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KENYA LITERATURE BUREAU

**PROCUREMENT GUIDELINES FOR YOUTH, WOMEN
AND PERSONS WITH DISABILITY**

**KENYA LITERATURE BUREAU
KLB ROAD
OFF POPO ROAD
P.O Box 30022 – 00100
NAIROBI**

Email: supplies@klb.co.ke

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1.BACKGROUND

Pursuant to Article 227(2) of the Constitution of Kenya, 2010 and section 155 and 157 of the Public Procurement and Asset Disposal Act 2015, candidates shall participate in the procurement proceedings without discrimination except where participation is limited in accordance with the Act and its Regulations.

The Public Procurement and Disposal (Preference and Reservations) Regulation 2011 was gazetted vide the legal notice number 58. In August 2020 the Public Procurement and Asset Disposal Regulations were gazetted. These regulations provided a framework for the implementation of preferential procurements in Kenya's public procurement. A new law governing procurement and assets disposal by public entities in Kenya known as the Public Procurement and Asset Disposal Act, No. 33 of 2015 (the "Act") later came into force on 7th January, 2016 repealing the Public Procurement and Disposal Act, 2005. All legal and gazette notices issued from 2005 when the old Act was in place have all been incorporated into the new Act. Section 53(6) of the Public Procurement and Asset Disposal Act, 2015 states that, „all state organs and public entities during their procurement and disposal planning are required to reserve a minimum of 30% of the budgetary allocations to enterprises owned by women, youth, persons with disabilities and other disadvantaged groups. Procurement circular No.1/2014 and Treasury circular no.1/2015 also state that it is a mandatory requirement to reserve the thirty percent.

Kenya Literature Bureau Guidelines For Youth, Women and People with Disability is (30%) threshold to these special groups and adhere to its full implementation. In addition, two percent (2%) of the thirty percent (30%) must be reserved for People with Disability. This guide has been published to assist in sensitizing and building the capacities of Youth, Women, and People with disabilities and other disadvantaged groups in doing business with Kenya Literature Bureau. In addition to this guide, prospective bidders are encouraged to familiarize themselves with the Public Procurement and Asset Disposal Act, 2015 and related regulations and manual to ensure full compliance.

2. INTRODUCTION

2.1 PURPOSE

The purpose of this document is to guide Youth, Women and People with Disability who intend to do business with the Bureau understand the stages of the Bureau's procurements and contracting processes and procedures. In addition, this guide is aimed at sensitizing and building the capacity of the Youth, Women and People with Disability on Public Procurement and Asset Disposal regulations.

2.2 APPLICABILITY OF GUIDELINES

This guideline is limited to the Youth, Women and People with Disability. The provisions described under this section 2 apply to all other sections of the Guidelines. For the procurement of those contracts for goods, works, and services not financed in whole or in part by the Bureau, the rules and regulations of the financier/donor shall apply.

2.3. JOINT VENTURES

Any firm may bid independently or in joint venture confirming joint and several liability, either with domestic firms and/or with foreign firms.

2.4 UNBUNDLING OF TENDERS

The Bureau may unbundle procurements to make them affordable to the Youth, Women & People with Disability who wish to participate.

2.5 FORMS OF COMMUNICATION

All communications and enquiries between parties on procurement and asset disposal proceedings shall be in writing. Information and Communication Technologies (ICT) may be used by the Bureau in procurement and asset disposal proceedings as prescribed in the Public Procurement and Asset Disposal Act, 2015 and subsequent regulations.

2.6 CONFLICTS OF INTEREST, FRAUD AND CORRUPTION

A person to whom the Public Procurement and Asset Disposal Act, 2015 applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceedings. In addition, a tender, proposal or quotation submitted by a person shall include a declaration that

the person will not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in procurement proceedings.

2.7 CONFIDENTIALITY

After the public opening of bids, information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with the procurement and disposal process until its final completion.

3. REGISTRATION OF BIDDERS AND CATEGORIES OF BUSINESS

3.1 KENYA LITERATURE BUREAU SUPPLIER REGISTER

The Bureau maintains lists of registered suppliers, contractors and consultants in various specific categories of goods, works or services according to its procurement needs. These lists shall be applied on the alternative procurement methods only. Open tenders shall be advertised in one widely circulated daily newspapers and uploaded on the Bureau's and the governments's websites.

Interested bidders are requested to forward their Bureau profiles to the Kenya Literature Bureau Supply Chain Department for registration consideration. Bidders shall be required to state procurement categories of interest. Kenya Literature Bureau allows for continuous application and hence continuous update of the lists and on expiry bidders are expected to seek fresh applications.

3.2 REGISTRATION DOCUMENTS

The following documents shall be required for registration consideration;

- a) Valid certificate from the National Treasury for Youth, Women or People with Disability **(Mandatory)**
 - b) Bureau profile
 - c) Registration certificate
 - d) CR12 or ID copy of Director
 - e) A completed Kenya Literature Bureau confidential business questionnaire
- Bidders with certificates from The National Treasury for Women, Youth and People with Disability shall be required to keep track of the expiry dates of the certificate to prevent disqualifications from procurement proceedings. Kenya

Literature Bureau shall endeavor to give equal opportunity to all registered bidders where alternative methods of procurement are applied. This shall be in line with the requirements set out in the Public Procurement and Asset Disposal Act, 2015 and its subsequent regulations and manuals.

3.3 CATEGORIES OF BUSINESS

The Bureau maintains the following listed business categories based on its business operations;

- a) Suppliers for Branded Giveaways and Corporate Wear
- b) Suppliers of General Stationery and Consumables
- c) Suppliers of Computer Consumables and Accessories
- d) Suppliers of General Printing
- e) Suppliers for Uniforms protective clothing and footwear
- f) Any other that may be necessary to its business operations

It shall be important for prospective bidders to indicate the business category of interest during registration for consideration. Prospective bidders are allowed to register for more than one business category.

4. METHODS OF PROCUREMENT OF GOODS, WORKS AND SERVICES

4.1 OPEN TENDERING

Open tendering shall be the preferred procurement method for procurement of goods, works and services. The Bureau may use an alternative procurement procedure only if that procedure is allowed and satisfies the conditions under the Public Procurement and Asset Disposal Act, 2015 for use of that method.

4.2 ALTERNATIVE PROCUREMENT METHODS

4.2.1 RESTRICTED TENDERING

Is a procurement method that limits the request for tenders to a select number of suppliers, contractors or service providers. The Accounting Officer may use restricted tendering if the conditions under the Public Procurement and Asset Disposal Act, 2015 and subsequent regulations and manuals are satisfied.

4.2.2 Direct procurement

Is a procurement method that limits the request for tenders to only one supplier, contractor or service provider. The Accounting Officer may use direct tendering if the conditions under the Public Procurement and Asset Disposal Act, 2015 and subsequent regulations are satisfied.

4.2.3 Request for quotations

The Bureau may use a request for quotation from the supplier register or market survey and is the procurement is goods that are readily available and for which there is an established market and the estimated value of the goods being procured is less than or equal to the prescribed maximum value for using the requests for quotations.

4.2.4 Force account

The Bureau may use force account by making recourse to the state or public officers and using public assets, equipment or and labour. The Accounting Officer may use force account if the conditions under the Public Procurement and Asset Disposal Act, 2015 are satisfied.

4.2.5 Request for proposals/consultancy services

The Bureau may use a request for proposals for procurement if the procurement is of a service or a combination of goods and services and the services to be procured are advisory or otherwise of a predominantly intellectual nature (*refer to Part X of the Act, 2015*).

4.2.6 Low value procurements

The Bureau may use a low-value procurement procedure if the estimated value of the goods, works or services being procured are less than or equal to the prescribed maximum value for that low-value procurement procedure and any other prescribed conditions for the use of the low-value procurement procedure are satisfied.

4.2.7 Two-stage tendering process

The Bureau may engage in this procurement method when, due to the complexity or inadequate knowledge on its part or advancements in technology, it is not feasible for the procuring entity to formulate detailed specifications for the goods or works or services in order to obtain the most satisfactory solution to the procurement needs.

This method shall be applied in compliance the Act, 2015 and subsequent regulations and manuals.

4.3 PRE-QUALIFICATION PROCEDURE

In addition to the alternative methods of procurement, Kenya Literature Bureau Accounting Officer where applicable, may conduct a pre-qualification procedure for complex and specialized goods, works and services for the purpose of identifying the best few qualified firms for the subject procurement. When Kenya Literature Bureau conducts a pre-qualification procedure the Accounting officer shall publish an invitation notice to candidates to submit applications to be pre-qualified.

Prospective bidders are requested to refer to the Public Procurement and Asset Disposal Act, 2015 and subsequent regulations and manuals on the meaning and procedures for each procurement method mentioned above and any other as prescribed in the documents.

4.4 FRAMEWORK AGREEMENTS

The Bureau may enter into a framework agreement for specific categories of services through open tender. The maximum term for these agreements range between a minimum of one (1) to a maximum of three (3) years and each category may have a minimum of seven alternative vendors. Selection is from the open tendering process with the most competitive bids entering into a framework agreement with the Bureau.

During implementation of the framework agreement the Bureau may-

- i. Procure through call-offs order when necessary; or
- ii. Invite mini-competition among persons that have entered into the framework agreement in the respective category.

The Bureau's practice is to maintain "call-offs orders" which means an order made using a framework agreement with one or more contractors, suppliers, goods, consultancy covering terms and conditions including price that users require to meet the immediate requirements. The Bureau may reserve certain categories of the framework agreements to preferences and reservations as provided for in the Act.

5. THE TENDERING PROCESS

5.1 INVITATION AND INFORMATION ON BIDDING

The Bureau shall invite bidders according to the selected procurement method. The tender documents may be gotten from the Bureaus offices or website. The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for goods, works or services to be provided. Bidders must comply with the requirements set out in the bidding documents.

While the detail and complexity of these documents may vary with the size and nature of the procurement, they generally include; *Title, invitations to tender, instructions to tenderers, general conditions of contract, special conditions of contract, technical specifications, price schedule and standard forms*. The Bureau shall utilize standard tender documents provided for by the Public Procurement Regulatory Authority.

5.2 NOTIFICATION AND ADVERTISING

Timely notification of bidding opportunities shall be done by the Bureau. For request for quotations and restricted tenders prospective bidders are requested to submit correct and current address and contact details in the register and pre-qualification lists.

5.3 LANGUAGE, CLARIFICATIONS AND MODIFICATIONS

The bidding documents shall be prepared in English. The contract signed with the winning bidder shall also be in English. Bidders may seek clarifications on a tender. Kenya Literature Bureau may make modifications to a tender before the closing date by issuing an addendum.

5.4 VALIDITY OF BIDS

Bidders shall be required to submit bids valid for a period specified in the bidding documents which shall be sufficient to enable the Bureau complete the comparison and evaluation of bids, and obtain all the necessary approvals and have the contract awarded within the specified period. Before expiry of the period during which tenders shall remain valid the Accounting Officer may request in writing for an extension of the bid validity period.

5.5 TENDER SECURING DECLARATION FORM

The target group (youth, women and people with disability) shall be required to complete and sign the *Tender Securing Declaration Form* set out in every tender document floated.

5.6 KENYA LITERATURE BUREAU TENDER AND QUOTATION BOXES

The Bureau has separate and distinct boxes for quotations and tenders at its premises. All bidders **MUST** drop physically their quotations and tenders at the designated boxes. There are currently no other alternative methods.

5.7 SUBMISSION OF BIDS AND TENDER OPENING

Bidders are requested to submit bids in accordance with the criteria set out in the tender documents. The envelopes of bid documents **MUST** have the correct tender/quotation name and number for ease of identification. Tenders shall not be received after the deadline for submission. Bidders may choose to attend and witness the tender opening meeting.

Note: In accordance to **Clause 82** of the **Public Procurement and Asset Disposal Act 2015**

“The Tender sum as submitted and read out during the tender opening shall be final and shall not be the subject of any correction, adjustment or amendment in any way, by any person or entity.”

5.8 EVALUATION, PRICING AND AWARD OF BIDS

Evaluations shall be carried out by the Bureau within the stipulated period as set out in the Act. Kenya Literature Bureau can also seek clarifications on bid documents received. Bidders shall be required to follow instruction on the specifications, evaluation criteria and pricing schedule and clearly indicate the total price quotation including applicable taxes, quantities and unit prices.

The successful best and final offer shall be the best rated tender using evaluation criteria set forth in the tender/quotation documents. Therefore, the most competitive tender shall be the one that meets specifications and all other evaluation criteria and offers the best price.

5.9 CONTRACTS ADMINISTRATION AND MANAGEMENT

The Bureau shall enter into a contract with the successful bidder(s). The contract, which shall be in writing, shall set out the following;

- i. The parties to the contract
- ii. The maximum amount of money that can be paid (where applicable)

- iii. The maximum amount of time that can be paid for under the contract
- iv. The General Conditions of contract
- v. The Special conditions of the contract
- vi. Performance Bond(where applicable).

Prospective bidders on being awarded a contract **MUST** adhere to the terms and conditions of a contract to facilitate quality delivery within the stipulated period.

5.10 DELIVERY, INSPECTION AND ACCEPTANCE TESTS

The Bureau has systems in place to ensure that on delivery of the goods, works or services-

- i. Inspections are carried out and where necessary, test the goods received;
- ii. Inspect and review the goods, works or services in order to ensure compliance with the terms and specifications of the contract; and
- iii. Accept or reject, on behalf of the procuring entity, the delivered goods, works or services.

The Bureau shall-

- i. Ensure that the correct quantity of the goods is received;
- ii. Ensure that the goods, works or services meet the technical standards defined in the contract;
- iii. Ensure that the goods, works or services have been delivered or completed on time, or that any delay has been noted;
- iv. Ensure that the correct quantity of the goods is received;
- v. Ensure that the goods, works or services meet the technical standards defined in the contract;
- vi. Ensure that the goods, works or services have been delivered or completed on time, or that any delay has been noted;
- vii. Ensure that all required manuals or documents have been received;
- viii. Issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

All prospective bidders shall be required to maintain high quality standards and ensure compliance to specifications and terms of reference.

5.11 PAYMENT PROCESS AND CONTRACT CLOSURE

Payments shall be linked to the terms and conditions set out in the tender documents, contract document and any other agreement between the Bureau and bidder. Duration of invoice payments shall be as set out in the contract and tender documents. During invoicing, the successful bidder shall be required to attach all relevant support documents to facilitate payment. These include;

- i. Electronic tax register – ETR (a MUST)
- ii. Copy of purchase order
- iii. Copy of stamped delivery note
- iv. Completion certificate if any
- v. And any other support document

APPENDIX 1: General guidance to bidders

Responsibilities of bidders

It shall be the responsibility of the bidder/supplier to ensure the following are adhered to;

- i. The bidding documents are secured in a sealed envelope and clearly marked according to the instructions in the tender document. The envelope should be plain without brand names or bidders' details. The envelope **MUST** have the tender/quotation name and number for ease of identification. If stated, the technical and financial envelopes should be separated but submitted in one outer bigger envelope. The **financial and Technical** envelopes must be clearly marked to ensure that the wrong is not erroneously opened.
- ii. The bidder **MUST** ensure that the bids are submitted before the deadline for closure of the bid submissions. No bid shall be accept and received after the deadline for submissions.
- iii. The tender/quotation documents must be dropped physically at the Kenya Literature Bureau quotation/tender box. Email submissions will automatically be rejected.
- iv. The bidder shall be required to adhere to the bidding instructions and information to bidders. This includes complying to the specifications set, the evaluation criteria and pricing instructions.

- v. The Bureau shall **NOT** accept/consider any price variations within the first twelve (12) months of the contract hence the prices quoted must be correct and valid for at least 12 months.
- vi. Where a sample was used as a specification, then actual delivery shall match the sample.
- vii. Where requested, samples **MUST** be approved before bulk delivery.
- viii. Bidders **MUST** ensure the registration certificates for Youth, Women and People with Disability are valid and if expired seek fresh approval from the National Treasury.
- ix. To facilitate prompt invoice payments, bidders **MUST** ensure the unit price; currency and total cost are correct including taxes applicable. Any support documents such as stamped delivery note shall be attached to the invoice. The invoice shall also have the correct address details of the supplier and their bank details.

In addition common challenges Kenya Literature Bureau faces with special groups include;

- i Price:- High instances of cancellation of Purchase Orders for purchases awarded since they are not able to honor their quoted prices. The special groups are requested to factor in all the related costs into their quotations and undertake market surveys before submission. Bidders also quote unrealistically low prices in order to secure award but are then unable to honour their commitment.
- ii Time:- Late delivery of goods, works and/or services since these special groups fail to factor related logistics costs.
- iii Quality: - Inadequate knowledge on technical specifications Kenya Literature Bureau shall endeavour to provide complete specifications; however, bidders are also advised to understand products being requested before quoting and delivery to avoid rejections. It is also important for bidders to provide a sample for approval before bulk delivery.
- iv Poor responses for quotations: Kenya Literature Bureau bidders to respond to requests for quotations and it shall ensure fairness and transparency in its procurement processes and procedures.

- v. Quality: - Poor quality of goods even after viewing of samples.
- vi. There are instances where bidders deliver partial quantities
thus affecting Kenya Literature Bureau .