

A TO Z TIPS FOR BIDDERS

Public Procurement

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A is for Avoiding Unnecessary Rush

Prepare your bid well before the deadline. Avoid last minute rush. Check the exact time of submission and exact location-whether head office, branch office, regional office, floor, wing or even online only submission.

? *Did you know ending up on the wrong floor or wing of a building could cost you a tender?*

B is for Bid Preparation Timelines

If time allocated to either attend the site visit or submit your bid is too short, seek clarification from the Procuring Entity (PE) and ask for more time.

? *Did you know you have a right to seek redress from the Procurement Tribunal (PPARB) if you feel time allowed before closing was unfairly short?*





C is for Clarifications on Site Visits

Seek clarification from the Procuring Entity on site visits. Ensure that you comply with tender requirements e.g where your representatives have to sign a site attendance register.

? *Did you know that a mandatory site visit does not necessarily mean that you have to visit the site on the day specified?*

As a bidder, you are entitled to make your own arrangements and get an officer of the Procuring Entity to take you on the site visit.

D is Defending your Performance Guarantee

Strive to secure an open-ended performance guarantee. While this may be expensive, it could be wiser in view of Government directives which include lockdowns that restrict movement. Such directives are likely to delay the completion date of a project.

? *Did you know you should not be required to give a performance guarantee if your successful bid was less than Kshs. 5 million?*



E is for Exercising Caution

Exercise caution when quoting your bid. Factor in likely rise in costs including power, fuel, labour, materials (e.g for construction) and transportation during implementation.

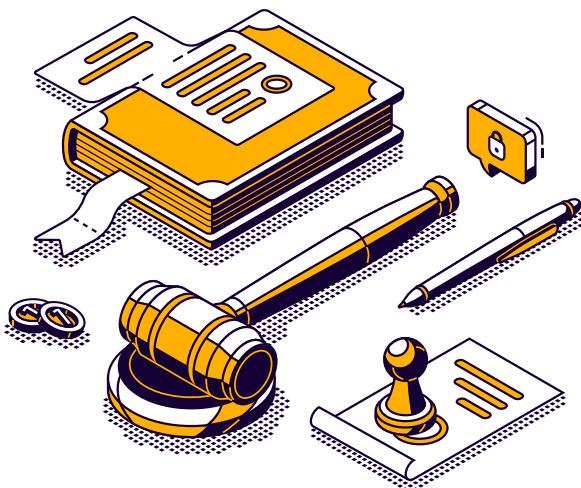
? *Did you know no contract can be varied upwards before 12 months?*

F is for Force Majeure (unforeseen events)

When awarded a tender, examine the force majeure clause carefully before signing the contract. If the contract is long term, insist on flexibility regarding suspension, termination and extension of terms.



Did you know, a public procurement contract can only be terminated on grounds specified in the contract agreement?



G is for Guiding Principles

Your bid is protected by the Constitution of Kenya. The Constitution shields your bid from discrimination, unprofessional conduct and unethical practices by officials of a public entity. The officials must treat the process with integrity, transparency, accountability and in line within good governance. You also have an obligation to ensure that you charge the public entity reasonably to ensure the resources allocated for that tender process are properly utilised.



Did you know as a private citizen you can also be held liable for breach or interference with public procurement procedures?

H is for Highlighting Weak Implementation Points

While signing the contract **highlight, discuss and record** areas that might be adversely affected by the pandemic and highlight them just in case the issues arise later. These include travel, sourcing of materials, importation of goods among others.



Did you know negotiation documents are supposed to form part of the contract agreement?





I is for ICT Infrastructure

Invest in ICT infrastructure. Some Procuring Entities are now conducting procurement online without the option of physical documents.

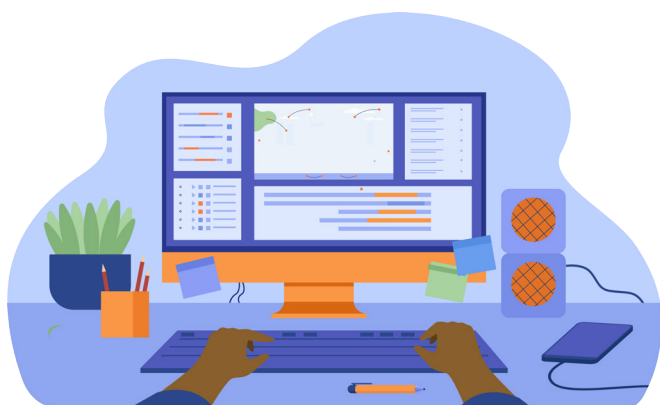
? *Did you know the law now provides for e-tenders including electronic signing, submission and opening of tenders?*

J is for Judicial Review

The Act allows aggrieved bidders who are not satisfied with a decision of the Board to challenge the same at Judicial Review.

? *Did you know that in case you are aggrieved by the decision of the Board, you can approach the High Court by way of an application for Judicial Review? The Application for Judicial Review is in two stages:*

- 1. The Leave Stage (certificate of Urgency, Chamber Summons, Statutory Statement and Verifying Affidavit)*
- 2. The Substantive Application Stage (Notice of Motion to be supported by the evidence relied on at Leave Stage)*



K is for Keeping Tabs (pun intended)

with the procuring entity's website and Government tenders website (www.tenders.go.ke) for any Addendums that may be issued. Addendums are issued to give clarifications / more information on the tender.

? *Did you know an addendum to a tender document forms part of the tender document? This means that a bidder who failed to see and download the addendum would be disqualified for failing to meet the requirements in the addendum?*

L is for **Lowest Evaluated Tenderer**

Procurement contracts are not only awarded on the basis of having the lowest price but a bid must also conform to all the technical and mandatory requirements in the tender.

? *Did you know that tenders are not awarded to the bidder with the lowest price but the bidder with the lowest evaluated price?*



M is for **mandatory requirements**

Mandatory Requirements in a tender document are used to confirm eligibility and compliance of a bidder at the Preliminary Stage before a bid is considered for the technical and financial evaluation

? *Did you know that failure by a bidder to meet the Mandatory Requirements under the tender would lead to automatic disqualification at the Preliminary Stage of the tender evaluation despite its ability to perform the work?*

N is for **Ne'er (Never)**

1. Never give false information about your qualifications during public procurement or asset disposal proceedings.
2. Never submit your tender documents past the deadline for submission.
3. Never solicit for information / communicate with the public entity after bid submission deadline. However, you are allowed to engage the Procuring Entity during the evaluation period if you are seeking a status update on the progress of evaluation.
4. Never bribe any of the employees or officials of a procuring entity or engage in corrupt practices.
5. Never assume or underrate any requirement in the tender document. All requirements will be considered during evaluation.

? *Did you know the Public Procurement Regulatory Board can debar you from participating in procurement or asset disposal proceedings because of giving false information about your qualifications?*



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O is for Opportunities

Seize all opportunities—that is, always be on the lookout for advertised/publicized tenders. Check newspapers, the Public Procurement Information Portal (PPIP) website, websites of public entities, newspapers. Do not miss an opportunity to bid.



Did you know that procuring entities are required by law to advertise tenders?

P is for Post Qualification

A procuring entity can conduct due diligence on a tenderer who is identified as having submitted the lowest evaluated responsive bid. The due diligence is done prior to award and it is carried out to confirm and verify the qualifications of the tenderer who has the lowest evaluated responsive bid and it involves visiting your business premises, contacting your clients/references listed.



Did you know that during due diligence a procuring entity can obtain confidential references from persons you have had prior engagement? (e.g. your clients)



Q is for Query

Where you do not understand any requirement under the Tender Document, where there is any uncertainty or doubt concerning what a procuring entity requires you to provide, contact the procuring entity (in writing) and ask/seek clarification.



Did you know you can ask a procuring entity questions where certain terms/requirements under a tender document are unclear?

R is for Request for Review

Section 167 of the Public Procurement and Asset Disposal Act allows a candidate or tenderer who claims to have suffered or risk suffering loss or damage due to a breach of duty imposed on a procuring entity to seek administrative review within fourteen (14) days of notification of award or date of occurrence of the alleged breach, a timeline that is strictly enforced.



Did you know that you should challenge any alleged breach in a procurement process within fourteen (14) days of occurrence of the breach even if that is before or after issuance of the notification of awards?



S is for Securities

Tender Security is usually listed as a preliminary mandatory requirement in Tender Documents. Bidders are expected to provide a tender security of a particular form, duration and amount and failure to meet the set requirements on tender security results to disqualification of the bidder.

Performance Security is only submitted by the successful bidder to protect the procuring entity and in case the contract is not performed or is not fully or well executed, the public entity shall fully seize this security as compensation.



Did you also know that under Section 142 (3), performance security may not be required for tenders below a certain threshold and that in case of procurements reserved for women, youth, persons with disabilities and other disadvantaged groups, the performance securities may be waived or fixed at not more than one per cent of the contract price?

Did you know that under Section 61 (5) of the Act, tender securities shall not be required in procurements reserved for small and micro-enterprises or enterprises owned by women, youth, persons with disabilities and other disadvantaged groups participating in a procurement proceeding and the target group shall instead be required to fill and sign the Tender Securing Declaration Form as prescribed?



T is for Termination

A Procuring Entity is allowed to terminate or cancel a procurement or asset disposal process any time before issuance of notification of award without entering into contract, based on the reasons provided in Section 63 of the Act.



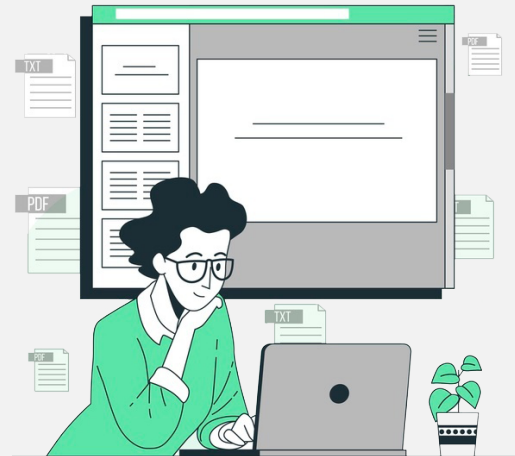
Did you know that even though section 167 (4) of the Act states that a termination under Section 63 shall not be the subject of review by the Review Board, the Courts have held that the Board has jurisdiction to establish if the pre-conditions in Section 63 of the Act have been met before ousting the jurisdiction of the Board or Court?

U is for Understanding the Tender Document

A bidder should read the requirements in the Tender Document carefully to ensure that they understand them well and respond to those set requirements and not any other extraneous requirements. If anything is unclear, the bidder should seek clarifications within the timelines provided for doing so or challenge the contents of the tender document before the close of the tender.



Did you know that challenging the contents of the tender document on the basis of ambiguity after a bidder has been declared unsuccessful may prove futile on the basis that you are likely out of time in raising that issue, having slept on your right to seek clarifications within the set timelines?



V is for Validity

Your tender is only good to you as long as it is valid. A tender without validity is useless. Most tenders are valid for strict timelines, usually between 150 and 210 days. You must ensure that you extend your tender validity and that your tender security aligns with the indicated tender validity at all times. Remember that the validity of the tender can only be extended by the Procuring Entity once and after that, the tender dies a natural death and it can never be revived.



Did you know that you must sign the contract ONLY during the tender validity period? If the validity lapses you lose your award and anticipated contract immediately.

Did you also know that the Board can extend the tender validity beyond the 30 days that the PE is allowed to extend as long as you make the application for extension before expiry of the tender validity?

W is for withdrawal of tenders

If you submit your tender early (before deadline), you can only withdraw it in writing and before the deadline. Upon closing of the tender, you are not allowed to withdraw or change the terms of your tender.



Did you know that any attempt to withdraw or change the terms of your tender after the closing will lead to the cashing in of your tender security by the Procuring Entity?



X is for Xenophobia

Procurement contracts are not only awarded on the basis of having the lowest price but a bid must also conform to all the technical and mandatory requirements in the tender.



In an open tender, international companies may submit their bids and unless the tender has been reserved for Kenyan Companies and/or Kenyan manufacturers, no procuring entity ought to dismiss a bid for reasons that the bidder is from a particular country.

Y is for youth

As a youth (18-35 years), please ensure that you are a mandatory signatory of the bank account where payments pursuant to a tender are made. You are also expected to control at least seventy percent (70%) of your company's shareholding either alone or with fellow youth. The same applies for bidders who are women or persons with disabilities.



Did you know, if you participate in a tender set aside for youth you will not be expected to produce a performance guarantee of more than 1% of the tender award?



Z is for Zest

Just like anything else in life, go through your procurement with enthusiasm, energy, creativity and positivity. Fill your bids in time, do your research, read the law and the tender documents and follow the instructions carefully.

Remember, "Successful people ask questions. They seek new teachers. They are always learning" ~ Robert Kiyosaki.

Talk to us!



Commissioners for Oaths & Notaries Public

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