

MINISTRY OF FINANCE & ECONOMIC DEVELOPMENT
PROCUREMENT POLICY OFFICE

Circular No. 8 of 2008

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From: Director, Procurement Policy Office

To : Heads of Public Bodies

Compliance with the Public Procurement Act 2006 and Procurement Regulations 2008

Some shortcomings on the part of public bodies and bidders have been noted in the initial stage of the implementation of the Public Procurement Act 2006. The purpose of this circular is to draw attention to those shortcomings and to ensure proper compliance with the provisions of the Act and the regulations.

Terminologies

2. With a view to avoiding any misinterpretation or misunderstanding, and for the sake of consistency, it is recommended to adhere to the terminologies used in the legislation as well as in the Standard Bidding Documents such as ‘Bid’, ‘Bid Security’ and ‘Performance Security’ instead of ‘Tender’, ‘Bid/Tender Bond’ and ‘Performance Bond’.

Rights of the Public Body

3. The Act provides that a public body may cancel a bid exercise prior to award of contract on anyone or more of the reasons mentioned in section 39 (1) of the Act. It is also provided that “Written notice of the rejection of all bids or cancellation of the public procurement proceedings shall be given to all bidders that submitted bids” [section 39(2) of the Act] and that ‘a notice of the rejection of all bids or the cancellation of the procurement proceedings shall state the grounds for the rejection of all bids, or the cancellation of the procurement proceedings, as the case may be’(reg.37). Accordingly, (a) in case of rejection of all bids or the cancellation of a bid exercise, the bidders should be informed of the ground of the action and (b) it is not in order to insert in the Invitation for Bids clauses like ‘the

public body reserves the right to cancel the bid exercise *without thereby incurring any obligation to inform any bidder of the ground of its action*'.

Rights of Bidders

4. Any challenge or appeal made by a bidder pursuant to Part VI of the Act should be promptly considered within the time limit provided. In the event a challenge or appeal is not properly made (e.g. where the bidder fails to make the challenge/appeal in the manner prescribed) appropriate guidance must be given to the bidder so that it may exercise its rights in a timely manner.

Preparation of Bid Documents

5. Public bodies should see to it that **no** alteration is made to the sections in the Standard Bidding Documents (SBDs) dealing with "Instructions to Bidders" and "General Conditions of Contract". On the other hand, the sections concerning 'Bidding Data' and 'Special Conditions of Contract' are meant to customize the bid documents so as to respond to the requirements of the public body, by filling in those data as guided by the standard bidding documents. In the event a public body feels the need to insert additional data in the 'Bidding Data' and/or the 'Special Conditions of Contract', it is advised that this Office be consulted to ensure that the inputs are acceptable and in line with good procurement practices.

Requirement of Bid Security

6. Pursuant to section 30 of the Act and Regulation 28, public bodies have the following options:

- (a) to request for a bid security, **where time is of essence and the failure of the successful bidder to sign the procurement contract would result in unacceptable delay;**
- (b) **not** to request for bid security -
 - for single source procurement, or
 - in situation where only a few overseas bidders are available.

Also, it is not considered advisable to request for a bid security for procurement of small values. It is left to the discretion of the public body, which is expected to be more knowledgeable of the market situation for its procurement, to identify such

situations and the threshold amount for small value procurement where a bid security may not be requested. In so doing, a public body may be equally aiming at improving responses from potential bidders.

7. Regulation 28(1) provides that, where a Bid Security is required, it has to be in the form of a **Bank Guarantee**. Office cheque is **not** acceptable in lieu of the Bank Guarantee.

8. Bid security can be from a reputable overseas bank or from any local bank.

Evaluation Criteria and Methodology

9. Bid documents should contain all the criteria and sub-criteria as well as the methodology and weights in the form of markings on the basis of which the evaluations will be conducted.

Use of Standard Bidding Document

10. Pursuant to section 7 (c) of the Act, Standard Bidding Documents issued by the PPO are for **mandatory use** by public bodies. As there are situations where public bodies have to conduct procurement for specific items and in such manner where the use of the Standard Bidding Documents may not be considered appropriate to meet the need of the public body, this Office will look into such cases and customize the documents for the sole use by those public bodies so as to be compliant with the Act.

11. When inviting bids, public bodies must ensure that the bidding document used is the updated version as posted on the website of the Office (www.ppo.gov.mu).

Time Allowed for Bid Preparation and Submission from Bidders.

12. The time allowed for submission of bids should be set after taking into consideration the complexity of the procurement and the time it would reasonably take the bidder to prepare his bid, gather all relevant documents required for submission, seek and obtain clarifications, if any, and submit documents by post or otherwise.

13. The prescribed minimum time for submission of bids when the open advertised bidding method is used is 30 days. There is no minimum time prescribed for submission of bids when other methods of procurement are used.

Guidance to Bidders

14. Ignorance by bidders of certain essential requirements referred to in the bidding documents issued may result in the rejection of bids for non compliance and thereby depriving a public body from benefitting from competitive bids. With a view to ensuring compliance with the requirements in the bidding documents thereby resulting in the submission of responsive bids, it is recommended that a check list as per annex be issued along with the bidding documents.

Publication of Notice of Award

15. Regulation 71 sets the manner and format for the publication of notice of award of major contracts.

No publication is required when the value of the contract awarded does not exceed the prescribed amount.

16. Please ensure that the contents of this circular are brought to the attention of the Chairman and Members of your Departmental Tender Committee as well as all those dealing with procurement in your organization.

**Procurement Policy Office
26 May 2008**

(Name of the Public Body)

The attention of Bidders is drawn to the following:

- (a) Where a bid security is required, it has to be in the form of a **Bank Guarantee and in the format contained in the bid documents. No office cheque will be accepted as bid security.** Please note that the non submission of a bid security in the format required may lead to the rejection of a bid for non-compliance.
- (b) The bid security should be valid for a period of 30 days **beyond** the validity date of the bid as required in the bid document.
- (c) Performance Security has to be submitted in the prescribed delay or else the Public Body may cancel its offer of contract award and the Bid Security will be forfeited.
- (d) Bidders should clearly mention their name and address on the back of the inner and outer envelopes containing their bids so as to enable the Public Body to return late bids unopened

(Title of the Officer of the Public Body)