

REF: PPRA/6/5 VOL. II (142)

18th May, 2023

PPRA CIRCULAR No. 03/2023

TO: All Principal Secretaries/ Accounting Officers
The Clerk, Senate
The Clerk, National Assembly
All Clerks, County Assemblies
The Chief Registrar of the Judiciary
All Regional Coordinators
All County Commissioners
All Heads of Constitutional Commissions and Independent Offices
All Chief Executive Officers, State Corporations and SAGAs
All Accounting Officers, County Departments
All Vice Chancellors, Public Universities
All Ambassadors/ High Commissioners, Kenya Diplomatic Missions
All NG-CDF Fund Managers
All NGAAF Managers
All Managing Directors, Public Water Companies
All Principals, Public Colleges and Tertiary Institutions
All Public Primary and Secondary School
All Trust Secretaries, Pension Funds for Public Entities
All Managers, City Boards and Municipalities
Heads of All Other Public Institutions

PROCUREMENT OF INSURANCE SERVICES-TENDER REQUIREMENTS

The Public Procurement and Asset Disposal Act, 2015 (the Act) came into effect on January, 7th 2016. In order to fully operationalize the Act, the National Treasury issued the Public Procurement and Asset Disposal Regulations, 2020 on 2nd July 2020 (the Regulations). The Act gives effect to Article 227 of the Constitution of Kenya 2010 (the Constitution) which provides that public procurement should be conducted in a system that is fair, equitable, transparent, competitive and cost-effective.

As indicated above, one of objectives of Article 227 of the Constitution is effective competition among potential tenderers. The same is echoed under Section 3 of the Act as one of the guiding principles. It is therefore critical that procuring entities observe and adhere to the set-out principles in processing their procurement. It is the responsibility of the procuring entity to determine the tendering requirements including eligibility criteria and mandatory requirements for potential bidders as guided by Sections 55 of the Act and specifying it in the

tender document and invitation to tender pursuant to Sections 70 and 74(1) (h) of the Act. However, the tendering requirements should not extinguish competition and fairness amongst bidders as it is contrary to the objectives of Article 227 of the Constitution and Section 3 of the Act.

With regard to the procurement of insurance services, the Authority has received numerous complaints from the insurance industry players and prospective bidders on procuring entities setting prohibitive/restrictive requirements as part of the tender evaluation criteria in the bidding documents.

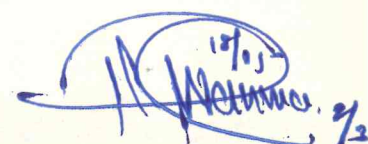
Upon our review of the complaints raised and analysis of the tender documents uploaded in the Public Procurement Information Portal, we have noted that some procuring entities are requiring bidders to provide requirements that are prohibitive and not proportionate to the estimated cost of services being procured. These include but not limited to evidence of profit, annual gross premium, professional indemnity cover limit and paid up capital limit. This, in our view restricts competition amongst interested bidders and contravenes Article 227 of the Constitution of Kenya, 2010 and Sections 60 and 80 (3) of the Public Procurement and Asset Disposal Act, 2015 (the Act).

We have sought guidance from the Insurance Regulatory Authority (IRA) on the matter and IRA has guided that since it issues licenses to insurers who have met the stipulated registration requirements, including having adequate capital to support the business, any insurer authorized by IRA to transact any class of insurance business should be eligible to bid for any insurance business in the Republic of Kenya.

The purpose of this Circular is to therefore, bring to the attention of all procuring entities of the above advisory from the Insurance Regulatory Authority and to remind all accounting officers of the need to ensure that the developed specific requirements relating to the goods, works or services being procured promote fair and open competition among those who may wish to participate in the procurement proceedings. In addition, the evaluation criteria should be objective and take into consideration the estimated cost of the goods, works or services being procured and be aligned to registration requirements provided for under the Insurance Act.

For avoidance of doubt, provision of insurance services, being part of procurement budget, is subject to preference and reservations pursuant to section 157 (5) of the Act which states that, *"An accounting officer of a procuring entity shall, when processing procurement, reserve a prescribed percentage of its procurement budget, which shall not be less than thirty per cent, to the disadvantaged group and comply with the provisions of this Act and the regulations in respect of preferences and reservations"*.

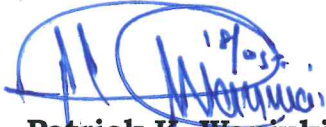
Further, we clarify that when using the open tender method, procuring entities should allow participation of all eligible registered insurance service providers.



10/05/2024
[Signature]

We therefore remind all Accounting Officers that it is an offence under the Act to breach the rules on specific procurement requirements or prepare skewed or tailored technical specifications, as provided under Section 60 of the Act.

All Accounting Officers are required to note and bring the contents of this Circular to the attention of all officers involved in public procurement and asset disposal activities within their jurisdiction.



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DIRECTOR GENERAL

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