

STATUTORY INSTRUMENTS SUPPLEMENT

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S T A T U T O R Y I N S T R U M E N T S

2023 No. 105.

**THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
(CONTRACTS) REGULATIONS 2023**

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STATUTORY INSTRUMENTS

2023 No. 105.

The Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2023

(Made under sections 96(1) and 96A of the Public Procurement and Disposal of Public Assets Act, 2003, Act No. 1 of 2003)

IN EXERCISE of the powers conferred upon the Minister responsible for finance by sections 96(1) and 96A of the Public Procurement and Disposal of Public Assets Act, 2003, in consultation with the Minister responsible for the Kampala Capital City Authority and the Minister responsible for local governments, and on the recommendation of the Authority, these Regulations are made this 26th day of September, 2023.

PART I—PRELIMINARY

1. Title and commencement.

(1) These Regulations may be cited as the Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2023.

(2) These Regulations shall come into force on the 5th day of February, 2024.

PART II—AWARD OF CONTRACT

2. Recommendation to award contract.

(1) After evaluation, and where negotiations are held and are successful, a Procurement and Disposal Unit shall submit to the Contracts Committee, a recommendation to award a contract.

(2) The Contracts Committee shall consider the recommendation to award a contract and make a decision as may be appropriate.

(3) Where the Contracts Committee makes a decision to award a contract, the award decision shall not be a contract binding the procuring and disposing entity to the provider.

3. Notice of best evaluated bidder.

(1) A procuring and disposing entity shall, within five working days after the award decision of the Contracts Committee, display a notice of best evaluated bidder on the notice board of the procuring and disposing entity for ten working days.

(2) The notice of best evaluated bidder shall state—

- (a) the name of the best evaluated bidder;
- (b) the total contract price and, where any scores were awarded during the evaluation process, the total score of the best evaluated bidder;
- (c) the date of the notice; and
- (d) the unsuccessful bidders, the stage at which their bids failed or were eliminated and the reasons for the failure or elimination.

(3) The notice of best evaluated bidder shall be displayed on the procurement and disposal notice board of the procuring and disposing entity and where available, the website of the procuring and disposing entity and the website of the Authority until the day following the expiry of the period specified, in regulation 4, where applicable.

(4) A procuring and disposing entity shall deliver a copy of the notice of best evaluated bidder to all bidders who participated in the bidding process in any of the following ways—

- (i) by electronic mail;
- (ii) by post or courier; or
- (iii) in person.

(5) A procuring and disposing entity shall obtain proof of delivery of the notice of best evaluated bidder to all bidders.

- (6) This regulation shall not apply where —
 - (a) the micro procurement method is used;
 - (b) direct procurement is used;
 - (c) irrespective of the procurement method used, procurement in emergency situations; or
 - (d) where one bid is received through a competitive procurement method.

4. Period during which no further action may be taken.

(1) A procuring and disposing entity shall not take any action on the award decision before the lapse of a period of ten working days, after the date of display of the notice of the best evaluated bidder as required under regulation 3.

(2) Where the award decision is changed within the time specified in regulation (1), the ten working days shall be deemed to commence on the date of display of the new notice of the best evaluated bidder.

- (3) This regulation shall not apply—
 - (a) where the micro procurement method is used;
 - (b) where the direct procurement is used;
 - (c) to procurement in emergency situations, irrespective of the procurement method used; or
 - (d) where one bid is received through a competitive procurement method.

5. Debriefing bidders.

(1) After signing a contract, the procuring and disposing entity shall at the request of a bidder give the bidder who made the request, a written debrief stating the reasons for the success or failure of the bid of that bidder—

- (a) provide brief details of any material deviation, reservation or omission that led to the rejection of the bid or state the relative weakness of the bid.
- (b) where any scores were awarded during the evaluation process, provide a breakdown of the scores awarded against each criterion, to the bid of the unsuccessful bidder.

(2) The debrief shall be unique to each bidder and shall not provide details on any other bids, other than the information that is otherwise publicly available.

(3) The debriefing of bidders shall not apply to the micro procurement method.

6. Procedure for signing contract.

(1) A procuring and disposing entity shall not issue a contract, purchase order, or other communication in any form, conveying acceptance of a bid that binds a procuring and disposing entity to a contract with a provider, except where—

- (a) the Contracts Committee makes an award decision;
- (b) the Accounting Officer confirms that the contract price is not higher than the market price established prior to the commencement of the procurement process;
- (c) the period specified in regulation 4 has expired and the bid is valid or the bidder is willing to extend the bid validity on terms similar to the terms stated in their bid;
- (d) the Accounting Officer confirms that the procurement is not subject to an administrative review process;
- (e) subject to regulation 7(2), the full amount of the funding required for the duration of the proposed contract is committed; and
- (f) all the relevant agencies, including, where applicable, the Attorney General, make the necessary approval of the contract.

(2) Notwithstanding regulation (1), in an emergency situation or for micro procurement, the Accounting Officer may sign a contract—

- (a) without an award decision by the Contracts Committee, where the Contracts Committee is unable to meet;
- (b) without a notice of best evaluated bidder; or
- (c) before the lapse of the period specified in regulation 4.

7. Commitment of funds.

(1) Notwithstanding regulation 6(1)(e), a procuring and disposing entity shall not enter into a contract until the Accounting Officer confirms in writing that the funds required for the proposed contract have been committed.

(2) Regulation (1) shall not apply where—

- (a) payment to a provider is to be effected in a subsequent financial year;
- (b) in the case of a framework contract, funds are committed at the time of issue of each specific call off order using Form 48 in Schedule II to these Regulations; or
- (c) the Secretary to the Treasury confirms in writing that the required funding shall be made available in accordance with a specified schedule of payment.

(3) Where payment to a provider extends to more than one financial year, the annual budget of the procuring and disposing entity shall for the duration of the contract, include for each financial year, the payment to be made to the provider in the financial year.

(4) In the case of a framework contract, the Accounting Officer shall ascertain that—

- (a) the funds required to cover the full cumulative costs of all call off orders anticipated for the financial year are included in the budget of the procuring and disposing entity, for the financial year; and

- (b) the funds required for each call off order are committed prior to the release of the call off order.

8. Commitment of total cost of acquiring requirement.

(1) An Accounting Officer shall ascertain that the total cost of acquiring a procurement requirement is committed before entering into a contract.

(2) The total cost of acquiring a requirement shall include the contract price and other incidental costs, not included in the contract price, but for which a procuring and disposing entity shall be liable, including local clearance, contingencies, inland delivery and import taxes or duties.

(3) In the case of a contract for supplies using an INCOTERM term, where the procuring and disposing entity is responsible for paying any additional costs, the procuring and disposing entity shall ascertain that the additional costs are included in the total cost of procuring the requirement before entering into the contract.

- (4) The additional costs referred to in regulation (3) include—
 - (a) freight costs;
 - (b) local clearance and delivery costs;
 - (c) insurance costs;
 - (d) taxes;
 - (e) inspection costs; and
 - (f) any other related costs.

9. Contract.

- (1) A contract shall—
 - (a) clearly identify the obligations of each party;
 - (b) correlate all payments by a procuring and disposing entity with the corresponding inputs and the obligations or

deliverables by a provider, in a specific identifiable and measurable manner;

- (c) where required, provide effective supervision arrangements;
- (d) where required, provide adequate monitoring and cost control measures;
- (e) where required, include adequate and clear delivery, acceptance and handover or commissioning arrangements; and
- (f) the right of the parties to terminate the contract and the procedure for termination.

(2) A contract document shall be in accordance with the form of contract specified in the bidding document.

(3) A person signing the contract shall initial all the pages of the contract and sign the signature page of the contract.

(4) At least three originals of the contract shall be produced and the procuring and disposing entity and the provider shall each have an original signed by both parties.

10. Formation of contract.

(1) A contract shall be formed where the contract is signed by the representatives of the procuring and disposing entity and of the provider with capacity to sign, and is issued by a procuring and disposing entity.

(2) A procuring and disposing entity shall, within five working days after the signing of the contract, display a notice of the signed contract on the notice board of the procuring and disposing entity.

11. Performance security.

(1) The bidding documents shall state the requirement for a performance security or a performance securing declaration.

(2) The value of the performance security shall be specified in guidelines issued by the Authority.

(3) A performance security shall be—

(a) in a format authorised by the Authority, which shall be specified in the bidding documents;

(b) in a form and from an institution that is acceptable to the Bank of Uganda, in the case of a bank guarantee, or in a form and from an institution that is acceptable to the Insurance Regulatory Authority, in the case of an insurance bond, as may be specified in the guidelines issued by the Authority; and

(c) valid for the period specified in the bidding documents.

(4) Where a provider is required to provide a performance security under subregulation (1), a bid security provided by the provider in the bidding process shall not be released until the performance security is received and verified by the procuring and disposing entity.

(5) A performance security shall not be released by a procuring and disposing entity until all the obligations of the provider, which are subject to the performance security, are fulfilled.

12. Effecting a contract.

(1) A contract shall become effective as specified in the contract, where one or more of the conditions specified in the contract including the following are fulfilled—

(a) the procuring and disposing entity receiving the performance security or the performance securing declaration;

(b) the procuring and disposing entity receiving an advance payment guarantee; and

(c) a provider receiving an advance payment, where applicable.

(2) A procuring and disposing entity shall terminate a contract where a provider fails to provide the required performance security within the specified time.

(3) Where a contract is terminated under subregulation (2), the procurement and disposing entity may award the contract to the bidder who is ranked second after the best evaluated bidder and where that bidder is not able to perform the contract, in descending order, to the next qualified bidder, provided the period for bid validity has not expired.

PART III—TYPES OF CONTRACTS.

13. Choice of contract.

(1) A procuring and disposing entity shall, determine the contract type appropriate for a procurement or disposal after taking into account—

- (a) the nature of the procurement or disposal requirement;
- (b) the need to minimise risk for the procuring and disposing entity;
- (c) the need to maximise value for money for the procuring and disposing entity;
- (d) the likelihood of any delays or unforeseen circumstances requiring contract extensions, or variations of change orders; and
- (e) the need for effective contract management and cost control.

(2) A procuring and disposing entity shall use any of the types of contracts specified in this Part and may for that purpose combine types of contracts.

14. Lump sum contract.

(1) A lump sum contract shall indicate the fixed price of the contract, determined in accordance with these Regulations.

(2) A lump sum contract shall provide for interim or stage payments.

(3) Payment for a lump sum contract shall be linked to clearly specified outputs or deliverables, including—

- (a) deliveries of supplies, evidenced by the appropriate delivery documentation;
- (b) reports;
- (c) drawings;
- (d) bills of quantities;
- (e) activity schedules; and
- (f) any other outputs or deliverables appropriate to the contract.

15. Time-based contract.

(1) Payment for a time-based contract shall be based on the agreed hourly, daily, weekly, or monthly fees for nominated personnel or of a certain type or grade of personnel and reimbursable items based on actual expenses or the agreed unit prices.

(2) The payment rates for personnel shall include salary, social costs, overhead costs, fees or profit and special allowances.

(3) Reimbursable items referred to in subregulation (1) include—

- (a) subsistence, such as per diem or housing;
- (b) transport, which may be international or local;
- (c) mobilisation and demobilisation;
- (d) services and equipment such as vehicles, office equipment, furniture and supplies;

- (e) office rent;
- (f) insurance;
- (g) printing of documents;
- (h) surveys;
- (i) training, where training is a major component of the assignment; and
- (j) any other appropriate items.

(4) A time-based contract shall indicate the maximum amount of total payments to be made, including any contingency allowance for unforeseen work and duration.

(5) A time-based contract shall include interim or stage payments.

16. Admeasurement contract.

(1) Under an admeasurement contract, works shall be split into various items and the quantity of each item needed to complete the assignment shall be estimated and indicated in the bidding document.

(2) A bidder shall price each work item by indicating a unit rate for each item in the bill of quantities.

(3) The initial total contract price shall be calculated by multiplying the unit rate of each item by the estimated quantity of the item, to give a total cost for each item, and then, calculating the sum of the line item totals.

(4) The actual work done shall be measured during the performance of the contract and shall be finally reconciled upon completion of the contract.

(5) Payment shall be made for the actual quantity of work performed.

(6) An admeasurement contract shall include fixed prices or price adjustments.

(7) An admeasurement contract shall include interim or stage payments.

17. Framework contract.

(1) Under a framework contract, a bidder shall indicate the unit rate for each item.

(2) Notwithstanding regulation (1), where applicable, under a framework contract, the price of a bidder may be based on commission rates.

(3) A procuring and disposing entity shall indicate the estimated quantity or value of a procurement where this is possible or necessary to obtain competitive bids, but shall not make a commitment to purchase the full quantity or value of a procurement requirement.

(4) A framework contract shall state the arrangements for obtaining specific requirements during the period of the contract, using the placement of “call-off” or delivery orders, as may be appropriate.

(5) Payment shall be made on the basis of the works, services or supplies actually delivered or performed.

(6) A framework contract shall include fixed prices or price adjustment.

(7) A procuring and disposing entity shall use open domestic bidding method to procure supplies, works, consultancy or non-consultancy services under a framework contract except where—

- (a) the supplies, works, consultancy or non-consultancy services are required in a period of time that does not allow the procuring and disposing entity to use the open domestic bidding method;

- (b) there is only available a single provider or limited providers for the supplies, works, consultancy or non-consultancy services; or
- (c) the value of the procurement does not conform to the threshold for open domestic bidding method.

18. Percentage based contract.

(1) A percentage based contract shall clearly define the total cost of the procurement requirement from which the percentage is to be calculated.

(2) A bidder shall be required to indicate the fee rate as a percentage of the total cost of the procurement requirement.

(3) A percentage contract shall include—

- (a) the fixed target cost;
- (b) the minimum or maximum fees;
- (c) sliding scales of the fees, related to the value of the subject of the contract; or
- (d) incentive fees, related to any savings made as a result of economic designs, discounts obtained, cost reductions or similar fees.

19. Cost reimbursable contract.

Under a cost reimbursable contract, a procuring and disposing entity shall pay a provider—

- (a) for the actual cost of the works, evidenced by receipts and other appropriate documentation; and
- (b) a fee or profit to be agreed upon and specified in the contract.

20. Target price contract.

Under a target price contract, a procuring and disposing entity shall pay the provider for the actual cost of the works, evidenced by receipts

and other appropriate documentation and a fee, profit or an agreed percentage of any cost savings which are below the target price.

21. Retainer contract.

Payment for a retainer contract shall include a flat fee—

- (a) which represents the total payment due, irrespective of the level and amount of the services provided during the prescribed period; or
- (b) as a retainer for the prescribed period plus a pre-agreed unit rate for the services provided.

22. Success fee contract.

(1) Payment for a success fee contract, shall be a—

- (a) pre-agreed amount linked to the successful completion of a target or event;
- (b) percentage of a predetermined amount or proceeds; or
- (c) a basic flat rate, which is not linked to the successful completion of a particular task, event or action.

(2) A success fee contract shall describe the nature of the success to which a success fee shall be applicable and the timeframe within which the task, event or action shall be achieved.

Contracts for supplies

23. Types of contracts for supplies.

(1) A procuring and disposing entity shall use a lump sum contract for supplies where the specification, required quantity and delivery schedule of the contract are known.

(2) A procuring and disposing entity shall use a framework contract for supplies—

- (a) which are needed repeatedly or continuously over a period of time, including stationery, office supplies, food stuffs and spare parts;

- (b) where there are logistical and procurement reasons for having the requirement available on a call off basis; or
- (c) where the arrangement reduces procurement costs or lead times.

(3) A procuring and disposing entity shall obtain the consent of the Authority to procure supplies using any other type of contract other than the types of contracts stated in this regulation.

24. Scope of contracts for supplies.

A contract for supplies shall clearly indicate the responsibilities of a provider under the contract, which may include—

- (a) the supply and delivery of supplies, in accordance with the specified INCOTERM;
- (b) the installation and commissioning of supplies;
- (c) training in the use, maintenance or repair of the supplies; and
- (d) provision of after-sales services, including the supply and delivery of consumables and spare parts and servicing, maintenance, repair, calibration and modification of the equipment.

25. Delivery terms.

(1) The delivery terms for supplies shall be in accordance with the INCOTERMS.

(2) A contract shall, where applicable, specify the INCOTERMS to be used for delivery.

26. Freight and delivery.

(1) The freight and delivery requirements for each procurement requirement shall be specified in the bidding documents by stating the delivery terms using the appropriate INCOTERMS.

(2) A contract shall state the required mode of transportation and freight.

(3) A procuring and disposing entity shall state its address clearly as the consignee address.

27. Packing, packaging, marking and labelling.

(1) A procuring and disposing entity shall state in the contract, the minimum packing and packaging criteria and where applicable, the requirements for labelling and marking of packages.

(2) A procuring and disposing entity shall state in the contract, that the packing standards shall where applicable, withstand rough handling, storage and protection against the effects of moisture.

28. Insurance for supplies.

(1) A procuring and disposing entity shall specify in the contract the required level of insurance against loss, damage and theft.

(2) A procuring and disposing entity shall state in the contract whether a bidder is required to take out insurance and shall include the cost of insurance using the appropriate INCOTERM.

(3) Where a provider is required to arrange insurance in the name of a procuring and disposing entity, the bidding documents and contract shall state that the minimum insurance coverage shall be one hundred and ten percent of the delivered cost, covering Institute of Cargo Clauses (A), including “all risks” “warehouse to warehouse”, “strikes”, “war” and “civil commotion”.

29. Export and import licences.

(1) A procuring and disposing entity shall specify in the contract the responsibility for export and import licences, or similar documentation or formalities, using the appropriate INCOTERMS.

(2) Where a procuring and disposing entity wishes to vary the provisions of the INCOTERMS, the revised provisions shall be clearly stated in the contract.

30. Inspection and testing for supplies.

(1) A contract for supplies shall specify whether a procuring or disposing entity may inspect or test the supplies during manufacture, prior to shipment, on delivery or prior to acceptance, in order to verify their technical quality, quantity, packaging or any other detail.

(2) Inspection and testing shall include an independent technical inspection or testing conducted under the internal quality control procedures of the provider.

(3) The requirement for inspection shall take into account—

- (a) the technical complexity of the supplies;
- (b) the quantity and value of the supplies;
- (c) the estimated cost, delay or other effect of receiving the wrong quantity or sub-standard or damaged supplies, to a procuring and disposing entity;
- (d) the cost of inspection; and
- (e) the internal quality control procedures of the provider.

(4) Where inspection is required, the contract shall indicate—

- (a) the type of inspection or test to be performed and the standards to be met;
- (b) the location where the inspection or test is to be performed;
- (c) the person to carry out the inspection or test;
- (d) when the inspection or testing is to be performed;
- (e) the notification or documentation required from a provider;
- (f) the party to pay for the cost of the inspection, including the cost of the facilities, labour, apparatus and materials and whether the cost is to be included in the bid;

- (g) that the samples required for inspection shall be provided at no additional cost
- (h) the arrangement and cost for any re-inspection where this is required; and
- (i) any other relevant issues.

(5) A contract shall describe the obligations and responsibilities of the provider, related to the inspection.

(6) Where a third party provider is required to inspect the supplies, the services of the third party provider shall be contracted using the appropriate procurement method and rules for the procurement of services.

(7) Where inspection or testing consists of the internal quality control procedures of the provider, the procuring and disposing entity may, if this is specified in the contract, send a representative to witness the internal tests or may request for copies of the reports of the tests.

Contracts for non-consultancy services

31. Types of contracts for non-consultancy services.

(1) A procuring and disposing entity shall use a lump sum contract for non-consultancy services where the terms of reference and the required input or the period of performance of the contract, are known.

(2) A procuring and disposing entity shall use a framework contract for non-consultancy services—

- (a) where there is a need to have non-consultancy services “on call” and the extent and timing of the requirement including repairs and the servicing of equipment cannot be defined in advance; or
- (b) which are needed repeatedly or continuously over a period of time and where having the non-consultancy services

available on a “call off” basis would reduce procurement costs or lead times.

32. Insurance and indemnity for non-consultancy services.

- (1) A procuring and disposing entity shall ascertain that—
 - (a) all procurement requirements for non-consultancy services are adequately and appropriately indemnified against—
 - (i) damage, loss or injury to person or property arising from the services provided; and
 - (ii) any actions, suits, claims, demands, costs and expenses occasioned by negligence or breach of statutory duty by a provider; and
 - (b) a provider maintains adequate professional liability and insurance coverage against negligent performance.

(2) A procuring and disposing entity shall state in the bidding documents and the contract, the insurance and indemnity required for the procurement for services and shall require a bidder to include the costs of the insurance and indemnity in the bid.

(3) A procuring and disposing entity shall take out the insurance required under the relevant laws and any other insurance, appropriate for the procurement of a non-consultancy service.

33. Contract for non-consultancy services.

A procuring and disposing entity shall specify, in a contract for non-consultancy services—

- (a) the ownership of all property purchased, produced, developed or used during implementation of the contract;
- (b) the obligations of the provider regarding the custody and care of the property of the procuring and disposing entity, occupied or used during the implementation of the contract;

(c) arrangements for temporary handover and return of all the property of a procuring and disposing entity occupied or used during the implementation of the contract; and

(d) arrangements for the handover, if appropriate, of all the property purchased during implementation of a contract.

Contracts for works

34. Types of contracts for works.

(1) A procuring and disposing entity shall use a lump sum contract for buildings and other forms of construction where the works are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions, such as hidden foundation problems, is unlikely.

(2) A procuring and disposing entity shall use an admeasurement contract for buildings and other forms of construction where the works are not well defined or are likely to change in quantity or specification, and where encountering difficult or unforeseen site conditions, such as hidden foundation problems, is likely.

(3) A procuring and disposing entity shall use a framework contract where the quantity of works is not defined and where—

- (a) there is a need to have works “on call” and the extent and timing of the requirement cannot be defined in advance; or
- (b) the requirements are needed repeatedly or continuously over a period of time and having the requirements available on a “call off” basis reduces the costs of procurement or lead times.

(4) A procuring and disposing entity shall use a cost reimbursable contract—

- (a) for emergency works, where there is insufficient time to calculate the full costs of the works required; or

- (b) for high risk works, where it is more economical for a procuring and disposing entity to bear the risk of price variations than to pay a provider to accept the risk or where a provider does not accept the risk.

(5) A procuring and disposing entity shall use a target price contract where—

- (a) the target price is agreed; and
- (b) savings on costs may be achieved by offering an incentive payment to a provider for any cost savings below the target price.

(6) A procuring and disposing entity shall obtain the consent of the Authority to use another type of contract for works, other than the types of contracts specified in this regulation.

35. Scope of contracts for works.

(1) A contract for works shall clearly indicate the scope of work and the responsibility for the design.

(2) A contract for works may be—

- (a) a standard lumpsum or admeasurement contract, where the works are fully designed by the procuring and disposing entity or a consultant prior to bidding and the provider is responsible for construction only;
- (b) a design and build contract, where the provider is responsible for the design and construction of the works based on the parameters of the procuring and disposing entity; or
- (c) a turnkey contract, where a provider is responsible for the design, engineering, supply, installation of equipment and the complete construction, based on the performance specifications of the procuring and disposing entity, except

where the procuring and disposing entity is responsible for the design and engineering, and invites bids for a single contract for the supply and installation of all the works and supplies required for the project component.

(3) A procuring and disposing entity shall use a management contracting contract where appropriate, subject to the regulations prescribed for the procurement of services.

(4) A procuring and disposing entity shall obtain the consent of the Authority to use a contract for works, whose scope is outside this regulation.

36. Insurance and indemnity for works.

(1) A procuring and disposing entity shall ascertain that all the procurement requirements for works are adequately and appropriately insured, from the commencement of the works to the end of the defects liability period, against events which are due to the risks of a provider, including—

- (a) loss of or damage to the works, plant, materials, equipment, property; and
- (b) personal injury or death.

(2) Insurance shall provide for the compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

(3) A procuring and disposing entity shall state the insurance required, in the bidding documents and the contract and shall require a bidder to include the costs of insurance in the bid.

37. Property for contracts for works.

A contract for works shall clearly state—

- (a) the procedure for the transfer of the completed works to a procuring and disposing entity, including the transfer of title and the documentation required of the transfer;

- (b) the ownership of the property, on site, during the implementation of a contract;
- (c) the obligations of the provider in relation to the custody and care of the property of a procuring and disposing entity, occupied or used during the implementation of a contract; and
- (d) the arrangements for the temporary handover and return of all the property of the procuring and disposing entity, occupied or used during the implementation of the contract.

PART IV—CONTRACT PRICING AND PAYMENT.

38. Contract pricing.

(1) A procuring and disposing entity shall for a procurement requirement that is to be completed within eighteen months from the placement of a contract, place the contract based on fixed prices.

(2) Notwithstanding regulation (1), a contract for a requirement that is to be completed within eighteen months shall provide for price adjustment in the case of—

- (a) rapidly rising prices; or
- (b) significant price fluctuations due to changes in the price of foreign currency, in the case of imported goods.

(3) For the purposes of regulation (2), the submission for price adjustment to the Contracts Committee shall include the justification for recommending the price adjustment.

(4) A procuring and disposing entity shall place a contract with provisions on price adjustment for a procurement requirement that will not be completed within eighteen months from the placement of a contract.

(5) The Authority shall advise a procuring and disposing entity on the internationally accepted practices, in relation to price adjustment, for differing procurement requirements.

39. Application of price adjustment.

(1) A procuring and disposing entity shall include a provision on price adjustment in a contract extending beyond eighteen months, where it is more economical for a procuring and disposing entity to accept the inflation risk than to pay an additional cost for the supplier to accept the risk.

(2) Where a provision on price adjustment is included in a contract, the method for calculating adjustments, and any restrictions or conditions on adjustments, shall be clearly stated in the bidding documents and in the contract.

(3) A price adjustment shall be calculated using a predefined formula, which shall separate the total price into components, such as labour, equipment, materials, and fuel, adjusted by the index price specified for each component.

(4) Where the payment currency is different from the currency of the source of the input and corresponding index, a correction factor shall also be applied in the formula, to avoid incorrect adjustment.

(5) The formula, price indices, correction factors and base date for application shall be clearly stated in the bidding documents and in the contract.

(6) The formula and price indices shall be appropriate to the type of procurement and the source of the inputs and shall use industry standards wherever possible.

(7) Where there is an industry standard or where an appropriate formula is not available, a procuring and disposing entity shall use the sample formula in Schedule 1 to these Regulations.

40. Payment terms.

(1) A contract shall specify the payment terms to apply to the contract, including—

- (a) the payment method;
- (b) the payment structure;
- (c) the payment documents;
- (d) the payment period; and
- (e) the currency of payment.

(2) Where a bidder proposes alternative payment terms, the bidder shall include the full cost of the terms in the bid price.

41. Payment method.

(1) A procuring and disposing entity shall agree with a provider on the method of payment for a contract.

(2) The method of payment shall be comprehensively defined in the contract and shall indicate the person to pay the costs if any, associated with the agreed method.

42. Payment structure.

(1) A procuring and disposing entity shall state in the contract, the structure of the payment to be made.

(2) The payment structure and amount of payment for each procurement requirement shall be determined by best practices.

(3) The amount of payment shall be proportionate to the required output or deliverables.

(4) A payment structure may include—

- (a) advance payments;
- (b) stage payments, which shall be linked to specific deliverables or milestones and which may be stated in percentage terms of the defined amount or in specific amounts;

- (c) regular interim payments, which shall be based on the general progress or the work performed and may relate to a specified time period or a measurement of work performed; or
- (d) a retained payment, which shall be linked to a specific contract event, such as installation or warranty.

(5) For payments under subregulation (4) (b) and (c), the payment structure shall be proportionate to the output or deliverables.

(6) Notwithstanding this regulation, a procuring and disposing entity may in accordance with the requirements of regulation 46 make payment in full before a contract is performed.

43. Advance payment.

(1) A procuring and disposing entity may make an advance payment for—

- (a) mobilisation or start-up costs for the provision of works or services; or
- (b) the provision of supplies, such as items that have to be specially or custom manufactured.

(2) Where an advance payment is to be made, an advance payment security specified in regulation 47, shall be required and the requirement for a payment security shall be stated in the bidding documents and in the contract.

(3) A procuring and disposing entity shall not make an advance payment exceeding thirty percent of the contract price.

(4) Notwithstanding sub regulations (2) and (3), a procuring and disposing entity may, with the approval of the Secretary to the Treasury, make an advance payment of more than thirty percent of the contract price, where the procurement of the supplies, works or non-consultancy services requires an advance payment of more than thirty percent of the contract price.

- (5) An advance payment shall—
 - (a) be recovered from subsequent interim payments made to a provider, by making a percentage deduction from the interim payments, equal to the percentage paid as advance payment; or
 - (b) for stage payments, be specified as a particular milestone.

44. Interim or stage payment.

(1) Where an interim or stage payment is permitted, a procuring and disposing entity shall—

- (a) link the payment to specific and verifiable deliverables, contract event, time period, or work which shall be stated in the bidding documents and the resulting contract;
- (b) ensure that the individual payments do not exceed the cost or value of the deliverable, period or work to which the payment relates; and
- (c) require the provision of a payment security if, during the delivery of the supplies, works or services, the risk or title remains with the provider.

(2) Where a payment security is required under subregulation (1)(c), a procuring and disposing entity shall comply with the requirements of regulation 47.

45. Retained payment.

(1) A procuring and disposing entity shall determine the works or services for which payment may be retained and shall state in the contract—

- (a) the percentage or amount of the total contract value to be retained;
- (b) the period or the event at which the retention is to be released; and

(c) the documents that shall be used to prove or to certify the period or event relating to the release.

(2) A provider may be permitted to substitute a payment security for a retained payment, in accordance with these Regulations.

46. Payment in full before performance of contract.

(1) A procuring and disposing entity may make payment in full before performance of a contract by a provider, where the procuring and disposing entity, on its own initiative, sources for supplies directly from a manufacturer or authorised agent of the manufacturer and the manufacturer or agent of a manufacturer requests for payment in full before performance of the contract.

(2) The payment made under subregulation (1) may, where the Secretary to the Treasury so authorises, be made without the requirement for a payment security.

47. Payment security.

(1) A procuring and disposing entity shall not make payment to a provider under a contract for supplies, works or services without receipt of the deliverables specified in the contract.

(2) Notwithstanding regulation (1), a procuring and disposing entity may make payment to a provider before receipt of deliverables specified in the contract, where the procuring and disposing entity obtains an appropriate payment security.

(3) The bidding documents and the contract shall state the requirement for a payment security.

(4) The validity period for a payment security for procurement for works shall be for three to six months after the final expected date.

(5) The validity period for a payment security for procurement for services or supplies shall be for one to three months after the final expected date.

(6) A payment security shall be released by a procuring and disposing entity upon the expiry of the term of the security or upon the reduction of the secured sum to zero, whichever is later.

(7) The proposed release of a payment security shall be communicated to a provider and returned in accordance with the instructions of the provider.

48. Payment documents.

(1) A procuring and disposing entity shall clearly state in the contract, the documents against which each payment shall be made.

(2) A payment document shall include a document certifying or proving—

- (a) the delivery or receipt of the supplies, works or services in accordance with the terms of the contract;
- (b) the content of the consignments delivered;
- (c) the insurance coverage of the delivered items;
- (d) that the delivered items were inspected and confirmed to be in accordance with the contract;
- (e) the origin or eligibility of the delivered items;
- (f) payment of the costs specified in the contract, such as duties, levies or taxes that may be due and payable by a provider on the delivered items;
- (g) acceptance of the installation or commissioning of the delivered items by the procuring and disposing entity or user department;
- (h) the receipt or acceptance of reports, manuals, guides, or other relevant documents;

- (i) the actual time period worked;
- (j) the actual works or services completed;
- (k) the payment of sums due to sub-contractors; and
- (l) the actual sums paid for reimbursable costs, such as air tickets.

(3) A payment request from a provider shall be made using an original invoice from the provider certifying the payment due.

49. Payment to provider.

(1) The payment for any sum of money due under a contract shall only be made in the name of the provider stated in the contract.

(2) Notwithstanding subregulation (1), payment may be made to any person other than a provider, where the provider requests and confirms in writing the details of the recipient of the payment.

(3) The period for payment shall be thirty days from certification of invoices, except where this is varied in the special conditions of the contract.

(4) Payment shall be made in the currency stated in the contract.

(5) Where a payment request contains errors or discrepancies or is supported by incorrect or incomplete documentation or is not in accordance with the terms of a contract, the payment request shall not be certified and shall be returned to the provider, specifying the reasons for the rejection.

(6) A provider whose payment request is rejected shall be entitled to present a new or amended payment request, which shall be treated as the original payment request.

(7) Notwithstanding subregulation (1), where a procuring and disposing entity queries any part of a payment invoice from a provider, the procuring and disposing entity shall pay the unchallenged portion of the invoice to the provider.

PART V—CONTRACT MANAGEMENT

50. Contract management.

(1) The Accounting Officer shall appoint a person from the user department to be the contract manager.

(2) The Procurement and Disposal Unit shall provide a copy of the contract to the person appointed by the Accounting Officer to manage the contract.

(3) Upon receipt of the contract, the contract manager shall prepare a contract management plan using Form 49 in Schedule 2 to these Regulations, and forward a copy of the contract management plan to the Procurement and Disposal Unit for purposes of monitoring.

(4) Where the contract manager or the user department has any reservation or difficulty with the terms or conditions of the contract, the contract manager shall discuss and resolve the reservation or difficulty with the Procurement and Disposal Unit.

51. Appointment of contract manager.

(1) For purposes of regulation 50 (1), a user department shall nominate, a member of the user department, with appropriate skills and experience, or a person who is supervised by a member of the user department who has the appropriate skills and experience, to be appointed as contract manager.

(2) Where a contract is of high value or is complex or forms part of a larger project, the Accounting Officer shall assign the contract to a contract management team, which shall have the same responsibilities as a contract manager.

(3) A contract may be managed by a body or person outside the procuring and disposing entity, supervised by the user department.

52. Responsibilities of contract manager.

(1) A contract manager shall—

- (a) manage the obligations and duties of the procuring and disposing entity specified in the contract; and
- (b) make certain that the provider performs the contract in accordance with the terms and conditions specified in the contract.

(2) In the case of a time-based contract, the contract manager shall closely monitor the progress of the contract and ascertain that the payments claimed by the provider are appropriate and in accordance with the contract terms.

(3) For the purposes of regulation (1), a contract manager shall—

(a) ascertain that—

- (i) the provider meets all the performance or delivery obligations in accordance with the terms and conditions of the contract;
- (ii) the provider submits all the required documentation in accordance with the terms and conditions of the contract;
- (iii) the procuring and disposing entity meets all the payment and other obligations in accordance with the terms and conditions of a contract;
- (iv) where appropriate, there is adequate control for the cost, quality and time of the contract;
- (v) there is compliance with the Public Procurement and Disposal of Public Assets Act, 2003, these Regulations, guidelines and best practices;

- (vi) all the contract obligations are completed before the expiry of the contract; and
- (vii) all contract management records are kept and archived as required;
- (b) issue any required variations or change orders, in accordance with the terms and conditions of a contract;
- (c) provide full details of a required contract amendment to the Procurement and Disposal Unit and obtain the approval of the Contracts Committee before issuing any amendment;
- (d) manage the handover of the acceptance procedures;
- (e) provide full details of any proposed termination of a contract to the Procurement and Disposal Unit and obtain the approval of the Accounting Officer prior to termination;
- (f) appraise the performance of the provider and report on the performance of the provider to the Procurement and Disposal Unit; and
- (g) submit monthly reports on the progress of the contract to the Accounting Officer and to the Procurement and Disposal Unit.

(4) The Procurement and Disposal Unit shall every three months prepare and submit to the Accounting Officer a report on all contracts signed by the procuring and disposing entity, highlighting the problems encountered in managing the contracts.

53. Change orders to contracts.

(1) Subject to subregulation (2), a procuring and disposing entity may at any time after signing a contract issue a change order to the provider, in accordance with the contract, requiring the provider to make changes within the general scope of the contract in—

- (a) the drawings, designs, or specifications;
- (b) the method of shipment or packing;
- (c) the place of delivery;
- (d) the time of performance or duration of the contract; or
- (e) the related services to be provided by the provider.

(2) A procuring and disposing entity shall not issue a change order under this regulation where the change order increases the cost of the contract beyond 1% in the case of a single change or 1.5 % in the case of cumulative change orders, of the original contract price.

(3) A change order shall be issued by the contract manager.

(4) A change order shall not be issued to the provider without the approval of the Accounting Officer.

54. Amendment of contracts.

(1) A change in the terms and conditions of a contract that are not change orders or which increase the price of the contract beyond 1% in the case of a single change or 1.5% cumulatively shall be effected by amending the contract.

(2) The price to be charged by a provider for any related services that might be needed but which were not included in the contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the provider, for similar services.

(3) Notwithstanding subregulation (2), a contract amendment for additional quantities of the same items shall use the same or lower unit prices as the original contract.

(4) A single contract amendment shall not increase the total contract price by more than fifteen percent of the original contract price.

(5) Where a contract is amended more than once, the cumulative value of all contract amendments shall not increase the total contract price by more than 25 percent of the original contract price.

(6) A contract amendment shall not be issued to a provider without—

- (a) commitment of the full amount of funding of the amended contract price over the required period of the revised contract;
- (b) obtaining the approval of the Contracts Committee; and
- (c) obtaining approval from the Attorney General and other concerned bodies.

(7) The approval required under sub regulation (6) (c), shall be obtained after approval of the amendment by the Contracts Committee.

55. Renewal of contracts

(1) The contracts for the supplies or non-consultancy services specified in Schedule 3, that expire may be renewed.

(2) A contract referred to in subregulation (1) shall be renewed once and shall only be further renewed where the Secretary to the Treasury authorises.

56. Termination of contracts.

(1) Where the contract manager or a Procurement and Disposal Unit is satisfied that a contract should be terminated, the contract manager or the Procurement and Disposal Unit shall submit a recommendation for termination, with a copy of the contract, to the Accounting Officer.

(2) A recommendation for termination of a contract shall state—

- (a) the name of the provider and the procurement reference number;

- (b) reasons for the termination;
- (c) the actions taken to avoid termination, where applicable;
- (d) the contractual grounds for the termination;
- (e) the costs, if any, resulting from the termination; and
- (f) any other relevant information.

(3) The decision to terminate a contract shall be taken by the Accounting Officer, after approval by the Attorney General.

(4) Where a contract is terminated for non-performance of obligations under the contract, the procuring and disposing entity shall recommend to the Authority to suspend the provider.

PART VI—REVOCATION AND TRANSITION

57. Revocation and transition.

(1) The Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2014 are revoked.

(2) A process that had commenced under the Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2014 and the Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006 shall be continued and completed under these Regulations.

SCHEDULES

SCHEDULE 1

Regulation 39 (7)

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT, 2003

SAMPLE PRICE ADJUSTMENT FORMULA

Prices payable to the provider, as stated in the contract, shall be subject to adjustment during performance of the contract to reflect changes in the cost of labour and material components in accordance with the formula:

$$\Delta P = P_0 \left(a + b \frac{L_1}{L_0} + c \frac{M_1}{M_0} \right) - P_0$$

in which:

- ΔP = adjustment amount payable to the provider.
- P_0 = contract price (base price).
- a = fixed element representing profits and overheads included in the contract price and generally in the range of five (5) to fifteen (15) percent.
- b = estimated percentage of labour component in the contract price.
- c = estimated percentage of material component in the contract price.
- L_0, L_1 = labour indices applicable to the appropriate industry in the country of origin on the base date and date for adjustment, respectively.
- M_0, M_1 = material indices for the major raw material on the base date and date for adjustment, respectively, in the country of origin.

The coefficients a, b, and c shall be specified by the procuring and disposing entity in the bidding documents. The sum of the three coefficients should be one (1) in every application of the formula.

The bidder shall indicate the source of the indices and the base date indices in his bid.

Base date = thirty (30) days prior to the deadline for submission of the bids.

Date of adjustment = _____ weeks prior to date of shipment (representing the mid-point of the period of manufacture).

The above price adjustment formula shall be invoked by either party subject to the following further conditions:

- (a) Price adjustment will be applied only if the resulting increase or decrease is more than ____ percent of the Contract Price. [*Two (2) percent would be an acceptable percentage.*]
- (b) No price adjustment shall be allowed beyond the original delivery dates unless specifically stated in the extension letter. As a rule, no price adjustment shall be allowed for periods of delay for which the provider is entirely responsible. The procuring and disposing entity will however be entitled to any decrease in the prices of the supplies and services subject to adjustment.
- (c) The total adjustment under this clause shall be subject to a ceiling of plus or minus percent of the contract price. [*Ten (10) percent would be an acceptable percentage.*]
- (d) If the currency in which the contract price P0 is expressed is different from the currency of origin of the labour and material indices, a correction factor will be applied to avoid incorrect adjustments of the contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.

No price adjustment shall be payable on the portion of the contract price paid to the provider as advance payment.

SCHEDULE 2

FORMS

FORM 48

Regulation 7(2)

THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT, 2003

COMMITMENT FOR CALL OFF ORDER

Call Off Order Reference Number		
Code of Procuring and Disposing Entity	Supplies/Works/Non-consultancy services	Financial Year
		Call Off Order No.

Particulars of Procurement	
Subject of Procurement	
Location for Delivery	
Date Required	

Item No.	Description	Quantity	Total Cost and Currency
Amount to be Committed			

(1) Requisition Prepared by
(Head of user department)

Signature: _____

Name: _____

Title: _____

Date: _____

(2) Approval of Commitment
(Head of Accounts)

Funds Position- Balance available under Accounting Warrants as per Vote Control Register

Vote/head No	Programme	Sub-programme	Item	Balance remaining

(3) Confirmation of Commitment for Call Off Order
(Accounting Officer)

Signature: _____

Title: _____

Name: _____

Date: _____

FORM 49

Regulation 50(3)

THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT, 2003

CONTRACT MANAGEMENT PLAN

Category of Procurement and Budget

Recurrent Budget	Development Budget	Project Code	Project Title	On EGP (Yes/No)	New/ Extension

Is Procurement to Result into Multiyear Contracting?

Required Resources (UGX Bn) Year One	Required Resources (UGX Bn) Year Two	Required Resources (UGX Bn) Year Three	Required Resources (UGX Bn) Year Four

PART I - SUPPLIES

Procurement Reference Number		
Code of Procuring and Disposing Entity	Supplies	Financial Year
		Sequence Number

Subject of Procurement	
Provider	
Contract Value	
1. Contract start date	
2. Delivery date	
3. Contract completion date if different from 2.	
Deliverables	
Item	Quantity
Contract Start-up/Mobilization and Guarantees (Where applicable)	
Letter of credit issued, if applicable	
Performance guarantee	<i>Amount:</i>
	<i>Latest date for receipt:</i>
Date of release of bid security	
Advance payment guarantee	<i>Amount:</i>
	<i>Latest date for receipt:</i>
Release of guarantees	

Inspection (Where applicable)	
Point of inspection	
Inspection agency	
Point of delivery	
Acceptance/handover	
Contract Progress	
Installation and commissioning (Where applicable)	
Installation date	
Commissioning date	
Interim or stage payments	<i>See attached sheet</i>
Contract Completion	
Liquidated damages due if any	
Final Payment	Amount
	Date
Warranty/Guarantee (Where applicable)	
Warranty/ Guarantee start date	
Warranty/ Guarantee expiry date	

Contract Implementation Plan prepared by: Contract Manager

Name: Position:

Signature Date

Schedule of Deliverables and Stage Payment Certificates for Multi Deliverable Contracts

<i>Deliverable</i>	<i>FY</i>	<i>Interim Payment Certificate No.</i>	<i>Date of IPC</i>	<i>Date received by the Entity</i>	<i>Amount of IPC</i>	<i>Amount Certified</i>	<i>Date of Certification</i>	<i>Date of Payment</i>	<i>Remarks</i>

Contract Management Plan prepared by:

Name:..... Position.....

Signature Date

Part II – Works

Procurement Reference Number			
Code of Procuring and Disposing Entity	Works	Financial Year	Sequence Number

Subject of Procurement	
Provider	
Contract Value	

Contract start date	
Contract end date (<i>Start Date + Time for completion</i>)	
Site possession date to contractor	
Supervisor or the engineer	
Guarantees (Where applicable)	
Performance guarantee	<i>Amount:</i>
	<i>Latest date for receipt:</i>
Advance payment guarantee	<i>Amount:</i>
	<i>Latest date for receipt:</i>
Date of release of bid security	
Date of release of advance payment guarantee	

Contract Progress	
Interim or Stage payments	<i>See attached sheet</i>
Contract Completion	
Date of taking over certificate	<i>(Release of % of Retention where applicable)</i>
Extension of time, if any	
Delay, if any	
Liquidated damages due, if any	
Date of performance certificate	<i>(date of taking over certificate + defects notification period and release of remaining % of retention)</i>
Return of performance security	
Final Payment	<i>Amount</i>
	<i>Date</i>
Retentions (Where applicable)	
The proportion of payments to be retained [insert percent] percent.
Defects Liability Period (Where applicable)	
Defects liability period	
Contractual Date of Performance Certificate	<i>(contract completion date + defects notification period)</i>

Contract Management Plan prepared by:

Name:..... Position.....

Signature Date

Schedule of Interim Payment Certificates

<i>Deliverable</i>	<i>FY</i>	<i>Interim Payment Certificate No.</i>	<i>Date of IPC</i>	<i>Date received by the Entity</i>	<i>Amount of IPC</i>	<i>Amount Certified</i>	<i>Date of Certification</i>	<i>Date of Payment</i>	<i>Remarks</i>

Contract Management Plan prepared by:

Name:..... Position.....

Signature Date

Part III - Consultancy Services

Procurement Reference Number			
Code of Procuring and Disposing Entity	Consultancy Services	Financial Year	Sequence Number

Subject of Procurement	
Provider	
Contract Value	

Contract Duration	
Contract Start Date	
Contract Completion Date	
Deliverables	
No.	Deliverable
	Date expected

<i>Payment Schedule (Where applicable)</i>			
Percentage payment	Deliverable	Amount to be paid	Amount outstanding on contract
Lumpsum			
Time based			

Contract Management Plan prepared by:

Name:..... Position.....

Signature Date

Part IV- Non-Consultancy Services

Procurement Reference Number			
Code of Procuring and Disposing Entity	Non-Consultancy Services	Financial Year	Sequence Number
Subject of Procurement			
Provider			
Contract Value			
Contract Duration			
Contract Start Date			
Contract Completion Date			
Deliverables			
No.	Deliverable	Dates expected	
Guarantees (Where applicable)			
Performance guarantee		<i>Amount:</i>	
Date of release of Bid Security		<i>Latest date for receipt:</i>	

Advance payment guarantee	<i>Amount:</i>
	<i>Latest date for receipt:</i>
Installation and commissioning (Where applicable)	
Installation date	
Commissioning date	
Payment Schedule	
Interim/stage payments	Milestones
Lumpsum	
Time based	
Contract completion	
Liquidated damages due if any	
Final Payment	Amount
	Date

Contract Management Plan prepared by:

Name:..... Position.....

Signature Date

SCHEDULE 3

Regulation 55(1)

SUPPLIES AND NON-CONSULTANCY SERVICES FOR WHICH CONTRACTS MAY BE RENEWED

1. SUPPLIES

Medical supplies

2. NON-CONSULTANCY SERVICES

- (i) Maintenance of buildings and fixtures and furnishings of buildings
- (ii) Rental agreements
- (iii) Cleaning services
- (iv) Security services
- (v) Catering services

MATIA KASAIJA,
Minister of Finance, Planning and Economic Development.