

Statutory Instrument No. 75 of 2023

PUBLIC PROCUREMENT ACT
(Act No. 24 of 2021)

**PUBLIC PROCUREMENT (NATIONAL ELECTRONIC PROCUREMENT)
REGULATIONS, 2023**
(Published on 30th June, 2023)

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IN EXERCISE of the powers conferred on the Minister of Finance by section 150 of the Public Procurement Act, the following Regulations are hereby made —

Citation **1.** These Regulations may be cited as the Public Procurement (National Electronic Procurement) Regulations, 2023.

Interpretation **2.** In these Regulations, unless the context otherwise requires —

“authorised personnel” means an individual who has been granted a specific legal or regulatory authority to perform certain actions or access certain areas, information or resources;

“award” means a decision by the Accounting Officer, or any person to which the Accounting Officer may delegate powers of adjudication and award a tender within specified financial limits, to determine the successful bidder;

“call off order” means an order placed by a procuring entity under general terms and pricing on a range of goods under a framework contract, without having to negotiate the terms every time;

“common procurement vocabulary” means a standardised classification system for public procurement activities;

“designated official” means an individual who has been formally designated by an organisation, government agency, or regulatory body, to be responsible for a specific duty or activity related to compliance with legal and regulatory requirements;

“forward auction” means a type of auction which a buyer competes to purchase goods or services from a seller, where the buyer is motivated to bid higher in order to outcompete another potential buyer and secure an item being auctioned;

“Government Data Centre” means a centre responsible for government information system and network;

“guidelines” means any advice given by the Authority through any circular that may be issued to the procuring entities in accordance with section 8 (1) (j) of the Act;

“legal frame” means the legal framework that governs a particular activity or situation;

“NePS” means the National eProcurement System;

“NePS support team” means a group of professionals who provide technical support, maintenance and troubleshooting services for NePS;

“non-complex procurement” means the procurement of goods, services, or works that are relatively straightforward and do not require extensive technical expertise;

“procurement method” means the procurement method provided under section 52 of the Act;

“procurement process” means the successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of such offers, award of a contract and contract management;

“public procurement stakeholder” means a person who has an interest in or is affected by the public procurement activities of an organisation;

“records” means any documents or information relating to any stage of a procurement process and includes —

(a) an electronic or manual archive containing the document or information relating to a procurement process; or

(b) a record received or kept by a public body, in the exercise of its functions;

“statement of requirement” means a document prepared by a procuring entity providing a correct and competitive description of the subject of the procurement for the purposes of creating a fair and open competition;

“third party” means an individual, organisation or entity that is not directly involved in a particular transaction; and

“user” means a procuring entity, system administrator, auditor, civil society organisation or any other user as may be approved by the Authority.

3. (1) A procuring entity may carry out its procurement activity using the National eProcurement System. Application

(2) Where a procuring entity uses the NePS, the procuring entity shall implement the NePS in full.

(3) Notwithstanding subregulation (2), where the NePS is still being implemented, the procuring entity shall partially implement the NePS in parallel with the conventional manual procedure of procurement.

(4) A public procurement stakeholder shall upon successful registration have appropriate access to the relevant features of the NePS as may be determined by the Minister.

(5) The NePS shall consist of several modules, sub-systems including interlinked sub-systems, which shall be used individually or in combination, in order to accomplish a function relating to an e-procurement related process.

4. (1) The objective of the NePS is to enhance efficiency and transparency in public procurement through the implementation of a comprehensive electronic public procurement solution to be used by any procuring entity. Objective of NePS

(2) The use of the NePS shall only be for a lawful purpose that does not infringe the rights of or restrict or inhibit the use of the system by any third party.

(3) The restriction or inhibition under subregulation (2) may include —

(a) conduct which —

(i) is intended to mislead,

(ii) is defamatory, or

(iii) may cause distress or inconvenience to any person;

(b) the transmission of obscene or offensive content; or

(c) the interruption of the normal flow of content within the NePS.

(4) The Government Data Centre shall host the NePS and the NePS’s web portal shall be accessible for use through a specified web URL.

(5) A person may, upon successful registration, get access to the NePS.

(6) The information obtained from the NePS shall be in accordance with —

(a) specified terms and conditions of use; and

(b) a disclaimer and privacy policy.

5. (1) The Authority shall be responsible for —

(a) all aspects of the management of contractor registration;

(b) any decision relating to an application for registration;

(c) the re-classification of registered contractors; and

(d) any other decision related to contractor registration.

(2) The Authority shall interface the registration of small, medium and micro enterprises with any system of the relevant authority responsible for a supplier. Registration of suppliers

User creation	<p>6. (1) An Accounting Officer shall authorise the creation of a user in the NePS to enable the user to perform any procurement activity.</p> <p>(2) The office of the Accounting Officer shall be responsible for the authorisation of the creation of system administrators in the NePS.</p> <p>(3) The creation of a user under subregulation (1) shall be followed by an online verification or validation of documents through due diligence in accordance with the Data Protection Act as the Authority may deem fit.</p>
Act No. 32 of 2018 Preparation of tender	<p>7. (1) A procuring entity may perform its procurement activity through the NePS.</p> <p>(2) A procuring entity which performs its procurement activity through the NePS shall prepare a tender document or a procurement notice through the NePS.</p> <p>(3) Where the NePS fails to handle characters or graphical files, the procuring entity may scan a tender document and such document shall be in the form of a scanned electronic document.</p> <p>(4) A date for a Tender Notice published in the <i>Gazette</i> and NePS by the procuring entity portal shall be treated as the start date of the tender.</p> <p>(5) Where specified in the Tender Notice, the NePS shall provide details or features for online pre-tender meetings.</p> <p>(6) An Accounting Officer shall through the NePS, vet the tender document and the Tender Notice.</p> <p>(7) The electronic preparation of a bid shall remain in the NePS in an encrypted form accessible only to the bidder preparing the bid.</p>
Advertising of tender	<p>8. (1) A procuring entity shall publish an invitation for a tender in the <i>Gazette</i>, in a newspaper of national circulation, electronic media or Government portal and in the NePS in accordance with these Regulations.</p> <p>(2) The invitation prepared by a procuring entity shall contain a detailed description of the works, services or supplies, time-schedule and any other conditions of the tender.</p> <p>(3) A procuring entity shall make a tender document available on the NePS for a contractor to view and consider participation.</p> <p>(4) A contractor shall submit a request for clarification or a response to a query through the NePS within the time set out in a tender document.</p>
Auction	<p>9. (1) A procuring entity may auction goods electronically through the NePS.</p> <p>(2) The Authority shall issue guidelines on the procedure to be followed and other applicable conditions for conducting an auction through the NePS.</p> <p>(3) Where a procuring entity wishes to conduct procurement by auction, the procuring entity shall specify whether the auction is a reverse or forward auction.</p> <p>(4) A procuring entity shall use an electronic reverse auction in the procurement of standard goods for which specifications may be determined with precision where —</p> <ul style="list-style-type: none"> (a) price or quantity is the only determinant; and (b) there exists a significant number of potential bidders. <p>(5) A procuring entity shall use an electronic reverse auction as a procurement method for non-complex procurement.</p> <p>(6) Where a contractor is to be pre-qualified before any auction, a procuring entity shall conduct a pre-qualification process online in the system, or offline in accordance with the Act.</p>

(7) An electronic reverse auction award shall be based on ranking of prices such that a tender is awarded at the lowest price to the corresponding qualified bidder in case of purchase.

(8) A bidder shall automatically and instantaneously be informed through the NePS of the new rankings as the rankings occur, together with the price in such manner that the bidder is able to ascertain such bidder's ranking at any moment.

(9) A procuring entity shall ensure that the identity of a bidder is not disclosed or identified by any party during any phase of any auction.

10. (1) The submission of a tender shall be as set out in Part VII of the Public Procurement Regulations.

Submission
of tender SI
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(2) A tender shall bear an electronic signature or a handwritten signature for identity and authentication.

(3) A procuring entity shall allow a reasonable time for a bidder to decrypt and re-encrypt his or her bid after the closing date and time for submission of a bid.

(4) A bid submitted through the NePS shall represent an offer from a contractor.

(5) A bidder shall submit the bid within the specified tender closing time and date.

11. (1) A procuring entity shall open a tender on the NePS in accordance with this regulation.

Opening
of tender

(2) A procuring entity shall --

(a) open an electronic bid in a manner stated in the bidding document; and

(b) prepare a bid opening report.

(3) A bidder or his or her representative who wishes to witness a tender opening may virtually be present at the tender opening meeting.

(4) A procuring entity shall publish the bid opening records in the appropriate section of the NePS.

12. A procuring entity shall adjudicate and award a tender in the NePS in accordance with the Public Procurement Regulations.

Adjudication and
award of tender

13. (1) The signing of a contract by a bidder shall be in accordance with Part VIII of the Public Procurement Regulations.

Signing
of contract

(2) An electronic signature shall be required for the security and integrity of data transmission.

(3) Where a bidder fails to electronically sign a contract in the NePS, he or she may sign the contract manually.

14. A procuring entity shall extend the submission period of a tender on the NePS in accordance with the Public Procurement Regulations.

Tender
submission
extension

15. (1) A procuring entity shall --

(a) sign a bidding document and bid data before the bidding document and bid data are published; and

(b) release data in respect of the bids received.

Electronic
signature,
encryption and
decryption

(2) A contractor shall sign a bid and bid data before submitting the bidding document through the NePS.

(3) A party using the NePS to submit the bidding document shall be bound by the transaction processed through the NePS.

16. (1) A procuring entity shall use standard forms generated from the NePS for issuing different types of certifications, including completion certificate, acceptance certificate, quality certificate, and any other relevant documents as may be determined by the Authority.

Certification
and payment

Handling of complaint by contractor	<p>(2) Prior to authorising the payment of an invoice, a procuring entity shall verify receipt of supplies, performance of services or execution of works in accordance with the contract.</p> <p>17. (1) A complaint by a contractor shall be dealt with in accordance with sections 104,105 and 106 of the Act.</p> <p>(2) The Tribunal shall facilitate all communications relating to disputes for expedient and transparent resolution of any such matter arising out of the e-procurement carried out over the NePS.</p>
Catalogue items	<p>18. (1) A catalogue shall contain a list of essential and common user items as may be determined by a procuring entity.</p> <p>(2) A procuring entity shall, by the end of December of each year, submit to the Government Procurement Office or any other office designated in terms of the Act, annual estimates of the required catalogue items including descriptions, specifications, statement of requirements and quantities.</p> <p>(3) The Government Procurement Office or any other office designated shall arrange for procurement of catalogue items which are —</p> <p>(a) required continuously or repeatedly over a set period of time; and</p> <p>(b) common to more than one procuring entity and may be procured through framework agreements by placing call-off orders.</p> <p>(4) A procuring entity shall place an order directly with a contracted service provider for any item included in the price catalogue within one working day after reaching the buffer stock.</p> <p>(5) Where a catalogue item requested to be purchased by the procuring entity is not available, the Government Procurement Office or any other designated office shall, within one working day and upon receipt of the request, issue a non-availability notice to the procuring entity.</p> <p>(6) Where the Government Procurement Office or any other designated office receives the non-availability notice under subregulation (5), the Government Procurement Office or the designated office may opt for another alternative source of supply.</p> <p>(7) The Government Procurement Office or any other designated office shall procure non-catalogue items for use by a procuring entity from a supplier awarded a framework agreement through placing of a call-off order.</p> <p>(8) The non-catalogue items under subregulation (7) shall be subjected to competition.</p> <p>(9) The Government Procurement Office or any other office designated may procure a catalogue and a non-catalogue item from any prequalified source if the item meets the required standards, and is available at a competitive price.</p> <p>(10) The NePS shall provide for the generation of a report showing common use items across Ministries as per the threshold set by the Government Procurement Office.</p>
Management of demand Cap. 54:01	<p>19. (1) An authorised personnel shall generate an order on the NePS, and the demand shall be managed in accordance with the Public Finance Management Act.</p> <p>(2) The Minister shall issue a policy to guide on acquisition of selective procurement and the procuring entity's thresholds.</p>
Management of supplier	<p>20. The NePS shall have features for supplier management including —</p> <p>(a) supplier registration whether active, deactivated, suspended or delisted;</p> <p>(b) supplier selection or rotation;</p> <p>(c) supplier performance evaluation;</p> <p>(d) end of activity report; and</p> <p>(e) any other functionality as may be determined by the Minister.</p>

- 21.** The process for a quotation shall be carried out in the NePS and shall be in accordance with the standard bidding documents appropriate for such process. Quotations
- 22.** (1) A procuring entity shall manage contracts in the NePS in accordance with Part XI of the Public Procurement Regulations. Management of contract
- (2) The procuring entity shall nominate an individual who has the required knowledge, skills and ability to effectively carry out his or her responsibilities by using the dashboard provided in the NePS and to manage contracts.
- (3) The Authority shall prepare a procedure on how a contract shall be monitored and controlled online.
- (4) The procuring entity shall enter any contract information into the NePS, during and after the implementation of the contract for the purpose of —
- (a) records and reporting; or
- (b) assessing and determining any deviation from the terms and conditions of the contract.
- (5) The NePS shall provide a tracking feature for all the contract agreements.
- (6) A designated official shall in order to make a decision during the administration of a contract agreement, check the —
- (a) contract status;
- (b) contracted parties;
- (c) contract period;
- (d) supplies;
- (e) works or services covered; and
- (f) contract points.
- (7) Where a contract needs to be amended, the NePS shall show an auto alert for the required action.
- (8) The designated official shall record an appropriate reason before any amendment under subregulation (7) is made.
- (9) A procuring entity shall base the contract management on the workflow process configured for the procuring entity.
- 23.** (1) The NePS shall have a feature to evaluate and monitor a supplier's performance based on the criteria set out in the Public Procurement Regulations. Evaluation of supplier
- (2) A procuring entity may —
- (a) conduct supplier evaluation and performance evaluation; and
- (b) produce a report to the Accounting Officer and the Authority.
- (3) The Authority may conduct monitoring and evaluation of the supplier's contract or awarded tender through the NePS.
- 24.** (1) A procuring entity may use the NePS to prepare an annual strategic procurement plan for a procuring unit. Procurement planning
- (2) The head of a procuring unit shall prepare and submit a consolidated annual strategic procurement plan to the Accounting Officer for approval prior to the commencement of the financial year and the plan shall be implemented in accordance with the timelines set out in the plan.
- (3) The Accounting Officer shall publish the annual strategic procurement plan in the NePS prior to the commencement of the financial year in accordance with section 71 (b) of the Act.
- (4) The Accounting Officer —
- (a) may review and update the annual procurement plan quarterly; and
- (b) shall on a quarterly basis review compliance and submit adherence reports to the Authority.
- (5) The NePS shall provide a procurement plan monitoring feature.

E-payment	<p>25. The NePS shall have a feature for e-payment using different payment platforms in line with written laws.</p>
Unavailability of system	<p>26. (1) The NePS support team shall ensure that the NePS is always available for use unless under maintenance or there are unforeseen circumstances which may render the NePS unavailable.</p> <p>(2) Where the NePS is offline or unavailable due to unforeseen circumstances, the Accounting Officer and the NePS support team shall assess the circumstances.</p> <p>(3) The unforeseen circumstances under subregulation (2) shall be handled as follows —</p> <p>(a) at the stage of preparation for invitation to tender, a procuring entity shall wait until the system has recovered and thereafter transmit the electronic tender documentation;</p> <p>(b) at the stage of acquiring the tender documentation, a contractor shall —</p> <p style="margin-left: 20px;">(i) make a request of the tender documentation using other means provided, or</p> <p style="margin-left: 20px;">(ii) wait until the system has recovered, and proceed to make an electronic acquirement of the tender documentation, and the entity may, by taking into consideration the extent to which an individual case is affected, publish a notice to extend the time-limit tendering;</p> <p>(c) at the stage of submission of a tender a bidder shall —</p> <p style="margin-left: 20px;">(i) submit his or her tender using other means provided by the tender documentation, or</p> <p style="margin-left: 20px;">(ii) wait until the system has recovered and then proceed to make an electronic submission of the tender, and the entity may, by taking into consideration the extent to which an individual case is affected, publish a notice to extend the tender closing date;</p> <p>(d) at the stage of opening of a tender, the procuring entity shall —</p> <p style="margin-left: 20px;">(i) wait until the system has recovered and then proceed to open the tender, or</p> <p style="margin-left: 20px;">(ii) defer opening of the tender, and an exception of this provision shall be given where it is certain that there exists no electronic tender;</p> <p>(e) under an exceptional case, the tender may be cancelled; or</p> <p>(f) any other option as may be deemed relevant by the Accounting Officer.</p> <p>(4) Where the NePS is offline due to maintenance, the NePS support team shall inform the NePS users —</p> <p style="margin-left: 20px;">(a) before system downtime;</p> <p style="margin-left: 20px;">(b) the expected maintenance duration and the expected uptime; and</p> <p style="margin-left: 20px;">(c) when the NePS is back online.</p>
Uploading tender document	<p>27. (1) The NePS shall have a feature to support uploading of different types of document formats as per the requirements, except executable files.</p> <p>(2) The uploaded documents shall have audit trail records.</p>
Amendment of tender document	<p>28. A procuring entity or bidder shall make an amendment to a tender document on the NePS in accordance with regulation 56 of the Public Procurement Regulations.</p>
Withdrawal of bid	<p>29. A procuring entity or bidder shall make a withdrawal of a bid document in accordance with Part VII of the Public Procurement Regulations.</p>
Contract negotiation	<p>30. (1) A contract negotiation shall be done in accordance with Part VIII of the Public Procurement Regulations.</p> <p>(2) A contract negotiation may be conducted online or in person if applicable to a specific procurement type or category in accordance with the requirements of the Act.</p>

(3) The results of a contract negotiation under subregulation (2) shall be entered in the NePS in accordance with the Public Procurement Regulations.

31. (1) The NePS shall provide an end-to-end audit trail feature that shows a record or trace of any activity in the procurement process. Audit trail

(2) The Authority shall conduct a regular internal audit of a procurement process.

(3) A procurement activity financed by the Government shall be subject to an audit conducted by the Auditor General to ensure that —

(a) funds are expended for their intended purpose;

(b) value for money is maximised;

(c) a proper and accountable system is in place and adhered to; and

(d) any weakness in the procurement process is identified.

(4) The Auditor General's procurement audit report shall be presented annually to the Minister for his or her information and endorsement.

(5) An employee of a procuring entity involved in any procurement process shall cooperate with and disclose information to auditors, evaluators and any other authority conducting an audit or monitoring, and evaluation reviews in accordance with the Act.

32. A procuring entity shall keep records in accordance with any applicable laws. Records

33. A procuring entity shall maintain confidentiality in accordance with any applicable laws. Confidentiality

34. There shall be a common procurement vocabulary for every category and subcategory of works, services and supplies. Common procurement vocabulary

35. (1) Where the NePS is in place, a procuring entity may submit all procurement requirements through the NePS. Procurement request

(2) A procuring entity may, as far as possible, manage all procurement requests through the NePS.

36. A procuring entity shall carry out cancellation of a tender process in accordance with Part VII of the Public Procurement Regulations. Cancellation of tender

37. (1) A procuring entity shall not launch a call for proposals and bidding procedures without a specific budgetary allocation approved, and funds shall be available before initiating any procedure. Availability of funds and procedure with suspension clause

(2) A procuring entity shall not award or sign a contract without the adoption of the financing decision and the legal frame.

(3) A bidding document or guidelines of a bidder shall contain a suspension clause providing that the process may be suspended in the case of non-availability of funding.

(4) Where the financing agreement or the legal frame is not signed the procuring entity shall cancel the bid.

MADE this 12th day of June, 2023.

PEGGY O. SERAME,
Minister for Finance.