The Public Procurement Guidelines for Framework Contracting

Guidelines for Framework Contracting: 2010
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To: All Accounting Officers
   All CEO’s, State Corporations
   All Vice Chancellors, Public Universities
   All Managers, Co-operative Societies
   All Clerks, Local Authorities
   All Principals, Public Colleges/Schools
   All CDF Account Managers

RE: GUIDELINES FOR FRAMEWORK CONTRACTING

The Public Procurement Oversight Authority (PPOA) has observed that there is rampant use of the Request for Quotations (RFQ) Method by procuring entities in most of their procurements. Further, procurement units pre-occupy about 90% of their time in processing procurements through the aforesaid method. To forestall these challenges, PPOA has prepared Guidelines for Framework Contracting as instructions for making awards of indefinite-delivery framework contracts pursuant to Section 9(c)(i) and (iv) of the Public Procurement and Disposal Act, 2005.

Further, the Guidelines provide clarifications on parts of the Act and the Regulations that deal with tender security, awarding of tenders, amendments or variations to contracts, invitation of tenders, preparation of tender documents and qualifications for contract award. In addition, the Guidelines should be applied as a creative approach to reduce the rampant use of the RFQ method and enhance efficiency of the procurement process and project implementation, pursuant to Section 31(7) of the Act.

Taking cognizance of the foregoing, you are requested to take the necessary action by ensuring that the Guidelines are availed to all staff of
your entity that are involved in the procurement function. The Guidelines are also found in the PPOA website www.ppoa.go.ke.

Attached are copies of the Framework Contracting Guidelines for your reference and action.

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Ag. DIRECTOR GENERAL

Encls.

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The Public Procurement Guidelines
For Framework Contracting

These Guidelines for Framework Contracting were issued by the Public Procurement Oversight Authority under Section 9(c)(i) and (iv) of The Public Procurement and Disposal Act, 2005, and distributed to all Accounting Officers and Chief Executive Officers and Heads of Procuring Entities.
Guidelines for Framework Contracting, 2010

PART I – PRELIMINARY

Short Title
1. These instructions may be cited as the Public Procurement Guidelines for Framework Contracting.

Purpose of the guidelines
2. These Guidelines are instructions for making awards of indefinite-delivery framework contracts.

3. The guidelines are a further clarification on parts of the Act and the Regulations that deal with tender security, awarding of tenders, amendments or variations to contracts, invitation to tenders, preparation of tender documents and qualifications for contract award.

Application of the Guidelines
4. These guidelines may be applied by procuring entities as a creative approach to enhance efficiency of the procurement process and project implementation, pursuant to Section 31(7) of the Act.

Definitions
5. In these guidelines unless the context otherwise requires –

“Definite-quantity framework contract” means a contract to provide for delivery of a definite quantity of specific goods, services or works for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

“Requirements framework contract” means a contract to fulfil all actual purchase requirements of one or more public bodies for goods, services or works during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.

“Indefinite-quantity framework contract” means a contract to provide an indefinite quantity, within stated limits, of goods, services or works during a fixed period, and may be a delivery order framework contract; a service order framework contract; or a works order framework contract.

Preference for single-award framework contracts
6. As an interim measure, procuring entities are required to make use of single-award framework contracts, under which frequently bought items would be consolidated into contracts for supply at an agreed price over a defined contract term, with orders being placed at the contract price when required. By consolidating such requirements into framework contracts, the procuring entity should be able to make savings on the administrative costs of procurement and to achieve better prices through larger volume contracts.

Multiple-award framework contracts not allowed.
7. While it is the Authority’s intention to advocate a preference for making multiple awards of indefinite-quantity framework contracts, this will require an amendment to section 66 (4) of the Act, which states that the successful tender shall be the tender with the lowest evaluated price and does not provide for multiple awards. Unless the provision is amended, multiple awards are not allowed.
PART II – GENERAL FRAMEWORK CONTRACTING RULES

8. There shall be three types of indefinite-delivery framework contracts:
   (i) definite-quantity indefinite-delivery framework contracts,
   (ii) requirements framework contracts, and
   (iii) indefinite-quantity framework contracts.

9. The appropriate type of indefinite-delivery framework contract may be used to:
   (i) acquire goods, services and/or works when the exact times and/or exact quantities of future deliveries are not known at the time of contract award;
   (ii) permit stocks to be maintained at minimum levels; and
   (iii) acquire goods, services and/or works on a “when-required” basis.

10. A tender document and a contract agreement for an indefinite quantity framework contract must—
   (i) Specify the period of the contract, including the number of options, if any, and the period for which the procuring entity may extend the contract under each option;
   (ii) Specify the total minimum and maximum quantity (ceiling amount) of goods, services or works the procuring entity will acquire under the contract (to ensure that the contract is legally binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the quantity that the procuring entity is fairly certain to order);
   (iii) Include a statement of work, specifications, or other description, that reasonably describes the specific requirements, nature, complexity, and purpose of the goods, services or works the procuring entity will acquire under the contract in a manner that will enable a prospective firm or individual to decide whether to submit a tender; and
   (iv) State the procedures that the procuring entity will use to issue orders, including the ordering means, e.g. electronically.

11. The value of any performance security for framework contracts must be based on the minimum value of the contract – not the maximum value.

12. For goods, services or works whose prices are expected to be volatile, framework contracts should include an indexing mechanism to adjust prices based on the Market Price Index issued by PPOA.
13. Consistent with Regulation 20(3) of the Public Procurement and Disposal Regulations, 2006, procuring entities may award multi-year framework contracts, provided that:

(i) Procuring entities included the multi-year framework contract in their annual procurement plan as provided for by Section 26(3) of the Public Procurement and Disposal Act, 2005;

(ii) All options periods are priced, and the price can be indexed as described in paragraph 9 above; and

(iii) The framework contract, including all option periods, does not exceed two years.

14. Approval of the procuring entity’s tender committee is required for all price changes included in framework contracts.

15. (1) Procuring entities are not required to advertise or invite quotations for orders issued under framework contracts.

(2) Individual orders shall clearly describe all services to be performed or goods to be delivered or works to be done so that the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the specific requirements, issued within the period of performance, and be within the ceiling of the contract.

(3) Orders may be placed by using any means, e.g. electronically (faxed, etc), as specified in the contract.

(4) The procuring entity must ensure the price for all the orders does not exceed the ceiling amount of the contract.

(5) Orders placed under framework contracts must contain the following information:

(i) Date of order;
(ii) Contract number and order number.
(iii) For goods, services or works, contract item number and description, quantity, and unit price or estimated cost;
(iv) Delivery or performance schedule;
(v) Place of delivery or performance (including consignee);
(vi) Any packaging, packing, and shipping instructions; and
Method of payment and payment office, if not specified in the contract.

- Procuring entities are not exempt from the requirement of Regulation 20 of The Public Procurement and Disposal Regulations, 2006 to prepare procurement plans even when ordering under a framework contract.

- Performance securities may be required at the discretion of the procuring entity as a basis of the order.

**PART IV – DEFINITE QUANTITY FRAMEWORK CONTRACTS**

16. A definite-quantity framework contract provides for delivery of a definite quantity of specific goods, services or works within a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

17. A definite-quantity framework contract may be used when it can be determined in advance that—
   (i) A definite quantity of goods, services or works will be required during the contract period; and
   (ii) The goods, services or works are regularly available or will be available after a short lead time.

**PART VII - REQUIREMENTS FRAMEWORK CONTRACTS**

18. A requirements framework contract provides for filling all actual purchase requirements of a procuring entity’s activities for goods, services or works during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.

19. A requirements framework contract may be appropriate for acquiring any goods, services or works when a procuring entity anticipates recurring requirements but cannot predetermine the precise quantities of goods, services or works that the procuring entity’s activities will need during a definite period.

20. For the information to tenderers and resultant contractors, the procuring entity shall state a realistic estimated total quantity in the tender and resulting contract. This estimate is not a representation to a bidder or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The procuring entity may derive the estimate from records of previous requirements and consumption, or by other means including market research, and should base the estimate on the most current information available.

21. The contract shall provide that all purchases by the procuring entity for the specified goods, services or works will be made under the contract.

22. The contract shall state, if feasible, the maximum limit of the contractor’s obligation to deliver or perform and the procuring entity’s obligation to order. The contract may also specify maximum or minimum quantities that the procuring entity may order under each individual order and the maximum that it may order during a specified period of time.
23. When a requirements framework contract is used to acquire work (e.g., repair, modification, or overhaul) on existing public assets, equipment or stores, the procuring entity shall specify in the contract that failure of the procuring entity to furnish such items in the amounts or quantities described in the contract as “estimated” or “maximum” will not entitle the contractor to any equitable adjustment in price.

PART VII - INDEFINITE-QUANTITY FRAMEWORK CONTRACTS

24. Procuring entities may use an indefinite-quantity framework contract when the procuring entity cannot predetermine, above a specified minimum, the precise quantities of goods, services or works that will be required during the contract period, and it is not advisable for the procuring entity to commit itself for more than a minimum quantity. The procuring entity should use an indefinite-quantity framework contract only when a recurring need is anticipated.

25. (1) An indefinite-quantity framework contract shall provide for an indefinite quantity, within stated limits, of goods, services or works during a fixed period. The procuring entity then places orders for individual requirements. Quantity limits may be stated as number of units or value.

(2) The contract shall require the procuring entity to order and the contractor to furnish at least a stated minimum quantity of goods, services or works. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The procuring entity should establish a reasonable maximum quantity based on market research, trends in recent contracts for similar goods, services or works, survey of potential users, consumption records, or any other rational basis.

(3) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the procuring entity is fairly certain to order.

(4) The contract must also specify the maximum and minimum quantities that the procuring entity may order under each task or delivery order.