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LEGAL NOTICE NO. 114

THE PUBLIC PROCUREMENT AND DISPOSAL ACT

(No. 3 of 2005)

IN EXERCISE of the powers conferred by section 140 of the Public Procurement and Disposal Act, the Cabinet Secretary to the National Treasury makes the following Regulations:—

THE PUBLIC PROCUREMENT AND DISPOSAL (PREFERENCE AND RESERVATIONS) (AMENDMENT) REGULATIONS, 2013

Citation.

1. These Regulations may be cited as the Public Procurement and Disposal (Amendment) Regulations, 2013.

LN. 58/2011.

2. Regulation 2 of the Public Procurement and Disposal (Preference and Reservations) Regulations, 2011, in these Regulations referred to as “the principal Regulations”, is amended by inserting the following new definitions in proper alphabetical sequence-

"furniture" includes screens, fixed bench couches, garden furniture, wardrobes and light furniture;

3. The principal Regulations are amended by deleting regulation 6 and substituting therefor the following new regulation -

6. (1) Small or micro enterprise or a disadvantaged group wishing to participate in public procurement shall apply for registration with the National Treasury or the respective county treasury with which they operate and are located in the form set out in the First Schedule to these Regulations.

(2) All lists of registered enterprises from the national and county levels shall be submitted to the Authority for consolidation and publication.

4. The principal Regulations are amended by deleting regulation 12 and substituting therefor the following new regulation—

12. For purposes of section 39(4)(d) of the Act, public entities shall grant exclusive preference to local contractors offering-

(a) motor vehicles, plant and equipment that are assembled in Kenya;

(b) construction material and other material used in the transmission and conduction of electricity of which such material is made in Kenya;

(c) furniture, textiles, foodstuffs and other goods made or locally available in Kenya.

5. The principal Regulations are amended by deleting regulation 13 and substituting therefor the following new regulation -

13. For the purposes of section 39(8)(a)(ii) of the Act, the threshold below which exclusive preference shall be given to citizen contractors, shall be the sum of -

- (a) one billion shillings for procurements in respect of road works, construction materials and other materials used in transmission and conduction of electricity of which the material is made in Kenya;
- (b) five hundred million shillings for procurements in respect of other works;
- (c) one hundred million shillings for procurements in respect of goods; and
- (d) fifty million shillings for procurements in respect of services.

6. The principal Regulations are amended by deleting regulation 19 and substituting therefor the following new regulation -

19. (1) For the purpose of ensuring maximum participation of citizen contractors, disadvantaged groups, small and micro- enterprises in public procurement, procuring entities may unbundle goods works and services in practicable quantities pursuant to section 31(7) of the Act.

(2) For greater certainty, a procuring entity in unbundling procurements in paragraph (1), may be lot goods, works or services in quantities that are affordable to specific target groups participating in public procurement proceedings.

7. The principal Regulations are amended by inserting the following new Regulations immediately after regulation 30—

Budgetary
Reservations

31. (1) A procuring entity shall allocate at least thirty percent of its procurement spend for the purposes procuring goods, works and services from micro and small enterprises owned by youth, women and persons with disability.

(2) For the purpose of implementing paragraph (1), a procuring entity shall implement the requirement through its budgets, procurement plans, tender notices, contract awards and submit quarterly reports to the Authority.

Qualification for
preference and
reservations
schemes.

32. For the purpose of benefiting from preference and reservations schemes, an enterprise owned by youth, women or persons with disabilities shall be a legal entity that—

- (a) is registered with the relevant government body; and
- (b) has at least seventy percent membership of youth, women or persons with disabilities and the leadership shall be one hundred percent youth, women and persons with disability, respectively

Facilitation for financing of local purchase or service orders.

33. A procuring entity shall facilitate financing of enterprises owned by youth, women or persons with disabilities that have been awarded contracts, by authenticating their notifications of tender awards and local purchase or service orders and subsequently entering into an agreement with the relevant financing institution with conditions that shall include paying the contracted enterprise through their account opened with the financier.

Prompt payments for performed contracts.

34. (1) For the purpose of ensuring sustained growth for enterprises owned by youth, women or persons with disabilities, procuring entities shall make prompt payments for all performed contracts through electronic media where possible and shall not delay beyond thirty days.

(2) Where delay is inevitable, a procuring entity shall make at least fifty percent part-payment and shall give a written explanation for the delay to the enterprises referred to in paragraph (1).

(3) Where delay of payments for works performed are likely to happen, a procuring entity may facilitate invoice discounting arrangements with a financial institution for the purpose of advancing credit to the affected enterprises stated in paragraph (1).

Sourcing supplies to citizen contractors by international tenderers.

35. For the purpose of ensuring sustainable promotion of local industry, a procuring entity shall have in its tender documents a mandatory requirement as a preliminary evaluation criteria for all foreign tenderers participating in international tenders to source at least forty percent of their supplies from citizen contractors prior to submitting a tender.

Made on the 18th June, 2013.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.