



**Public Procurement Regulatory Authority**

**Guideline**

**For**

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**Determination of Major and Minor Deviation**

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**PPRA**

**October, 2017**

**Further information may be  
obtained on [www.ppra.go.tz](http://www.ppra.go.tz)**

<b>PART I: INTRODUCTION</b>	
1. Background	<p>1.1. When procuring entity (PE) invites tenders to participate in the tendering process, the aim is to obtain maximum competition from the invited firms. Determination of responsiveness of bids submitted can be achieved through the evaluation conducted as per the processes specified in the instructions contained in bidding documents. The scrutiny of bids for substantial responsiveness to the provisions of the bidding documents includes determination of Major and Minor deviation.</p> <p>1.2. This guideline is hereby issued to guide PE to determine major and minor deviations.</p>
2. Short Title	2.1. This document may be cited as the guidelines for determination of major and minor deviation during determination of responsiveness of bids.
3. Application	3.1. This guideline shall be applied by all PEs during the evaluation of bids.
4. Definitions	<p>4.1. In these Guidelines, unless the context requires otherwise;-</p> <p>“Authority” means the Public Procurement Regulatory Authority.</p> <p>“Procuring Entity” means a public body and any other body, or unit established and mandated by government to carry out public functions;</p> <p>“Deviation” is a departure from the requirements specified in the Bidding Document;</p> <p>“Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and</p> <p>“Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document.</p>
5. Purpose of the Guideline	<p>5.1. General Purpose</p> <p>To guide procuring entities to determine major and minor deviation while establishing responsiveness of the bids. This guideline is issued based on the power vested to the Authority by virtue of Section 106 of the Public Procurement Act Cap 410.</p> <p>5.2. Specific Purpose</p> <p>Specific purpose of this guideline is to:</p>

	<ul style="list-style-type: none"> <li>a) Provide guidance to PEs on appropriate provisions of legislations and procedures to be followed during the determination of major and minor deviation.</li> <li>b) To ensure consistency in the application of evaluation criteria specified in the bidding documents; and</li> <li>c) Increasing transparency, efficiency and effectiveness of the evaluation process.</li> </ul>
6. Importance of the Guideline	<p>6.1 The guideline outlines the criterion that should be used by procuring entities when determining the most responsive bid.</p> <p>6.2 The use of this guideline will ensure uniformity with regard to the procedures to be undertaken by procuring entities when evaluating and comparing bids.</p>
<b>PART II: DETERMINATION OF RESPONSIVENESS</b>	
7. Responsiveness of tenders	<p>7.1 It is the requirements of the procurement legislations that tender evaluation shall be consistent with the terms and conditions prescribed in the solicitation documents and such evaluation shall be carried out using the criteria explicitly stated in the tender documents. Tenders shall be comparable among themselves in order to determine the lowest evaluated cost for procurement of goods, works or services.</p> <p>7.2 The procuring entity's determination of a tender's responsiveness shall be based on the contents of the tender itself without recourse to extrinsic evidence. Where a tender is not responsive to the tender document, it shall be rejected by the procuring entity, and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation.</p>
<b>PART II: PRELIMINARY EVALUATION</b>	
8. Determination of responsiveness	<p>8.1 In order to determine substantially responsiveness of tenders, PEs should conduct preliminary examinations on commercial terms, conditions and technical requirements of the tender documents to determine whether or not:</p> <ul style="list-style-type: none"> <li>(a) each tender is substantially responsive to the requirements of the tender documents;</li> <li>(b) the required securities have been provided;</li> </ul>

	<p>(c) the documents have been properly signed; and</p> <p>(d) the tenders are otherwise generally in order.</p>
<p>9. Responsiveness to commercial terms and conditions</p>	<p>9.1 All tenders shall be checked for substantial responsiveness to the commercial terms and conditions of the tendering documents.</p> <p>9.2 Material deviations to commercial terms and conditions, which justify rejection of a tender shall include the following:</p> <ul style="list-style-type: none"> <li>(a) failure to sign the bid form and price schedules by the authorized person or persons;</li> <li>(b) failure to satisfy eligibility requirements;</li> <li>(c) failure to submit a tender security as specified in the tendering documents;</li> <li>(d) failure to satisfy the tender validity period;</li> <li>(e) inability to meet the critical delivery schedule or work schedule clearly specified in the tendering documents, where such schedule is a crucial condition with which tenderers must comply;</li> <li>(f) failure to comply with minimum experience criteria as specified in the tendering documents;</li> <li>(g) conditional tenders such as conditions in a tender which limit the tenderer's responsibility to accept an award;</li> <li>(h) inability to accept the price adjustment formulae of the tendering documents;</li> <li>(i) stipulating price adjustment when fixed price tenders were invited;</li> <li>(j) subcontracting in a substantially different amount or manner than that permitted;</li> <li>(k) failure to submit major supporting documents required by the tendering documents to determine substantial responsiveness of a tender.</li> </ul>

<p>10. Responsiveness to technical requirements</p>	<p>10.1 All tenders shall be checked for substantial responsiveness to the technical requirements of the tendering documents and non-conformity to technical requirements, which are justifiable grounds for rejection of a tender includes the following:</p> <ul style="list-style-type: none"> <li>(a) failure to tender for the required scope of work as instructed in the tendering documents and where failure to do so has been indicated as unacceptable;</li> <li>(b) failure to quote for a major item in the package;</li> <li>(c) failure to meet major technical requirements, such as offering completely different types of equipment or materials from the types specified, plant capacity well below the minimum specified, equipment not able to perform the basic functions for which it is intended;</li> <li>(d) presentation of absolutely unrealistic and inadequate implementation plans and schedules regarding performance, technical or service factors.</li> </ul>
<p>11. Deviations, Reservations and Omissions</p>	<p>11.1. During the evaluation of bids, the following definitions shall apply:</p> <ul style="list-style-type: none"> <li>(a) "Deviation" is a departure from the requirements specified in the Bidding Document;</li> <li>(b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and</li> <li>(c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.</li> </ul> <p>11.2. A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission.</p> <p>11.3. A material/major deviation, reservation, or omission is one that,</p> <ul style="list-style-type: none"> <li>(a) if accepted, would: <ul style="list-style-type: none"> <li>(i) affect in any substantial way the scope, quality, or performance of the Works specified in the</li> </ul> </li> </ul>

	<p style="text-align: center;">Contract; or</p> <p style="text-align: center;">(ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or</p> <p style="text-align: center;">(b) if rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.</p> <p>11.4. PE shall examine the responsiveness to the commercial terms, conditions and technical requirements of the tender documents have been met without any material deviation, reservation or omission.</p> <p><b>11.5.</b> If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the PE and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.</p>
<p>12. Non conformities, Errors and Omissions</p>	<p>12.1. Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.</p> <p>12.2. Provided that a bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the methods indicated in Section III (Evaluation and Qualification Criteria).</p> <p>12.3. Makes it an obligation on the part of Bidders to submit along with their bids the documents listed therein. If this clause is read in isolation, a bid may be declared incomplete and therefore not responsive for non-submission of anyone of the documents. This may not be correct esp. if the bid is</p>

	<p>substantially responsive and the omission is a non-material nonconformity, as ITB 30.2 allows the Bidder to rectify the omission in such circumstances.</p> <p>12.4. In applying clause ITB 29.2 referred to above, the determination of Responsiveness of Bids finally rests upon the interpretation of material deviation, reservation and omission. Experience has shown that whilst material deviation and reservation as defined above are applied without ambiguity, there is a need to define material omission in respect of required documents.</p> <p>12.5. Legal advice obtained by the Procurement Policy Office has confirmed that non-submission of factual documents and information like trade license or contractor's permit that is, documents and information which cannot be tampered with, are non-material omissions. Accordingly, and in-keeping with the provisions under ITB 29.2 (b), it becomes equally important to establish what are those missing documents that, if rectified, "would unfairly affect the competitive position of other Bidders presenting substantially responsive bids".</p>
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