

Our Ref: PPDA/CMA/140

15th August 2024

The Accounting Officer
Capital Markets Authority
Plot 1 Baskerville Avenue
KOLOLO

**BID PREPARATORY AUDIT FOR THE SUPPLY OF FUEL FOR STAFF AND CMA
MOTOR VEHICLES-CMA/SUPLS/24-25/002**

Reference is made to the above subject.

In accordance with Section 8 (1) (j) of the Public Procurement and Disposal of Public Assets (PPDA) Act, Cap 205, the Authority conducted an audit into the procurement of fuel for staff and CMA motor vehicles.

The purpose of the audit was to establish whether the solicitation document issued to the bidders was prepared in accordance with the provisions of the PPDA Act, Cap 205 and PPDA Regulations, 2023.

The Authority identified the following exceptions with regard to the bidding document preparation for the attention of management.

1. Request for a Performance Security without stating the percentage in relation to the contract price.

The Authority noted that in the Special Conditions of Contract under GCC 18.1 the Entity indicated the requirement for a Performance Security without stating the percentage contrary to clause 2.0 (iv) of the (PDDA) Guideline 3/2024 which states that "where a Performance Security in form of a Bank Guarantee is required, it shall be expressed in the Special Conditions of the contract in the bidding document as a percentage of the contract price and shall not exceed 5% of the contract value.

Implication

Failure to state the percentage of a Performance Security deprives bidders key information on terms and conditions of the contract that should be kept in mind while preparing bids.

Recommendation

The HPDU should state the percentage of Performance Security that shall be required during contracting, revise the bidding document and notify bidders.

2. Failure to include the margin of preference

The Authority noted that margin of preference was not provided for under Section II, Bid Data Sheet (ITB 35.1) of the bidding document provided that a margin of preference **shall not** apply as opposed to making it mandatory which was in breach of Section 62 (1)(a) of the PPDA Act Cap 205 that provides that preference schemes shall be applied in respect of goods, works and non-consultancy services, where the open domestic or open international bidding methods are used, with a specified margin of preference being added during the financial comparison stage of the evaluation process to the evaluated price of the bid which does not qualify for preference.

Implication

Local firms are denied a chance of attaining a competitive advantage in the event that foreign firms participate hence affecting national development.

Recommendation

The Head Procurement and Disposal Unit should revise the requirement by making margin of preference applicable in the document in order to attain a competitive advantage to local firms in the event that foreign firms participate in accordance with Section 62 (1)(a) of the PPDA Act Cap 205.

3. Failure to state the actual date within which a bidder can seek clarification

The Authority noted that Part 1: Section 2, Bid Data Sheet (ITB 7.1) of the above procurement, the Entity stated the period to which a bidder can seek clarification in days that is 7 days contrary to Regulation 59 (1) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023 that requires stating the date by which clarification can be sought.

Implication

The omissions in the bidding document may lead to disagreements leading to unnecessary delays in the procurement process.

Recommendation

The Head Procurement and Disposal Unit should make a clarification on the actual date by which clarifications can be sought and issue it to all bidders immediately.

4. Failure to state the bid validity date

The Authority noted that Part 1: Section 2, Bid Data Sheet (ITB 20.1) of the above procurement, the Entity stated the bid validity period in days that is 90 working days contrary to Regulation 62 (1) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2023 that requires stating the date up to which a bid shall be valid.

Implication

Failure to state a date up to which a bid shall be valid may cause unnecessary complaints since different people calculate working days differently basing on either nationality, faith and others.

Recommendation

The Head Procurement and Disposal Unit should state the date up to which bids shall remain valid under ITB 20.1 of the bid data sheet and notify all bidders.

5. Incorrect procurement reference number

The Authority noted that Part 1: Section 2, Bid Data Sheet (ITB 1.1) of the above procurement, the Entity indicated the Reference number as CMA/SUPLS/24-25/002 contrary to clause 2.1.2 (d) of the (PDDA) Guideline 2/2024 which requires a five- digit unique number allocated sequentially from 00001 onwards.

Implication

Incorrect referencing makes identification, tracking and review of individual procurement requirements difficult.

Recommendation

The Head Procurement and Disposal Unit should correct the reference number provided for under ITB 1.1 of the Bid Data Sheet and throughout the bidding document.

6. Unclear Statement of Requirements

The list of supplies and related services stated brief description of supplies under section 6 as *“supply fuel and fuel cards for staff and CMA Motor Vehicles worth UGX 434,715,500 for a period of one year”*. The Authority noted that there was no clarity on what the bidders were required to quote for in terms of items, quantity and unit of measure. This would aid bidders in filling up of the price schedule under bidding forms.

Implication

This may lead to subjectivity during evaluation and recommendation of award of contract to bidders who would have not been the best.

Recommendation

The Head Procurement and Disposal Unit should make adjustments in the bidding document by indicating the exact items and quantities required where applicable to guide bidders in preparation of responsive bids and have a basis for financial evaluation.

7. Failure to require a bid security from bidders

The Authority noted that Part 1: Section 2, Bid Data Sheet (ITB 21.1) of the above procurement, the Entity stated that a bid security **shall not** be required contrary to clause 1.1 (i) of the (PDDA) Guideline 3/2024 that requires a bid security for supplies, works and non-consultancy services under open domestic and international bidding procedures.

Implication

Failure to require a bid security denies the Entity a backup position in cases where bidders including the Best Evaluated Bidder unjustifiably withdraws from bidding process leaving the Entity with little or no competition.

Recommendation

The Authority recommends that a bid security be required under ITB.21.1 and bidders be notified in accordance with clause 1.1 (i) of the (PDDA) Guideline 3/2024.

8. Failure to require a signed copy of Beneficial Ownership declaration form

The Authority noted that Section 3, Evaluation methodology and criteria under eligibility documents of the above procurement, the Entity did not require bidders to provide a copy of Beneficial Ownership declaration form contrary to Circular no.4 of 2022 issued by the Authority on 25th April 2022 that requires submission of Beneficial Ownership information for firms that are awarded government contracts.

Implication

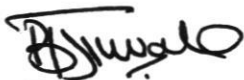
Failure to require submission of a copy of signed beneficial ownership declaration form exposes the Entity to fraud and hinders transparency in executing procurement functions.

Recommendation

The Authority recommends that submission of a beneficial ownership declaration form be required under eligibility documents and bidders be notified.

The Authority recommends that the above observations are immediately rectified, necessary approvals obtained where applicable and bidders notified of the changes before bid closure.

The purpose of this letter is to forward the findings of the bid preparatory audit exercise for implementation.



Benson Turamye

EXECUTIVE DIRECTOR

cc: The Chairman, Contracts Committee
cc: The Head, Procurement and Disposal Unit