

Our Ref:

**ZPPA/101/14/6**

**CIRCULAR NO. 20 OF 2024**

3<sup>rd</sup> September, 2024

To: All Permanent Secretaries  
All Chief Executives of Parastatal and Statutory Bodies  
All Town Clerks and Council Secretaries of Local Authorities

**RE: TRENDS IN APPEALS AGAINST PROCURING ENTITIES' DECISIONS**

1. Pursuant to Section 100 (1) of the Public Procurement Act No. 8 of 2020, a bidder or supplier who is aggrieved with a decision made by a procuring entity under the Act may appeal against the decision to the Authority.
2. The Authority has observed growing trends in appeals against procuring entities' decisions. The appeal grounds are common across most procuring entities. The growing number of appeals have resulted in delays in implementing government programmes. In light of this, the Authority wishes to provide guidance on the observed appeal grounds in order to avoid potential appeals and avert delays in project implementation.

**(a) Submission of inauthentic documentation**

There has been a growing number of cases where bidders recommended for contract award are found to have submitted false documentation such as National Pension Scheme Authority or Zambia Revenue Authority compliance certificates among other compliance certificates relating to statutory obligations.

Pursuant to regulation 223 (4) of the Public Procurement Regulations, 2022, a procuring entity should verify documents submitted by a bidder with the issuing authority to determine a bidder's authenticity.

**(b) Bid evaluation criteria**

The Authority has also noted an increase of appeals relating to the bid evaluation and selection criteria. More specifically, appeals under this heading relate to:

- i) disqualifying a bidder on account of poor past performance despite the requirement not having been provided for in the solicitation document;

- ii) introduction of new criteria or methodology other than that stated in the solicitation, during bid evaluation; and
- iii) application of the provisions of Circular(s) issued by the Authority during bid evaluation when the provisions of the said Circular(s) was/were not part of the bid evaluation criteria in the solicitation document.

The introduction of new criteria during the evaluation of bids in public procurement can have several significant implications such as the perception of unfairness in the undertaking. Further, the efficiency and effectiveness in the procurements may be compromised.

The Authority hereby wishes to direct that pursuant to section 60(5) of the Public Procurement Act, 2020 procuring entities should not consider methodology or criteria, other than those stated in the solicitation document, and all methodology and criteria should be applied equally to bids.

**(c) Non-communication of correction to arithmetic errors**

The Authority has also observed a growing number of appeals challenging the authenticity of the bid sum of the best evaluated bidder which is different from the read-out bid sum at tender opening. A review of such challenges shows that the difference between the read-out bid sum at tender opening to the evaluated bid sum is as a result of correction of arithmetic errors during bid evaluation and that the corrections were not communicated to the concerned bidder(s) in most cases. In addition, where the correction of arithmetic errors was applied to the bid sum of the best evaluated bidder, the notification of best evaluated bidder does not provide an explanation for the difference in bid sum at tender opening and the evaluated bid sum.

Regulation 100 (4) of the Public Procurement Regulations, 2022 requires that an evaluation committee should notify bidders of any arithmetical corrections and request them to agree, in writing to the correction and any bidder who does not accept the correction of arithmetical error should be rejected and its bid security may be forfeited. In addition, the proposed contract sum in the notification of best evaluated bidder should clearly indicate that it is a corrected bid sum, where applicable, citing the relevant provision of the Public Procurement Regulations. The Authority hereby directs strict adherence to regulation 100(4) of the Public Procurement Regulations, 2022.

**(d) Non debriefing of bidders**

The Authority has also noted a growing trend where a bidder challenges a procuring entity's decision on grounds which ordinarily should have been addressed had a procuring entity debriefed the bidder on the outcome of the bid evaluation process. Procuring entities are hereby directed to strictly adhere to regulation 185 (3) of the Public Procurement Regulations, 2022 which provides that *a Procurement Unit shall provide all unsuccessful bidders with a debrief of the reasons for the failure of their bids or applications to pre-*

*qualify*. Debriefing bidders after a public procurement process is crucial for continuous supplier development and upholding transparency and accountability.

**(e) Solicitation Documents with Unclear Instructions**

The Authority has also observed a trend where bidders are evaluated as non-responsive because the criteria in the solicitation document is not clear or is ambiguous or where templates of required documentation/information to be submitted by bidders are not clear. Solicitation documents are extremely important in public procurement, as they communicate the requirements of the procuring entity and thus form the basis for the award decision.

A poorly prepared solicitation document is thus a recipe for challenges from bidders. Solicitation documents should be comprehensive and further approved by a relevant approvals authority prior to their issue in line with section 34 (1) (c) of the Public Procurement Act No. 8 of 2020, as amended by Public Procurement (Amendment) Act No.17 of 2023.

**(f) Discrepancies in the content of the tender structure and the solicitation document**

The Authority has furthermore observed a growing number of complaints relating to the discrepancies on the content of the tender on the electronic Government Procurement (e-GP) System (tender structure) and the solicitation document (manually generated) and uploaded on the system. For example, there have been cases where the tender structure on the e-GP System has different bid submission dates, tender reference number, tender title, packaging of the tender, instructions on preparation of Power of Attorney to those in the solicitation document.

Procuring entities are hereby urged to ensure that, where a solicitation document is uploaded on the system, there is consistency in the contents of both the **“tender structure on the e-GP system and the solicitation documents”**.

**(g) Non-adherence to template for Notice of the Best Evaluated Bidder**

The Authority has observed from the review of the appeals from bidders, that there are instances where notices of the best evaluated bidder do not adhere to the template issued by the Authority. In some cases, the notice omitted information such as date of the notification, address of best evaluated bidder, tender number, etc.

Procuring entities are advised to comply with regulation 178 of the Public Procurement Regulations, 2022 and the template provided for the notice of the best evaluated bidder which is accessible on the Authority’s website.

(h) **Clarifications from bidders not addressed by procuring entities during the bidding period**

It has been observed that clarifications from bidders are submitted to a procuring entity in accordance with the solicitation documents, but the procuring entity does not respond to the bidders promptly. This affects the bidders' ability to prepare a responsive bid.

Responses to requests for clarification should be responded to promptly in accordance with the solicitation documents. Where applicable, an addendum may be issued, in writing, to all bidders at the same time in accordance with regulation 89(2) of the Public Procurement Regulations, 2022.

(i) **Invitations for bids lack information on tender closing dates and eligibility**

The Authority has also observed instances where invitation for bids lack information on closing dates and eligibility requirements.

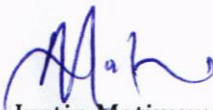
Invitation for bids should encompass all the information required in accordance with regulation 83 of the Public Procurement Regulations, 2022 and should be in the format provided in the solicitation document.

(j) **Applying the restriction of tenders to target groups during evaluations without indicating the same in Solicitation Documents**

It has been observed that procuring entities include a statement on restriction of the tender to target groups but omit the details of the restriction in the solicitation document e.g., no details on the targeted group, criteria and evaluation methodology in the solicitation document issued by the Authority.

Where a tender is restricted to a target group, the solicitation document should include the appropriate criteria and adhere to section 91 of the Public Procurement Act No. 8 of 2020.

All addressees are urged to ensure that the contents of this Circular are brought to the attention of all staff under their supervision.



Justin Matimuna (Mr)

**ACTING DIRECTOR GENERAL**

cc: The Secretary to the Cabinet  
Cabinet Office  
**LUSAKA**

- cc: The Auditor General  
Office of the Auditor General  
**LUSAKA**
- cc: The Secretary to the Treasury  
Ministry of Finance and National Planning  
**LUSAKA**
- cc: The Principal Private Secretary  
State House  
**LUSAKA**