

Public Procurement and Disposal of Assets Authority

Ref No. PPDA/01/22

4TH FEBRUARY, 2021

FROM : THE ACTING DIRECTOR GENERAL, PUBLIC PROCUREMENT AND DISPOSAL OF ASSETS AUTHORITY, PRIVATE BAG 383, CAPITAL CITY, LILONGWE 3.

TO : ALL DISTRICT COMMISSIONERS AND CHIEF EXECUTIVE OFFICERS OF CITY COUNCILS AND MANUCIPALITIES

CC : THE SECRETARY TO THE PRESIDENT AND CABINET, OFFICE OF THE PRESIDENT AND CABINET, PRIVATE BAG 301, LILONGWE 3.

THE SECRETARY TO LOCAL GOVERNMENT AND RURAL DEVELOPMENT, P.O. BOX 30312, LILONGWE 3.

THE ATTORNEY GENERAL, PRIVATE BAG 333, LILONGWE 3.

THE SECRETARY TO THE TREASURY, P.O. BOX 30049, LILONGWE 3.

THE AUDITOR GENERAL, P.O. BOX 30045, LILONGWE 3.

THE CONDUCT OF PROCUREMENT OF SUPPLY AND DELIVERY OF FACE MASKS USING COVID 19 FUNDS

The Public Procurement and Disposal of Assets Authority (PPDA) in pursuit to its mandate under section 6(1)(k) of the Public Procurement and Disposal of Public Assets Act 27 of 2017 and following the Circular Reference Number LG/2/34 from the Secretary for Local Government on the "Funds for Face Masks" hereby

provides the following guidance to Local Councils on how to conduct procurement of the face masks using the allocated funds.

I should, at the outset, kindly inform all councils that the general guidance on Covid-19 procurements which was issued by the Authority through its circular dated 15th April 2020 is still applicable in the present procurement. The procurement is to be treated as emergency procurement and in this instance, for the procurement of masks under circular LG/2/34, a waiver has been granted that councils use Request for Quotation procurement method with a reduced bidding period of 3 days. The Councils are required to comply with the publication of the procurement notices through means which will benefit the local community e.g Notice Boards and also on the PPDA website regardless of value to ensure transparency of the processes.

Further, the Authority advises the Councils to strictly adhere to the record keeping expected of them as provided for in regulation 18 of the Public Procurement Regulations 2020 (PPR 2020) and as highlighted in the previous Circular issued on 15th April, 2020. In cases where the general guidance of the Circular of 15th April 2020 is inconsistent with the guidance in this Circular, then the latter will prevail in as far as it relates to these procurements.

Section 6(1)(k) of the PPD Act provides:

“The Authority shall, through subsidiary legislation set special conditions for targeted procurement in enhancement of the capacity and performance of micro, small and medium enterprises in consultation with other regulatory bodies”

As you are aware, the Public Procurement and Disposal of Public Assets (participation by Micro, Small and Medium Enterprises) Order 2020 i.e. the MSME Order was gazetted on 14th December, 2020. This MSME Order provides for “Personal Health Products” under the Second Schedule as one of the set asides for micro, small and medium sized enterprises. In accordance with regulation 2 of the Public Procurement Regulations 2020, a set aside **“means reserving of a**

procurement exclusively for participation by micro, small and medium sized enterprises”

It is against this background that all Councils are under legal obligation to conduct the procurement of the face masks in accordance with the MSME Order 2020. A copy of the MSME Order 2020 has been attached for ease of reference. For avoidance of doubts, only micro, small and medium sized enterprises are expected to participate in this procurement of supplying face masks unless the procuring and disposing entity has failed to identify the successful bidder in line with paragraph 17 of the MSME Order.

I should also advise that the Ministry of Local Government in conjunction with Ministry of Trade has put in place proper arrangements that eligibility of all interested MSMEs is favourably considered to ensure that they participate in this procurement. In accordance with the Third Schedule of the MSME Order, all Councils are required to package their lots of this procurement in a manner which will enhance competition within the respective categories of MSMEs provided for under paragraph 6 of the Order. In other words, micro enterprises will compete among themselves; small enterprises will compete amongst themselves and so forth. Prohibited competition i.e. allowing participation of MSMEs from different categories is punishable under MSME Order. Therefore, Councils are reminded to comply with paragraph 16 of the MSME Order.

I finally reiterate that contravention of the guidance of this Circular or the provisions of the MSME Order 2020 shall attract a penalty as provided for under the PPD Act and the Public Procurement Regulations 2020.

I should be very grateful if the contents of this circular are communicated to all your Officers involved in procurement and disposal activities.



Timothy Kalembo
ACTING DIRECTOR GENERAL

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
(PARTICIPATION BY MICRO, SMALL AND MEDIUM ENTERPRISES) ORDER, 2020

GOVERNMENT NOTICE NO. ...

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT
(Act No. 27 of 2017)

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS (PARTICIPATION
BY MICRO, SMALL AND MEDIUM ENTERPRISES) ORDER, 2020

IN EXERCISE of the powers conferred by section 36(2) of the Public Procurement and Disposal of Public Assets Act, I, ELLIAS HAUSI, Director General of the Public Procurement and Disposal of Assets Authority, in consultation with the Minister of Trade, Minister of Economic Planning and Development and the Minister of Gender, Disability Affairs and Community Development, make the following Order-

PART I-PRELIMINARY PROVISIONS

Short
title

1. This Order may be cited as the Public Procurement and Disposal of Public Assets (Participation by Micro, Small and Medium Enterprises) Order, 2020.

Interpretation

2. In this Order, unless the context otherwise requires-

“disability” has the meaning ascribed to it under section 2 of the Disability Act[Act number 10 of 2012];

“marginalization” means a condition or process preventing an individual or group of individuals from full participation in public procurement enjoyed by the wider society due to their social, economic and cultural circumstances; “marginalized group” and “marginalized person” shall be construed accordingly;

“medium enterprise” means an enterprise comprising at least two (2) of the following characteristics-

- (a) annual turnover between fifty million Kwacha(K50,000,000) and five hundred million Kwacha(K500,000,000);
- (b) has between twenty-one (21) and ninety-nine (99) employees;
- (c) has maximum assets (excluding land and buildings in the case of manufacturing enterprises) of two hundred and fifty million Kwacha (K250,000,000);

“micro enterprise” means an enterprise comprising at least two (2) of the following characteristics-

- (a) annual turnover of up to five million Kwacha (K5,000,000);
- (b) has between one (1) and four (4) employees;
- (c) has maximum assets (excluding land and buildings in the case of manufacturing enterprises) of one million Kwacha (K1,000,000);

“small enterprise” means an enterprise comprising at least two(2) of the following characteristics-

- (a) annual turnover between five million Kwacha(K5,000,000) and fifty million Kwacha(K50,000,000);
- (b) has between five (5) and twenty (20) employees;
- (c) has maximum assets (excluding land and buildings in the case of manufacturing enterprises) of twenty million Kwacha (K20,000,000);

“set aside” means the reserving of a procurement exclusively for participation by micro, small, and medium size enterprises or marginalized groups; and

“youth” means a person who is between the age of eighteen (18) and thirty-five (35).

Scope and application

3. -(1) This Order applies to-

- (a) participation of micro, small and medium enterprises and marginalized groups in public procurement of goods, works and services in Malawi; and
- (b) participation of enterprises other than those specified in subparagraph(1)(a) where identification of successful bidder who is micro, small or medium enterprise or marginalized person has failed.

(2) This Order prescribes preferences and reservations for micro, small and medium enterprises and marginalized groups involved in public procurement of goods, works and services in Malawi.

PART II-PARTICIPATION OF MICRO, SMALL AND MEDIUM ENTERPRISES IN PUBLIC PROCUREMENT

Eligibility
for
preferences
and
reservations

4. –(1) Subject to subparagraph (2), a supplier shall be eligible to enjoy the preferences and reservations under this Order in procurement of goods, services and works if-

(a) the supplier produces proof of being registered under this Order as a micro, small or medium enterprise as defined under this Order; and

(b) the supplier produces proof of being registered as a business entity in Malawi.

(2) In addition to satisfying the requirement stipulated under subparagraph (1), the supplier shall also be eligible to participate in public procurement as required under section 52 of the Act in order to be entitled to the preferences and reservations under this Order.

(3) The Minister responsible for trade may, where appropriate, verify the information submitted by a supplier under subparagraph (1) with the relevant public entities.

Application
for a micro,
small or
medium
enterprise
status

5. –(1) A supplier who meets eligibility criteria under paragraph 4 may apply to the Minister responsible for trade to be registered as a micro, small or medium enterprise by submitting a duly completed **Form 1** prescribed in the First Schedule to this Order.

(2) The supplier shall pay application fees to be prescribed by the Minister responsible for trade.

(3) Where the Minister responsible for trade is satisfied with the merit of the application made under subparagraph (1), he shall, within thirty (30) days of receipt of the application, grant the supplier a certificate as a micro, small or medium enterprise prescribed in **Form 2** to the First Schedule to this Order.

(4) Where the Minister responsible for trade is not satisfied with the merit of the application, he shall, within thirty (30) days of receipt of the application, refuse to grant the application by giving reasons in writing to the supplier.

Categorization
of enterprises

6. –(1) In applying this Order, the following shall be the main categories for enjoying the preferences and reservations-

- (a) micro enterprises;
- (b) small enterprises;
- (c) medium enterprises; and
- (d) marginalized groups.

(2) For the purpose of subparagraph (1)(d), “marginalized groups” are women, youth and persons with disability.

Assignment of
certificate

7. A person shall not transfer or assign the certificate issued under this Order

Suspension
of certificate

8. (1) The Minister responsible for trade may suspend a certificate issued under this Order where the holder of the certificate is in breach of the certificate conditions, the provisions of the Act and this Order.

(2) A suspension under this paragraph shall be for such period not exceeding two (2) years as the Minister responsible for trade may determine to enable the holder of the certificate take remedial action for the non-compliance.

Revocation
of certificate

9. –(1) The Minister responsible for trade may revoke a certificate where-

- (a) the certificate was issued with conditions and the holder thereof has failed to satisfy those conditions;
- (b) the holder of the certificate has failed to take remedial action referred to under paragraph 8 at the expiry of the time prescribed in the suspension;
- (c) a report relating to the activity for which the certificate is issued made under any written law recommends revocation; or
- (d) the holder of the certificate has been convicted of an offence which is punishable by debarment under the Act.

(2) Where a certificate has been revoked, the holder of the revoked certificate shall not participate in public procurement as micro, small or medium enterprise or marginalized person.

Administration
of preferences
and reservations

10. –(1) For the purpose of promoting the participation of suppliers who are micro, small and medium enterprises in the procurement of goods, works and services, a procuring and disposing entity shall, in every financial year-

- (a) indicate in the bidding document the value of preferences applicable to micro, small and medium enterprises in its procurement contracts;
- (b) publicize adequately the invitation to bid and state clearly the existence of the preferences and reservations for

procurement contracts with micro, small and medium enterprises as in the manner prescribed by the Director General from time to time;

- (c) submit to the Authority a procurement plan indicating inter alia the value and percentage of its procurement contracts intended for award to micro, small and medium enterprises;
 - (d) submit to the Authority quarterly reports of compliance with the preferences and reservations stipulated under this Order for micro, small and medium enterprises;
 - (e) grant a margin of preference to marginalized groups of -
 - (i) fifteen percent (15%) procurement of goods and services; and
 - (ii) ten percent (10%) procurement of works; and
 - (f) comply with preferences and reservations which the Minister may set from time to time.
- (2) A bidder who is a beneficiary of the preferences and reservations under this Order shall only be entitled to one preference or reservation per procurement.
- (3) Where there is more than one margin of preference or reservation applicable to a micro, small or medium enterprise or a marginalized person, a procuring and disposing entity shall adopt the margin of preference or reservation which presents the most economically advantageous position to the intended beneficiary.

Subcontracting

- 11.** –(1) A micro, small or medium enterprise or a marginalized person who is bidding in a public procurement may subcontract another micro, small or medium enterprise or marginalized person.
- (2) Notwithstanding subparagraph (1), a procuring and disposing entity may require the micro, small or medium enterprises or marginalized persons to subcontract for the purpose of enhancing capacity to deliver the contract and expanding the participation of micro, small or medium enterprises or marginalized persons in public procurement.
- (3) Where a procuring and disposing entity has required subcontracting as envisaged under subparagraph (2)-
- (a) the bidder shall only subcontract to another enterprise which is a micro, small or medium enterprise or marginalised group; and
 - (b) the subcontracted value shall not exceed forty percent (40%) of the contract value.

Prioritization
of locally
produced
goods, and
services

12. (1) A procuring and disposing entity shall prioritize award of contract to micro, small and medium enterprises who are supplying locally produced goods and services by granting a margin of preference of twenty percent (20%).

(2) The goods and services shall be regarded as locally produced if certified by the Minister responsible for trade.

Set-aside for
sectors

13. A procuring and disposing entity shall award contracts of procurement of goods, works and services listed in the **Second Schedule** to bidders who are micro, small and medium enterprises or marginalized groups.

Participation
thresholds for goods
and services

14. A procuring and disposing entity shall restrict the participation of micro, small or medium enterprises or marginalized groups in the supply of goods and services in accordance with thresholds prescribed in the **Third Schedule**.

Participation
thresholds for works

15. A procuring and disposing entity shall restrict the participation of micro, small or medium enterprises or marginalized groups in the provision of works in accordance with thresholds prescribed in the **Fourth Schedule**.

Prohibited
competition

16. Where a procuring and disposing entity has made an invitation for bids for procurement of goods, works and services, it shall not permit participation of bidders from different categories stipulated under paragraph 6.

Failure to
identify
successful
bidder

17. (1) Where a procuring and disposing entity who used request for quotation method has failed to identify a supplier within the categories of micro, small and medium enterprises or in marginalized group, the procuring and disposing entity shall use open tender method of procurement but restricting the participation in the procurement to micro, small and medium enterprises or marginalized group.

(2) Subject to subparagraph (3), where, after using open tender method as provided for in subparagraph (1), the procuring and disposing entity still fails to identify a supplier who is micro, small or medium enterprises or marginalized group, the procuring and disposing entity shall seek prior approval from the Authority to

open the participation in the procurement to all eligible bidders without restricting the procurement to micro, small or medium enterprises or marginalized group.

(3) A supplier who, not being a micro, small or medium enterprise or marginalized person, intends to submit a bid to a procuring and disposing entity under subparagraph (2) following the failure to identify a successful bidder from among micro, small or medium enterprises or marginalized persons may partner with a micro, small or medium enterprise or marginalized person when submitting its bid.

(4) Where an entity which is not a micro, small or medium enterprise has partnered with a micro, small or medium enterprise or a marginalized person as envisaged under subparagraph (3)-

(a) - the partnership shall be accorded five percent (5%) margin of preference;

(b) the procuring and disposing entity shall be satisfied that the partners have executed a partnership agreement with clear terms on-

(i) role to be played by the micro, small or medium enterprise or marginalized person;

(ii) amount of money payable to the micro, small or medium enterprise or marginalized person pursuant to the partnership; and

(iii) plan on how knowledge shall be transferred to the micro, small or medium enterprise or marginalized person.

(5) Until the Authority grants a written approval, a procuring and disposing entity shall not proceed to invite tenders from suppliers who are not micro, small and medium enterprises or marginalized group.

(6) Where a procuring and disposing entity fails to identify a successful bidder among those who submitted bids under this paragraph, the procuring and disposing entity shall inform all unsuccessful bidders in writing.

Obligations
of a
supplier

18. (1) A supplier who has been granted a certificate of micro, small and medium enterprise or marginalized group status shall not, for the mere reason of such status, be excused from complying with the general obligations and enjoying the general rights of a supplier under the Act or the Regulations made thereunder or any written law.

(2) Without prejudice to the generality of subparagraph (1), a supplier who is micro, small or medium enterprise or a marginalized person shall-

- (a) not, in the process of fulfilling the contract of procurement, commit misconducts prohibited under section 55 of the Act;
- (b) supply goods, service and works of standard as required under the contract; and
- (c) meet all obligations in relation to the procurement contract.

(3) A supplier who has been awarded a procurement contract as preference to micro, small and medium enterprise or marginalized group shall not assign or subcontract the procurement contract to another person without prior consent of the procuring and disposing entity which consent shall only be granted upon prior approval by the Authority.

Monitoring
by the
Authority

19. The Authority shall-

- (a) generally monitor the application and implementation of preferences and reservations under this Order;
- (b) develop, maintain and periodically update a register of procurement contracts awarded to micro, small and medium enterprises and marginalized groups.

Publication of
contract details

20. The Authority shall, within thirty (30) days from the end of a quarter, publish on its website the material information for all contracts which procuring and disposing entities have awarded to micro, small or medium enterprises and marginalised persons and the procuring and disposing entities have furnished to the Authority under paragraph 7(1) (d).

PART III- OFFENCES AND ENFORCEMENT

Sanctions for
violations

- 21.** Where a person contravenes any provision of this Order, the cognate provision of the Act or Regulations made thereunder shall apply in respect of the offence and penalty to be imposed.

SCHEDULES
FIRST SCHEDULE
FORMS

(para.5)

FORM 1:
APPLICATION FORM FOR REGISTRATION AS A MICRO, SMALL AND
MEDIUM ENTERPRISES/MARGINALIZED GROUP

Form to be completed in **block letter** and submitted in **duplicate** –

1. Full name of Applicant.....
2. Name of Business
3. Business Registration Certificate number.....
4. Percentage of foreign shareholding
5. Tax Payer Identification Number.....
6. Name and address of owners of the business
7. Particulars of owners (attach list where necessary).....

Name of Owner	Nationality	Identity	Male/Female	Age	Contact Details

8. Is the business owned by disabled person and describe nature of disability
.....
.....
9. Nature of business
10. Are goods manufactured locally
11. Physical location of the business
- a. Location: Village, road or street name
- Chief (if applicable)
- Town or District
- b. Please state if plot is freehold, leasehold or customary land (give plot No. if applicable)

12. Annual sales turnover.....
Number of employees
Business capital
.....
Name and address of your bank
Account Number.....

13. Please attach the following documents:

- a. Certificate of registration/incorporation
- b. Tax clearance certificate
- c. National Identification document
- d. Current business licence
- e. Letter from the District Commissioner as proof of originality

DECLARATION

I declare that the information given is true and correct to the best of my knowledge and belief.

Signed by

Witness

Application Fee.Paid Receipt No.

Dated thisday of, 20.....

.....
Name of Applicant

FORM 2:

REGISTRATION CERTIFICATE FOR MICRO, SMALL AND MEDIUM ENTERPRISE

Registration Number:

This is to certify that..... is
registered as Micro/Small/Medium/Marginalized [delete where not applicable] enterprise in
Malawi

This certificate is valid from to

Given under the hand of the Secretary for Trade at Lilongwe, Malawi

Secretary for Trade

SEAL

Dated this day ofday of20..

SECOND SCHEDULE

(para.13)

LIST OF SECTORS WHOSE PROCUREMENT IS RESTRICTED TO MICRO, SMALL AND MEDIUM ENTERPRISES

(This list is inclusive but may be changed from time to time by the Director General by Order published in the Gazette).

A. Goods

1. Horticultural products
2. Fish and fish products
3. Milk and milk products
4. Poultry products
5. Local building materials
6. Veterinary supplies
7. Fingerlings
8. Live stocks
9. Farm implements
10. Furniture
11. School Laboratory chemicals and equipment
12. Apprenticeship tools and equipment
13. Signage and Electrical Signage
14. Screen printing and Embroidery
15. Information, Education and Communication (IEC) material
16. Leather and leather products
17. Firewood supplies
18. Pipes and fittings
19. Water meters
20. Information and Communication Technology products/solutions
21. Water tanks
22. Bobbins for electrical transmission poles
23. Office Stationary and consumables
24. Sporting materials and equipment
25. Gypsum material e.g Chalk
26. Personal health products

B. Works

1. Civil and Building works: up to MK500 million
2. Earth dams
3. Fish ponds
4. Prefabricated concrete products
5. Basic solar installation
6. Plumbing Services
7. Basic electrical works
8. Grass cutting
9. Road grading/shaping
10. Road drainage works
11. Pot-hole patching

12. Road gravelling
13. Road markings
14. Drilling Works
15. Landscaping
16. Welding and fabrication
17. Property Maintenance
18. Fencing works

C. Consulting Services

Simple consultancies: up to K50m.

D. Non-consulting services

1. Local Haulage
2. Travel agents
3. Clearing Agents & Freight forwarding
4. Refuse Collection and disposal
5. Events management
6. Cleaning services
7. Fumigation services
8. Local courier services
9. Interior design services
10. Advertising
11. Printing services
12. Veterinary services
13. Panel beating and spray painting

THIRD SCHEDULE (para.14)
THRESHOLDS FOR PARTICIPATION OF MICRO, SMALL AND MEDIUM
ENTERPRISES IN PUBLIC PROCUREMENT OF GOODS AND SERVICES

	Micro Enterprise	Small Enterprise	Medium Enterprise
Goods/non-consulting services	0 to K5 million	K5m to K50 million	K50m to K500 million
Consulting services	0 to K5 million	K5m to M50 million	K50m to K500 million

FOURTH SCHEDULE (para.15)
THRESHOLDS FOR PARTICIPATION OF MICRO, SMALL AND MEDIUM
ENTERPRISES IN PUBLIC PROCUREMENT OF WORKS

	Micro Enterprise	Small Enterprise	Medium Enterprise
Works	0 to K5 million	K5m to K50 million	K50m to K500 million

Made this day of , 2020

ELLIAS HAUSI
Director General

(FILE NO.)