a public asset where—

- (a) the public assets for disposal are a small number or are of a low value and sale to the public would not achieve value for money for the procuring and disposing entity; or

- (b) the use of the public asset by the public officer, would directly enhance the performance of the public officer in the execution of his or her duties within a procuring and disposing entity, if the asset is put to the personal use of the public officer.

(2) Disposal by sale to public officials shall be contracted to an independent agent.

(3) A public asset shall be sold to a public officer for the personal use of the public officer and not for business or commercial use.

(4) For the purposes of subregulation (3) a public asset is sold for business or commercial use where a public officer—

- (a) makes an excessive number of purchases of a similar public asset made within a limited period; or
- (b) purchases more than one similar public assets at a particular disposal process.

12. Rules for disposal of public assets by sale to public officers

(1) The Procurement and Disposal Unit shall make a request to the Contracts Committee, for sale to public officers using Form 33 in the Schedule.

(2) The Contracts Committee shall state its decision on the Form submitted under subregulation (1).

(3) The independent agent appointed under regulation 11 (2) shall solicit for bids to dispose of a public asset by sale to public officers by publication of a non-public invitation notice which shall be displayed within at least five procuring and disposing entities, which are freely and easily accessible by public officers and on the website of the Authority.

(4) The non-public invitation notice shall indicate that the public officers interested in bidding for the public assets shall obtain the bidding documents from the independent agent.

(5) The bidding documents for disposal by public auction shall indicate—

- (a) a description of the public asset to be disposed of;
- (b) that the public asset is sold on an “as is, where is” basis or the alternative basis for sale;
- (c) the documentation required for bidding;
- (d) the eligibility requirements;
- (e) the procedure for signing and authorising bids;
- (f) the number of copies of bids to be submitted, which shall include one original bid, marked ‘ORIGINAL’, and a specified number of copies, of the bid marked ‘COPY’;
- (g) the following instruction for labeling the envelope—
 - (i) the reference number of the disposal process;
 - (ii) the name of the bidder;
 - (iii) the words “WITHDRAWAL” or “REPLACEMENT” where a bid is withdrawn or replaced, respectively; and
 - (iv) the words “NOT TO BE OPENED BEFORE THE DATE AND TIME OF BID OPENING”;
- (h) the location of the public asset and arrangements for the interested public officers to inspect the public asset;
- (i) the requirement for a bid security, where required;
- (j) that the substance of a bid including changes in price shall not be sought, offered or permitted after bid closing;

- (k) the deadline for submission of bids and the location and method for submission bids;
- (l) the arrangements for opening the bids;
- (m) the qualification required of the public officers who intend to bid;
- (n) the method to be used to evaluate the bids and to award the contract for disposal;
- (o) the conditions of the sale;
- (p) the payment procedure and handing over arrangements; and
- (q) that the risk and cost of dismantling and removing the public asset is to be the responsibility of the successful bidder.

(6) The bidding documents shall be drafted using the format issued by the Authority.

(7) The bidding documents shall not be sold.

(8) An independent agent shall record the issuance of the bidding documents using Form 31 in the Schedule.

(9) The public assets to be sold to public officers shall not be grouped in lots, but shall be sold as separate items, except where—

- (a) a group of items is of a very low value;
- (b) a group of items forms a natural set; or
- (c) the items would not have a value or would have a lower value if sold as separate item.

(10) Except where items are in lots, a public officer shall not be permitted to purchase two or more similar items at a particular disposal process.

(11) The bidding period for sale to public officers shall be ten working days.

(12) The bids shall be evaluated using the “price only” methodology.

(13) Notwithstanding subregulation (13), an evaluation committee shall, prior to recommending award of contract, using the register of sales to public officers of the Authority, verify that the best evaluated bidder is not purchasing the public asset for business or commercial use.

(14) Where the evaluation committee determines that best evaluated bidder is purchasing the public asset for business or commercial use, the evaluation committee shall report this to the Contracts Committee.

(15) A procuring and disposing entity shall not hold negotiations with any bidder.

(16) Where the successful bidder fails to pay the contract price in accordance with the terms of the contract, the procuring and disposing entity shall terminate the contract and make an offer to the next highest bidder.

(17) The Authority shall maintain a register of the sales to public officers, which shall include for each contract—

- (a) the name of the public officer to whom the contract is awarded;
- (b) the date of the disposal contract;
- (c) the type of public asset sold; and
- (d) any other relevant information.

(18) The following persons may bid for public assets under this regulation—

- (a) a member of the Contracts Committee or of the evaluation committee of the procuring and disposing entity or of another procuring and disposing entity; and
- (b) a member of the Board of Survey .

Conditions and rules for destruction of public assets

13. Conditions for use of destruction of public asset.

Destruction of a public asset shall be used where—

- (a) national security, public interest, health and safety issues, legal and human rights issues or environmental considerations will be served if the public asset is destroyed; or
- (b) the public asset has no residual value and it cannot be transferred to another procuring and disposing entity, converted or classified into another form with any value or disposed of by donation.

14. Rules for disposal of public assets by destruction

(1) The Procurement and Disposal Unit shall make a request to the Contracts Committee, for disposal by destruction using Form 34 in the Schedule.

(2) The Contracts Committee shall state its decision on the Form submitted under subregulation (1).

(3) A procuring and disposing entity shall undertake the destruction of the public asset or engage a competent authority or a provider to undertake the destruction.

(4) Where a procuring and disposing entity engages a provider to undertake the destruction, the provider shall be procured in accordance with the relevant procurement rules and methods in the Act.

(5) The accounting officer shall, using Form 35 in the Schedule give approval for the destruction, prior to the destruction.

(6) Where a procuring and disposing entity engages a competent authority or a provider to undertake the destruction, the competent authority or provider shall issue a certificate of destruction to the procuring and disposing entity which shall be part of the record of disposal proceedings.

Conditions and rules for conversion or classification of public assets into another form

15. Conditions for use of conversion or classification of a public asset into another form for disposal by sale.

Conversion or classification of a public asset into another form for disposal by sale shall be used as a method of disposal—

- (a) where national security, public interest, health and safety issues, legal and human rights issues or environmental considerations will be served if the public asset is converted or classified into another form; or
- (b) where the public asset has no residual value in its current form, but where some sale value can be obtained through conversion or classification of the public asset into another form.

16. Rules for disposal of public assets by conversion or classification of the public assets into another form.

(1) The Procurement and Disposal Unit shall make a request to the Contracts Committee, for disposal by conversion or classification of public assets into another form using Form 36 in the Schedule.

(2) The Contracts Committee shall state its decision on the form submitted under subregulation (1).

(3) A procuring and disposing entity may engage a competent authority or a provider to undertake the conversion or classification.

(4) Where a procuring and disposing entity engages a provider to undertake the conversion or classification, the provider shall be procured in accordance with the relevant procurement rules and methods in the Act.

(5) The competent authority or the provider who undertakes the conversion or classification shall submit evidence of the conversion or classification undertaken, using Form 37 in the Schedule which shall be part of the record of disposal proceedings.

Conditions and rules for use of trade-in

17. Conditions for use of trade-in.

(1) Trade-in shall be used where a public asset of a procuring and disposing entity will be upgraded in a convenient, economic and efficient way, by trading-in a surplus public asset of the procuring and disposing entity, to offset the purchase price of a new asset.

(2) Trade-in shall not be used where competition and value for money will not be achieved in the procurement process.

18. Rules for disposal of public assets by trade-in.

(1) The Procurement and Disposal Unit shall make a request to the Contracts Committee, for disposal by trade-in using Form 38 in the Schedule.

(2) The Contracts Committee shall state its decision on the Form submitted under subregulation (1).

(3) A procuring and disposing entity shall solicit for bids for the procurement to be done under the trade-in of a public asset using the relevant regulations on procurement.

(4) A procuring and disposing entity shall cause the public assets to be disposed of by trade-in to be valued before the disposal.

(5) For the purposes of selecting the appropriate method of disposal to use, the estimated value of the asset of the trade-in shall be included in the estimated value of the procurement.

(6) The disposal process of the trade-in shall be carried out using the appropriate disposal method in accordance with these Regulations.

(7) The disposal process of the trade-in shall be an integral part of the procurement process and shall follow the procurement rules in the Act and the Regulations made under the Act.

(8) The method used to evaluate trade-in offers shall be stated in the evaluation report.

(9) A procuring and disposing entity may where permitted by section 74 of the Act, hold negotiations with the successful bidder.

*Conditions and rules for transfer to another procuring
and disposing entity*

19. Conditions for use of transfer to another procuring and disposing entity.

Transfer to another procuring and disposing entity shall be used where the procuring and disposing entity to which a transfer of the public asset is made shall make further use of the public asset.

20. Rules for disposal of public assets by transfer to another procuring and disposing entity.

(1) The Procurement and Disposal Unit shall make a request to the Contracts Committee, for the transfer to another procuring and disposing entity using Form 39 in the Schedule.

(2) The Contracts Committee shall state its decision on the Form submitted under subregulation (1).

(3) The concerned procuring and disposing entities shall prior to the transfer, agree on the following—

- (a) the subsidiary or linked public assets to be included in or excluded from the transfer;
- (b) the date for the transfer;

- (c) the responsibility for transporting the public asset;
- (d) the procedure of handing over the public asset and the documentation to be transferred with the public asset; and
- (e) the responsibility for any legal obligations linked to the public asset to be transferred.

(4) The arrangements for the transfer shall be recorded using Form 40 in the Schedule.

Conditions and rules for donation

21. Conditions for use of donation.

Donation of a public asset shall be used where—

- (a) the procuring and disposing entity cannot obtain payment for the public assets using any of the relevant methods of disposal;
- (b) the public asset cannot be transferred to another procuring and disposing entity.

22. Rules for disposal of public assets by donation.

(1) The Procurement and Disposal Unit shall make a request to the Contracts Committee, for disposal by donation using Form 41 in the Schedule.

(2) The Contracts Committee shall state its decision on the Form submitted under subregulation (1).

(3) The procuring and disposing entity shall identify a recipient of the public assets to be donated and confirm the interest of the recipient to receive the public asset on the terms and conditions offered by the procuring and disposing entity.

(4) A procuring and disposing entity shall not dispose of a public asset by donation where the procuring and disposing entity will incur expenses except where—

- (a) there is no other way of disposing of the asset; and
- (b) the cost to be incurred is less than would be incurred if the public asset was destroyed.

(5) These Regulations shall not apply to an asset that is procured by a procuring and disposing entity for the purpose of donation to any person.

(6) A procuring and disposing entity shall confirm the donation of a public asset using Form 42 in the Schedule.

PART III—RULES AND PROCESSES FOR DISPOSAL OF PUBLIC ASSETS

23. Valuations and reserve price.

(1) A procuring and disposing entity shall obtain a valuation for a public asset prior to the commencement of disposal proceedings.

(2) The valuation shall be obtained from—

- (a) a competent authority, where this is so required by law; or
- (b) a competent authority or a provider procured in accordance with the Act, where there is no requirement for valuation under the relevant laws.

(3) The Contracts Committee shall determine whether the valuation required under subregulation (2) (b) should be conducted.

(4) A valuation shall not be carried out under subregulation (2) (b) where the cost of the valuation is likely to be more than the money expected to be realised from the disposal.

(5) Where the Contract Committee determines, another valuation may be conducted.

(6) Where more than one valuations are conducted, the valuations shall be confidential and the identities and recommendations of a valuer shall not be revealed to the other valuer.

(7) The Contracts Committee shall use the valuation to select the disposal method and where required, to determine the reserve price.

(8) For the purposes of determining the reserve price, the Contracts Committee shall decide whether a reserve price should be set and shall, on the recommendation of the user department approve the reserve price.

(9) The reserve price shall be the minimum sale price of a public asset.

24. Description of public assets for disposal.

(1) A procuring and disposing entity shall in the invitation notice to the public and the bidding documents, give a description of a public asset to be disposed of including pictures of the asset, the size of the asset, the encumbrances on the assets, if any, the current usage of the asset, the condition and location of the asset.

(2) The description of a public asset shall, where applicable, indicate the risk and cost of dismantling and removing the public asset upon completion of the disposal proceedings.

(3) A warranty shall not be offered on a public asset to be disposed of, except where the increase in price received for the public asset is likely to be greater than any costs associated with providing the warranty.

25. Inspection of public assets.

(1) A procuring and disposing entity shall offer a reasonable opportunity to potential bidders, to inspect a public asset before the deadline for bidding.

(2) The arrangements for the inspection of the public assets shall be included in the invitation notice and in the bidding documents, where appropriate.

26. Submission of bids.

(1) A written bid shall be submitted in a plain outer envelope which shall be sealed securely in such a manner that opening and resealing the envelope cannot be achieved undetected.

(2) A procuring and disposing entity shall at the opening of bids, reject an envelope that is not sealed.

27. Cancellation of disposal process.

(1) A Procurement and Disposal Unit shall where it deems it necessary, or upon the recommendation of the User Department, recommend to the Contracts Committee that the disposal process be cancelled.

(2) The recommendation for cancellation shall indicate—

- (a) the reference number of the disposal and the respective public asset;
- (b) the reasons for the recommendation;
- (c) the status of the disposal process;
- (d) the recommended alternative disposal method, where applicable; and
- (e) and other relevant information.

(3) The Contracts Committee shall consider the recommendation and forward it to the accounting officer for a decision.

28. Withdrawal of bids.

(1) A bidder may, at any time before the deadline for submission of bids, withdraw a bid, by a letter notifying a procuring and disposing entity of the withdrawal.

(2) A withdrawal letter shall be authorised and submitted in the same way as the bid and shall be opened, read out and recorded at the bid opening session.

(3) A bidder who withdraws a bid may submit a new bid in accordance with the provisions of the bidding documents.

(4) A bidder may at any time before the deadline for submission of bids withdraw a bid and submit another bid.

29. Methods of receipt of bids.

(1) A procuring or disposing entity shall receive bids—

(a) through the staff of the procurement and disposal unit, and issue a receipt, in accordance with regulation 30; or

(b) by use of a bid box in accordance with regulation 31.

(2) Where a bid is delivered by registered mail or courier, a procuring and disposing entity shall not be held liable for risk of loss or delay in delivery.

30. Receipt of bids in person and deadline for submission of bids.

(1) An officer of the procurement and disposal unit shall be available at the location for submission, before the deadline for submission of bids, to receive the bids and to issue receipts.

(2) The procurement and disposal unit shall issue a signed receipt for each bid received, stating the date and time the bid is received.

(3) A procuring and disposing entity shall maintain a record of the bids received using Form 43 in the Schedule which shall indicate the name of each bidder, the date and time when each bid is received and name of the staff member of the procurement and disposal unit who receives the bid.

(4) Bidding shall be closed at the precise time of the deadline for submission of bids.

(5) A bid that is brought to the location of submission of bids after the deadline for submission of bids shall not be accepted for purposes of bidding.

(6) The bid that is brought to the location of submission after the deadline for submission of bids shall be labeled “LATE” and returned unopened to the bidder.

(7) A bid that is brought to the location of submission of bids after the deadline for submission of bids, which is not labelled with the name of the bidder, shall be left unopened and destroyed.

(8) The procurement and disposal unit shall manage the process specified under this regulation and a representative of the Contracts Committee or of the User Department shall witness the process.

(9) The persons referred to in subregulation (8) shall sign Form 43 in the Schedule to confirm that bidding was closed at the precise time of the deadline for submission of bids.

(10) Immediately after the deadline for submission of bids, the bids received shall be moved to the location to be used for opening the bids.

31. Receipt of bids by bid box and deadline for submission of bids.

(1) A procurement and disposal unit shall ensure that a bidder has access to the bid box at all times during working hours until the deadline for submission of bids.

(2) Where a bid is too large to be placed in the bid box, the procurement and disposal unit shall—

- (a) issue a receipt for each bid received, stating the date and time the bid is received;
- (b) keep the bid securely until the deadline for submission of bids; and
- (c) take the bid and the bid box to the location to be used for opening the bids.

(3) Where a procuring and disposing entity considers it appropriate, it may require a bidder to register a bid.

(4) A bidder whose bid is registered under subregulation (3) shall be given a receipt, stating the date and time the bid is received, before the bid is placed in the bid box.

(5) Bidding shall be closed at the precise time of the deadline for submission of bids by sealing the bid box.

(6) The bid that is brought to the location of submission after the deadline for submission of bids shall be labeled “LATE” and returned unopened to the bidder.

(7) A bid that is brought to the location of submission of bids after the deadline for submission of bids, which is not labelled with the name of the bidder, shall be left unopened and destroyed.

(8) The procurement and disposal unit shall manage the process specified under this regulation and a representative of the Contracts Committee or of the User Department shall witness the process.

(9) The persons referred to in subregulation (8) shall sign Form 43 in the Schedule to confirm that the bid box was sealed at the precise time of the deadline for submission of bids.

(10) Immediately after the deadline for submission of bids, the bid box shall be moved to the location to be used for opening the bids.

(11) The bid box shall not be opened until the time of the public opening of the bids.

32. Notification to bidders of public bid opening.

(1) Where a procuring and disposing entity uses the open bidding or the restricted bidding process the bids shall be opened at a public bid opening session and the bidding document shall contain instructions to bidders regarding—

- (a) the date and time of the bid opening;

- (b) the location of the bid opening; and
- (c) the information to be read out and recorded at the bid opening session.

(2) Where the information in subregulation (1) is not available at the time of issue of the bidding document, the information shall be communicated to all the bidders who purchased or were issued with the bidding document, before the deadline for submission of bids.

33. Information to be read out.

(1) The information to be read out at the bid opening under regulation 32, shall be in accordance with the bidding document and shall include—

- (a) the name of the bidder;
- (b) the presence or absence of a bid security and the form or amount of the bid security, where bid security was requested in the bidding document;
- (c) the total price and currency of the bid; and
- (d) any other information required as may be stated in the bidding documents.

(2) The information in this regulation may be varied where it is required by an alternative bid submission or evaluation method.

34. Procedure for public bid openings.

(1) The bid opening session shall be managed by a member of the procurement and disposal unit and shall be witnessed by a representative of the Contracts Committee.

(2) The envelopes marked “WITHDRAWAL” shall be opened first and read out and the envelopes containing the withdrawn bid shall be located and returned to the bidder unopened.

(3) A procuring and disposing entity shall only allow a bid to be withdrawn where the withdrawal notice is in accordance with the requirements in the bidding document and where the notice is read out at the bid opening session.

(4) The other envelopes, including the envelopes marked “REPLACEMENT”, shall be opened one at a time and the relevant details read out in accordance with the bidding document.

(5) A replacement bid shall be recorded as such at the bid opening session.

(6) The key pages of a bid that is opened shall be stamped with the stamp of the procuring and disposing entity and signed or initialled by the chairperson of the bid opening session.

(7) The chairperson of the bid opening session shall determine the key pages to be stamped and initialled, which shall include the typed pages of the bid that are unique to the bid, and the bid form or bid submission sheet and the pages containing financial information.

(8) With the exception of a bid that is brought to the location of submission of bids after the deadline for submission of bids, a bid shall not be rejected or evaluated in any way at the public bid opening session.

(9) A procuring and disposing entity shall in the record of the bid opening session, note any discrepancies in a bid or any missing documents but shall not comment on the discrepancies or missing documents.

35. Representation of bidder at public bid opening.

(1) Public bid opening shall be conducted in the presence of a bidder or a representative of a bidder who chooses to attend.

(2) The procuring and disposing entity shall permit a bidder or a representative of a bidder to confirm that the bid is intact and sealed and any addition, deletion or modification to the exterior or the contents of a sealed bid shall not be permitted.

(3) A bidder or a representative of a bidder may ask questions after all the bids are opened, but a procuring and disposing entity shall not enter into discussion on the specific details of any bid.

36. Record of public bid opening.

(1) The bid opening shall be recorded using Form 44 in the Schedule.

(2) Any person who attends or participates in a bid opening shall sign Part II of Form 44 in the Schedule.

(3) After the bids are opened, read out and recorded, the record of the opening shall be signed by the chairperson and countersigned by the secretary.

(4) Copies of the record shall, upon request, be made available to a bidder or a representative of a bidder.

(5) The record of the bid opening shall be posted on the notice board of the procuring and disposing entity, within one working day of the opening and shall be displayed for a minimum of seven days.

37. Complaints on the bidding process.

(1) A member of a procuring and disposing entity, who suspects collusion between bidders, may request the Authority to investigate this.

(2) A member of a procuring and disposing entity who suspects mismanagement or malpractice of a procurement or disposal process within the procuring and disposing entity, shall report this to the accounting officer who shall take appropriate action.

(3) A bidder may complain about the bidding process in accordance with the Public Procurement and Disposal of Assets (Administrative Review) Regulations, 2014.

38. Re-bidding due to identical highest price bids.

(1) Where two or more bidders offer the same price for a bid, and it is the highest price, the procuring and disposing entity shall invite these bidders to submit revised bids.

(2) A bidder who is invited to submit a revised bid under subregulation (1) shall not quote a price lower than the price quoted in the original bid.

(3) A revised bid shall be written, sealed and submitted in the same way as the original bid.

(4) A procuring and disposing entity shall give the bidders who are invited to submit revised bids reasonable time within which to submit revised bids.

(5) The procedure for opening the revised bids shall be the same as the procedure for opening the original bids.

(6) Where the revised bids have identical prices, the process shall be repeated in accordance with this regulation.

(7) This regulation shall not apply where the price referred to in subregulation (1) is a result of an error that is made in the original evaluation, including, an arithmetic error or application of an exchange rate.

PART IV—EVALUATION OF BIDS

39. Evaluation of bids.

The Public Procurement and Disposal of Public Assets (Evaluation) Regulations 2014, shall, with the necessary modifications, apply to evaluation of bids under these Regulations.

40. Evaluation based on price only.

(1) Where the evaluation is based on the price only, the bidder with the highest price shall be awarded the contract.

(2) The evaluation committee shall, in evaluating the bids—

(a) correct any arithmetic errors;

(b) convert the currency of the bids into a common currency; and

- (c) compare the price of each bid with the value of a public asset or the reserve price, as appropriate.

(3) The evaluation committee shall recommend award of the disposal contract to the bidder with the best evaluated price, subject to any reservations in regard to the valuation or reserve price.

(4) The evaluation report shall be drafted using Form 45 in the Schedule and shall indicate—

- (a) the price of each bid;
- (b) correction of arithmetic errors, if any, and the conversion of the bid prices into a common currency;
- (c) the best evaluated bid;
- (d) the comparison of the best evaluated bid with the valuation or reserve price, if any; and
- (e) a recommendation to—
 - (i) award the contract to the best evaluated bidder and where necessary, to hold negotiations with the best evaluated bidder and a copy of the negotiation plan;
 - (ii) cancel the disposal process; or
 - (iii) dispose of the public asset using an another disposal method.

(5) For the purposes of subregulation (4) (e) (i), the evaluation committee shall prepare for the approval of the Contracts Committee a negotiation plan using Form 46 in the Schedule which shall—

- (a) propose the negotiation team;
- (b) specify the issues to be negotiated; and

- (c) specify the objectives to be achieved; and where possible shall quantify the objectives and set maximum and minimum negotiating parameters for a negotiation team.

41. Evaluation based on price and other factors.

(1) Where the evaluation is based on price and other factors, the eligibility requirements and compliance with the other factors, shall be evaluated on a pass or fail basis.

(2) Notwithstanding subregulation (1), evaluation of compliance with the other factors may include an evaluation of the relative merits of each bid in exceptional circumstances.

(3) The other factors shall be stated and the reasons for evaluating them justified and approved by the Contracts Committee, prior to the issuance of bidding documents.

(4) The evaluation committee shall—

- (a) use a preliminary examination to assess the eligibility of a bidder on a pass or fail basis and shall reject a bidder who fails to meet the eligibility criteria;
- (b) evaluate other factors in the manner stated in the bidding document; and
- (c) use a price evaluation to—
 - (i) correct any arithmetic errors;
 - (ii) convert the bid prices into a common currency, where applicable; and
 - (iii) compare the bid price with the valuation of the public asset or reserve price, where applicable.

(5) A recommendation for contract award shall be in accordance with the specifications in the bidding document.

(6) The evaluation committee shall recommend award of the disposal contract to the bidder with the best evaluated price, and who meets the eligibility requirements and passes the evaluation criteria, subject to any reservations in regard to the valuation or reserve price.

(7) Notwithstanding subregulation (6), where the evaluation criteria includes an evaluation of the relative merits of each bid in accordance with subregulation (2), the evaluation committee shall recommend award of contract to the bidder with the best evaluated price, in accordance with the methodology in the bidding documents.

(8) The evaluation report shall be prepared using Form 45 in the Schedule and shall indicate—

- (a) whether a bidder is eligible;
- (b) the results of the application of any other evaluation criteria relevant to public interest;
- (c) the price of each bid;
- (d) the correction of any arithmetic errors and the conversion to a common currency where applicable;
- (e) the best evaluated bid;
- (f) a comparison of the best evaluated bid with the valuation or reserve price, if any; and
- (g) a recommendation to—
 - (i) award the contract to the best evaluated bidder and where necessary, to hold negotiations with the best evaluated bidder;
 - (ii) cancel the disposal process; or
 - (iii) dispose of the public asset using another disposal method.

(9) For the purposes of subregulation (8) (g) (i), the evaluation committee shall prepare for the approval of the Contracts Committee a negotiation plan using Form 46 in the Schedule which shall—

- (a) propose the negotiation team;
- (b) specify the issues to be negotiated; and
- (c) specify the objectives to be achieved; and where possible shall quantify the objectives and set maximum and minimum negotiating parameters for a negotiation team.

42. Submission of evaluation report.

(1) Where the disposal of a public asset is by public auction, the auctioneer shall within fourteen days from the date of the public auction, submit the name of the highest bidder, the price of the bid, and the proceeds from the public auction, to the Accounting Officer, using Form 47 in the Schedule.

(2) Where the disposal method requires the submission of a written bid, the evaluation committee shall submit the name of the highest bidder and the price of the bid, to the Procurement and Disposal Unit using Form 45 in the Schedule.

43. Procedure for negotiations.

The procedure for negotiations shall be in accordance with the relevant provisions of the Act.

44. Failure to reach the reserve price.

(1) Where the price of the best evaluated bid is lower than the reserve price, the Contracts Committee shall, taking into consideration the difference between the best evaluated bid and the valuation or reserve price, the likely costs of the recommended action and the possibility of collusion of the bidders, make a recommendation to accounting officer.

(2) A recommendation under subregulation (1) shall specify whether—

- (a) another valuation for the public asset should be obtained;
- (b) negotiations should be conducted with the highest bidder, where the direct negotiations method was used for the disposal;
- (c) an invitation for new bids should be made;
- (d) the disposal process should be repeated using another method of disposal which is likely to obtain a higher price; or
- (e) the public asset should be sold at a reduced price.

45. Records of disposal of public assets

(1) A procuring and disposing entity shall in respect of each disposal process keep the following records—

- (a) records of the disposal;
- (b) records relating the management of the contract for disposal;
- (c) records of the Contracts Committee; and
- (d) records of the accounting officer including records of investigations of complaints.

(2) “Records of the disposal” in subregulation (1) (a) includes, as appropriate—

- (a) a request to initiate disposal proceedings;
- (b) a report of the board of survey;
- (c) a copy of an invitation notice;
- (d) a copy of the bidding documents, and the amendments, clarifications and additions to the bidding documents such as the catalogue of the auctioneer or general descriptive literature;

- (e) a report on the inspection of the public assets by the potential bidders;
- (f) a record of the bid opening process;
- (g) the records of the Contracts Committee;
- (h) a copy of the bids that were evaluated and the requests for clarifications by the evaluation committee and the responses received in respect of the requests;
- (i) the evaluation report;
- (j) minutes of the negotiation proceedings;
- (k) a copy of the letter of bid acceptance issued to the successful bidder;
- (l) the contract;
- (m) documents related to the management of the contract for disposal receipts of payment and the handing over certificate;
- (n) a copy of the public assets register of the procuring and disposing entity; and
- (o) all correspondence between the procuring and disposing entity and the bidders, the auctioneer or the third party disposal agent.

(3) A procuring and disposing entity shall, using Form 48 in the Schedule, by the 15th day of the month, submit a monthly report to the Authority on all disposal contracts awarded during the preceding month.

46. Contracts of disposal

The Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2014 shall, with the necessary modifications, apply to the contracts of disposal entered into between a procuring and disposing entity and a bidder.