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CIRCULAR No. OPS/1 of 2023

TO ALL ACCOUNTING OFFICERS

TECHNICAL GUIDELINES TO ASSIST PROCURING ENTITIES (PEs) WITH RESPECT TO:

1. TREATMENT OF HISTORIC DOCUMENTS DURING BID EVALUATION
2. EVALUATION OF TENDERS WITH A SINGLE RESPONSE
3. EVALUATION OF 2 or 3 STAGE (ENVELOPE) TENDERS

The Authority has noted procedural gaps and challenges faced by PEs during bid evaluation with regard to treatment of historic documents, evaluation of 2 or 3 stage (envelope) tenders and evaluation of tenders which close with a single bid.

The Authority as part of its functions provided for under Section 6 of the Public Procurement and Disposal of Public Assets (PPDPA) Act, is mandated to issue technical guidelines and instructions regarding the interpretation and implementation of this Act. In view of the above and in fulfilling this function so as to ensure that public procurement is affected in a manner that is transparent, fair, honest, cost-effective, and competitive, the Authority hereby issues the *attached* technical guidelines to assist Procuring Entities (PEs) during bid evaluation.

The technical guidelines serve to compliment the law and provide assistance to PEs during bid evaluation and should not, in any way, be construed as a relaxation of the PPDPA Act or the PPDPA General Regulations. The same guidelines can be downloaded on our website www.praz.org.zw.

Please be guided accordingly and in need, do not hesitate to contact the Authority for any further assistance.


C. Ruswa
Chief Executive Officer
PROCUREMENT REGULATORY AUTHORITY OF ZIMBABWE

cc: Dr M.J.M Sibanda
Chief Secretary to the President and Cabinet
OFFICE OF THE PRESIDENT AND CABINET

Ms. M. Nyanda
Secretary in the Vice President Hon.Gen (Retd) Dr. C.G.D.N Chiwenga's
Office
OFFICE OF THE VICE PRESIDENT

Mr. A. Choruma
Secretary for State Enterprises Reform, Corporate Governance &
Procurement
OFFICE OF THE PRESIDENT AND CABINET

9th Floor, Pearl House, 61 Samora Machel Avenue
P.O. Box CY 408 Causeway, Harare, Zimbabwe
reception@praz.org.zw/enquiries@praz.org.zw
+263 (242) 752 539-42, 753 132, 790 080
+263 716 800 036
VOIP: +263 8688 003 491/2
www.praz.org.zw

B.S.
C.R.



TECHNICAL GUIDELINES ON: -

1. TREATMENT OF HISTORIC DOCUMENTS DURING BID EVALUATION
 2. EVALUATION OF TENDERS WITH A SINGLE RESPONSE
 3. EVALUATION OF 2 or 3 STAGE (ENVELOPE) TENDERS
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Technical Guideline Reference No: PRAZ OPS/01/2023

Date of Approval: March 2023

1.1 Introduction

The Procurement Regulatory Authority of Zimbabwe (PRAZ), as part of its functions provided for under Section 6 of the Public Procurement and Disposal of Public Assets (PPDPA) Act, is mandated to issue technical guidelines and instructions regarding the interpretation and implementation of this Act. As part of fulfilling this function and ensuring that public procurement is effected in a manner that is transparent, fair, honest, cost-effective, and competitive, PRAZ hereby issues the following guidelines to assist Procuring Entities (PEs) during bid evaluation.

The Authority has noted challenges faced by PEs on treatment of historic documents during bid evaluation and procedural gaps surrounding evaluation of 2 or 3-Stage (Envelope) tenders. The Authority has also become aware of situations where tenders are not evaluated or are cancelled on the basis that a single bid has been received.

1.2 Purpose of the Guidelines

The purpose of developing these guidelines is to address challenges faced by PEs during bid evaluation when dealing with historical documents, a sole bid and when evaluating 2 or 3-Stage (Envelope) tenders. This will then contribute to the achievement of public procurement objectives stated under Section 4 of the PPPDA Act i.e.

- a) To ensure that procurement is effected in a manner that is transparent, fair, honest, cost-effective and competitive;
- b) To promote competition among bidders;
- c) To provide for the fair and equitable treatment of all bidders, leading to procurement contracts that represent good value for money;
- d) To promote the integrity of, and fairness and public confidence in, procurement processes;
- e) To secure the implementation of any environmental, social, economic and other policy that is authorized or required by any law to be taken into account by a procuring entity in procurement proceedings.

1.3 SCOPE AND APPLICATION OF THE GUIDELINE

These guidelines are designed to assist PEs during bid evaluation. These guidelines must be applied at evaluation of tenders irrespective of financial thresholds and the adopted procurement method. These guidelines should be taken as not superseding both the PPDPA Act and Regulations.

1.4 DEFINITION OF HISTORIC DOCUMENTS IN THE CONTEXT OF PUBLIC PROCUREMENT

Historic documents in the context of public procurement are original documents or copies of original documents that contain important historic information about a company, person, place and such documents are, upon request, readily available within a short time frame.

1.4.1 PROVISIONS FOR HISTORIC DOCUMENTS IN THE PPDPA ACT & PPDPA REGULATIONS

- Section 47 of the PPDPA Act provides that: -

"Where a bidder omits to submit company registration or incorporation documents, credentials or other historic documents as specified in the proviso to section 47 of the Act, the procuring entity shall immediately request the bidder, in writing, to submit the missing documents within two days of the request: Provided that bidders shall be deemed to have met the qualification criteria if any default of compliance therewith relates simply to the failure to submit company registration or incorporation documents, credentials or other historic documents that can be readily availed or accessed."

- Section 28 (4) of the PPDPA Regulations further provides that: -

"Where a bidder omits to submit company registration or incorporation documents, credentials or other historic documents as specified in the proviso to section 47 of the Act, the procuring entity shall immediately request the bidder, in writing, to submit the missing documents within two days of the request."

1.4.2 EXAMPLES OF HISTORIC DOCUMENTS

1. Company Registration Documents (CR14, CR5, CR6 and Certificate of Incorporation) OR equivalent documents in the case of foreign bidders.
2. Company Profile
3. VAT Registration Certificate and Tax Clearance Certificate or ITF263 OR equivalent documents in case of foreign bidders
4. Reference Letters
5. Deeds
6. Financial Statements (Audited or Unaudited)
7. Brochures and Technical Literature
8. Letter of Authorization from Manufacturer
9. Proof of Agency or Distributorship Agreement
10. Type Test Results
11. Procurement Regulatory Authority of Zimbabwe (PRAZ) Certificates & Receipts
12. Environment Management Agency (EMA) License or Certificate
13. Post and Telecommunications Regulatory Authority (POTRAZ) License or Certificate/ equivalent for foreign bidders
14. Zimbabwe Energy Regulatory Authority (ZERA) License or Certificate/Equivalent for foreign bidders
15. Proof of Membership or Certificate of Membership to a particular professional Body or Institution.

16. Zimbabwe National Water Authority (ZINWA) Rates Bill
17. Local Authorities or City Council Water or Rates Bill
18. Zimbabwe Electricity Supply Authority (ZESA) Rates Bill
19. CVs and Academic qualifications/Transcripts/Certificates
20. Standards Association of Zimbabwe (SAZ) ISO Certificates or any other International Organization for Standards (ISO) certificates
21. Partnership/Joint Venture agreements
22. Bank Statements
23. Vendor Number Certificate
24. Or Any other license or Certificate issued by a recognized Authority.

NB:- Accounting Officers are advised to seek clarification from the Authority on any other document which the PE is not clear on whether it's a historic document or not.

1.4.3 TREATMENT OF HISTORIC DOCUMENTS DURING EVALUATION OF TENDERS

The Authority has noted that PEs are facing different scenarios when dealing with historic documents during bid evaluation and as such PEs are advised to deal with the circumstances/scenarios they meet as follows: -

No.	Circumstances/Scenarios faced by PEs	How PEs should deal with the circumstance or scenario
1.	When the documents stated under 1.4.2 have not been submitted in the case where they have been requested in the Standard Bidding Document (SBD).	The PE shall request the above documents in line with Section 47 of the PPDPA Act as read together with Section 28(4) of the PPDPA Regulations.
2.	When the SBD required bidders to submit a certain number of reference letters and a bidder submits less than the requested number of reference letters e.g. Where the SBD requires 3 reference letters and a bidder submits 2 Reference letters .	The PE shall disqualify the bidder. Requesting the bidder to submit the 3 rd reference letter is tantamount to bid improvement since the bidder would have realized that the requirement was for 3 reference letters but decided not to submit.

3.	When the SBD required bidders to submit <i>reference letters</i> but a <i>bidder submits a reference list</i> .	The PE shall disqualify the bidder. Requesting the bidder to reference letters is tantamount to bid improvement since the bidder would have realized that the tender required one to submit reference letters but decided not to submit.
4.	Where the SBD required bidders to submit audited Financial Statements or unaudited Financial Statements for a particular period but a bidder submits Financial Statements which are not covering the particular period e.g. Where the SBD requires Financial Statements for the last 2 years i.e. 2022 Financial Statements and 2021 Financial Statements and the bidder submits 2022 Financial Statements only.	The PE shall disqualify the bidder. Requesting the bidder to submit the Financial Statements for the missing year is tantamount to bid improvement since the bidder would have realized that the requirement was for the last 2 years but decides not to submit for the other year.
5.	When the SBD required bidders to submit <u>certified copies</u> of the documents stated in <u>1.4.2</u> but the bidder submits uncertified copies.	The PE shall disqualify the bidder. Requesting the bidder to submit certified copies is tantamount to bid improvement since the bidder would have realized that the requirement was for certified copies but decided to submit uncertified copies.
6.	When the SBD required bidders to submit documents in <u>1.4.2</u> but a bidder submits expired documents e.g. Where a tender is advertised from 1 January 2023 and a bidder submits PRAZ certificates, ITF 263/Tax Clearance Certificates, NSSA Certificates, POTRAZ Certificates or Membership Certificates valid up to the year 2022 etc.	The PE shall disqualify the bidder. Requesting the bidder to submit the valid certificates after having submitted expired certificates is tantamount to bid improvement since the bidder was aware that the requirement was for 2023 Certificates/Licenses but did not meet the requirement.
7.	When the SBD required bidders to submit documents in <u>1.4.2</u> and a	The PE shall accept the bid as compliant since the submitted documents were valid during the bidding period. If the Bidder goes on to win the tender,

	<p>bidder submits documents which are valid during the bidding period but expire during Bid Adjudication e.g. Where a tender is advertised say from 1 December 2022 to 5 January 2023 but the submitted documents expire on 31 December 2022.</p>	<p>contract signature must be conditional or subject to submission of valid documents to ensure that the bidder remains compliant to relevant legislation.</p>
8	<p>When the SBD required bidders to submit documents in <u>1.4.2</u> which have validity periods and a bidder does not submit the documents, but upon request submits documents which were obtained after the bidding period e.g. a tender closed on 31 December 2022 and upon request a bidder submits EMA Licenses, proof of Registration with PRAZ certificate, NSSA Certificates, ITF 263 or Tax Clearance Certificates, Reference Letters etc. obtained from 1 January 2023 or after.</p>	<p>The PE shall disqualify the bidder. Accepting Documents obtained after the bidding period is tantamount to bid improvement since the bidder did not have the required documents at the closure of the bidding period.</p>
9	<p>When the SBD required bidders to submit PRAZ SPOC Fee Certificate or Bid Security Certificate and the bidder submits the proof of payment (POP) for the same or fails to submit the PRAZ SPOC fee certificate or the PRAZ Bid Security Certificate.</p>	<ol style="list-style-type: none"> 1. The PE shall request the bidder to submit the PRAZ SPOC fee certificate and the Bid Security certificate in line with Section 47 of the PPDPA Act as read together with Section 28(4) of the PPDPA Regulations. 2. The PE shall automatically accept the bid if the PRAZ SPOC Fee Certificate and the Bid Security Certificate were obtained before the closure of the bidding period and if upon checking on the portal the certificates are confirmed to be genuine. 3. The PE shall, in writing check, at evaluation, with PRAZ on whether to accept or reject the POP.

		NB. Where the PE is not clear on whether the certificates are genuine or not the PE shall in writing check with PRAZ at the bid evaluation stage.
10	When the SBD required bidders to submit PRAZ SPOC Fee Certificate or Bid Security Fee Certificate and the bidder submits: - 1. a PRAZ SPOC fee certificate or Bid Security Certificate obtained after the bidding period. 2. PRAZ receipt with respect to SPOC fees or Bid Security. 3. Proof of Payment for the fees from the Bank done in favour of PRAZ.	1. The PE, at evaluation stage, must seek written clarification from PRAZ on whether to accept or reject the bid if the PRAZ SPOC fee certificate or Bid Security Certificate was obtained after the bidding period. 2. The PE must seek written clarification from PRAZ on whether or not to accept the receipt in lieu of either the SPOC Certificate or Security Certificate. 3. The PE must seek written clarification from PRAZ on whether or not to accept the POP in lieu of either the SPOC Certificate or Security Certificate.
11	When the SBD required bidders to submit PRAZ SPOC Fee Certificate of a certain amount or Bid Security Fee Certificate of a certain amount and the bidder submits certificates with values below the stated amount in the SBD.	The PE must: - 1. Seek written clarification from the bidder in line with Section 47 of the PPDP Act as read together with Section 28(4) of the PPDP Regulations on whether they made subsequent payments during the bidding period and then ; 2. Seek written clarification from PRAZ on whether to accept or reject the bid. NB: The clarification by the bidder must be supported with evidence in the form of POPs or Certificates.
12	Can the Bid Security Certificate/receipt/POP and the SPOC Fee Certificate/receipt/POP with respect to a particular tender be used on another tender? OR Can PEs request bidders to use the Bid Security	No. PEs should craft every Standard Bidding Document (SBD) with its own terms and conditions without requesting bidders to use the Bid Security Certificate/receipt/POP and the SPOC Fee Certificate/receipt/POP of a cancelled tender/running tender on a new tender.

	Certificate/receipt/POP and the SPOC Fee Certificate/receipt/POP of a cancelled tender/running tender on a new tender?	
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1.5 EVALUATION OF TENDERS WITH A SINGLE RESPONSE

In some instances, some tenders are not evaluated or are cancelled on the basis that a single bid has been received. PEs are advised to deal with the circumstances/scenarios they meet as follows: -

No.	Circumstances/Scenarios faced by PEs	How PEs should deal with the circumstance or scenario
1.	Can a tender or Request for Quotation (RFQ) process be evaluated where there is a single response?	<p>1. The PE must first investigate why, in a market with several suppliers, only one bidder responded, If the PE finds that the reasons for the lack of responses is something that can be corrected, then the PE must make the correction and re-start the process.</p> <p>2. PEs shall proceed to evaluate the tender or RFQ process where the advertising and receipt of bids has been done in a manner which meets the objectives of public procurement as stated under section 4 of the PPDPA Act and in line with the PPDPA Act and Regulations</p>
2.	Can a tender or RFQ process be awarded where there is a sole response?	<p>PEs can proceed to award a sole bidder if: -</p> <ol style="list-style-type: none"> 1. the sole bidder is compliant to Tender or RFQ requirements 2. after carrying out the price due diligence, the sole bidder's price is cost effective and is achieving value for money. <p>NB PEs can consider cancelling the tender if the offer from the single bidder is not cost effective and is achieving value for money in line with Section 42 of the PPDPA Act.</p>
3.	Can a PE accept the bid where a tender process closed with a single bid which is not compliant to	The PE can consider seeking a waiver from the Authority if the PE feels that the shortcoming/s of the single bidder can be addressed at contractual stage. The waiver should be sought in writing from the Authority.

	mandatory tender requirements?	
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1.6 EVALUATION OF 2 or 3-STAGE (ENVELOPE) TENDERS

Section 36 (1) states that *"Where the estimated value of the procurement exceeds the threshold prescribed in section 10(10)(a), the procuring entity shall seek expressions of interest from prospective participants in which they shall be requested to demonstrate their capacity to participate in the procurement."*

Section 36 (2) further states that *"Where the estimated value of the procurement exceeds the threshold prescribed in section 10(10)(b), expressions of interest, the short-listing of firms and the award of the contract shall be subject to prior scrutiny by the Special Procurement Oversight Committee."*

The Authority has noted procedural gaps amongst PEs when evaluating 2 or 3 Stage (Envelope) tenders where the quality and cost selection method has been adopted by PEs. PEs have been concluding the first 2 stages of the quality and cost-based selection method i.e. the Expression of Interest (EOI) Stage and the Request for Proposals (RFP) stage without submitting them for prior scrutiny by the Special Procurement Oversight Committee (SPOC) violating Section 36 (2) of the PPDPA Regulations.

In order to ensure that the objectives of Public Procurement are met at every stage of the quality and cost-based selection procurement process, PEs are therefore advised to submit procurement records/documents for review at every stage of the process, as follows: -

No.	Stage of the Tender process	How PEs should deal with the circumstance or scenario
1.	The Expression of Interest Stage	PEs shall evaluate/asses the EOI and submit for prior scrutiny by SPOC before proceeding to the next (RFP) stage of the tender.
2.	The Request for Proposal (RFP)- Technical Stage	PEs shall evaluate the Technical proposals and submit for prior scrutiny by SPOC before

		proceeding to the next (Financial) stage of the tender.
3.	The RFP- Financial Stage	PEs shall evaluate the Financial proposals and submit for prior scrutiny by SPOC before proceeding to award the tender. NB: - At the Financial Evaluation Stage of the tender, the results of the of the technical evaluation must be combined with results of the financial evaluation before submitting for review.
4.	How shall the Technical Envelopes and the Financial Envelopes be opened?	The PE, on the tender opening day, shall open the Technical Proposal (Envelope) only and then open the Financial Proposal (Envelope) on another day after the Technical Evaluation has been scrutinized by the SPOC.

NB.1. PEs are required to request for SPOC fees at the EOI

2.PEs are also required to request for the SPOC Fees at the RFP stage of the tender and the SBD should clearly state that the SPOC should be submitted in the Technical Envelope.

3. The RFP SBD should be clear on what should be submitted in the Technical and the Financial Envelope. The PE should request bidders to submit the Technical envelope and Financial Envelope separately but on the same day and the same time.

4. It is not best practice to charge bid security fees for the procurement of consultancy services

1.7 CONCLUSION

The above guidelines have been developed with the hope that PEs are going to effectively and efficiently evaluate tenders in a manner that achieves the objectives of public procurement. Notwithstanding these guidelines, the Authority still expects PEs to urgently approach the Authority on any issues that might need clarity when evaluating tenders in order to ensure that there is improved service delivery as Zimbabwe moves towards attainment of Vision 2030.