

GOVERNMENT NOTICE NO. 96

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT

(CAP. 37:03)

**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, the Minister of Economic Planning and Development and the Minister of Gender, Disability Affairs and Community Development, make the following Order—

PART I

PRELIMINARY PROVISIONS

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

2. In this Order, unless the context otherwise requires— Interpretation
“disability” has the meaning ascribed to it under section 2 of the Disability Act; Cap. 33:06

“marginalization” means a condition or process that hinders an individual or group of individuals from effective participation in public procurement due to social, economic or cultural circumstances;

“marginalized person” means a person affected by marginalization;

“medium enterprise” means an enterprise comprising at least two of the following characteristics—

(a) annual turnover of more than fifty million Kwacha (K50,000,000) but not more than five hundred million Kwacha (K500,000,000);

(b) has number of employees above twenty but not more than ninety-nine;

(c) has assets, excluding land and buildings, in the case of a manufacturing enterprise, of value above twenty million Kwacha (K20,000,000) but not more than two hundred and fifty million Kwacha (K250,000,000);

“micro enterprise” means an enterprise comprising at least two of the following characteristics—

(a) annual turnover of up to five million Kwacha (K5,000,000);

(b) has number of employees not exceeding four;

(c) assets, excluding land and buildings in the case of a manufacturing enterprise, which are of a maximum value of one million Kwacha (K1,000,000);

“small enterprise” means an enterprise comprising at least two of the following characteristics—

(a) annual turnover above five million Kwacha (K5,000,000) but not more than fifty million Kwacha (K50,000,000);

(b) has between five and twenty employees;

(c) has assets, excluding land and buildings in the case of a manufacturing enterprise, which have a value of above one million Kwacha (K1,000,000) but not above 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 and thirty-five years.

Scope and application

3. This Order applies to participation of—

(a) small and medium enterprises in public procurement of goods, works and services; and

(b) enterprises other than those specified in subparagraph (a) where identification of a successful bidder which is micro, small or medium enterprise has failed.

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

Categorization of enterprises

4. The following shall be the categories of suppliers to be granted preferences and reservations under this Order—

(a) micro enterprises;

(b) small enterprises; and

(c) medium enterprises.

Eligibility for preferences and reservations

5.—(1) Subject to subparagraph (2), a supplier shall be eligible for application of the preferences and reservations under this Order if the supplier—

(a) is registered as a business entity in Malawi; and

(b) is registered as a micro, small or medium enterprise under this Order.

(2) In addition to satisfying the requirements of subparagraph (1), a micro, small or medium enterprise shall also comply with the eligibility criteria prescribed under section 52 of the Act.

6.—(1) A supplier who meets the eligibility criteria under paragraph 5 may submit an application for registration as a micro, small or medium enterprise, in a duly completed Form 1 prescribed in the First Schedule hereto, to the Minister responsible for trade.

Application
for a micro,
small or
medium
enterprise
status

(2) The supplier shall pay application fees 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 days of receipt of the application, issue to the supplier, a certificate of registration in Form 2 to the First Schedule hereto.

(4) The Minister may issue a certificate under paragraph (3), with conditions.

(5) Where the Minister responsible for trade is not satisfied with the merit of the application, he shall, within thirty days of receipt of the application, not issue a certificate and give reasons in writing to the supplier.

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

Assignment
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 conditions of a certificate, the provisions of the Act or this Order.

Suspension of
certificate

(2) The suspension made pursuant to subparagraph (1) shall be communicated in writing to the holder of the licence indicating the breach, the remedy for the breach and the time frame within which the remedy to the breach is to be effected.

(3) A suspension made under this paragraph shall be for such period, not exceeding two (2) years, as the Minister responsible for trade may determine.

(4) The suspension made pursuant to this paragraph shall be lifted where—

(a) the remedy for the breach has been effected; and

(b) the time frame for the suspension has lapsed:

Provided that the suspension may be lifted earlier where the holder of the certificate remedies the breach and the Minister, in consultation with the Authority determines that it would be appropriate to lift the suspension.

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

Revocation of
a certificate

(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 under paragraph 8 within the period prescribed in the suspension notice;

(c) a report relating to the activity for which the certificate is issued made under any written law recommends revocation:

Provided that, in such a circumstance, the Minister shall ensure that the holder of the certificate is heard before a decision for revocation is made; 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 micro, small and medium enterprises in the procurement of goods, works and services, a procuring and disposing entity shall—

(a) submit to the Authority, an annual procurement plan indicating *inter alia*, the value and percentage of procurement reserved or intended for award to micro, small and medium enterprises;

(b) indicate in a bidding document, the margin of preference applicable to micro, small and medium enterprises;

(c) where applicable, state clearly in the invitation to bid, the existence of the preferences and reservations for micro, small and medium enterprises in the manner prescribed by the Director General from time to time;

(d) comply with preferences and reservations which the Minister may set; and

(e) submit to the Authority, quarterly reports on compliance with the preferences and reservations stipulated in the annual procurement plan.

(2) Subject to subparagraph (5), where a micro, small or medium enterprise is owned by a marginalized person, a procuring and disposing entity, shall in addition to the preferences and reservations stipulated herein, grant a margin of preference of—

(a) fifteen percent for procurement of goods or services; and

(b) ten percent for procurement of works; and

(3) For the purpose of subparagraph (2), “marginalized persons” includes women, youth, persons with disability and the elderly.

(4) A micro, small or medium enterprise shall be entitled to one preference or reservation per procurement.

(5) Notwithstanding subparagraph(2), where there is more than one margin of preference or reservation applicable to a micro, small or medium enterprise, a procuring and disposing entity shall adopt the margin of preference or reservation which presents the most economically advantageous position to the intended beneficiary.

11.—(1) A micro, small or medium enterprise may subcontract another micro, small or medium enterprise and where this is done, the bidder shall include details of the subcontract in the bid.

Sub-contracting and joint bidding

(2) A procuring and disposing entity may require a micro, small or medium enterprise to subcontract parts of a contract to another micro, small or medium enterprise for the purpose of enhancing capacity to deliver the contract of procurement.

(3) Where a procuring and disposing entity has required subcontracting under subparagraph (2)—

(a) the bidder shall only subcontract to another enterprise which is a micro, small or medium enterprise; and

(b) the subcontracted value shall not exceed forty per cent of the contract value.

(4) A micro, small or medium enterprise may submit a joint bid in order to participate in a public procurement of goods, works and services.

12.—(1) A procuring and disposing entity shall prioritize locally produced goods and services by granting a margin of preference of twenty percent in a procurement where applicable.

Prioritization of locally produced goods and services

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

13. A procuring and disposing entity shall reserve contracts for procurement of goods, works and services listed in the Second Schedule hereto, for bidders which are micro, small and medium enterprises or marginalized groups.

Procurement contracts set aside for micro, small or medium enterprises

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

Participation thresholds for goods and services

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 hereto.

Participation thresholds for works

Prohibited
competition

16. A procuring and disposing entity shall not permit bidders in different categories provided in paragraph 4 of this Order to bid at the same time in a single procurement contract.

Failure to
identify a
successful
bidder

17.—(1) Where a procuring and disposing entity uses a request for quotation method and fails to identify a supplier within the categories of micro, small and medium enterprises, the procuring and disposing entity shall use open tender method of procurement:

Provided that participation in the procurement shall be restricted to micro, small or medium enterprises.

(2) Subject to subparagraph (3), where a procuring and disposing entity uses the open tender method and fails to identify a supplier which is micro, small or medium enterprises, the procuring and disposing entity shall seek prior approval from the Authority to open participation in the procurement to all eligible bidders.

(3) A supplier which, not being a micro, small or medium enterprise, intends to submit a bid to a procuring and disposing entity pursuant to subparagraph (2) may partner with a micro, small or medium when submitting its bid.

(4) Where a partnership has been entered as envisaged under subparagraph (3), a procuring and disposing entity shall—

(a) accord the partnership, a five percent (5%) margin of preference;

(b) ensure that the partners have executed a partnership agreement with clear terms on the—

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

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

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

(5) Where a procuring and disposing entity fails to identify a successful bidder among bidders that submit bids pursuant to this paragraph, the procuring and disposing entity shall inform all unsuccessful bidders in writing.

Obligations of a
supplier

18.—(1) A supplier which has been granted a certificate under this Order shall not, for the mere reason of such status, be exempted from complying with the general obligations of a supplier under the Act or the Regulations made thereunder or any other written law.

(2) Without prejudice to the generality of subparagraph (1), the supplier shall—

(a) not, in the process of fulfilling a procurement contract, commit a misconduct prohibited under section 55 of the Act;

(b) supply goods, works and services of the standard required under the contract; and

(c) meet all obligations in relation to the procurement contract.

(3) A supplier which has been awarded a procurement contract under this Order 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.

19. The Authority shall—

Monitoring by the Authority

(a) monitor the application and implementation of preferences and reservations under this Order; and

(b) develop, maintain and periodically update a register of procurement contracts awarded under this Order.

20. The Authority shall, within thirty days from the end of each quarter, publish on its website, the material information for all contracts which procuring and disposing entities have submitted to the Authority pursuant to paragraph 10 (1) (e) on contracts awarded to micro, small or medium enterprises.

Publication of contract details

PART III—OFFENCES AND ENFORCEMENT

21.—(1) Where an act or omission, which is committed by any person or entity in contravention of this Order, constitutes an offence under any written law, the person or entity shall be subjected to the provisions of that written law as if the act or omission was committed under such written law.

Sanctions for violations

(2) Where no similar offence exists in any written law, the general offence provision prescribed under section 63 of the Act shall apply.

SCHEDULES

FIRST SCHEDULE

para 6 (1)

FORMS

FORM 1:

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

Form to be completed in block letters 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. Names and addresses 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 a person with disabilities 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
- ASSETS (NON CASH).....
- 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

DECLARATION

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

Signed by

Dated this day of, 20.....

OFFICIAL USE

Application Fee. Paid Receipt No.

XXXXXXXXXX

FORM II

REGISTRATION CERTIFICATE FOR MICRO, SMALL OR MEDIUM ENTERPRISE

Registration Number:

THIS IS TO CERTIFY THAT..... is registered as Micro/Small/Medium/ [delete where not applicable] enterprise in Malawi

This certificate is valid from to

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

.....

Secretary for Trade



Dated this day of day 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. Foodstuffs
6. Agricultural Equipment
7. Fertilizer
8. All building materials
9. Agricultural chemicals
10. Veterinary supplies
11. Seeds/seedlings
12. Fingerlings
13. Livestock
14. Farm implements
15. Teaching and learning materials
16. Classroom furniture
17. Laboratory, chemicals and equipment
18. Apprenticeship tools and equipment
19. Promotional material
20. Hospital furniture & fittings
21. Hospital kitchenware and utensils
22. Personal protective clothing & equipment
23. Hospital linen
24. Patient gowns
25. Medical personnel uniforms
26. Leather and leather products
27. Prison & and wildlife guards uniforms
28. Cleaning chemicals & materials
29. Irrigation equipment and accessories
30. Hydro Power transmission materials
31. Solar power installation materials.
32. Gas supplies
33. Firewood supplies
34. Pipes and fittings

35. Water meters
36. Information and Communication Technology Communication equipment
37. Motors
38. Auto spares
39. Pumps
40. Water tanks
41. Bobbins for electrical transmission poles
42. Products that are certified under the Buy Malawi Strategy
43. Sporting materials and equipment
44. Medicine, pharmaceuticals and medical supplies

B. Works

1. School blocks, staff houses, dispensaries, markets, office blocks, water kiosks
2. Earth dams
3. Fish ponds
4. Prefabricated concrete products
5. Solar installation
6. Plumbing
7. Electrical works
8. Grass cutting
9. Road grading/shaping
10. Road drainage works
11. Pot-hole patching
12. Road gravelling.
13. Simple bridges: concrete and timber deck bridges
14. Earth dams
15. Electric wiring services
16. Road markings
17. Drilling Works
18. Landscaping
19. Construction of shallow wells

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20. Welding and fabrication
 21. Interior design services
- C. Consulting Services
- Simple consultancies: up to K50 million.
- D. Non-consulting services
1. Local haulage
 2. Local passenger service
 3. Car hire services
 4. Travel agents
 5. Clearing agents and freight forwarding
 6. Refuse collection
 7. Refuse recycling
 8. Events management
 9. Public toilets and bathrooms
 10. Mobile toilets and bathrooms
 11. Cleaning services
 12. Fumigation services
 13. Emptying of septic tanks
 14. Catering services
 15. Security services
 16. Local courier services

THIRD SCHEDULE

(para 14)

THRESHOLDS FOR PARTICIPATION OF MICRO, SMALL AND MEDIUM ENTERPRISES IN PROCUREMENT OF GOODS AND SERVICES

	Micro Enterprise	Small Enterprise	Medium Enterprise
Goods/ non-consulting services	Up to K5 million	Above K5 million but not more than K50 million	Above K50million but not more to K500 million
Consulting services	Up to K5 million	Above K5 million but not more than K25 million	Above K25 million but not more than K500 million

FOURTH SCHEDULE

(para 15)

THRESHOLDS FOR PARTICIPATION OF MICRO, SMALL AND MEDIUM ENTERPRISES INPROCUREMENT OF WORKS INCLUDING WORKS SUPERVISION CONSULTANCY

	Micro Enterprise	Small Enterprise	Medium Enterprise
Works	Up to K5 million	Above K5 million but not more than K50 million	Above K50million but not more to K500 million

Made this 11th day of December, 2020.

(FILE NO. PPDA/01/04)

E. HAUSI
Director General

GOVERNMENT NOTICE NO. 97

IMMUNITIES AND PRIVILEGES ACT

(CAP 16:01)

IMMUNITIES AND PRIVILEGES (INTERNATIONAL ATOMIC ENERGY AGENCY) ORDER, 2020

IN EXERCISE of the powers conferred by section 24 (1) of the Immunities and Privileges Act, I, EISENHOWER NDUWA MKAKA, Minister of Foreign Affairs, make the following Order—

- Citation 1. This Order may be cited as the Immunities and Privileges (International Atomic Energy Agency) Order, 2020.
- Immunities and privileges and capacities of IITA 2. The International Atomic Energy Agency (hereinafter referred to as "IAEA") shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act, and shall also have all the legal capacities of a body corporate.
- Immunities and privileges of representatives and staff of IITA 3. There are conferred upon such persons, not being citizens of, or permanent residents in, Malawi, as IAEA may in writing to the Minister of Foreign Affairs designate by name as being—
- (a) representatives of IAEA or holders of such high offices of IAEA as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act; and
- (b) officers or servants of IAEA of such class as shall be specified in such writing, all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

Made this 19th day of September, 2020.

(FILE NO. EA/ADMIN/5/8)

E.N. MKAKA
Minister of Foreign Affairs

GOVERNMENT NOTICE NO. 98

IMMUNITIES AND PRIVILEGES ACT
(CAP 16:01)

IMMUNITIES AND PRIVILEGES (INTERNATIONAL INSTITUTE OF
TROPICAL AGRICULTURE) ORDER, 2020

IN EXERCISE of the powers conferred by section 24 (1) of the Immunities and Privileges Act, I, EISENHOWER NDUWA MKAKA, Minister of Foreign Affairs, make the following Order—

- Citation 1. This Order may be cited as the Immunities and Privileges (International Institute of Tropical Agriculture) Order, 2020.
- Immunities and privileges and capacities of IITA 2. The International Institute of Tropical Agriculture (hereinafter referred to as "IITA") shall have all the immunities and privileges set out in Part I of the Fifth Schedule to the Act, and shall also have all the legal capacities of a body corporate.
- Immunities and privileges of representatives and staff of IITA 3. There are conferred upon such persons, not being citizens of, or permanent residents in, Malawi, as IITA may in writing to the Minister of Foreign Affairs designate by name as being—
- (a) representatives of IITA or holders of such high offices of IITA as shall be specified in such writing, all the immunities and privileges set out in Part II of the Fifth Schedule to the Act; and

(b) officers or servants of IITA of such class as shall be specified in such writing, all the immunities and privileges set out in Part III of the Fifth Schedule to the Act.

Made this 2nd day of September, 2020.

(FILE NO. EA/LA/5/8)

E.N. MKAKA
Minister of Foreign Affairs