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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. 10.

**THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
(PROCUREMENT OF CONSULTANCY SERVICES) 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. 10.

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

(Made under section 96(1) of the Public Procurement and Disposal of Public Assets Act, 2003)

IN EXERCISE of the powers conferred upon the Minister responsible for finance by section 96 (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 (Procurement of Consultancy Services) 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;

“consultancy service” means a service of an intellectual or advisory nature, provided by a practitioner who is skilled and qualified in a particular field of profession; and includes, but is not limited to, engineering design or supervision, accountancy, auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice and assistance with institutional reform;

“consultant” means an individual who, or a firm, company, corporation, organisation or partnership which, provides consultancy services to a procuring and disposing entity;

“consultants qualifications selection method” means the method of selecting where a procuring and disposing entity—

- (a) prepares the terms of reference to request expressions of interest and information on the consultants experience in order to develop a short list;
- (b) selects a consultant with the most appropriate qualifications;
- (c) requests the consultant with the most appropriate qualifications to submit a combined technical and financial proposal;
- (d) evaluates the combined technical and financial proposal; and
- (e) invites the consultant for negotiations;

“fixed budget selection method” refers to a method of selecting consultants with the best technical proposal that is within the budget;

“least cost selection method” refers to the method of selecting consultants where the lowest priced proposal meeting the minimum qualifying score of the technical proposal is selected;

“quality based selection method” means the method of selecting consultants that uses quality as the primary factor and the technical proposal of the consultants are evaluated and only the financial proposal of the best evaluated consultant is opened and negotiated upon;

“quality cost based selection method” means the method of selecting consultants which takes into account the quality of the of the proposal and the cost of the services in the selection of the consultant.

Initiation of Procurement Requirement

3. Initiation of procurement requirement and confirmation of funding.

(1) An initiation of a procurement requirement shall include—

- (a) a clearly defined terms of reference;
- (b) the estimated value of the consultancy services;
- (c) confirmation of availability of funding; and
- (d) the approval of the procurement requirement as specified in sub regulation (4).

(2) In estimating the value of the consultancy services required and confirming the availability of funds, a procuring and disposing entity shall—

- (a) base the estimate on an assessment of the market price;
- (b) seek technical advice, where required; and
- (c) ascertain that the confirmation of availability of funding takes into account the total cost of acquiring the requirement.

(3) A specific reference number shall be allocated to each procurement requirement, using the numbering system prescribed by the Authority in guidelines.

(4) The approval of requisition of a procurement requirement shall be evidenced by the signature of the Accounting Officer.

(5) A procurement process shall be initiated using Part 1 of Form 18 in the Schedule.

4. Availability of funds.

(1) A procuring and disposing entity shall not initiate any procurement for which funds are not available or adequate, except where—

- (a) the delivery of consultancy services and the consequent payments to a provider are to be effected from subsequent financial years;
- (b) in the case of framework contracts, funds will be committed at the time of issue of each specific call off order; or
- (c) the Secretary to the Treasury confirms in writing that the required funding shall be made available.

(2) The availability of funds shall be evidenced by budgeted or supplementary funds for the current financial year or an allocation for subsequent years.

(3) The accounting officer shall confirm the availability of funds.

(4) Procurement may be initiated, in accordance with this regulation, before the receipt of funds, but a contract shall not be awarded before the availability of funds.

5. Assessment of market price.

(1) In order to determine the market price of a consultancy service, the accounting officer shall use all appropriate sources of information, including—

- (a) prices obtained on previous similar services; and
- (b) prices advised by potential consultants.

(2) Where the accounting officer contacts potential consultants for advice under subregulation (1)(b) in order to determine the market price, the accounting officer shall limit the information disclosed to the potential consultants to that which is essential for obtaining the market price or which is already available to the public.

(3) Where the price of the best evaluated bidder is higher than the market price, established at the commencement of the procurement, the accounting officer shall re-assess the market price to ascertain that the market price is still valid.

Procurement of consultancy services

6. Methods of procuring consultancy services.

A procuring and disposing entity shall procure consultancy services—

- (a) by publishing a notice inviting expression of interest and developing a shortlist;
- (b) by developing a shortlist without publication of a notice inviting expression of interest; or
- (c) by inviting a single or sole source consultant in accordance with regulation 16.

Expression of interest

7. Procuring consultancy services by publishing a notice of expression of interest.

(1) A procuring and disposing entity shall invite consultants to provide consultancy services by publishing a notice inviting interested consultants to submit expressions of interest.

(2) A procuring and disposing entity shall publish the notice inviting expressions of interest in at least one newspaper of wide circulation in Uganda.

(3) Where a procuring and disposing entity requires to obtain effective competition, the notice inviting expressions of interest shall also be published in the relevant trade or professional publication.

(4) Where a procuring and disposing entity does not expect the required consultancy services to be available from at least six consultants in Uganda, the notice inviting expressions of interest shall be published in a publication of wide international circulation.

(5) The notice inviting expressions of interest shall on the date of publication of the notice, be displayed on the website of the Authority and on the procurement and disposal notice board of the procuring and disposing entity, and remain on display up to the date of closing of submission of expressions of interest.

(6) A notice inviting expressions of interest may also be published on the website of the procuring and disposing entity and in any other appropriate location.

(7) A procuring and disposing entity may publish an abridged version of the notice inviting expressions of interest and where the procuring and disposing entity publishes an abridged version—

- (a) the abridged notice shall indicate the website address where the full notice may be viewed; and
- (b) the full notice shall be displayed on the website of the Authority and of the procuring and disposing entity.

(8) A notice inviting expressions of interest shall indicate—

- (a) the name, address and contact details of the procuring and disposing entity;
- (b) a summary of the scope of the assignment and a brief description of the required consultancy services;
- (c) a statement of any eligibility and qualification requirements;
- (d) the criteria to be used to evaluate the expressions of interest;
- (e) details of the information required in the expression of interest, including any information or documentation required to verify the eligibility or qualifications of a consultant;
- (f) instructions on the location for submission of expressions of interest and the deadline for submission; and
- (g) instructions on the sealing and labelling of expressions of interest.

(9) A procuring and disposing entity shall use the standard notice inviting expressions of interest issued by the Authority, to prepare a notice inviting expressions of interest.

(10) A request to publish a notice shall be made by the Procurement and Disposal Unit to the Contracts Committee using Part II of Form 18 in the Schedule.

8. Period for expressions of interest.

(1) The period for expressions of interest shall start on the date the notice is first published and end on the deadline for submission of expressions of interest.

(2) The period shall be determined taking into consideration—

- (a) the level of detail required in the expression of interest;
- (b) whether the consultants are required to submit authenticated legal documents or similar documents as part of the proposals and the time required to obtain the documents; and
- (c) the location of the consultants and the time required to deliver the expression of interest to the procuring and disposing entity.

(3) The minimum period for expressions of interest shall be—

- (a) ten working days where the notice is only published in Uganda; and
- (b) fifteen working days where the notice is published internationally.

9. Short listing of consultants after expression of interest.

(1) The evaluation committee shall, using the evaluation of expressions of interest, develop a shortlist of consultants who meet the requirements of the procuring and disposing entity.

(2) The evaluation of expression of interest shall be in accordance with the criteria stated in the notice inviting expressions of interest.

(3) The evaluation of expressions of interest shall determine—

- (a) the capacity of a consultant to perform the assignment successfully; and
- (b) the eligibility of a consultant.

(4) In determining the capacity of the consultant to perform an assignment successfully, the evaluation committee shall establish—

- (a) the experience of the consultant in assignments of a similar nature;
- (b) the experience of the consultant in countries with conditions similar to the conditions in Uganda;
- (c) the skills of the consultant that are relevant to the assignment; and
- (d) any other criteria that is relevant to the capacity of the consultants to perform the assignment.

(5) In determining the eligibility of the consultant, the evaluation committee shall establish whether—

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

(h) the consultant is not a member of the procuring and disposing entity as defined in section 91U of the Act.

(6) For the purpose of subregulation (5), a consultant, where the consultant is a firm, company, corporation, organisation or partnership, shall be required to submit the following documents, with the expression of interest—

- (a) a copy of the trading licence of the consultant or its equivalent;
- (b) a copy of the certificate of registration of the consultant or its equivalent;
- (c) a signed statement indicating that the consultant 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 notice inviting expression of interest.

(7) Subregulation (6) (a) and (b) shall not apply to a consultant who is registered by the Authority on the register of providers.

(8) Where the business of a consultant is not registered in Uganda and a document required in subregulation (6) is not available in the country of the consultant, the consultant shall submit an alternative document or a statement affirming that the document is not available in the country of the consultant.

(9) A procuring and disposing entity shall verify the accuracy, validity and authenticity of the documents submitted a consultant under subregulation (6).

(10) For the purpose of subregulation (4), where the consultant is an individual, the consultant shall be required to submit a curriculum vitae, with the expression of interest.

(11) The eligibility of a consultant shall be evaluated on a pass or fail basis and where a consultant fails the eligibility requirements, the consultant shall be eliminated from the evaluation.

(12) A shortlist shall to the extent possible, have six consultants.

(13) The evaluation of expressions of interest shall be recorded using Form 19 in the Schedule.

10. Debriefing of consultants not shortlisted.

(1) The procuring and disposing entity shall, on the day the request for proposals is issued, notify a consultant who is not shortlisted.

(2) A procuring and disposing entity shall where requested by a consultant who is not shortlisted, provide the consultant with a debrief stating the reasons for the failure of the expression of interest of that consultant.

(3) The debrief shall—

(a) include a copy of the shortlist of the consultants approved for the consultancy service; and

(b) include brief details of the reasons why the consultant was not shortlisted and the reasons why the consultant did not meet the required standard or the relative weaknesses of the expression of interest of the consultant against the evaluation criteria.

(4) The debrief shall be unique to a consultant and shall not provide details of any other expression of interest except the information specified under subregulation (3) or information which is available publicly.

(5) A procuring and disposing entity shall provide the debrief within ten working days of a request.

Short listing consultants without expression of interest

11. Short listing consultants without publication of notice of expression of interest.

(1) A procuring and disposing entity may short list consultants without publication of a notice for expression of interest where—

- (a) the consultancy service can only be provided by a limited number of consultants, in this case not more than six consultants;
- (b) the value of the procurement is lower than the value prescribed for publication of notice inviting expression of interest; or
- (c) there is an emergency situation.

(2) The shortlist shall for the purposes of sub regulation (1) (a), have all the potential consultants and for the purposes of sub regulation (1) (b), have at least three consultants.

(3) Where consultants are shortlisted without publication of a notice of expression of interest on the grounds that the service can only be provided by a limited number of consultants, the procuring and disposing entity shall prior to issuing the request for proposals, publish a notice on the website of the Authority indicating—

- (a) the subject matter of the procurement; and
- (b) the shortlist of consultants.

(4) For the purposes of developing a shortlist, a procuring and disposing entity shall use its list of prequalified providers.

(5) Where a procuring and disposing entity does not have a list of prequalified providers, the procuring and disposing entity shall use—

- (a) the register of providers of the Authority;
- (b) the recommendations of a competent authority; or
- (c) the pre-qualified list of providers of another procuring and disposing entity, for a similar procurement.

(6) A procuring and disposing entity shall in developing a short list confirm that—

- (a) a fair and equal opportunity is afforded to all the consultants and that barrier shall not be created to deter competition;
- (b) a consultant is not included on the shortlist unless the consultant is expected to fully satisfy the eligibility requirements in regulation 9(5);
- (c) a consultant is not included on the shortlist unless the consultant is expected to fully satisfy the qualification requirements and the key personnel of the consultant have the relevant experience and the qualifications to perform the service; and
- (d) the owners of the consultant, where the consultant is a firm, company, corporation, organisation or partnership, are not owners of another firm, company, corporation, organisation or partnership on the shortlist.

12. Shortlist of consultants.

(1) The procuring and disposing entity shall, before a request for proposals is issued to the consultants, display the shortlist on the procurement and disposal notice board of the procuring and disposing entity.

(2) The Procurement and Disposal Unit shall submit the shortlist of consultants, a request for proposals document and the proposed evaluation committee to the contracts committee for approval using Part II of Form 18 in the Schedule.

(3) The Contracts Committee shall consider the shortlist of consultants and record the reasons for the selection of each consultant in Part III of Form 18 in the Schedule.

(4) The shortlist approved by the Contracts Committee shall, on the date the request for proposals is issued to the consultants on the shortlist, be displayed on the procurement and disposal notice board of the procuring and disposing entity, and shall be displayed for the duration of the period for submission of proposals.

13. Pre-qualification notices and documents

(1) A procuring and disposing entity shall by issuing a pre-qualification notice, invite potential consultants to obtain the pre-qualification documents from the procuring and disposing entity.

(2) A pre-qualification notice shall be published in at least one newspaper of wide circulation.

(3) A procuring and disposing entity shall, for the purpose of sub regulation (1), use the pre-qualification documents issued by the Authority.

(4) Pre-qualification documents shall contain—

- (a) the categories of consultancy services required by the procuring and disposing entity;
- (b) the criteria for pre-qualification;
- (c) a statement of the information required from a provider;
- (d) instructions on the location and deadline for submission of pre-qualification applications; and
- (e) instructions on the sealing and labelling of pre-qualification applications.

(5) The information required from a provider under sub regulation (4) (c) shall be the minimum information required to make a judgment on the suitability of the provider and not to discourage a provider from applying for pre-qualification.

14. Bidding periods in pre-qualification

(1) The bidding period for pre-qualification shall start from the date of first publication of the pre-qualification notice or the date of availability of the pre-qualification documents, whichever is later, and end on the deadline for submission of pre-qualification applications.

(2) The minimum bidding period for pre-qualification shall be fifteen working days.

(3) Forms 20, 22 and 23 shall apply to the pre-qualification exercise under this regulation.

15. Developing pre qualified list of consultants.

(1) The evaluation of pre-qualification applications shall be in accordance with the criteria stated in the pre-qualification documents.

(2) In determining the eligibility of the consultant, the evaluation committee shall establish whether—

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

(3) For the purpose of sub regulation (2), a consultant, where the consultant is a firm, company, corporation, organisation or partnership, shall be required to submit the following documents, with the application to be pre-qualified—

- (a) a copy of the trading licence of the consultant or its equivalent;
- (b) a copy of the certificate of registration of the consultant or its equivalent;

- (c) a signed statement indicating that the consultant 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 pre-qualification document.

(4) Sub regulation (3) (a) and (b) shall not apply to a consultant who is registered by the Authority on the register of providers.

(5) Regulation 9 (8) to (13) shall apply to pre-qualification as they apply to expression of interest.

Single and sole source consultants

16. Procuring a single or sole source consultant.

(1) Where exceptional circumstances prevent the use of competitive bidding and where the conditions for using the direct procurement method as specified in the Fourth Schedule to the Act are satisfied, a procuring and disposing entity may invite a consultant who has the capacity to perform the required assignment to submit a proposal.

(2) For the purposes of sub regulation (1)—

- (a) a single consultant shall be identified from a number of consultants who are able to provide the consultancy service;
- (b) a sole source consultant shall be identified where only one consultant is able to provide the consultancy service, due to the unique skills or knowledge of that consultant or where there is need for continuity in the delivery of the consultancy service.

(3) A procuring and disposing entity shall use the prequalified list of providers of the procuring and disposing entity to identify a single consultant or a sole source consultant for a consultancy service and where the procuring and disposing entity does not have a prequalified list of providers, the procuring and disposing entity shall use—

- (a) the register of providers of the Authority;
- (b) the recommendations of a competent authority; or
- (c) the pre-qualified providers of another procuring and disposing entity.

(4) For each consultancy service, the consultants who are eligible for selection as single consultants shall, be procured on a rotational basis.

(5) The Procurement and Disposal Unit shall, prior to making a recommendation for procurement as a single or sole source consultant to the Contracts Committee, confirm that the consultant is eligible and qualified.

(6) Where a consultant is to be procured as a sole source consultant, the Procurement and Disposal Unit shall, prior to making a recommendation to the Contracts Committee, verify that only that consultant is able to meet the requirements of the required consultancy service, due to the unique skills or knowledge of the consultant and that the consultant is eligible and qualified.

(7) The Procurement and Disposal Unit shall submit the name of the recommended single consultant or a sole source consultant to the Contracts Committee for approval of the request for proposals, using Part II of Form 18 in the Schedule.

(8) The name of the single consultant or sole source consultant, who is approved by the Contracts Committee shall on the day the request for proposals is issued, be displayed on the procurement and disposal notice board of the procuring and disposing entity, and remain on display for the duration of the period for submission of proposals.

17. Procurement of services of consultants who are individuals.

(1) Regulations 6, 7, 8, 9, 10, 11, 12 and 16 shall apply to the procurement of services of consultants who are individuals.

(2) A procuring and disposing entity shall procure the services of a consultant who is an individual where—

- (a) the procuring and disposing entity does not require the services of a firm, company, corporation, organisation or partnership to provide the consultancy services;
- (b) additional professional support is not required; or
- (c) the experience and qualifications of the consultant who is an individual are the most important requirement.

(3) A notice inviting expression of interest from individual consultants shall in addition to the requirements in regulation 7, state—

- (a) the address of the website with the full terms of reference which shall state the skills, qualifications and experience required;
- (b) details of the information required from the consultants, which shall include the curriculum vitae, the fee rate of the consultants and a covering letter stating the suitability and availability of the consultant, for the assignment;
- (c) that the expression of interest is to be submitted using the one stage-single envelope method;
- (d) the criteria to be used to select the consultants which shall be based on the experience and qualifications of the consultant and capacity to provide the consultancy services; and
- (e) whether the selection shall take into account references and use interviews to assess the skills, qualifications and experience of the consultant.

(4) Where a consultant is to be interviewed as part of the selection process, the notice shall state that—

- (a) the consultant invited for the interview will bear the costs of attendance;
- (b) the consultant invited for the interview shall be notified of the arrangements for the interview; and
- (c) where the consultant who is invited for interviews fails to attend, the consultant shall be eliminated from the selection process.

(5) The full terms of reference shall be displayed on a website referenced in the notice and shall promptly be made available to a consultant who makes a request.

(6) A procuring and disposing entity shall use the standard notice inviting individual consultants issued by the Authority to prepare a notice inviting individual consultants.

Request for proposals

18. Drafting request for proposals.

(1) A procuring and disposing entity shall use the standard request for proposals issued by the Authority, to draft a request for proposals for a consultancy service.

(2) A request for proposals shall be approved by the Contracts Committee.

(3) For the purposes of drafting a request for proposals under sub regulation (1), a Procurement and Disposal Unit shall not make any textual or other changes to the section on instructions to consultants, the section on the general conditions of the contract and the section on the proposal forms, except in accordance with sub regulation (4).

- (4) The Procurement and Disposal Unit shall—
 - (a) effect any necessary changes to the instructions to the consultants by an entry in the data sheet;

- (b) effect changes to the general conditions of contract by an entry to the special conditions of contract;
- (c) modify the statement of requirements, as may be required; and
- (d) modify the evaluation and qualification criteria in accordance with the options in the standard request for proposals issued by the Authority and these Regulations.

(5) A request for proposals shall—

- (a) define the terms of reference of the consultancy service in a precise form and in a manner that leaves no doubt or assumption by a consultant;
- (b) state clearly the selection method to be used which shall be appropriate to the requirements of the procuring and disposing entity;
- (c) state the validity period of the proposals;
- (d) state whether a pre-proposal meeting is to be held;
- (e) where appropriate, notify of the date, time and the location for the opening of the technical proposals and the information to be read at the opening session;
- (f) state clearly the evaluation criteria to be used including the all appropriate factors and their weighting and method of application;
- (g) include a draft contract with the structure of payment, payment terms and method of payment; and
- (h) require that the basis of the prices and costs required are adequately defined and that these represent the full cost of the procurement requirement.

- (6) A request for proposals shall—
- (a) in respect of the instructions to the consultants on the selection process—
 - (i) indicate the form of the proposal securing declaration, where required;
 - (ii) indicate the form required of a valid proposal;
 - (iii) provide instructions on the requirements for signing and authorising proposals;
 - (iv) state the details for labelling the envelopes and that the proposals are to be submitted in a securely sealed plain outer envelope;
 - (v) contain instructions that a consultant may, at any time before the deadline for submission of proposals, withdraw the proposal and submit another or modify part of a proposal and the procedure for this;
 - (vi) state that a consultant may seek clarification on the request for proposal and the date by which clarification may be sought;
 - (vii) state that the original copy of the technical proposal and of the financial proposal shall be marked, “ORIGINAL” and specify the number of copies of the technical proposal and of the financial proposal to be submitted, which shall be marked, “COPY”.
 - (viii) the currency in which a proposal is to be submitted;
 - (ix) the proposal submission method, including instructions for the submission of the technical and financial proposals, separately, where applicable;
 - (x) the selection method and evaluation criteria to be used; and

- (xi) the procedure for conversion of prices to a single currency for evaluation purposes, including the source and date of exchange rates to be used;
- (b) in respect of the statement of requirements for the consultancy services, include—
 - (i) the terms of reference and the expected input of the key personnel;
 - (ii) the duration and timing of the inputs and the completion schedule;
 - (iii) the inputs and facilities to be provided by the procuring and disposing entity; and
 - (iv) the required deliverables or outputs and the arrangements for approval or acceptance of the deliverables or outputs;
- (c) in respect of the proposed contract, include—
 - (i) the type of contract to be placed;
 - (ii) the amount and form of the performance security, where this is required;
 - (iii) the currency in which the contract price is to be paid;
 - (iv) the payment terms and the documentation required for payment;
 - (v) the basis for determining the fixed prices and the variable prices, and the method for calculating the variations in the variable prices, where required;
 - (vi) provisions relating to fraud and collusion; and
 - (vii) the method of payment.

(7) For the purposes of sub regulation (6) (a) (v) and (vi), the consultants shall indicate on the envelopes—

- (a) the procurement reference number;
- (b) the name of the consultant; and
- (c) the following words—
 - (i) “TECHNICAL” or “FINANCIAL”, as may be necessary;
 - (ii) “WITHDRAWAL” “MODIFICATION” or “REPLACEMENT”, as may be necessary; and
 - (iii) “NOT TO BE OPENED BEFORE DATE AND TIME OF PROPOSAL OPENING”.

(8) The request for proposals may require a consultant to comment on the terms of reference.

19. Changes to proposal details.

(1) The request for proposals shall state that a consultant shall not seek to make a change to the substance of a proposal submitted and shall not be permitted to effect any change, after the deadline for submission of proposals.

(2) The request for proposals shall state that the proposal of a consultant who attempts to make a change to the proposal, after the deadline for submission of proposals, shall be rejected and the consultant reported to the Authority.

20. Details of terms of reference in request for proposals.

(1) A statement of requirements for the procurement of consultancy services shall be in the form of terms of reference.

(2) The terms of reference for consultancy services shall be included in the request for proposals and in the contract.

(3) The terms of reference shall contain a clear and unambiguous description of the required consultancy services and shall include—

- (a) a background narrative to the required consultancy services;
- (b) the objectives of the required consultancy services and a list of the targets to be achieved by the consultant;
- (c) a list of the specific tasks or duties to be performed;
- (d) a schedule of the deliverables or the outputs for the assignment and the timelines for submission of the deliverables or outputs, against which the achievements of the consultancy services are to be measured;
- (e) the management and reporting lines of the consultant, to the procuring and disposing entity and the specific administrative arrangements and reporting requirements to apply;
- (f) the duration of the assignment and the timetable for implementing the assignment;
- (g) the industry standards applicable to the assignment, if any; and
- (h) the required key personnel and their minimum qualifications.

21. Details to be included in the request for proposal.

- (1) A request for proposals shall—
 - (a) where the quality and cost based selection method is to be used, state—
 - (i) the technical evaluation criteria to be used and the maximum scores for each criterion;
 - (ii) the qualifying score of the technical proposal; and
 - (iii) the relative weights to be allocated to the technical and the financial proposals at evaluation;
 - (b) where the quality based selection method is used, state—
 - (i) the technical evaluation criteria to be used and the maximum scores for each criteria; and

- (ii) the qualifying score of the technical proposal;
- (c) where the fixed budget selection method is to be used, state—
 - (i) the technical evaluation criteria to be used and the maximum scores for each criterion;
 - (ii) the qualifying score of the technical proposal; and
 - (iii) the budget for the assignment;
- (d) where the least cost selection method is to be used, state—
 - (i) the technical evaluation criteria to be used and the maximum scores for each criteria; and
 - (ii) the qualifying score of the proposal;
- (e) where the consultants qualification selection method is used, state—
 - (i) the technical evaluation criteria to be used and the maximum scores for each criteria; and
 - (ii) the qualifying score of the proposal.

(2) For the purposes of sub regulation (1) (a) (iii) the weight for the financial score shall not be less than ten points and not more than thirty points of the total of one hundred points for the technical and financial proposals.

22. Details of evaluation criteria to be included in request for proposals.

(1) The evaluation criteria to be used shall be stated in the request for proposal and the evaluation shall be conducted in accordance with the criteria without any amendment to the criteria.

(2) The request for proposals shall state the technical evaluation criteria, which shall consist of a number of main criteria which may be divided into sub criteria.

(3) The request for proposals shall state that total of the points for all the criteria shall be one hundred and shall state the maximum number of points for each main criterion.

(4) The main criteria and maximum number of points in this subregulation are indicative and may be adjusted to the specific circumstances of the procurement requirement—

	Criteria	Range of points
(a)	Specific experience	5 to 10 points
(b)	Methodology proposed	20 to 50 points
(c)	Key personnel	30 to 60 points
(d)	Transfer of knowledge	0 to 10 points
(e)	Participation by nationals	0 to 10 points
	Total	100 points

(5) Where an evaluation is complex or where a detailed evaluation of sub criteria or the curriculum vitae is required, each criterion may be scored out of one hundred points and the scores of each criterion weighted to obtain a maximum total of one hundred points.

23. Issue of request for proposals.

(1) A request for proposals shall be issued to all the consultants who are invited to submit proposals, on the same day.

(2) A procuring and disposing entity shall obtain a signed receipt or other confirmation of receipt of the request for proposal from the consultant to whom a request for proposal is issued.

(3) A procuring and disposing entity shall only receive proposals from consultants who are invited to submit proposals.

(4) A procuring and disposing entity shall record the issuance of the request for proposals using Form 20 in the Schedule.

24. Considerations in respect of taxes, duties and levies.

(1) A request for proposals shall state the taxes, duties and levies to be included in the evaluated price.

(2) A procuring and disposing entity shall state the liability to taxes and other such charges for the consultant for the duration of the consultancy.

(3) Unless otherwise stated in the request for proposals, where a preference scheme applies, the cost of any taxes, duties or levies shall be included in the evaluated price prior to the application of any margin of preference.

25. Availability of staff.

(1) A procuring and disposing entity shall in the request for proposals, where appropriate—

- (a) request the consultant to confirm the availability of the key professional staff, whose curriculum vitae are to be included in the proposal and which shall be evaluated; and
- (b) request for signed statements of availability from the key professional staff, which shall be included in the proposal.

(2) A procuring and disposing entity may, where necessary, allow a consultant to substitute the key professional staff of the consultant, and where the procuring and disposing entity allows this, the substitute staff shall have equivalent or superior qualifications and experience.

(3) A consultant shall confirm the availability of the key professional staff.

26. Insurance and indemnity for consultancy services.

(1) A procuring and disposing entity shall in the request for proposal require a consultant—

- (a) to indemnify or cause to be indemnified, the procurement requirements for the consultancy services—

- (i) against damage, loss or injury to person or property arising from the services provided; and
 - (ii) against any actions, suits, claims, demands, costs and expenses occasioned by negligent or breach of statutory duty by a consultant; and
- (b) to have and maintain adequate professional liability and insurance coverage against negligent performance.

(2) A procuring and disposing entity shall state the insurance and indemnity required for the procurement of consultancy services in the request for proposals and shall require a consultant to include in the proposal, the costs of the insurance and indemnity.

27. Period for preparation of proposals for consultancy services.

(1) The period for preparation of proposals for consultancy services shall start on the date the consultants are invited to submit proposals and end on the deadline for submission of proposals.

(2) A procuring and disposing entity shall determine the period in subregulation (1), taking into consideration the following factors-

- (a) the time necessary for the consultants to prepare the proposals, taking into account the level of detail required and the complexity of proposals and to obtain authenticated legal documents, where these are required;
- (b) the location of consultants invited to submit proposals and the time required to deliver the request for proposals to the procuring and disposing entity; and
- (c) the anticipated duration of the procurement process.

(3) The minimum bidding period shall be—

- (a) fifteen working days, in the case of consultancy firms; and

(b) ten working days in the case of individuals.

(4) Subregulation (3) shall not apply in an emergency situation or where single or sole source consultant is invited in accordance with regulation 16.

28. Clarification and amendment of request for proposals.

(1) Where a consultant makes a request for clarification, the procuring and disposing entity shall in writing, provide the clarification and send a copy of the clarification to all the consultants who are invited to submit proposals.

(2) The clarification shall describe the request made, but shall not identifying the consultant who makes the request.

(3) At any time, prior to the deadline for submission of proposals, a procuring and disposing entity may, at its own initiative or in response to a request for clarification from a consultant, amend the request for proposals by issuing an addendum.

(4) Where a procuring and disposing entity amends the request for proposals by issuing an addendum, the procuring and disposing entity may where necessary extend the period for preparation of proposals, as may be appropriate.

(5) The addendum and the extension to the period of submission of proposals, shall be issued to all the consultants who are invited to submit proposals.

(6) An addendum to a request for proposals shall be approved by the Contracts Committee prior to issue to the consultants.

(7) The addenda shall be numbered sequentially.

(8) The clarifications and amendments to the request for proposals issued under this regulation shall be binding on the consultants.

29. Pre-proposal meetings.

(1) A procuring and disposing entity may hold a pre-proposal meeting to allow consultants to whom a request for proposals is issued to seek clarification on the requirements of the procuring and disposing entity.

(2) A pre-proposal meeting shall be managed by the Procurement and Disposal Unit and person nominated by the user department shall attend the meeting.

(3) To allow the consultants take into account any additional information in the preparation of the proposals, the pre-proposal meeting shall be held within sufficient time before the deadline for submission of proposals.

(4) A procuring and disposing entity shall give the consultants sufficient notice of the meeting.

(5) The minutes of a pre-proposal meeting shall be recorded using Form 21 in the Schedule and copies of the minutes shall be provided to all the consultants who are issued the request for proposals.

30. Period of validity of proposals and extension of period of validity.

(1) The period of validity of a proposal shall start from the date of the closing of submission of the proposal and end on the last day of the period of validity of the proposal.

(2) A procuring and disposing entity shall determine the period of validity of a proposal taking into consideration the following—

- (a) the time needed by the procuring and disposing entity to undertake the technical and financial evaluation and negotiations, as appropriate;
- (b) the time needed by the Contracts Committee to adjudicate the award of contract recommendation; and

- (c) the time needed by the Procurement and Disposal Unit to prepare the letter of proposal acceptance and the contract and to obtain the required approvals.

(3) Where it is necessary, for purposes of completing the requirements specified in subregulation (2), to extend the period of validity of a proposal, the consultant shall be requested in writing, before the expiry of the validity of the proposal of the consultant, to extend the period of validity of the proposal.

(4) A consultant shall not, in extending the period of validity of a proposal, change the price or any other item of the proposal.

(5) A consultant may refuse to extend the period of validity of the proposal and where the consultant refuses, the proposal securing declaration shall not be executed.

31. Proposal securing declaration.

(1) A procuring and disposing entity may require a consultant to provide a proposal securing declaration in respect of the proposal submitted.

(2) A proposal securing declaration shall be—

(a) in a format provided in the request for proposals; and

(b) valid until the date prescribed in the request for proposals.

(3) Where a consultant breaches the proposal securing declaration, the procuring and disposing entity shall immediately notify the Authority.

(4) The Authority may in accordance with Section 94 of the Act, suspend a consultant who breaches a proposal securing declaration.

32. Methods for submission of proposals.

(1) A procuring and disposing entity shall use one of the following methods of submission of proposals—

- (a) the one stage-two envelope method where the proposal is submitted in an outer sealed envelope containing two separately sealed envelopes labelled “technical proposal” and “financial proposal”, respectively;
- (b) the one stage-single envelope method where a proposal is submitted in one sealed envelope; or
- (c) two stage method where, at the first stage only the technical proposal is submitted and at the second stage, a revised technical proposal and a financial proposal are submitted.

(2) The method of submission of proposals shall be used for the respective methods of procurement and shall be based on the following—

- (a) the one stage-two envelope method shall be used where, the quality and cost based selection method, the quality based selection method, the least cost selection method or the fixed budget selection method is used and may be used for the quality based selection method;
- (b) the one stage-single envelope method shall be used for the direct procurement method or the consultants’ qualifications selection method; and
- (c) the two stage method shall be used for the quality based selection method.

33. Withdrawal, modification and replacement of proposals.

(1) A consultant shall withdraw or modify a proposal by writing a letter, notifying the procuring and disposing entity of the withdrawal or modification, as the case may be.

(2) The letter to withdrawal a proposal shall be contained in an envelope clearly marked, “WITHDRAWAL” and shall be submitted in the same way as a proposal.

(3) A consultant who withdraws a proposal may submit a replacement proposal which shall be submitted in an envelope clearly marked “REPLACEMENT”.

(4) A consultant may modify part of a proposal by submitting another proposal in respect of the part to be modified with a covering letter in an envelope clearly marked, “MODIFICATION”.

(5) The proposal submitted under subregulation (4) and the covering letter shall indicate the part of the proposal to which the modification relates.

Receipt and opening of proposals

34. Methods of receipt of proposal.

(1) A proposal shall be received by a procuring and disposing entity where—

- (a) the proposal is received by a member of the Procurement and Disposal Unit; or
- (b) the proposal is deposited in the proposal box.

(2) A procuring and disposing entity shall not be held liable for risk of loss or delay in delivery of a proposal delivered by courier.

35. Receipt of proposals in person and closing of submission of proposals.

(1) A member of the Procurement and Disposal Unit shall be available at the location for submission of proposals, for a reasonable period of time before the deadline for submission, to receive proposals and to issue receipts.

(2) The Procurement and Disposal Unit shall issue a receipt for each proposal received, stating the date and time the proposal is received.

(3) A procuring and disposing entity shall maintain a record of the proposals received using Form 22 in the Schedule which shall indicate the name of the consultant, the date and time the proposal is received and name of the member of staff of the Procurement and Disposal Unit who receives the proposal.

(4) The process of submission of proposals shall be closed at the deadline for submitting proposals.

(5) A proposal that is brought to the location of submission of proposals after the deadline for submission shall not be accepted or received by the procuring and disposing entity.

(6) A proposal that is submitted after the deadline for submission of proposals shall be labelled “LATE”, and shall be returned unopened to the consultant or shall be destroyed where the proposal is not labelled with the name of the consultant.

(7) The closure of the process of submission of proposals shall be managed by at least one member of the procurement and disposal unit and shall be witnessed by a member of the Contracts Committee or a person nominated by the user department.

(8) The persons referred to in subregulation (7) shall fill and sign Form 22 in the Schedule to confirm that selection closed at the deadline for submission of proposals.

(9) Immediately after the closure of the process of submission of proposals, the proposals received shall be moved to the location where the proposals are to be opened.

36. Receipt of proposals by box and closing of submission of proposals.

(1) A Procurement and Disposal Unit shall provide a box for submission of proposals which shall be accessible to a consultant during working hours, until the deadline for submission of proposals.

(2) A Procurement and Disposal unit may issue a receipt for each proposal received, stating the date and time the proposal was received, before it is placed in the box and record the receipt of the proposal using Form 22 in the Schedule.

(3) Where a proposal is too large to be placed in the box, a member of the Procurement and Disposal Unit shall receive the proposal and issue a receipt.

(4) The process of submission of proposals shall be closed at the deadline for submission of proposals, by sealing the box.

(5) A proposal that is brought to the location for submission of proposals after the deadline for submission shall not be, placed in the box or accepted in any other way.

(6) The closure of the process of submission of proposals shall be managed by at least one member of the Procurement and Disposal Unit and shall be witnessed by a member of the Contracts Committee or a person nominated by the user department.

(7) The persons referred to in subregulation (6) shall sign Form 22 in the Schedule to confirm that selection was closed at the deadline for submission of proposals.

(8) Immediately after the closure of the process of submission of proposals, the proposals received shall be moved to the location where the proposals are to be opened.

37. Representation of consultants at public opening.

(1) A consultant or a representative of the consultant may attend the public opening session.

(2) A consultant or a representative of the consultant shall be requested to confirm that the proposal 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 proposal.

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

38. Information to be read out at technical opening.

The Procurement and Disposal Unit shall at the technical opening session notify the consultants of—

- (a) the consultants who submit proposals;
- (b) a consultant that did not submit a proposal securing declaration, where this was requested for;
- (c) the consultant who submitted separately sealed financial proposals, where this was required; and
- (d) any other information that is required to be stated at the public opening as indicated in the request for proposals.

39. Procedure for public opening of technical proposals.

(1) The public opening of technical proposals 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) At the public opening, the Procurement and Disposal Unit shall first manage the envelopes marked “WITHDRAWAL” by reading out the names of the consultants as indicated on the envelopes and returning the sealed envelopes to the consultants.

(3) A proposal shall be accepted as withdrawn where the withdrawal notice is in accordance with the instructions for withdrawal of proposals stated in the request for proposals.

(4) The Procurement and Disposal Unit shall open all the other envelopes including the envelopes marked “REPLACEMENT” and “MODIFICATION” and read out the information that is required by the request for proposal to be read out at the public opening session.

(5) The financial proposals shall not be opened at the public opening session.

(6) A replacement proposal shall be recorded as such in the record of the proposal opening session.

(7) The signed pages of the technical proposal and any other pages as may be determined by the person who chairs the public opening session to be the important pages of the technical proposals shall be endorsed with the stamp of the procuring and disposing entity and signed or initialled by that person.

(8) The procuring and disposing entity shall, in the record of proposal opening session, note the proposal securing declarations received.

(9) A copy of the record shall be made available to a consultant or a representative of the consultant, upon request, and on payment of the fee prescribed by the Authority in guidelines.

(10) A copy of the record shall be posted on the procurement and disposal notice board of the procuring and disposing entity, three working days after the public opening session is held and shall be displayed for a minimum of one week.

(11) The public opening of the technical proposals and expressions of interest shall be recorded using Form 23 in the Schedule.

Methods of selection of consultants and evaluation of proposals

40. Methods of selection of consultants.

(1) A procuring and disposing entity may use any of the following selection methods for the selection of consultants—

- (a) the quality and cost based selection method;
- (b) the quality based selection method;
- (c) the fixed budget selection method;

- (d) the least cost selection method; or
- (e) consultants qualifications selection method.

(2) A request for proposals shall indicate the selection method to be used by the procuring and disposing entity.

(3) A procuring and disposing entity shall use the quality and cost based selection method to select consultants except in the circumstances specified in subregulation (4), where other selection methods may be used.

(4) A procuring and disposing entity may use other methods in the following circumstances—

- (a) the quality based selection method shall be used for—
 - (i) highly specialised assignments, where it is difficult to develop precise terms of reference or the required input and for which a procuring and disposing entity expects consultants to demonstrate innovation in the proposal;
 - (ii) assignments that have a high downstream impact and in which, the objective is to have the best consultants; and
 - (iii) assignments that can be carried out in several different ways, where a proposal is therefore not comparable and where the value of the consultancy services depends on the quality of the proposals submitted;
- (b) the fixed budget selection method shall be used where an assignment is simple, can be precisely defined, and where the budget is fixed;
- (c) the least cost based selection method shall be used where the required consultancy service is of a standard or routine nature and where well established practices and standards exist; and

- (d) the consultant qualifications selection method shall be used for consultancy services of a value as may be prescribed by the Authority in guidelines.

41. Application of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014.

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

42. Evaluation of proposals.

(1) An evaluation committee shall evaluate the proposals for provision of consultancy services using the method and criteria stated in the request for proposals.

(2) The technical proposals shall be evaluated within thirty working days from the date of the opening of the technical proposals.

(3) The financial proposals shall be evaluated within seven working days from the date of the opening of the financial proposals.

43. Request for clarification of proposals.

(1) Notwithstanding regulation 19, an evaluation committee may at any stage of the evaluation, request a consultant to clarify the information provided in the proposal 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 sub regulation (1) where—

- (a) there is a nonconformity or an omission in the proposal, which is not a material deviation as specified in regulation 44 (3); 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 proposal except to correct errors in accordance with regulation 44;
- (b) changing the substance of the terms and conditions of the proposal; or
- (c) substantially altering anything which forms a crucial or deciding factor in the evaluation of the proposal.

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

- (a) alters or amends the price of a proposal except to correct errors in accordance with regulation 44;
- (b) changes the substance of the terms and conditions of the proposal; or
- (c) substantially alters anything which forms a crucial or deciding factor in the evaluation of the proposal.

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

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

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

44. Correction of non-conformities and omissions.

(1) Notwithstanding regulation 19, an evaluation committee may correct non-conformity or an omission in a proposal that does not constitute a material deviation.

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

(3) For the purposes of these Regulations a material deviation is a deviation that—

- (a) is inconsistent with the request for proposal and which may limit in any substantial way, the rights of the procuring and disposing entity or the obligations of the consultant under the contract;
- (b) if corrected would unfairly affect the competitive position of the other consultants whose proposal are administratively compliant; or
- (c) impacts the key factors of a procurement including cost, risk, time and quality and causes unacceptable—
 - (i) time schedules, where it is stated in the request for proposals that time is of the essence;
 - (ii) alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; or
 - (iii) counter-proposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty.

45. Receipt and evaluation of single proposal or of limited number of proposals.

(1) Where a procuring and disposing entity receives one proposal or a limited number of proposals in response to a notice inviting expression of interest or in response to a request for proposals sold or issued to bidders, the procuring and disposing entity may accept the single proposal or the limited number of proposals.

(2) For the purposes of subregulation (1), an evaluation committee shall select the single proposal or the limited number of proposals where the evaluation committee determines that—

- (a) the procurement method was appropriate for the required consultancy service and that there is an adequate number of consultants that make competition possible;
- (b) the bidding period was sufficient for the procurement method and the required consultancy service;
- (c) the terms and conditions of the request for proposals were reasonable and not excessive to deter competition;
- (d) the proposal notice, if any, was published in an appropriate publication and on the required date;
- (e) the short list has the required number of consultants;
- (f) the consultants who are shortlisted were issued with the request for proposal and that there was no delay in issuing the request for proposals;
- (g) the amendments to the request for proposals, if any, allowed sufficient time for the bidders to take the amendments into account in preparing the proposals;
- (h) there was no unrelated event or circumstance that may have affected the ability of the bidders to respond to the proposal notice or the request for proposals; and
- (i) there is no suspicion of collusion between the consultants.

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

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

46. Preliminary examination.

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

(2) A proposal shall be administratively compliant where the proposal conforms to the instructions, requirements and the terms and conditions of the request for proposals without any non-conformity or omission.

(3) A proposal shall be administratively compliant where—

(a) the proposal is submitted in the required format;

(b) the financial proposal is submitted separately;

(c) the signature and authorisation to submit proposals is in accordance with the instructions in the request for proposals;

(d) a proposal securing declaration, if required, is submitted in the correct format;

(e) the validity of the proposal 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 proposal that is not administratively compliant and responsive to the request for proposals, shall be rejected at the preliminary examination stage of evaluation.

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

47. Detailed evaluation.

(1) An evaluation committee shall using the evaluation criteria in the request for proposals and based on the contents of a proposal, conduct a detailed evaluation of a proposal that passes the preliminary examination.

(2) The detailed evaluation shall compare the details of the proposal with the criteria stated in the request for proposals.

(3) The detailed evaluation of proposals shall use a merit point evaluation system as specified in the request for proposals.

(4) A proposal which does not achieve the minimum score required in the request for proposal shall be rejected at the detailed evaluation stage.

48. 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 proposal 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 proposal, from which the average score for each proposal shall be calculated;

- (d) the members of the evaluation committee shall compare the scores of each evaluator for each proposal 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 proposal 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 proposal, the member shall be permitted to adjust the scores awarded but shall not be obliged to make the adjustments.

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

(3) For the purposes of subregulation (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 proposal.

(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.

(6) The evaluation committee shall, in the evaluation report, indicate the strengths and weaknesses of each proposal.

49. Technical evaluation report.

(1) The Procurement and Disposal Unit shall submit the report of the evaluation committee to the contracts committee for approval before the financial proposals are opened.

(2) The evaluation report shall be signed by all the members of the evaluation committee and a member who is not able to sign the report shall give a written explanation for this.

(3) The technical evaluation report shall contain—

- (a) a summary of the preliminary examination;
- (b) the results of the technical evaluation, including the scores allocated to each proposal, a narrative on the strengths and weaknesses of each proposal and the ranking of the proposals as may be required by the selection method;
- (c) the non-conformity or omissions, if any, relating to the technical method used by the consultant or regarding the staffing or required experience; and
- (d) recommendations on the proposals that should be evaluated at the financial comparison stage.

(4) The technical evaluation report shall be prepared using Form 24 in the Schedule.

50. Notification to consultants not recommended for financial evaluation.

(1) After the approval of the technical evaluation report by the Contracts Committee and before the financial proposals are open, the consultants whose proposals 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 consultant whose proposal 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 proposal at the technical evaluation, the reasons for the disqualification of the proposal and the weaknesses of the proposal against the evaluation criteria.

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

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

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

51. Evaluation of proposals of single consultants and sole source consultants.

(1) The evaluation committee shall make a recommendation for award of contract, to a single consultant or sole source consultant where the proposal of the consultant achieves the minimum technical score.

(2) Where the technical proposal of a single consultant or a sole source consultant is not administratively compliant or does not achieve the minimum technical score, the evaluation committee shall recommend to the Contracts Committee to reject the proposal and to invite another consultant to submit a proposal.

(3) The Procurement and Disposal Committee shall submit the report of the evaluation committee the contracts committee for approval without any change or comment.

(4) The evaluation report shall state—

(a) the results of the preliminary examination;

- (b) the technical scores awarded by each member of the evaluation committee;
- (c) the total technical score for the proposal;
- (d) a description of the relative strengths and weaknesses of the proposal;
- (e) the price of the financial proposal read out at the proposal opening session;
- (f) the results of the assessment of responsiveness to the terms and conditions of the request for proposals;
- (g) the evaluated price of the proposal, following any arithmetic corrections or adjustments to the price;
- (h) a recommendation to award the contract to the consultant or where the proposal is rejected, the reasons for the rejection; and
- (i) the issues that require negotiations, if any.

(5) The evaluation report shall be signed by all the members of the evaluation committee and a member who is not able to sign the report shall give a written explanation for this.

(6) The evaluation report shall be prepared using Form 24 in the Schedule.

Evaluation of financial proposals

52. Notification of public opening of financial proposals.

(1) A procuring and disposing entity shall notify the consultants whose technical proposals qualify for financial comparison and invite the consultants to the session for opening the financial proposals.

(2) The notification shall indicate—

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

(3) The session for opening the financial proposals shall be open to the public.

53. Procedure for opening of financial proposals.

(1) The opening of the financial proposals 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 proposals and read out the information that is required by the request for proposal, to be read out at the public opening session.

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

- (a) of the consultants who submitted proposals;
- (b) of the technical score obtained by each consultant;
- (c) of the total price of each financial proposal, 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 request for proposals.

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

(5) For purposes of subregulation (4), the important pages of a financial proposal shall be the signed pages of the financial proposal, the proposal submission sheet and all the pages containing financial information.

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

(7) A copy of the record of the proposal 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 proposals shall be recorded using Form 25 in the Schedule.

54. Representation of consultants at opening session of financial proposals.

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

(2) A consultant or a representative of the consultant shall be requested to confirm that the proposal 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 proposal.

55. Financial comparison.

(1) An evaluation committee shall conduct a financial comparison of the proposals by examining and comparing the financial proposals and determining the best evaluated proposal.

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

(3) The financial comparison shall—

- (a) assess whether a proposal conforms to the terms and conditions of the request for proposals, without material deviation;
- (b) determine the proposal price;
- (c) correct any arithmetic errors in a proposal;
- (d) determine whether a financial proposal is complete and where a proposal is not complete, cost the missing items and add these to the original proposal price in accordance with regulation 57;
- (e) make adjustments for a non-conformity or an omission in a proposal that does not constitute a material deviation in accordance with subregulation (4);
- (f) convert the currencies of the proposals into a single currency for purposes of comparison, where required;
- (g) apply any margin of preference in accordance with the procedure specified in the request for proposals;
- (h) determine the total evaluated price of each proposal;
- (i) award a financial score to each proposal or rank the proposals, in accordance with the requirements of the selection method used; and
- (j) determine the best evaluated proposal using the method and criteria specified in the request for proposals.

(4) For the purposes of subregulation (3) (e), an adjustment for a non-conformity or an omission in a proposal 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 proposal but which is not priced, shall be assumed to be included in the prices of the other inputs or items;
- (b) where the quantification of an input or item in the financial proposal is different from the quantification in the technical proposal—
 - (i) the evaluation committee shall, where a time-based contract is to be used, correct the quantification in the financial proposal to make it consistent with the quantification in the technical proposal by applying the relevant unit price to the corrected quantity and correcting the total financial price; and
 - (ii) and a lump sum contract is used, no corrections shall be made to the financial proposal.

(5) A financial proposal shall be determined to be complete where the price of the inputs and items required is indicated and included in the technical proposal.

56. Costs to be included in the financial comparison.

(1) The costs to be taken into account in the financial comparison include—

- (a) fee rates, based on either a fixed or estimated total input quantity;
- (b) reimbursable costs, such as costs for travel, translation, printing and dispatching report, communication and secretarial services;
- (c) costs for office accommodation, investigations and surveys;
- (d) costs of rental and freight for any equipment to be provided by the consultant;

- (e) duties, taxes or other levies; and
- (f) contingencies.

(2) The request for proposals shall state the costs to be taken into account in the financial comparison and the costs shall be excluded from the financial comparison.

57. Correction of arithmetic errors.

(1) Notwithstanding regulation 44, an evaluation committee may correct an error that is purely arithmetical.

(2) Where the request for proposals 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 the words and the figures in the proposal, 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).

58. Evaluation of financial proposals for consultancy services.

A financial proposal shall be evaluated using the selection method specified in the request for proposals and in regulation 40.

59. Evaluation of financial proposals under the quality and cost based evaluation method and determining the best evaluated proposal.

(1) An evaluation committee shall evaluate the financial proposals of the corresponding technical proposals that achieved the minimum qualifying score under the detailed evaluation for the technical proposals.

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

(3) The evaluation of the financial proposals shall be in accordance with regulation 55 (3).

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

(5) Notwithstanding subregulation (4), another method, where this is provided in the request for proposals, may be used to allocate scores for the cost.

(6) For the purposes of determining the best evaluated proposal—

- (a) the score of the technical and financial proposals shall be weighted, using the weights stated in the request for proposals;
- (b) the total score of a proposal shall be obtained by adding the weighted score of the technical and financial proposals; and
- (c) the consultant who obtains the highest total score under paragraph (b) shall, be recommended for award of contract.

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

- (a) the total price of the proposal of each consultant and technical score of each consultant as read out at the public opening of the financial proposals;
- (b) the results of the administrative compliance of the proposals to the terms and conditions of the request for proposals and the reasons for the rejection of the proposals that are rejected;
- (c) the evaluated price of each proposal, following any corrections or adjustments to the price and the conversion to a single currency;
- (d) the score of each financial proposal;
- (e) the weighting of the technical and financial scores;
- (f) the total score for each proposal; and
- (g) a recommendation to award the contract to the consultant who obtains the highest total score under subregulation(6).

(8) The Procurement and Disposal Unit shall submit the report of the evaluation committee to the contracts committee for approval without any change or comment

(9) The evaluation report shall be prepared using Form 26 in the Schedule.

60. Evaluation of financial proposals under the quality based evaluation method.

(1) An evaluation committee shall evaluate the financial proposal of the corresponding technical proposal that achieved the highest qualifying score under the detailed evaluation for the technical proposals.

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

(3) The evaluation of the financial proposal shall be in accordance with regulation 55 (3).

(4) The consultant who obtains the highest qualifying score under the detailed evaluation shall be recommended for award of contract.

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

- (a) the price of the financial proposal of the consultant, following any corrections or adjustments to the price and the technical score of the consultant as read out at the public opening of the financial proposals;
- (b) the results of the administrative compliance of the proposal to the terms and conditions of the request for proposals; and
- (c) a recommendation to award the contract to the consultant.

(6) The Procurement and Disposal Unit shall submit the report of the evaluation committee to the contracts committee for approval without any change or comment.

(7) The evaluation report shall be prepared using Form 26 in the Schedule.

61. Evaluation of financial proposals under the fixed budget evaluation method.

(1) An evaluation committee shall evaluate the financial proposals of the corresponding technical proposals that achieved the minimum qualifying score under the detailed evaluation for the technical proposals.

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

(3) The evaluation of the financial proposal shall be in accordance with regulation 55 (3).

(4) A proposal which exceeds the budget indicated in the request for proposals shall be rejected.

(5) The proposals that are within the budget of the procuring and disposing entity shall be ranked according to their technical scores and the consultant who submitted the highest ranked, of the technical proposals that are within the budget, shall be recommended for award of contract.

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

- (a) the total price of the proposal of each consultant and technical score of each consultant as read out at the public opening of the financial proposals;
- (b) the results of the administrative compliance of the proposals to the terms and conditions of the request for proposals and the reasons for the rejection of the proposals that are rejected;
- (c) the evaluated price of each proposal, following any corrections or adjustments to the price and the conversion to a single currency;
- (d) the proposals that were rejected for exceeding the budget;
- (e) the ranking of the proposals that are within the budget, using the score of the technical proposals;
- (f) a recommendation to award the contract to the consultant who obtains the highest technical score, that is within the budget; and

(g) where appropriate, a recommendation for negotiation and the issues for negotiations.

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

(8) The Procurement and Disposal Unit shall submit the report of the evaluation committee to the contracts committee for approval without any change or comment.

(9) The evaluation report shall be prepared using Form 26 in the Schedule.

62. Evaluation of financial proposals under the least cost evaluation method.

(1) An evaluation committee shall evaluate the financial proposals of the corresponding technical proposals that achieved the minimum qualifying score under the detailed evaluation for the technical proposals.

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

(3) The evaluation of the financial proposal shall be in accordance with regulation 55 (3).

(4) The financial proposals shall be ranked according to the total prices.

(5) The consultant who submits the lowest priced proposal, which meets the minimum qualifying score under the detailed evaluation shall be recommended for award of contract.

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

(a) the total price of each proposal and the technical score of each proposal as read out at the public opening of the financial proposals;

- (b) the results of the administrative compliance of the proposals to the terms and conditions of the request for proposals and the reasons for the rejection of the proposals that are rejected;
- (c) the evaluated price of each proposal, following any corrections or adjustments to the price and the conversion to a single currency;
- (d) the ranking of the proposals, according to their total proposal price;
- (e) a recommendation to award the contract to the consultant with the lowest proposal price, which meets the minimum qualifying technical mark; and
- (f) where appropriate, a recommendation for negotiation and the issues for negotiations.

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

(8) The Procurement and Disposal Unit shall submit the evaluation report to the Contracts Committee for approval without any change or comment.

(9) The evaluation report shall be prepared using Form 24 in the Schedule.

Selection of consultants who are individuals

63. Selection of consultant who is an individual.

(1) An evaluation committee shall select the consultant who is an individual with the best evaluated expression of interest.

(2) The selection shall be conducted using the criteria stated in the invitation for expression of interest.

(3) The evaluation committee shall during the selection—

- (a) verify that a consultant meets the eligibility criteria stated in the notice;
- (b) assess the skills, qualifications and experience of a consultant in relation to the requirements of the terms of reference and criteria stated in the invitation for expression of interest;
- (c) reject a consultant who does not substantially meet the requirements of the procuring and disposing entity, as defined in the terms of reference; and
- (d) rank the consultants who meet the requirements of the procuring and disposing entity according to the technical scores of their proposals.

(4) Where it is stated in the invitation for expression of interest, the evaluation shall—

- (a) take into account references; or
- (b) use interviews to assess the skills, qualifications and experience of a consultant.

(5) Where an interview is to be conducted, it shall be after the evaluation of the other criteria with the consultant with the best expression of interest.

(6) An interview may be conducted by telephone or other appropriate means of communication.

(7) An interview shall be conducted by at least three members of the evaluation committee who shall prepare a plan for the interview for the approval of the contracts committee, prior to the interview.

(8) The minutes of the interview shall form part of the evaluation report.

(9) Subject to the requirement for an interview in this regulation, the evaluation committee shall recommend to the contracts committee to award the contract to the consultant with the best expression of interest.

(10) The evaluation report shall contain—

- (a) the results of the assessment of responsiveness to the notice inviting expression of interest;
- (b) the score for the expression of interest, awarded by each member of the evaluation committee;
- (c) the total score for the expression of interest;
- (d) the evaluated price of the expressions of interest, following any arithmetic corrections or adjustments to the price;
- (e) a recommendation to award the contract to the consultant with the best expression of interest; and
- (f) a recommendation for negotiations, where necessary.

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

(12) The evaluation report shall be submitted to the Contracts Committee for approval.

(13) The evaluation report shall be prepared using Form 26 in the Schedule.

Contracts for consultancy services

64. Types of contracts for consultancy services.

(1) A procuring and disposing entity shall use the following types of contracts as shall be necessary—

- (a) a lump sum contract shall be used where the content of the required consultancy service, the duration of the consultancy service, and the required output are clearly defined and are all in the control of the consultant;
- (b) a time-based contract shall be used where it is difficult to define the scope and duration of the required consultancy service, where the consultancy service is related to an activity performed by other consultant for which the completion period may vary or where the input required to attain the objectives is difficult to assess;
- (c) a framework contract shall be used—
 - (i) for regularly required professional services or technical advice, such as audit services or legal or procurement advice;
 - (ii) where there is a need to have consultancy services “on call” and the extent and timing of the requirement cannot be defined in advance; or
 - (iii) for requirements which are needed repeatedly or continuously over a period of time and having the requirement available on a “call off” basis would reduce procurement costs or reduce lead times;
- (d) a percentage based contract shall be used where it is appropriate to relate the fee to be paid directly to the estimated or actual cost of the subject of the contract, such as the construction cost of the project or the cost of goods procured, auctioned or inspected such as architectural services, third party procurement, auctions or inspection services; and
- (e) a retainer contract shall be used where a procuring and disposing entity intends to retain a specialised consultant over a prescribed period of time, but where the level and amount of services required cannot be defined or where advisers are to be retained for the implementation of complex projects or for technical troubleshooting.

(2) The Public Procurement and Disposal of Public Assets (Contracts) Regulations 2014 shall, with the necessary modifications, apply to the contracts for the procurement of consultancy services entered into under these Regulations.

65. Evaluated price and contract price.

(1) The price of the best evaluated proposal shall be used only as a basis for evaluating a proposal and shall not necessarily be the price of the resulting contract.

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

- (a) any margin of preference that is allocated to the consultant during evaluation ;
- (b) any conversion to a common currency; and
- (c) any weightings applied to the financial proposals.

(3) For the avoidance of doubt, the following elements of a financial evaluation shall be included in the components of the proposed contract price—

- (a) the cost of all taxes, duties and levies originally included in the proposal price; and
- (b) any adjustments made to correct arithmetical errors.

66. Negotiations with consultants.

(1) For the purpose of section 88A of the Act, a procuring and disposing entity may, before award of contract conduct negotiations with a consultant to whom it is award of contract is recommended.

(2) The negotiations shall for all selection methods, except the quality based selection method and the direct selection method or the consultants qualifications method, relate to—

- (a) minor alterations to the terms of reference or the method proposed by the consultant, to take into account the comments of the consultant on the terms of reference;
- (b) the scope of the assignment and the inputs to be used;
- (c) minor amendments to the special conditions of the contract;
- (d) the arrangements for payment under the contract;
- (e) the work plan and completion schedule to accommodate any changes in the terms of reference or a request made by the procuring and disposing entity;
- (f) the inputs required from the procuring and disposing entity; or
- (g) clarification of any details that are not apparent or which could not be finalised at the time of submission of expression of interest.

(3) Where direct selection method, quality based selection method or the consultants qualifications method is used, the negotiations shall relate to—

- (a) alterations to the terms of reference or the method proposed by the consultant;
- (b) a reduction of inputs for budgetary reasons;
- (c) amendments to the special conditions of the contract;
- (d) the payment terms and arrangements;
- (e) proposal unit rates;
- (f) the work plan and completion schedule;

- (g) inputs required from the procuring and disposing entity; or
 - (h) clarification of any details that are not apparent or which could not be finalised at the time of submission of expression of interest.
- (4) The negotiations held under this regulation shall not—
- (a) substantially change the technical quality or details of the procurement requirement, including the tasks or responsibilities of the consultant;
 - (b) materially alter the terms and conditions of the contract stated in the request for proposal.