

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. 9.

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(EVALUATION) 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. 9.

The Public Procurement and Disposal of Public Assets (Evaluation) 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.

1. Title and Commencement.

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

Evaluation Committee

3. Evaluation Committee.

(1) A person appointed member of an evaluation committee shall have the technical skills and experience relevant for the procurement requirement.

(2) An evaluation committee shall have among its members—

(a) a person representing the user department; and

(b) a member of the procurement and disposal unit.

(3) A member of a Contracts Committee shall not be a member of an evaluation committee.

(4) A member of an evaluation committee shall declare that he or she has read the Code of Ethical Conduct in Business and does not have a conflict of interest in the procurement or disposal requirement by signing Form 13 in the Schedule to these Regulations.

4. Chairperson of evaluation committee.

(1) The members of an evaluation committee shall select a chairperson, from amongst themselves.

(2) The chairperson of the evaluation committee shall be responsible for—

- (a) chairing all the meetings of the evaluation committee;
- (b) conducting the evaluation is in accordance with the bidding document;
- (c) the security of the bids and the other documentation before the evaluation committee;
- (d) submitting the report of the evaluation committee to the Procurement and Disposal Unit within the time prescribed in regulation 5; and
- (e) communication between the evaluation committee and a bidder or any other person.

5. Meetings of evaluation committee.

(1) An evaluation exercise shall, for each type of procurement, be concluded within the time period specified in this regulation—

- (a) twenty working days for the evaluation of bids for the procurement of supplies or non-consultancy services, from the date of opening of the bids; and

(b) forty working days for the evaluation of bids for the procurement of works, from the date of opening of the bids.

(2) Where an evaluation committee is not able to complete an evaluation exercise within the time specified in subregulation (1), the evaluation committee shall in writing explain to the Accounting Officer the reasons for this and request for extension of the time period for the evaluation exercise.

(3) A meeting of an evaluation committee shall not be held unless all members of the evaluation committee are present.

(4) Notwithstanding subregulation (3), a meeting of the evaluation committee may be held where a member who is absent agrees or where it is not possible or practical for all the members to be present at the meeting.

(5) A member who is absent from a meeting in accordance with subregulation (4) shall be informed of the proceedings and decisions of the meeting.

(6) Where a member who is absent from a meeting in accordance with subregulation (4), does not agree with a decision taken at the meeting, the member shall inform the chairperson of the evaluation committee, who shall call a meeting to consider the decision.

(7) The evaluation of a bid shall be conducted by the members of the evaluation committee, jointly, during a meeting of the evaluation committee.

(8) Notwithstanding subregulation (7), where an evaluation is complex or lengthy, the members of the evaluation committee shall—

(a) conduct the evaluation or part of the evaluation individually, before discussing and agreeing the results of each member, at a meeting of the evaluation committee; or

(b) request two or more members of the evaluation committee to carry out the evaluation and prepare recommendations, which shall be reviewed by the evaluation committee and adopted as the evaluation of the evaluation committee.

(9) A decision of an evaluation committee shall be unanimous except where the evaluation methodology requires individual scores or marks.

(10) Notwithstanding subregulation (9), where the evaluation committee is unable to reach a decision unanimously, the decision of the majority shall be the decision of the evaluation committee and shall be stated as such in the evaluation report.

(11) The minutes of a meeting of the evaluation committee shall be signed by all members of the evaluation committee and shall form part of the records of the procurement for which the evaluation is conducted.

(12) The minutes of a meeting of the evaluation committee shall be an annex to the evaluation report.

(13) The evaluation report shall state the disagreements of the members, if any, including the reasons for the disagreement, the discussions held on the issue in disagreement and the views of the members of the evaluation committee on the matter.

(14) The evaluation report shall be signed by all the members of the evaluation committee.

(15) Where a member of the evaluation committee does not or is not able to sign the report, the member shall in writing give reasons why he or she did not or was not able to sign the report.

Evaluation of bids

6. Evaluation of bids for supplies, works and non-consultancy services.

(1) Bids for the procurement of supplies, works and non-consultancy services shall be evaluated using the technical compliance evaluation method.

(2) Notwithstanding sub regulation (1) bids for text books, information technology systems and for design and build contracts may be evaluated using the quality and cost based evaluation method.

(3) The evaluation shall determine as the best evaluated bid, the bid—

- (a) which is eligible and administratively compliant to the technical requirements of the procuring and disposing entity;
- (b) with the lowest evaluated price; and
- (c) where the bidder has the capacity and the resources to effectively execute the contract.

7. Evaluation criteria.

(1) The evaluation of a bid, shall be conducted in accordance with the evaluation criteria stated in the Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non Consultancy Services) Regulations, 2014 and in the bidding document.

(2) An evaluation committee shall not, during an evaluation, make an amendment or addition to the evaluation criteria stated in the bidding document, and shall not use any other criteria other than the criteria stated in the bidding document.

(3) The evaluation criteria shall assess—

- (a) the compliance of the bid with the statement of requirements;
- (b) the ability of the bidder to perform the proposed contract; and
- (c) the ability of the bid to meet the objectives of the procurement.

(4) The evaluation criteria shall not be drafted in a way which restricts competition, except where this is necessary to meet the objectives of the procurement or where the preference or reservation scheme is applied.

8. Receipt and evaluation of single bid or of limited number of bids.

(1) Where a procuring and disposing entity receives one bid or a limited number of bids in response to a bid notice or in response to bidding documents sold or issued to bidders, the procuring and disposing entity may accept the single bid or the limited number of bids.

(2) For the purposes of subregulation(1), an evaluation committee shall evaluate the single bid or the limited number of bids where the evaluation committee determines that—

- (a) the bidding period was sufficient for the procurement method and the requirement;
- (b) the terms and conditions of the bidding documents were reasonable and not excessive to deter competition;
- (c) the bid notice, if any, was published in an appropriate publication and on the required date;
- (d) the amendments to the bidding documents, if any, allowed sufficient time for the bidders to take the amendments into account in preparing the bids;
- (e) there was no other extraneous events or circumstances that may have affected the ability of the bidders to respond to the bid notice of the bidding documents;
- (f) there is no suspicion of collusion between the potential bidders; and
- (g) the choice of procurement method was appropriate for the market and that there is an adequate number of potential bidders that make competition possible.

(3) In this regulation “limited number of bids” means bids of a small proportion of the bidders who bought or who were issued with bidding documents.

(4) The evaluation report shall include a discussion of the evaluation committee of the issues in subregulation (2).

9. No changes to bids.

The bidding documents shall state that—

- (a) a bidder shall not seek to make a change to the substance of a bid submitted and shall not be permitted to effect any change, after the deadline for submission of bids; and
- (b) the bid of the bidder who attempts to make a change to the bid, after the deadline for submission of bids, shall be rejected and the bidder reported to the Authority.

10. Request for clarification of bids.

(1) Notwithstanding regulation 9, an evaluation committee may at any stage of the evaluation request a bidder to clarify the information provided in the bid documents or to submit additional documentation to clarify the information provided.

(2) An evaluation committee shall only make a request for clarification of information or submission of documentation under subregulation (1) where—

- (a) there is a nonconformity or an omission in the bid, which is not a material deviation as specified in regulation 11 (4); or
- (b) there is an arithmetic error which has to be corrected.

(3) A request for clarification or submission shall not be made with the intention of—

- (a) altering or amending the price of the bid except to correct errors in accordance with regulation 14;
- (b) changing the substance of the terms and conditions of the bid;
or

(c) substantially altering anything which forms a crucial or deciding factor in the evaluation of the bid.

(4) A bidder shall not be permitted to make a clarification or submission which—

(a) alters or amends the price of a bid except to correct errors in accordance with regulation 14;

(b) changes the substance of the terms and conditions of the bid; or

(c) substantially alters anything which forms a crucial or deciding factor in the evaluation of the bid.

(5) A request to a bidder shall be signed by the chairperson of the evaluation committee.

(6) Where a bidder does not respond to a request, the evaluation committee may disqualify the bidder.

(7) A request to clarify the information provided in the bid documents or to submit additional documentation shall not become negotiations.

11. Correction of non-conformities and omissions.

(1) Notwithstanding regulation 9, an evaluation committee may correct a non-conformity or an omission in a bid that does not constitute a material deviation.

(2) For purposes of making a correction under subregulation (1), a nonconformity or an omission shall be quantified and expressed in monetary terms and the bid price shall, for evaluation purposes only, be adjusted, to reflect the price of the non-conforming or omitted item or component.

(3) Where a non-conformity or an omission in a bid is not a material deviation, an evaluation committee shall—

- (a) waive the non-conformity or omission;
- (b) request the bidder to clarify the non-conformity or omission in accordance with regulation 10;
- (c) correct the non-conformity or omission using subregulation (2).

(4) For the purposes of this regulation a “material deviation” is a deviation that—

- (a) affects in a substantial way, the scope or quality of the supplies or services or the performance of the works to be procured;
- (b) is inconsistent with the bidding document and which may in a substantial way, limit the rights of the procuring and disposing entity or the obligations of the bidder under the contract;
- (c) if corrected would unfairly affect the competitive position of the other bidders whose bids are administratively compliant and responsive; or
- (d) impacts the key factors of a procurement including cost, risk, time and quality and causes—
 - (i) unacceptable time schedules, where it is stated in the bidding document that time is of the essence;
 - (ii) unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; or
 - (iii) unacceptable counter-bids with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty.

12. Evaluation of alternative technical bids.

(1) An alternative bid shall be evaluated using the methodology, criteria and weight used to evaluate the main bid to which the alternative bid relates.

(2) For the purposes of evaluating an alternative bid, the detailed evaluation shall only take into account the objectives or performance requirements prescribed in the statement of requirements and shall not be required to conform precisely to the statement of requirements.

(3) An alternative bid shall be evaluated by the evaluation committee that evaluates the main bid and the skills required for the evaluation of the alternative bid shall be taken into account when proposing the membership of the evaluation committee.

(4) The evaluation committee may seek additional advice or assistance where required in order to conduct a fair and comprehensive evaluation of an alternative bid.

13. Costs to be included in comparison of financial bids.

(1) The following costs shall, where applicable, be included in the financial comparison of bids—

- (a) fee rates or unit prices, based on either a fixed or estimated total quantity;
- (b) reimbursable costs, such as costs for travel, materials or consumables used in the performance of the services or similar costs;
- (c) costs for packing, packaging, freight and inland delivery;
- (d) costs for installation and commissioning of equipment;
- (e) costs for inspection and tests;
- (f) operating costs, which shall be for the period specified in the bidding document;

- (g) costs for the servicing and maintenance of equipment and costs for spare parts for equipment, which shall be for the period specified in the bidding document;
- (h) for works, the total bid price based on the bill of quantities or the schedule of prices and the cost of day work items;
- (i) duties, taxes or other levies; and
- (j) cost to cover contingencies.

(2) Where equipment is to be in use for a long period of time or where maintenance and operating costs are a significant proportion of the overall cost, the evaluation committee shall assess the life-cycle of the costs.

(3) The following shall be considered in the assessment of a life-cycle of the cost—

- (a) the cost and availability of any extended warranty;
- (b) the cost of training in operation, maintenance or repair of the supplies, taking into account the level of training required and the number of staff who require training;
- (c) the quantity and cost of consumables or spare parts for operation over the anticipated lifetime of the supplies;
- (d) the frequency and cost of maintenance and servicing;
- (e) the cost of repair services;
- (f) energy costs for operating the supplies;
- (g) the level of manpower required for use of the supplies;
- (h) the anticipated lifetime of the supplies; and
- (i) the likely residual value and cost of disposal of the supplies.

14. Correction of arithmetic errors.

(1) Notwithstanding regulation 11, an evaluation committee may correct an error which is purely arithmetical.

(2) Where the bidding document does not specify the arithmetical error that may be corrected, an arithmetical error shall be corrected where—

- (a) there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, in which case the unit price shall prevail and the total price shall be corrected, except where there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) there is an error in a total which corresponds to the addition or subtraction of subtotals, in which case the subtotals shall prevail and the total shall be corrected; or
- (c) there is a discrepancy between words and figures, in which case the amount in words shall prevail, except where the amount which is expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to paragraphs (a) and (b).

(3) A bidder shall be promptly notified of an arithmetic correction and requested to agree to it within five working days, in accordance with the procedure for clarification of bids in regulation 10.

Evaluation of bids using the technical compliance evaluation method

15. Stages of evaluation using the technical compliance evaluation method.

The evaluation of a bid for the procurement of supplies, works or non-consultancy services using the technical compliance evaluation method shall be conducted under the following four stages—

- (a) a preliminary examination to determine the eligibility of the bidders and the administrative compliance of the bids received;
- (b) a detailed evaluation of the bids to determine their technical responsiveness of the bids that are eligible after the preliminary examination carried out under paragraph (a); and
- (c) a financial comparison of the bids that are eligible after the detailed evaluation carried out under paragraph (b) and to determine the best evaluated bid; and
- (d) post qualification in accordance with regulation 34, to determine that the best evaluated bidder has the capacity and the resources to effectively execute the contract.

16. Preliminary examination.

(1) A preliminary examination shall be conducted to determine that—

- (a) the bidder is eligible in accordance with regulation 17 and as specified in the bidding document; and
- (b) the bid is administratively compliant with the basic instructions and requirements specified in regulation 18 and in the bidding document.

(2) Eligibility and administrative compliance shall be determined on a pass or fail basis and a bid which is not eligible or administratively compliant shall be rejected at the preliminary stage of evaluation.

17. Eligibility of bidder

(1) An evaluation committee shall at the preliminary examination, verify the accuracy, validity and authenticity of the documents submitted by a bidder.

(2) A bidder shall be eligible where—

- (a) the bidder has the legal capacity to enter into a contract with the procuring and disposing entity;
- (b) the bidder is not insolvent, in receivership, bankrupt or being wound up;
- (c) the business activities of the bidder are not suspended;
- (d) the bidder is not the subject of legal proceedings for any of the circumstances mentioned in paragraph (b);
- (e) the bidder fulfilled the obligations to pay taxes and social security contributions in Uganda;
- (f) the bidder does not have a conflict of interest in relation to the subject of the procurement;
- (g) the bidder is not suspended by the Authority; and
- (h) the bidder is not a member of the procuring and disposing entity as defined in section 91U of the Act.

(3) For the purpose of subregulations (1) and (2), a bidder shall be required to submit the following documents, with the bid—

- (a) a copy of the trading licence of the bidder or its equivalent;
- (b) a copy of the certificate of registration of the bidder or its equivalent;
- (c) a signed statement indicating that the bidder does not have a conflict of interest in the subject of the procurement; and
- (d) any other relevant documents or statements as may be stated in the bidding documents.

(4) Subregulation (3) (a) and (b) shall not apply to a bidder who is registered by the Authority on the register of providers or where the eligibility of the provider was verified at the pre-qualification stage.

(5) Where a document required in subregulation (3) is not available in the country of a foreign provider, the foreign provider shall submit an alternative document or a statement affirming that the document is not available in the country of the foreign provider.

(6) Where a bidder does not submit a document required under subregulation (3) the evaluation committee shall in accordance with regulation 10, request the bidder to submit the document.

18. Administrative compliance.

(1) An evaluation committee shall determine the administrative compliance of a bidder by confirming that the bidder conforms satisfactorily to the basic instructions, requirements and the terms and conditions of the bidding documents without any material deviation or omission.

(2) A bidder shall be administratively compliant where—

- (a) the bidder submits a bid security, where this is required, in the correct form and amount and where the bid security is authentic;
- (b) the bidder submits a bid securing declaration, where this is required, in the correct form;
- (c) the bidder submits the bid in the required format;
- (d) the authorisation and signature of the bids is in accordance with the instructions in the bidding document;
- (e) the bid validity is correct; and
- (f) the bidder submits additional documents or samples as may be required.

(3) An evaluation committee shall determine the administrative compliance of a bid with the instructions in the bidding document and its responsiveness to the requirements of the procuring and disposing entity, based on the contents of the bid.

(4) A bid that is not administratively compliant to the bidding document, shall be rejected by at the preliminary stage.

(5) Where a bid is administratively compliant, the evaluation committee shall waive any non-conformity or omission in the bid that does not constitute a material deviation.

19. Detailed evaluation.

(1) An evaluation committee shall conduct a detailed evaluation of a bid that passes the preliminary examination to assess—

- (a) the responsiveness of the bid to the terms and conditions of the bidding document; and
- (b) the technical responsiveness of the bid to the statement of requirements.

(2) The detailed evaluation shall compare the details of a bid with the criteria stated in the bidding document.

(3) The detailed evaluation shall—

- (a) determine whether a bid conforms to the terms and conditions of the bidding document, without any material deviation;
- (b) determine whether a bid conforms to the statement of requirements without any material deviation;
- (c) for a bid for supplies, determine whether the bid complies with the minimum technical specification stated in the bidding document;
- (d) for a bid for works, determine whether –
 - (i) the bid adheres to the technical specifications and standards;

- (ii) the proposed work plan and the completion schedule are adequate;
- (iii) the work methods, including the safety precautions and measures proposed are adequate;
- (iv) the documents submitted, including drawings, charts, calculations and data sheets are adequate; and
- (v) the methods proposed for handling materials and the schedules and sources of the materials and equipment are suitable.

(4) A bid which is not substantially responsive to the minimum requirement of the detailed evaluation shall be rejected at the detailed evaluation stage.

20. Product demonstration.

(1) Where it is necessary to assess the technical characteristics of supplies, a procuring and disposing entity may, as part of the detailed evaluation process, request for a demonstration of the product by the provider.

(2) The evaluation committee shall give a bidder who is requested to demonstrate a product, sufficient notice of the date, time and location of the demonstration.

(3) The evaluation committee shall prior to the demonstration of a product, agree on the requirements of the demonstration and the manner in which the demonstration is to be assessed and recorded.

(4) At least three members of the evaluation committee shall attend a demonstration of a product and the members who attend shall prepare a report of the demonstration.

(5) The report in subregulation (4) shall be part of the evaluation report.

21. Comparison of financial bids.

(1) The financial bids, of the corresponding technical bids that are responsive under regulation 19 shall be examined and compared, to determine the best evaluated bid.

(2) In conducting a financial comparison of the bids, the evaluation committee shall—

- (a) correct the arithmetic errors in the bids, if any, using regulation 14;
- (b) apply any non-conditional discounts offered in a bid, using regulation 32;
- (c) determine whether the financial bids are complete and where the bids are not complete, except a bid for works, include the missing items, cost them and add the costs to the original bid price, using sub regulation (5);
- (d) make adjustments for any deviation that is not a material deviation, using regulation 11;
- (e) where required for purpose of comparison, convert all bids to a single evaluation currency;
- (f) where required, apply a margin of preference using the procedure specified in the bidding document;
- (g) determine the total evaluated price of each bid;
- (h) rank the bids using the total evaluated price; and
- (i) determine the best evaluated bid.

(3) Where a cross discount is offered, it shall be incorporated in a further financial comparison prior to determining the best evaluated bid.

(4) A financial bid shall be determined to be complete if the prices of all items required and included in the corresponding technical bid, are indicated in the financial bid.

(5) Where the bidding document does not state how the missing items are to be costed, the missing items shall be costed using the highest of the prices offered by the other bidders, which shall be added to the original bid price.

(6) The best evaluated bid shall be the lowest priced bid which is eligible and administratively compliant to the technical requirements specified in the bidding document.

(7) An evaluation committee, shall for the best evaluated bid for works, assess whether the level of payment projected for the different stages of the assignment exceed the progress of the works and where the evaluation committee determines that this, the bidder shall be requested to—

- (a) provide a detailed analysis of the price of any of the items of the bid, to demonstrate that the price is consistent with the construction methods and work schedules proposed in the bid; or
- (b) increase the amount of the performance security provided, where this is necessary to protect the procuring and disposing entity against default.

Evaluation of bids using the quality and cost based evaluation method

22. Preliminary examination.

(1) An evaluation committee shall at the preliminary examination determine whether a bid is administratively compliant.

(2) A bid shall be administratively compliant where the bid conforms to the instructions, requirements and the terms and conditions of the bidding documents without any non-conformity, or omission.

- (3) A bid shall be administratively compliant where—
- (a) the bid is submitted in the required format;
 - (b) the financial bid is submitted separately;
 - (c) the signature and authorisation to submit bids is in accordance with the instructions in the bidding documents;
 - (d) a bid securing declaration, if required, is submitted in the correct format;
 - (e) the validity of the bid is correct; and
 - (f) the additional documentation that is required is submitted.

(4) The preliminary examination shall be conducted on a pass or fail basis and a bid that is not administratively compliant and responsive to the bidding documents, shall be rejected at the preliminary examination stage of evaluation.

(5) Notwithstanding sub regulation (4), where a bid is not administratively compliant but the non-compliance does not constitute a material deviation the evaluation committee may waive, clarify or correct the deviation.

23. Detailed evaluation.

(1) An evaluation committee shall using the evaluation criteria in the bidding documents and based on the contents of a bid, conduct a detailed evaluation of a bid that passes the preliminary examination.

(2) The detailed evaluation shall compare the details of the bid with the criteria stated in the bidding documents.

(3) The detailed evaluation of bids shall use a merit point evaluation system as specified in the bidding documents.

(4) A bid which does not achieve the minimum score required in the bidding document shall be rejected at the detailed evaluation stage.

24. Procedure for conducting merit point evaluation.

(1) The following procedure shall apply to the conduct of the merit point evaluation—

- (a) the members of the evaluation committee shall at a meeting of the evaluation committee discuss the criteria and any sub-criteria and the relative importance of each criteria and sub-criteria;
- (b) each member of the evaluation committee shall independently conduct an evaluation by considering each bid and awarding scores for the set criterion and record the scores in the score sheet;
- (c) the chairperson of the evaluation committee shall at a meeting of the evaluation committee collect the score sheets and the scores awarded by each evaluator shall be compiled during the meeting, to produce a score sheet for each bid, from which the average score for each bid shall be calculated;
- (d) the members of the evaluation committee shall compare the scores of each evaluator for each bid in order to verify that there has been a consistency of approach to the evaluation and a common understanding of the criteria and of each bid by all the members of the evaluation committee;
- (e) the evaluation committee shall note any significant deviation from the average score or any inconsistencies in scoring and these shall be discussed and each evaluator shall explain and justify the scores awarded, where required; and
- (f) where the evaluation committee agrees that a member of the evaluation committee was not consistent in the approach or did not understand the evaluation criterion or a bid, the member shall be permitted to adjust the scores awarded but shall not be obliged to make the adjustments.

(2) The average score in sub regulation (1) (c) shall be the total technical score of the bid and where a weighted score is used, the weightings shall be applied prior to calculating the average score.

(3) For the purposes of sub regulation (1) (f), an adjustment shall only be permitted to the extent necessary to correct an inconsistency in the approach or where a member of the evaluation committee did not misunderstand the evaluation criterion or the bid.

(4) An adjustment shall not be made where it is not permitted by the evaluation committee.

(5) Where a score is adjusted, the original score sheet shall be kept as part of the record of the evaluation and the adjusted score shall be recorded on a new score sheet.

25. Technical Evaluation Report.

(1) The evaluation committee shall, using Form 14 in the Schedule to these Regulations prepare a technical evaluation report indicating the strengths and weaknesses of each bid.

(2) The technical evaluation report shall be signed by all the members of the evaluation committee.

(3) The procurement and disposal unit shall submit technical evaluation report shall be submitted to the Contracts Committee for approval, without any change or comment, before the financial bids are opened.

26. Notification to bidders not recommended for financial evaluation.

(1) After the approval of the technical evaluation report by the Contracts Committee and before the financial bids are open, the bidders whose bids are disqualified at the technical evaluation stage and which are not recommended for financial evaluation shall be informed.

(2) The procuring and disposing entity shall, on request, provide a bidder whose bid is disqualified at the technical evaluation stage and which is not recommended for financial evaluation with a debrief which

shall state the score awarded to the bid at the technical evaluation, the reasons for the disqualification of the bid and the weaknesses of the bid against the evaluation criteria.

(3) The debrief under this regulation shall be unique to the bidder who makes a request and shall not provide details on any other bid, other than the information that is otherwise publicly available.

(4) The debrief shall be provided within ten working days of a request by a bidder.

(5) A financial bid that is not evaluated shall be returned to the bidder, unopened, after the contract is awarded.

27. Public opening of financial bids.

(1) The financial bids shall be opened and the financial evaluation conducted after approval of the technical evaluation report by the Contracts Committee.

(2) A procuring and disposing entity shall notify the bidders whose technical bids qualify for financial comparison and invite the bidders to the session for opening the financial bids.

(3) The notification shall indicate—

- (a) the date and time of the opening of the financial bids, which date shall be one week after the notification;
- (b) the location of the opening session; and
- (c) the information to be read out and recorded at the opening session.

(4) The session for opening the financial bids shall be open to the public.

(5) The procuring and disposing entity shall, in the record of bid opening, note any inconsistencies or omissions in the bids submitted.

(6) A copy of the record shall be posted on the procurement and disposal notice board of the procuring and disposing entity, a day after the public opening session is held and shall be displayed for a minimum of four weeks.

28. Procedure for opening of financial bids

(1) The opening of the financial bids shall be managed by the Procurement and Disposal Unit and shall be witnessed by a member of the Contracts Committee or a person nominated by the user department.

(2) The Procurement and Disposal Unit shall open all the financial bids and read out the information that is required by the bidding document, to be read out at the public opening session.

(3) The Procurement and Disposing Unit shall at the financial bid opening session notify the bidders—

- (a) of the bidders who submitted bids;
- (b) of the technical score obtained by each bidder;
- (c) of the total price of each financial bid, including the currency and the amount; and
- (d) of any other information that is required to be stated at the public opening as indicated in the bidding documents.

(4) The important pages of the technical bids shall be endorsed with the stamp of the procuring and disposing entity and signed or initialed by the person who chairs the public opening session.

(5) The important pages of a technical bid shall be the signed pages of the financial bid, the bid submission sheet and all the pages containing the financial information.

(6) The procuring and disposing entity shall, in the record of the bid opening session, note any inconsistencies or omissions in the bids submitted.

(7) A copy of the record of the bid opening session shall be posted on the procurement and disposal notice board of the procuring and disposing entity, a day after the public opening session is held and shall be displayed for a minimum of four weeks.

(8) The public opening of the financial bids shall be recorded using Form 15 in Schedule 1 to these Regulations.

29. Representation of bidders at opening session of financial bids.

(1) A procuring and disposing entity shall allow a bidder or a representative of the bidder whose financial bids is to be opened, to attend the public opening sessions but the bidder or the representative of the bidder shall not participate in the opening of the bids.

(2) A bidder or a representative of the bidder shall be requested to confirm that the bid is as it was submitted but shall not be permitted to make any addition, deletion or modification to the exterior or the contents of the bid.

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

30. Financial comparison.

(1) For the purposes of evaluating financial bids of the corresponding technical bids that adhered to the minimum qualifying score under the detailed technical evaluation of the technical bids, an evaluation committee shall conduct a financial comparison of the bids by examining and comparing the financial bids and determining the best evaluated bid.

(2) The financial comparison shall only be conducted on the bids that are opened at the session for opening financial bid.

(3) The financial comparison shall—

- (a) assess whether a bid conforms to the terms and conditions of the bidding documents, without material deviation;
- (b) determine the bid price;
- (c) correct any arithmetic errors in a bid;
- (d) determine whether a financial bid is complete and where a bid is not complete, cost the missing items and add these to the original bid price in accordance with regulation 11;
- (e) make adjustments for a non-conformity or an omission in a bid that does not constitute a material deviation in accordance with subregulation (4);
- (f) convert the currencies of the bids into a single currency for purposes of comparison, where required;
- (g) apply any margin of preference in accordance with the procedure specified in the bidding documents;
- (h) determine the total evaluated price of each bid; and
- (i) award a financial score to each bid or rank the bids, in accordance with the requirements of the selection method used.

(4) For the purposes of sub regulation (3) (e), an adjustment for a non-conformity or an omission in a bid that does not constitute a material deviation shall be made using the following rules—

- (a) the price of an input or item that is described in the technical bid but which is not priced, shall be assumed to be included in the prices of the other inputs or items; and

(b) where the quantification of an input or item in the financial bid is different from the quantification in the technical bid the evaluation committee shall—

(i) where a time-based contract is to be used, correct the quantification in the financial bid to make it consistent with the quantification in the technical bid by applying the relevant unit price to the corrected quantity and correcting the total financial price; and

(ii) shall not make any to the financial bid where a lump sum contract is used.

(5) A financial bid shall be complete where the inputs and items indicated in the technical bid are priced in the financial bid.

(6) The financial bid with the lowest evaluated price shall be given a financial score of 100 and the other bids shall each be given a financial score that is inversely proportional to the lowest evaluated price.

(7) Notwithstanding sub regulation (1), another method, where this is provided in the bidding documents, may be used to allocate scores for the cost.

31. Determination of best evaluated bid.

(1) For the purposes of determining the best evaluated bid—

(a) the score of the technical and financial bids shall be weighted, using the weights stated in the bidding documents; and

(b) the total score of a bid shall be obtained by adding the weighted score of the technical and financial bids.

(2) The bidder who obtains the highest total score under paragraph (b) shall, be recommended for award of contract.

General provisions for evaluation of bids using the technical compliance and quality and cost based evaluation methods.

32. Discounts.

Where a bidder offers a discount, the discount shall be reflected in the evaluation of bids and the original price of the bid shall at the financial comparison stage be modified by the discount offered.

33. Cross discounts.

(1) Where a bidder offers a cross discount that is conditional on the simultaneous award of a contract for another lot, the cross discount shall only be considered at the financial comparison of the bids.

(2) A cross discount shall be included in a further financial comparison, using the methodology specified in the bidding document, once the ranking of each lot, which incorporates any individual discount, is determined.

(3) In evaluating a cross discount, the evaluation committee shall seek to obtain the best overall value for money for the procuring and disposing entity.

34. Post qualification evaluation.

(1) An evaluation committee shall undertake a post qualification evaluation to confirm whether the best evaluated bidder has the capacity and the resources to effectively execute a procurement for the procuring and disposing entity.

(2) A post qualification evaluation shall be undertaken to determine to confirm—

- (a) the experience and performance of the bidder, with regard to similar assignments;
- (b) the capacity of the bidder with respect to equipment and facilities;

- (c) the qualifications and experience of the personnel of the bidder;
- (d) for a bid to procure non-consultancy services or works, that the bidder has the capacity to supervise or manage the performance of the non-consultancy services or works, as the case may be, based on the qualifications of the supervisory or management staff of the bidder and the number and deployment of the staff;
- (e) the financial capability to perform the assignment;
- (f) the facilities or representation at or near the location to be used for the performance of the assignment; and
- (g) any other relevant criteria.

(3) The criteria for post qualification evaluation shall be limited to that which is necessary for the procurement and shall not be restrictive.

(4) Where the best evaluated bidder does not meet the post qualification evaluation criteria, the evaluation committee shall record this in the evaluation report and the exercise shall be undertaken for the next best evaluated bidder.

(5) For purposes of post qualification evaluation, an evaluation committee may request a bidder for independent references and the results from the references may be used to determine the award of contract.

(6) An evaluation committee shall verify the information provided under subregulation (6) and where the evaluation committee determines that the best evaluated bidder no longer meets the pre qualification requirements, it may recommend that the contract is not awarded to the best evaluated bidder.

(7) For the purpose of subregulation (6), the evaluation committee shall—

- (a) consider any material changes in the circumstances the bidder after the submission of the information for pre qualification; and
- (b) consider any information that becomes available after the pre qualification which affects, materially, the capacity of the bidder to perform.

35. Evaluation report.

(1) The evaluation committee shall prepare an evaluation report which shall indicate—

- (a) the total price of the bid of each bidder and technical score of each bidder as read out at the public opening of the financial bids;
- (b) the results of the administrative compliance of the bids to the terms and conditions of the bidding documents and the reasons for the rejection of the bids that are rejected;
- (c) the evaluated price of each bid, following any corrections or adjustments to the price and the conversion to a single currency;
- (d) the score of each financial bid;
- (e) the weighting of the technical and financial scores; and
- (f) the total score for each bid.

(2) The evaluation report shall contain recommendations on—

- (a) the best evaluated bidder and the evaluated price of the best evaluated bidder;
- (b) where necessary, the issues for which negotiations should be conducted with the bidder; and

(c) a proposed price for the contract.

(3) An evaluation report shall be signed by all the members of the evaluation committee.

(4) The evaluation report shall be submitted to the Contracts Committee for approval without any change or comment.

(5) The evaluation report under the technical compliance evaluation method shall be prepared using Form 16 and under the quality and cost based evaluation method using Form 17 in the Schedule to these Regulations.

36. Evaluated price and contract price.

(1) The evaluated price of the best evaluated bid may not be the contract price of the contract.

(2) The following elements of the financial evaluation shall not be included in the components of the proposed contract price—

- (a) the cost of any items that were missing from the bid and are added during evaluation;
- (b) the costs of adjustments made for deviations that are not material deviations;
- (c) the price of the margin of preference that is allocated to a bidder during evaluation; and
- (d) the gains of conversion of the currencies used in the bids to a common currency.