



Procurement Regulations for Electricity Sector Licensees, 2020

ES 07/2020

Issue Date: 15 July 2020

UTILITIES REGULATION & COMPETITION AUTHORITY

Frederick House, Frederick Street | P.O. Box N-4860 Nassau, Bahamas | T 242.393.0234 | F 242.393.0153 | F 242.393.0237

www.urcabahamas.bs

Contents

1. Short title.....	3
2. Definitions	3
3. Purpose of Regulations.....	5
4. Application of Regulations	5
5. Implementation of Regulations by licensees	6
6. Rules applicable to valuation	6
7. Preparation of procurement - relationship to the Integrated Resource Plan	7
8. Principles of procurement.....	9
9. Choice of procurement procedures	10
10. Periodic indicative notices	12
11. Permanent qualification system.....	12
12. Prequalification.....	13
13. Bidding documents	14
14. Participation of a bidder in preparation of a procurement process	18
15. Submission of bids	20
16. Restricted bidding.....	20
17. Reception of bids	21
18. Opening of bids.....	21
19. Evaluation of bids	22
20. Notice of contract award	25
21. Treatment of unsolicited bids.....	25
22. Licensee procurement reporting.....	26

1. Short title

These Regulations may be cited as the Procurement Regulations for Electricity Sector Licensees, 2020.

2. Definitions

(1) In these Regulations, all terms shall have the meaning attributed to them by the Electricity Act 2015 as amended (EA), unless otherwise expressly defined as follows:

"Affiliated person" means, in relation to a licensee, a company, an entity or a person (whether natural or legal, incorporated or not) that directly or indirectly controls, is controlled by, or is under common control with, such licensee.

"Candidate" means an economic operator which has been invited to participate in a procurement process, applied for prequalification or otherwise expressed an interest in a procurement process, but before he has made a bid.

"Bid" means an offer made by an economic operator to a licensee for supply of goods, works or services for consideration which is capable of being accepted to form a contract.

"Bidder" means an economic operator which has made a bid in a procurement process conducted by a licensee.

"Bidding documents" means requirements in respect of submission of bids, all relevant specifications, draft contractual documents to be entered into with the winning bidder, information on bid security and other documents issued by the procuring licensee and which are binding on bidders.

"Economic Operator" means any person or an entity, or a group of such persons or entities or both, including any temporary associations of undertakings, which offers the execution of works or of a work, the supply of goods or the provision of services on the market.

"Integrated Resource Plan" or "IRP" means a document as is defined and required by the licence.

"Licence" means a licence issued by URCA as defined under the EA

"Licensee" means the holder of a licence as defined under the EA.

"Open bidding" means a competitive procurement method whereby the number of potential participants in the procurement is not restricted.

“Permanent qualification system (PQS)” means a system of prequalification of potential bidders operated by the licensee on a permanent basis (without relation to any particular procurement process) pursuant to section 11(1)(a).

“Prequalification” means prequalification referred to in section 12.

“Procurement” means the solicitation of the supply of goods, works and services or any combination thereof.

“Procurement notice” means a notice of invitation to participate in a prequalification or to bid.

“Procurement process” means a single instance of procurement undertaken by a licensee designed to result in a single contract with a goods, works or services provider.

“Restricted bidding” means a competitive procurement method whereby only the economic operators preselected by the licensee are invited to participate in the procurement process.

3. Purpose of Regulations

- (1) These Regulations are designed to establish the framework for procurement by licensees of generation resources, transmission, distribution, storage and supply assets and services in order to ensure that licensees are at all times compliant with their economic purchasing obligations under their respective licences.
- (2) These Regulations do not impose on licensees any specific requirements in respect of types of generation resources transmission, distribution, storage and supply assets and services to be procured, the timing or particular form of procurement processes.
- (3) Licensees shall appropriately coordinate their planning, investment and procurement processes with a view to providing adequate, safe and efficient service to their customers at approved rates.

4. Application of Regulations

- (1) These Regulations shall apply to procurement by licensees where the total value of goods, works and services to be procured is estimated to be at least BSD 500,000 or the total generation capacity, whether new or replacement, to be so procured is at least 1 MW, except –
 - (a) as specified in section 22, it shall also apply to procurement by licensees where the value of relevant contracts is between BSD 50,000 and 500,000, in respect of reporting requirements only,
 - (b) procurement by independent power producers, and
 - (c) procurement by licensees that are not connected to the grid, irrespective of the installed generation capacity.
- (2) Procurement of goods, works and services constitutes, in whatever combination thereof, procurement of power generation resources, transmission, distribution, storage and supply assets (or services in regard thereof) if it results in acquisition by the licensee of:
 - (a) a generation, transmission, distribution, storage and/or supply facility (or services in regard thereof) and whether it is designed, built, assembled, integrated, commissioned and/or operated by the licensee or by one or several contractors pursuant to one or several contracts where such contracts are designed to serve one business purpose of the licensee, or

- (b) electric energy or capacity pursuant to a power purchase agreement or any other contractual arrangement (such as a generation lease or similar arrangement) with the contractor having the same business purpose or function for the licensee.
- (3) These Regulations shall prevail, in case of conflict between these Regulations and either (i) the general procurement rules of licensees or (ii) any specific rules established by licensees for individual procurement processes.

5. Implementation of Regulations by licensees

- (1) No later than 60 days following entry into force of these Regulations, licensees shall submit to URCA for approval their respective draft procurement rules which shall be consistent with the Electricity Act, other applicable laws and regulations, relevant licence conditions and these Regulations.
- (2) Where a person or an entity becomes a licensee after entry into force of these Regulations, it shall submit to URCA for approval its draft procurement rules no later than 60 days following receipt of the relevant licence.
- (3) URCA shall review draft procurement rules of the licensees specified in subsections (1) or (2) above, as the case may be, and shall within 30 days of their receipt either approve them or request that such draft procurement rules be amended specifying the reasons for such request. If so requested, the licensee shall appropriately amend its draft procurement rules and resubmit, within 15 days of receipt of relevant request from URCA, such draft procurement rules to URCA for approval.
- (4) Licensees shall, within 30 days of approval by URCA of their procurement rules, implement them according to their respective internal procedures.
- (5) In the event of any subsequent amendment of these Regulations, the provisions of subsections (1)-(4) above shall apply *mutatis mutandis*.
- (6) Any subsequent amendment of licensees' procurement rules shall be subject to approval by URCA, the rules of subsections (1)-(4) above shall apply *mutatis mutandis*.

6. Rules applicable to valuation

- (1) For the purposes of estimating the value of a procurement under section 3(1), the estimated value shall —

- (a) take into account all available price information including —
 - (i) published national and international prices;
 - (ii) local market prices;
 - (iii) prices of previous contracts;
 - (b) exclude [the VAT/sales tax]; and
 - (c) include all reasonably foreseeable elements of the total price to be paid (such as different goods, works and services and elements of remuneration).
- (2) Where procurement may be conducted in several separate lots with contracts to be awarded at the same time or over a given period to one or more bidders, the calculation of the estimated value shall be based on the estimated total maximum value of all lots making up the procurement.
- (3) Where the procurement does not specify a total price but is in respect of supplies occurring over a period of time (whether regular, periodic or otherwise), the basis for estimating value shall be —
- (a) for a fixed-term contract, the total estimated contract value for the contract's duration including any termination payment; or
 - (b) for a contract for an indefinite period or where there is doubt as to whether the contract is to be fixed-term, the estimated monthly payment multiplied by the number of months the licensee believes to be the most likely duration.
- (4) Where the procurement contains an option for extension of the contract for additional deliveries or services for the same price and under the same conditions, the basis for calculating the estimated procurement value must be the highest possible total permitted for the option included.

7. Preparation of procurement - relationship to the Integrated Resource Plan

- (1) The licensee shall, prior to including the relevant procurement item in the periodic indicative notice referred to in section 10 or in the procurement notice, as the case may be, either -
- (a) reasonably satisfy URCA that the proposed procurement process reflects the requirements of the licensee based on its Integrated Resource Plan approved by URCA, or

- (b) submit to URCA for approval draft revised IRP so that the proposed procurement process reflects the requirements of the licensee based on such revised Integrated Resource Plan, or
 - (c) request URCA for a waiver of the above requirement that the proposed procurement process reflects the requirements of the licensee based on IRP, in which case the licensee shall provide to URCA a justification for such waiver, together with relevant supporting materials.
- (2) In the absence of an approved IRP, the licensee shall reasonably satisfy URCA that the proposed procurement process is otherwise compliant with its licence conditions in respect of the IRP and the requirements specified in subsection (3) below.
- (3) Licensee, in its submissions to URCA under subsections (1) and (2) above, shall:
 - (a) demonstrate that the proposed procurement process is necessary in order to ensure that the licensee will comply with its obligations and duties under its relevant licence in respect of its generation, transmission, distribution, storage and supply functions for the relevant planning period;
 - (b) demonstrate that it has undertaken technical, economic, financial, environmental, social and other studies relevant to the proposed procurement process;
 - (c) provide reports, calculations, technical schemes and other supporting materials necessary and sufficient for URCA to make its decision/determination on approval or rejection of the licensee's submission;
 - (d) indicate the preferred procurement method or methods;
 - (e) specify the form, in which the licensee's relevant needs are proposed to be met (e.g., by purchasing own equipment, services or electricity and/or capacity from an economic operator), including whether alternative forms will be considered or prohibited, and the relevant contractual arrangements;
 - (f) provide draft procurement notice and bidding documents (specified in section 13).
- (4) URCA shall consider the submission by the licensee referred to in subsections (1) and (2) above and, subject to the right of URCA to request any necessary additional information for review, inform the licensee of its decision within 30 days of receipt of the licensee's submission.

- (5) If URCA requests additional information from the licensee, the licensee shall provide such information in the prescribed form and within the prescribed time limit. URCA shall have the right to request meetings with the licensee to discuss matters relevant to the submission which the licensee shall be obliged to attend on reasonable notice.
- (6) Where URCA believes that the licensee's submitted proposal for a procurement process is deficient in certain respects it shall be entitled to request that the licensee amend, as appropriate, its IRP and the bidding documents.

8. Principles of procurement

- (1) Procurement policies, rules and practices of licensees shall be consistent with the requirements of any applicable laws and regulations, and their respective licence conditions.
- (2) Licensees shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner. Where licensees invite or allow to participate in their competitive procurement processes their affiliated persons, they shall, specifically:
 - (a) not treat them more favourably than any other economic operator, and
 - (b) disclose participation of their affiliated persons to the other candidates or bidders participating in the procurement process.
- (3) The design of the procurement rules and processes shall not be made with the intention of or result in excluding any procurement from the scope of these Regulations by artificially reducing the size of the procurement below the threshold value specified in section 4.
- (4) Notwithstanding the provisions of the preceding subsection, licensees shall be entitled to divide a procurement requirement which can be procured as a single contract into several separate lots where it can be reasonably anticipated that the award of separate contracts may result in the best overall value for the licensee, taking into account all relevant factors, including the cost of servicing and contract management.
- (5) The design of the procurement rules and processes shall not artificially narrow competition. For this purpose, competition shall be considered to be artificially narrowed where the design of the procurement (including the procurement method) is made with the intention of unduly favouring or disadvantaging certain economic operators.

- (6) Licensees shall ensure that award of contracts for goods, works and services be based on the principle of the most economically advantageous bids assessed from the point of view of the licensee and by the most timely, cost-effective and efficient means possible. This provision shall not prevent licensees from using objective, transparent and fair non-price criteria in selection of the most economically advantageous bids.
- (7) Licensees shall ensure that no person or individual having voting or other decision making powers in, or in respect of, procurement bodies of the licensee, will participate in the evaluation, negotiation and/or selection of bids and candidates or bidders where such person or individual (including immediate members of the family) has a conflict of interest involving candidate's or bidder's participation in the procurement process. Licensees shall establish in their procurement rules mechanisms for having such conflicts of interest avoided.

9. Choice of procurement procedures

- (1) Licensees shall, as part of the procurement planning process, propose the most appropriate procedure that conforms to these Regulations and ensures an appropriate balance between the particular characteristics of the procurement procedure, its expected results and the resources required to conduct it.
- (2) Licensees may use the following procurement procedures:
 - (a) open bidding – in all cases,
 - (b) restricted bidding – in the cases and subject to the rules specified in section 16,
 - (c) single-source procurement procedures – in the cases and subject to the rules specified in subsection (4) below.
- (3) They may, in open and restricted procedures, establish objective rules and criteria that enable licensees to reduce the number of candidates that will be invited to make a bid or to negotiate. Licensee shall take account of the need to ensure adequate competition when selecting the number of candidates or bidders.
- (4) Licensees may only use single-source procurement procedures (including direct negotiations) in respect of:
 - (a) items already included in the procurement plan of the licensee where the supplier has been identified in a prior competitive procurement process;
 - (b) items necessary due to a catastrophic failure or major outage affecting the licensee's electricity supply system;

- (c) items where there exists only one known or acceptable source;
- (d) items and guarantees available from original manufacturers only - for the goods already procured and used by the licensee;
- (e) licence arrangements (such as IT licences) where change of the supplier is not possible for technical reasons;
- (f) bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;
- (g) acquisition of power from renewable electricity resources where the licensee is obliged to take such power from a specified source in order to meet a particular objective stated by law, a policy or a specific decision of the Government;
- (h) where no bids, no suitable bids, no requests to participate or no suitable requests to participate have been submitted in response to an invitation to qualify or to bid, provided that the initial conditions of the contract are not substantially altered;
- (i) items where prices are established by recognized competitive markets.

(5) In respect of subsections (4)(b)-(g) above, licensees shall inform URCA of their intention to use single-source procurement procedures prior to commencing such procurement process and provide to URCA sufficient supporting information. Failure of URCA to object to such single-source procurement process within 15 days of receipt of the relevant notice shall be considered as approval. Where the licensee can demonstrate to URCA that the urgency of procurement under subsection (b) above is such that a shorter period for URCA's review is required, URCA and the licensee shall convene within the shortest time possible to effect the procurement.

(6) The selection of the procurement procedure shall take into account —

- (a) the nature of the goods, works or services required;
- (b) the estimated value of the procurement, calculated in accordance with the valuation rules set out in section 6;
- (c) the urgency of the procurement and the likely duration of the procurement process;
- (d) the potential sources for the procurement including —
 - (i) the competitiveness of the national and international market for the relevant goods, works or services, and
 - (ii) the likely interest of potential national and international bidders, given the size and nature of the requirement.

10. Periodic indicative notices

- (1) Licensee may make known their intentions of planned procurements through the publication of periodic indicative notices in respect of the next budget year.
- (2) Such notices shall be published on the licensee's website, and in at least 2 newspapers of national circulation no later than [1 March of each year] and contain at least the following information:
 - (a) nature of the goods, works and services to be procured in such budget year,
 - (b) expected value of each item to be so procured, specifying whether the intended procurement will be done in one or several lots,
 - (c) expected date or period of publication of invitations to prequalify or to bid, as the case may be,
 - (d) expected date or period for delivery of the relevant items,
 - (e) an indication of the anticipated procurement procedure for each procurement requirement,
 - (f) an indication of the anticipated form of contract to be concluded with the winning bidder,
 - (g) any other details as may be relevant to the procurement.

11. Permanent qualification system

- (1) Licensees may, for the purposes of preliminary selection of economic operators for participation in their procurement processes, establish and operate a permanent qualification system (PQS) as specified in this section 11.
- (2) Where licensees elect to use a PQS, they shall establish objective rules and criteria for:
 - (a) the exclusion and selection of economic operators requesting qualification, and
 - (b) the operation of the PQS, covering such matters as –
 - (i) goods, works and services to which the PQS applies (these may be categorised by type of goods, works or services they provide, capacity or monetary value);
 - (ii) inscription in the system;
 - (iii) periodic updating of the qualifications, if any;

- (iv) period of validity of qualification of economic operators, and
 - (v) the duration of the system.
- (3) Licensees shall inform URCA of existence of their PQS and provide to URCA the rules and procedures of the PQS for its evaluation and approval. URCA shall review and approve or request amendment to such PQS within 30 days of receipt of the relevant submission from the licensee.
- (4) The PQS shall maintain a written record of qualified economic operators which shall be divided into categories according to type of goods, works and services for which the qualification is valid.
- (5) Licensees may impose upon economic operators charges in connection with requests for qualification under the PQS or with updating or conserving an already obtained qualification; such charges shall be proportionate to the generated costs.
- (6) Criteria for qualification of economic operators for the purposes of PQS shall be relevant to the category of procurement, material, verifiable and may include -
- (a) technical, operational and managerial capabilities and prior experience of the economic operator,
 - (b) financial standing, including in respect of provision of any securities,
 - (c) good standing in terms of money laundering, terrorism financing, tax evasion, anti-corruption legislation of The Bahamas or abroad, or any other violations which may, pursuant to the laws of The Bahamas, make such economic operators not eligible to conduct operations in The Bahamas,
 - (d) availability of sufficient qualified personnel.

12. Prequalification

- (1) Licensees shall conduct prequalification within the framework of each procurement process.
- (2) Criteria for prequalification of economic operators shall be relevant to the procurement process, material, verifiable and may include -
- (a) technical, operational and managerial capabilities and prior experience of the economic operator,
 - (b) financial standing, including in respect of provision of any securities,

- (c) good standing in terms of money laundering, terrorism financing, tax evasion, anti-corruption legislation of The Bahamas or abroad, or any other violations which may, pursuant to the laws of The Bahamas, make such economic operators not eligible to conduct operations in The Bahamas, or
 - (d) availability of sufficient qualified personnel.
- (3) The rules and criteria for prequalification of candidates shall be made available to interested economic operators within a reasonable time prior to the date when the bidding documents are published or otherwise made available. If such licensee subsequently wishes to amend the rules and criteria for prequalification of candidates, such amendments shall be communicated simultaneously to all economic operators who submitted requests for prequalification.
- (4) No new qualification criteria shall apply within the same procurement process with the effect that a candidate which qualified at a prior stage in the procurement process will be disqualified by operation of such new qualification criteria.
- (5) Results of prequalification shall be communicated to all candidates and, in respect of open bidding, shall be published in the same way as the relevant invitation to bid, within 15 days of the licensee's relevant decision.

13. Bidding documents

- (1) In case of open bidding, a procurement notice (an invitation to bid) shall be published on the licensee's website and in at least 2 newspapers of national circulation.
- (2) In case of restricted bidding, an invitation to bid shall be sent to those economic operators which have been identified by the licensee.
- (3) The notice under subsections (1) or (2) above, as appropriate, shall include information on –
- (a) the identity and address of the licensee and the contact details of the person from whom further information can be obtained;
 - (b) the nature and time frame of the procurement, including the place of delivery of goods or services and the location of any works;
 - (c) the price of and the manner of obtaining the bidding documents or, where applicable, any pre-qualification documents required;
 - (d) the place and deadline for submission of bids;
 - (e) the method of procurement; and

- (f) such other matters as may be necessary for the procurement.
- (4) The licensee shall make available in a non-discriminatory manner, the requisite bidding documents —
- (a) in the case of open bidding, to all potential bidders that responded to the invitation to bid by the due date indicated in such invitation and passed the prequalification stage; or
 - (b) in the case of restricted bidding, to all bidders that have been preselected by the licensee for the procurement process.
- (5) Licensees shall ensure that the bidding documents contain at least the following information -
- (a) detailed description of the goods, services or works to be supplied, including the minimum requirements that such goods, services or works need to comply with;
 - (b) form of contract (including text of the model contract or contracts, together with relevant annexes) to be entered into with the winning bidder;
 - (c) instructions for preparation and submission of bids, including the form of submission, period of validity of the bids, the due date and address for submission of bids;
 - (d) the time and place of bid opening (if applicable, separately for technical and financial proposals);
 - (e) site visits and pre-bid conferences, if relevant;
 - (f) the components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;
 - (g) criteria for evaluation and ranking of bids in relation to financial and technical aspects, such as —
 - (i) total bid price, including the cost of acquisition (life-cycle cost if relevant), financing, operating, maintaining and repairing the goods or works, if relevant – in case of acquisition of assets, or
 - (ii) levelized electricity cost (for a scenario predefined by the licensee in the bidding documents) – in case of acquisition of energy or capacity;
 - (iii) time for delivery of the goods, completion of the works or provision of the services;

- (iv) functional characteristics of the goods or works;
 - (v) different technologies used;
 - (vi) environmental or social attributes;
 - (vii) terms of payment and of guarantees in respect of the goods, works or services, or
 - (viii) any combination thereof as well as the scoring system reflecting both price and non-price criteria of evaluation and specifying their relative weights;
- (h) providing the methodology for evaluation, including the relevant steps in evaluation, establishment of a shortlist, whether negotiations may be required;
 - (i) standards to be used by the bidders;
 - (j) preference, if any, for domestic goods and contractors;
 - (k) any grouping of goods, works or services into lots and packages and the manner of evaluation of the lots and packages;
 - (l) specific requirements of the bidding documents in respect of which deviations are prohibited;
 - (m) whether alternative bids are allowed and, if so, how those alternatives will be evaluated;
 - (n) notice of conflict of interest restrictions and anti-fraud and corruption rules;
 - (o) criteria and conditions for exclusion of bidders from the procurement process, and
 - (p) any other matters as may be required by any other laws and/or regulations in effect in The Bahamas.

(6) If alternative bids are allowed, the bidding documents shall establish:

- (a) the minimum requirements to be met by the alternatives;
- (b) acceptable and prohibited, as the case may be, alternative technologies to be used in such bids;
- (c) maximum allowed deviations from the technical specifications (not more than 10% of the required technical parameters), and
- (d) any specific requirements for their presentation, in particular whether alternatives may be submitted only where a bid compliant with the standard requirements of the bidding documents has also been submitted.

- (7) The criteria and methodology for evaluation of alternative bids shall allow for comparison between compliant and alternative bids.
- (8) The due date for submission of bids shall be such that will allow reasonable time for bidders to prepare the bid, considering its nature and complexity.
- (9) In the event a site visit or a pre-bid conference is organized by the licensee, all bidders or candidates, as appropriate, shall be invited to participate and be given reasonable time to take part in such event.
- (10) In the event the licensee responds to any clarification questions from a bidder or candidate, answers shall be simultaneously communicated to all the other bidders or candidates. The licensee shall ensure that in such communications any commercially sensitive information received from bidders or candidates shall be protected.
- (11) Licensees shall, wherever possible, avoid changing the bidding documents in any material respect at any time throughout procurement processes. The change shall not be considered material if the expected value, the number of items to be procured or the key technical parameters (such as capacity of the equipment to be procured) is varied by 10% or less of the values specified in the original bidding documents. No change to the bidding documents shall be allowed after the financial proposals have been opened.
- (12) In the event that a licensee considers that a change referred to in subsection (11) above is necessary, it shall notify URCA of its intention to so change the bidding documents and provide the details of the proposed change and an explanation of reasons therefor.
- (13) If the proposed change is such that additional time for preparation of bids would normally be required, a corresponding additional time for preparation of bids shall be accorded to bidders.
- (14) URCA shall review such notice and inform the licensee whether it approves the proposed change within 5 (five) days of the date of receipt of such notice. URCA shall be entitled to withhold its approval if such change is likely to unduly affect effective competition between the same bidders by excluding originally qualifying bidders.
- (15) Where the proposed change in the bidding documents requires that the licensee's IRP be revised, the licensee shall –
 - (a) submit to URCA for approval draft revised IRP with which the proposed change is compatible, or

(b) request URCA for a waiver of the requirement that the proposed change in the bidding documents be compatible with an approved IRP.

(16) In the absence of an approved IRP, the licensee shall reasonably satisfy URCA that the proposed change in the bidding documents is otherwise compliant with the requirements of section 7.

(17) If URCA approves the proposed change in the bidding documents, the licensee shall:

(a) inform all the bidders of such change, and

(b) allow them reasonable time to amend their original bids accordingly.

(18) If URCA does not approve the proposed change in the bidding documents, the licensee shall either continue the procurement process pursuant to the original bidding documents or cancel the procurement process and inform all the bidders accordingly.

14. Participation of a bidder in preparation of a procurement process

(1) Where a bidder/candidate, including an economic operator that made the relevant unsolicited proposal, or an undertaking related to it —

(a) has advised the licensee, or

(b) has otherwise been involved in the preparation of the procurement process,

the licensee shall take appropriate measures to ensure that competition is not distorted by the participation of that bidder/candidate.

(2) Such measures shall include—

(a) the communication to the other bidders/candidates of relevant information exchanged in the context of or resulting from the involvement of the bidder/candidate in the preparation of the procurement process; and

(b) the fixing of adequate time limits for the receipt of tenders.

- (3) The bidder/candidate concerned shall only be excluded from the process where there are no other means to ensure compliance with the duty to treat economic operators equally in accordance with these Regulations.
- (4) Prior to any such exclusion, the bidder/candidate concerned shall be given the opportunity to prove that their involvement in preparing the procurement process is not capable of distorting competition.
- (5) The licensee shall document measures taken under this section and keep relevant documents.

15. Submission of bids

- (1) A bid shall be submitted not later than the due date for submission of bids in written form, duly signed and sealed, in an envelope, or electronically, whichever method has been specified.
- (2) Bids shall be submitted in separate envelopes containing, respectively, technical and financial proposals. Where submission of bids is envisaged in electronic form, the relevant interface shall ensure that the technical and financial proposals be submitted in separate files or otherwise enabling separate access and registration of the events and time of access.
- (3) Bids received after the due date for submission of bids shall be returned unopened or denied electronic access.
- (4) Bids shall remain valid for the period of time indicated in the bidding documents but modification or withdrawal of a bid during the bid validity period shall be subject to forfeiture of the bid security, if such security is required.

16. Restricted bidding

- (1) Licensees may use restricted bidding in the following circumstances:
 - (a) the goods, works or services in question can be procured from the economic operators included in the licensee's PQS;
 - (b) the goods, works or services are only available from a limited number of economic operators; or
 - (c) the time and cost of considering a large number of bids are disproportionate to the estimated value or the urgency of the procurement having regard to the nature of the procurement.
- (2) Where a licensee elects to conduct a restricted bidding in respect of a procurement item specified in subsections (b) and (c) above, the licensee shall, in addition to the general requirements of these Regulations in respect of preparation of the procurement process and of the bidding documents, submit to URCA its proposed list of the economic operators to be invited to participate in the restricted bidding.

17. Reception of bids

- (1) Licensee shall receive all envelopes submitted by the bidders and clearly marked as bids at the address indicated in the bidding documents or, where applicable, relevant electronic communications (files or otherwise means of accessing the contents of bids) at the electronic address specified in the bidding documents. All submitted bids shall be registered by the licensee in a list specifying the name of the bidder and the date and time of receipt.
- (2) The bids submitted by bidders after the due date for receipt of bids shall be returned to them unopened or shall not be accessed in case of submission by electronic means.

18. Opening of bids

- (1) All submitted bids shall be opened (or accessed electronically, as the case may be), by the relevant procurement unit of the licensee in a bid opening meeting at the time and place indicated in the bidding documents and the time of bid opening shall coincide with or follow immediately the deadline for submission of bids, allowing a minimum time interval for logistical reasons.
- (2) Envelopes containing technical and financial proposals shall be opened, or, where applicable, electronic communications (files or otherwise means of accessing the contents of bids) shall be accessed and opened, in their separate respective bid opening meetings.
- (3) A representative of the procurement unit shall read out loud and record —
 - (a) in the meeting where the envelopes containing technical proposals are to be opened (or relevant electronic communications accessed) —
 - (i) the name of each bidder;
 - (ii) the presence or absence of any required bid security or essential supporting documents whose absence constitutes grounds for automatic and immediate disqualification and exclusion from the bidding process;
 - (b) in the meeting where the envelopes or relevant electronic communications containing financial proposals only or both technical and financial proposals are to be opened and/or accessed, where relevant —
 - (i) the name of each bidder;
 - (ii) the total amount of each bid;
 - (iii) any discounts or alternatives offered; and

- (iv) the presence or absence of any required bid security or essential supporting documents whose absence constitutes grounds for automatic and immediate disqualification and exclusion from the bidding process.
- (4) URCA and all the bidders shall be invited to attend the bid opening meetings where the estimated value exceeds BSD 1,000,000. An invitation to such meeting shall be sent sufficiently in advance of the meeting to afford URCA and the bidders reasonable time to participate.
- (5) A copy of the record of the bid opening meeting shall be made available to any bidder on request and, in the case of open bidding, published in the manner prescribed for the publication of the procurement notice.
- (6) No decision regarding the disqualification or rejection of a bid shall be taken or announced in the bid opening meeting other than pursuant to subsection (3) above.
- (7) A bidder shall not, after the opening of the bids and until the preliminary decision on award has been notified to the successful bidder, make any unsolicited communication to the licensee or attempt in any way to influence the examination and evaluation of the bids.

19. Evaluation of bids

- (1) The licensee shall, following the opening of bids, examine the bids in order to determine whether they are eligible and substantially responsive to the technical specifications and contract conditions as set forth in the bidding documents.
- (2) Bids not excluded from consideration pursuant to subsection (1) above shall be evaluated in accordance with the criteria and methodology stated in the bidding documents.
- (3) Bids which significantly deviate from the technical requirements of the bidding process in respect of at least one mandatory parameter as well as those that score less than the minimum technical score required in the procurement process shall be disqualified and the relevant bidders informed accordingly.
- (4) Bids meeting the technical requirements of the procurement process shall be:
 - (a) ranked, and
 - (b) financially evaluated.

- (5) In respect of financial evaluation of the bids, to the extent relevant, life-cycle costing shall be used to cover the following costs over the life cycle of a product, service or works—
- (a) costs, borne by the licensee, such as—
 - (i) costs relating to acquisition and financing;
 - (ii) costs of use, such as consumption of energy and other resources;
 - (iii) maintenance and operation costs;
 - (iv) end of life costs, such as collection and recycling costs;
 - (b) costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified.
- (6) Where licensee evaluates the costs using a life-cycle costing approach, it shall indicate in the bidding documents —
- (a) the data to be provided by the bidders; and
 - (b) the method which the licensee will use to determine the life-cycle costs on the basis of those data.
- (7) If the terms of the procurement process allow for alternative bids, the licensee shall not reject an alternative bid on the sole ground that it would, where successful, lead to conclusion of another type of contract or to a significant change to the terms and conditions of the draft contract included in the bidding documents.
- (8) If the licensee considers that an alternative bid represents an improvement to the best of the compliant bids, it shall be entitled to accept it subject to subsection (9) below.
- (9) The licensee shall inform URCA of its intention to accept such alternative bid. If URCA so requests, the licensee shall demonstrate to it that the proposed alternative bid is consistent with the IRP or, in its absence, is otherwise consistent with the relevant licence conditions relating to generation, transmission, distribution or supply functions, as relevant.
- (10) If the alternative bid is not compliant with the bidding documents' requirements in respect of alternative bids (e.g. where the proposed technology or deviations from the required parameters are not allowed) but the licensee reasonably considers that the bid is in the interest of the licensee's business and should be pursued, the licensee may:

- (a) treat such bid as an unsolicited proposal, in which case section 21 shall apply,
 - (b) cancel the subject procurement process, and
 - (c) inform URCA and the bidders within 5 days of such decision accordingly.

- (11) In the course of evaluation of the bids the licensee —
 - (a) may seek clarifications in writing from any bidder to facilitate evaluation;
 - (b) may engage in negotiations with bidders with a view to finalise clarifications on outstanding issues relating to the evaluation of their bids and to sign the resulting contract or contracts, and
 - (c) where a bidder amends its bid in any manner following the due date for submission of bids, shall reject the bid and be entitled to draw on the bid security.

- (12) The licensee shall designate the bidder with the highest resulting total (combined technical and financial) evaluation score derived using the criteria and the methodology of evaluation established by the licensee for the procurement process.

- (13) The licensee shall offer to such bidder to sign the relevant agreement on the terms and conditions of the bidding documents (as amended), subject to any accepted variations resulting from the bid and any negotiations between the licensee and the bidder.

- (14) If no agreement has been signed within the period of time established for this in the bidding documents or, if such period is not specified, within a reasonable period, the licensee shall disqualify such bidder and offer to sign the relevant agreement to the bidder with the total second best score. This section 14 shall apply, *mutatis mutandis*, to the bidders having the second and lower scores.

- (15) The licensee shall be entitled to cancel the bidding process and inform URCA and the bidders accordingly within 5 days:
 - (a) if If no bids meeting the requirements of the bidding documents have been received;
 - (b) if only one bid meeting the requirements of the bidding documents has been received, and
 - (c) if the licensee, acting reasonably, rejects all bids.

- (16) The licensee shall keep bidding documents (including procurement notices, bids, records of evaluation, correspondence and minutes of meetings) for a period of 5 years and make them available to URCA at its request. The records shall clearly specify the results of technical evaluation, the results of financial evaluation and the combined results.

20. Notice of contract award

- (1) The licensee shall:

- (a) in respect of open bidding - publish the notice of contract award within one month of its relevant decision, in the same way as the initial invitation to bid was published, and
- (b) in respect of all other competitive procurement processes - communicate to all bidders the notice of contract award within a reasonable period of time of its relevant decision.

- (2) The notice under subsection (1) above shall include information on —

- (a) the title of the bid;
- (b) the selection method;
- (c) the awarded bidder's name; and
- (d) the total contract price (if it is known), or another appropriate value reflecting the cost of acquisition which was used by the licensee in the determination of the winning bid.

- (3) Certain information on the contract award may be withheld from publication where its release—

- (a) would be contrary to the public interest;
- (b) would prejudice the legitimate commercial interests of a particular economic operator; or
- (c) might prejudice fair competition between economic operators.

21. Treatment of unsolicited bids

- (1) Licensees shall not be obliged to consider unsolicited bids from economic operators.

- (2) If the licensee considers the unsolicited bid and is reasonably satisfied that it represents a potential improvement to its known procurement opportunities, considering its licence conditions and its current and planned costs in respect of the relevant item, it shall establish whether the unsolicited bid can only be fulfilled by the economic operator in question.
- (3) If the unsolicited bid referred to in subsection (2) above represents an opportunity that can only be fulfilled by the economic operator in question (due to the unique proprietary nature of the proposed technology or the apparently and abnormally low price), the licensee shall inform URCA of such bid and, subject to non-objection under section 9(5), shall be entitled to engage in direct negotiations with such economic operator.
- (4) If the procurement opportunity represented by the unsolicited bid referred to in subsection (2) above can be fulfilled by several competing economic operators, the licensee, if it elects to pursue such opportunity, shall use appropriate competitive procurement procedures envisioned by these Regulations.
- (5) Licensees may provide in the design of the procurement procedures arising out of unsolicited bids for the right of first refusal of the economic operator who made the initial unsolicited bid if, following a competitive procedure, he undertakes to match the best bid made in the competitive process.

22. Licensee procurement reporting

- (1) Licensees shall provide URCA, on URCA's written request, with -
 - (a) copies of all prequalification and bidding documents relating to procurement processes;
 - (b) copies of any documents purporting to amend any of the documents referred to in subsection (a) above;
 - (c) copies of any evaluation documents relating to procurement processes, including correspondence with candidates or bidders, referred to in subsection (a) above.
- (2) Licensees shall, not later than two months after the end of the preceding fiscal year, and, within 6 (six) months of the entry into force of these Regulations, submit to URCA a report on procurement in respect of the items specified in subsections (3) and (4) below undertaken in the preceding fiscal year.

(3) The report referred to in subsection (2) above shall specify, in respect of contracts of the value specified in section 4, at least the following –

- (a) total value of procurement;
- (b) dates of procurement notice, due dates for receipt of bids and, if relevant, prequalification documents, dates of award or cancellation, as the case may be;
- (c) description of the goods, work or services;
- (d) procurement method employed, including any changes in the procurement method made throughout the procurement process;
- (e) number of bidders and prices offered;
- (f) winning price;
- (g) winning bidder (and whether it is an affiliated person);
- (h) reasons for cancellation, where relevant.

(4) The report referred to in subsection (2) above shall, in respect of contracts of the value of BSD 50,000-500,000, specify at least the following –

- (a) total value of procurement;
- (b) value of procurement via competitive procurement methods and the number of contracts so concluded;
- (c) value of procurement via single-source procurement methods and the number of contracts so concluded, and
- (d) value of procurement from affiliated persons.

Made this 15 day of July, 2020.

Signed _____



Chief Executive Officer of Utilities Regulation and Competition Authority