

Extraordinary



FEDERAL REPUBLIC OF NIGERIA

Federal Republic Of Nigeria Official Gazette

No. 109

Lagos 31st December, 2007

Vol. 94

Government Notice No. 79

The following is published as Supplement to this *Gazette* :

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Printed and Published by The Federal Government Printer, Lagos, Nigeria

FGP 18/32008/2,000 (OL 08)

Annual Subscription from 1st January, 2007 is Local : N15,000.00 Overseas : N21,500.00 [Surface Mail] N24,500.00 [Second Class Air Mail]. Present issue N350.00 per copy. Subscribers who wish to obtain *Gazette* after 1st January should apply to the Federal Government Printer, Lagos for amendment Subscriptions.

S. I. 45 of 2007

FEDERAL GOVERNMENT OF NIGERIA

PUBLIC PROCUREMENT ACT 2007

(Act No. 14 of 2007)

PUBLIC PROCUREMENT REGULATIONS FOR GOODS AND WORKS

In the exercise of powers granted to it under the Public Procurement Act 2007 the Bureau of Public Procurement hereby makes the following Regulations :

Commencement.

[4th June, 2007]

PART I—GENERAL PROVISIONS

Citation and application.

1. These Regulations may be cited as the Public Procurement Regulations for Goods and Works 2007. These Regulations shall apply to all Procuring Entities and Participants in Public Contracts and to all public procurements of Goods and Works except where a waiver is first obtained under the Act. The Regulations for Consulting Services of an intellectual or advisory nature are issued separately.

Section 5 (a)

2. These Regulations for the procurement of Goods and Works have been prepared by the Bureau of Public Procurement (BPP) pursuant to the Public Procurement Act for use by the Procuring Entities and Consultants participating in public financed contracts.

Revocation of prior directives.

3. These Regulations supersede all prior procurement Regulations, directives and or due process guidelines.

Interpretation.

4. In these Regulations—

"Accounting Officer" means the person charged with line supervision of the conduct of all procurement processes ;

"Approving Authority" means the person charged with overall responsibility for the functioning of a ministry, extra-ministerial department or corporation ;

"Assets" includes tangible and intangible things which have been or may be sold or procured for consideration ;

"Bid Security" means a form of security assuring that the bidder shall not withdraw a bid within the period specified for acceptance and shall execute a written contract within the time specified in the bid ;

"BOO" means Build, Own, Operate contracts ;

"BOT" means Build, Operate, Transfer contracts ;

"BOOT" means Build, Own, Operate and Transfer contracts ;

"Debar" means the placing of a firm, company or natural person on a list of person ineligible to participate in any procurement proceedings under this Act ;

"Certificate of No Objection" means the document evidencing and authenticating that due process and the letters of this Act have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers from the Treasury ;

"Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property with intent to influence the manner of their participation in and/or their appropriate conduct of a procurement process and/ or the execution of a contract ;

5. "Consulting Services" means any one or a combination of the following :

(i) advisory and review services ;

(ii) pre-investment or feasibility studies ;

(iii) design ;

(iv) construction supervision ;

(v) management and related services ; and

(vi) other technical services or special studies.

"Conflict of interest" means but is not limited to the following situations :

(a) where a person has a direct or indirect interest in or relationship with a Bidder that is or may be reasonably perceived to be unethical due to that person's influence or ability to affect the procurement process ;

(b) where a person receives or benefits by taking personal advantage of an opportunity that properly belongs to the Procuring Entity he represents or the Government ;

(c) where a person for his personal benefit discloses to unauthorized persons confidential information belonging to; the Procuring Entity, the Government, or a Bidder ;

(d) where a supplier or contractor (or the firm with which it is affiliated) combines the functions of manufacturer or contractor with those of consultant ;

Provided that a conflict of interest may not be inferred :

(i) where a supplier/ manufacturer or contractor's bid is in combination with a firm offering services as a consultant and in its bid is included relevant information about such relationship along with a

statement to the effect that it shall limit its role to that of supplier or contractor, and that neither the firm nor its associates and affiliates shall participate in the project in any other capacity ;

(ii) where two or more firms (suppliers, contractors and consultants) with disclosure to the Procuring Entity combine to bid for and/or execute a Turnkey or Design and Build contract.

"Contract" means an agreement entered in writing ;

"Contractor or supplier" means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, individual, sole proprietor, joint stock company, joint venture or any other legal entity through which business is conducted ;

"Collusive practice" means a scheme or an arrangement between two or more Bidders with or without the knowledge of the Procuring Entity, including non-disclosure of subsidiary relationships, designed to establish bid prices at artificial, non-competitive levels thereby depriving the Procuring Entity of the benefits of free and open competition ;

Corrupt, Fraudulent, Collusive or Coercive Practices.

"Corruption" or "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution ;

"Domestic firm" means a business or professional organization :

- (a) incorporated or otherwise organized in Nigeria ; and
- (b) having its principal place of business located in Nigeria ; and
- (c) having at least 50% of its equity held by nationals of Nigeria ; and
- (d) not having its assets controlled by foreign national or organization incorporated or organized outside Nigerian ; and
- (e) with more than 50% of persons who will perform services under the contract whether employed directly or by a subcontractor being nationals of Nigeria.

"Direct Labour Account" means the procurement of civil works by a procuring entity using its own internal personnel, equipment and resources ;

"Excessive Price" means a monetary value proposed by a bidder for any procurement which is in the estimation of the Bureau unreasonable and injudicious after consideration of the actual value of the item in question plus all reasonable imputations of cost and profit.

"Fraudulent practice" means anyone or combined misrepresentation or omission of facts that affects the procurement process or contract execution to the detriment of the Procuring Entity ;

"Goods" means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form and electricity as well as services incidental to the supply of the goods ;

"Government" shall mean the Federal Government of Nigeria ;

"Interim Performance Certificates" means evidence that a contract or supplier has performed its obligations under a procurement contract up to a level stipulated by the contractor but not meaning completion ;

"International Competitive Bidding" means the solicitation of bids from both domestic and foreign contractors and suppliers ;

"Joint Venture" means an association where all member firms or persons are jointly and severally liable for the entire contract, and shall designate one party to act as a leader with authority to bind the joint venture and to sign contract with the Procurement Entity.

"Margin of Preference" means extra mark up on price allowed any domestic contractor or supplier bidding under International Competitive Bidding without being otherwise disadvantageous to the bid in terms of price ;

"Minor Value" means a monetary value which is not in excess of the monetary thresholds set for any approving authority by the Bureau ;

"National Competitive Bidding" means the solicitation of bids from domestic contractors and suppliers registered or incorporated to carry on business under Nigeria Law ;

"Negotiation" means discussions to determine the terms and conditions of a contract or procurement ;

"Open Competitive Bidding" means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services ;

"Procurement" means acquisition ;

"Procurement Proceedings" means the initiation of the process of effecting a procurement up to award of a procurement contract ;

"Procuring Entity" means any public body engaged in procurement and includes a Ministry, Extra-Ministerial Office, Government Agency, Parastatal and Corporation ;

"Relevant Authority" includes Economic and Financial Crimes Commission and Independent Corrupt Practices Commission ;

"Services" means the rendering by a contract or supplier of his time and effort and includes any object of procurement other than goods, works or construction ;

"Solicitation Documents" means the bid solicitation documents or any other documents for solicitation of offers, proposals or quotations ;

"Special Purpose Goods" means any object of armaments, ammunition, mechanical, electrical equipment or other things as may be determined by the President needed by the Armed Forces or Police Force as well as the services incidental to the supply of the objects ;

"Subcontractor", means natural person, a legal person or combination of the above to whom any part of the goods to be supplied or works to be executed is subcontracted by the supplier or contractor ;

"Substantially Responsive" means the response to bid solicitations which virtually answers to all the needs of a procuring entity as stipulated in the bid solicitation documents ;

"Supplier" means a real or legal person that provides supply of goods, contracting of works or consultants ;

"Threshold" refers only to the approving and not the actual process of award ;

"Valid Period" means the period during which a bidder agrees not to increase the cost of its bid or to remove any components of the bid.

6. "Works" means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement of contract, where the value of those services does not exceed that of the construction itself.

7. If these Regulations conflict with the Government's obligations under agreements with other countries or international organizations, the provisions under such international agreements shall prevail.

8. Where :

(a) a Procuring Entity establishes the use of corrupt, fraudulent, collusive or coercive practices of any kind in the procurement process, or

(b) the Bureau establishes same during prior review or post review of procurement procedures or procurement audits,

the Procuring Entity shall immediately refer the matter to, or the Bureau shall promptly take up the matter, and will, upon substantiated evidence, direct :

(i) exclusion of the Bidder from further proceedings in the procurement of the contract or reject a proposal for contract award, or

(ii) Measures to sanction such a firm or individual, including declaring it ineligible, either indefinitely or for a stated period of time, to be awarded public financed contracts.

Section 16 (6).

9. To be eligible to bid for and execute a public procurement contract, every Bidder must :

(a) have the necessary professional and technical qualifications, managerial competence, qualified personnel, bonafide reputation, financial capability, equipment and other physical facilities (including after sales service, where appropriate) to perform the contract ;

(b) possess the legal capacity to enter the procurement contract ;

(c) not be in receivership, insolvent, bankrupt or being wound-up, being suspended, or be the subject of any proceedings of the foregoing ;

- (d) have fulfilled all its fiscal obligations and social security contributions ; and
- (e) not have any directors who have been convicted in any country for a criminal offence related to fraudulent or corrupt practices, or criminal misrepresentation or falsification of facts relating to any matter ;
- (f) affidavit accompany every bid with an affidavit directing whether or not any officer of the relevant committees of the procurement entity or Bureau is a former or present director, shareholder or has any pecuniary interest in the bidder or confirm that all information presented in its bid are true and correct in all particulars.

Government owned enterprises.

10. Government-owned or controlled enterprises in Nigeria may bid for goods and works within the purview of the Act only if they can establish that they :

- (a) will meet all the prerequisites set out in the bid solicitation ;
- (b) are legally and financially autonomous ;
- (c) are subject to Nigerian commercial law and not exempted by Statute from being sued or prosecuted ;
- (d) Do not receive any form of subsidy from the public treasury.

Procurement Planning

Section 17, 18, 21.

11. (i) All procurements shall be undertaken within the approved budget of the Procuring Entity and be based on a meticulously prepared procurement plan. The Procuring Entity shall prepare an Annual Procurement Plan to be approved by the Accounting Officer.

(ii) The procurement plan should :

- (a) be closely coordinated with the Budget departments of each Procuring Entity to ensure that the procurement expenditure is provided for in the budget ;
- (b) indicate the appropriate procurement methods for each project to the extent identified and ensure that no contract splitting is carried out ;
- (c) detail the procurement steps and associated expenditure outlays for not less than the first 18 months thereof for projects sufficiently developed and evaluated ;
- (d) detail indicatively the procurement steps and associated expenditure outlays for the remaining period of the contract ;
- (e) provide for grouping of contracts to obtain economies of scale and reduce procurement costs ; and
- (f) be continuously updated as procurement progresses or new projects are developed in accordance with budgetary provisions.

Mandatory associations prohibited.

12. No Procuring Entity shall require mandatory joint ventures, subcontracting or other forms of association or cooperation between firms whether domestic or otherwise.

13. Whenever it is established that there exists one or a combination of the following instances, i.e. :

- (a) If any part or the whole of a procurement has been carried out by procedures other than approved by the BPP ; or
- (b) if a procurement was not included in the Procurement Plan ; or
- (c) if the terms and conditions of the contract are not satisfactory to BPP ; or
- (d) if the BPP comes to a determination that its certification was issued on the basis of false or misleading information.

the BPP shall declare a mis-procurement and withdraw the certification and or such other approvals as have hitherto given and shall initiate or apply such provisions of the Act as are relevant.

**Confidentiality
Section 32(8).**

14. After the opening of bids, no information relating to the examination, clarification and evaluation of bids and recommendations concerning awards shall be disclosed either to any Bidder or to other persons not officially concerned with the procedure; until the award of contract is notified to the successful Bidder.

**Review by BPP.
Section 16 (1).**

15. Subject to thresholds as may be set from time to time by BPP, BPP will review all Federal procurements during the procurement process and prior to contract award to ensure that the procurement process is carried out in accordance with the approved procedures. BPP will also carry out periodic post review of contracts below the prior review thresholds.

**Record Keeping.
Section 38.**

16. The Procuring Entities shall maintain records of each procurement process from the date of advertisement through contract signature and for a minimum of ten (10) years thereafter in such manner and formats as the BPP might prescribe.

**Complaints and Appeals
Section 54.**

17. Where a Bidder considers that its proposal has not been given appropriate attention and that it has or may suffer undue disadvantage due to a breach of an obligation in the selection procedure by a Procuring Entity with regards to the Act or these Regulations, the Bidder shall submit a complaint in writing not later than 15 working days after it becomes aware of the circumstances giving rise to the complaint or when it should have become aware of such circumstances, whichever is earlier.

18. The Bidder shall first submit its complaint to the Accounting Officer of the Procuring Entity issuing the bid document. The Accounting Officer shall respond in writing to the Bidder within 15 working days stating what corrective action has or will be taken or if the complaint is rejected, stating the reasons for the rejection.

19. If the Bidder considers that its complaint has not been equitably dealt with or is howsoever dissatisfied with the decision of the Accounting Officer, it shall submit an appeal to the BPP within 10 working days of its receipt of the Accounting Officer's decision. The BPP shall review the case and issue a written declaration within 21 working days stating what corrective action has or will be taken or if the appeal is rejected, stating the reasons for the rejection.

20. If the Bidder still considers that its rights have been compromised, it may appeal to the Federal High Court within 30 days after receipt of the decision of the Bureau.

21. The following shall not be subject of a complaint or appeal :

- (a) complaints about the choice of the procurement method ;
- (b) complaints about the rejection of all Bidders by the Procuring Entity ;
- (c) complaints about a bid returned unopened because it was received after the submission deadline ; and
- (d) complaints about a bid having been rejected because it was unsigned and/or not accompanied by a valid bid security, if required, or submitted by a Bidder who was not prequalified.

PART II — INSTITUTIONAL AND REGULATORY FRAMEWORK

22. The procurement function in the Federal Republic of Nigeria (FRN) will be carried out and supervised at three levels :

- (a) National Council on Public Procurement, hereinafter called the Council ;
- (b) Bureau of Public Procurement, hereinafter called the Bureau ; and
- (c) Procuring and Disposal, hereinafter called the Procuring Entity.

23. The Council will be the overall public procurement supervisory body in the FRN. The Council shall consist of :

- (a) the Minister of Finance as Chairman ;
- (b) the Attorney-General and Minister of Justice for the Federation ;
- (c) the Secretary to the Government of the Federation ;
- (d) the Head of Service of the Federation ;
- (e) the Economic Adviser to the President ;
- (f) six part-time members to represent ;
- (i) Nigeria Institute of Purchasing and Supply Management ;
- (ii) Nigeria Bar Association ;

(iii) Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture ;

(iv) Nigeria Society of Engineers ;

(v) Civil Society ;

(vi) Media ; and

(g) the Director-General of the Bureau who shall be the Secretary of the Council.

24. Notwithstanding the provisions of Section (7), the Council may co-opt any person to attend its meetings but the person so co-opted shall not have a casting vote or be counted towards the quorum.

25. The Chairman and other members of the Council shall be appointed by the President.

26. The Council shall :

(a) consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Act by procuring entities ;

(b) consider and approve policies on public procurement ;

(c) approve the appointment of the Directors of the Bureau ;

(d) receive and consider for approval, the audited accounts of the Bureau ;

(e) approve changes in the procurement process to adapt to improvements in modern technology ; and

(f) give such other directives and perform such other functions as may be necessary to achieve the objectives of the Procurement Act.

27. The Bureau shall perform the executive functions of regulating the conduct of procurement in the FRN. The Bureau :

(a) shall be a corporate body with perpetual succession and a common seal ;

(b) may sue and be sued in its corporate name ; and

(c) may acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under these Regulations.

28. The Objectives of the Bureau are :

(a) the harmonization of existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process ;

(b) the establishment of pricing standards and benchmarks ;

(c) ensuring application of fair, competitive, transparent, value-for-money standards and practices for the procurement and disposal of public assets and services ; and

(d) the attainment of transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system.

29. The functions of the Bureau will be to :

- (a) formulate the general policies and guidelines relating to public sector procurement ;
- (b) publicize and explain the provisions of the Procurement Act ;
- (c) subject to thresholds as may be set by the Council, certify Federal procurement prior to the award of contract ;
- (d) supervise the implementation of established procurement policies ;
- (e) monitor the prices of tendered items and keep a national database of standard prices ;
- (f) publish the details of major contracts in the procurement journal ;
- (g) publish electronic and paper editions of the procurement journal and maintain an archival system for the procurement journal ;
- (h) maintain a national database of the particulars and classifications and categorization of federal contractors and service providers ;
- (i) collate and maintain in an archival system, all federal procurement plans and information ;
- (j) undertake procurement research and surveys ;
- (k) organize training and development programs for procurement professionals ;
- (l) periodically review the socio-economic effect of the policies on procurement and advise the Council accordingly ;
- (m) prepare and update standard bidding and contract documents ;
- (n) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions ;
- (o) review the procurement and award of contract procedures of every procuring entity to which these Regulations apply ;
- (p) perform procurement audits and submit such reports to the National Assembly bi-annually ;
- (q) introduce, develop, update and maintain related database and technology ;
- (r) establish a single internet portal that shall serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement at all times ; and
- (s) co-ordinate relevant training programs to build institutional capacity.

PART III — ORGANIZATION OF PROCUREMENT OPERATIONS

30. Actual procurement activities will be carried out by the Procuring Entity. A Procuring Entity is a Government Ministry, or a Government Agency where these Regulations are applicable in accordance with Section (1) of these Regulations.

31. The Accounting Officer will be the person responsible for supervision of all procurement activities in the Procuring Entity. The Accounting Officer will establish a Procurement Unit and a Tenders Board for the Procuring Entity.

32. The Tenders Board will be composed of :

(a) Accounting Officer (Permanent Secretary or Chief Executive Officer) of the Procuring entity, who will be the Chairman ;

(b) Heads of Department.

33. The Procurement Unit shall serve as the Secretariat to the Tenders Board and the Head of the Procurement Unit will be a non-voting member and Secretary of the Tenders Board.

34. The functions of the Accounting Officer shall be as follows :

(a) certifying the availability of funds required for procurement ;

(b) committing of funds prior to contract placement ;

(c) communicating award decisions ;

(d) signing contracts ;

(e) ensuring that the implementation of the awarded contract is in accordance with the terms and the conditions of award ;

(f) implementing the recommendations of the Bureau ;

(g) establishment of and appointment of members of the Tender Board ;

(h) establishment of a Procurement Management Unit ;

(i) Establishment of Procurement Planning Committee every year ;

(j) investigation of a complaint by a bidder ; and

(k) submission of reports of findings in respect of complaints to the Bureau.

35. The functions of the Tenders Board shall be to approve :

(a) procurement plans ;

(b) Entity's Procurement Manual ;

- (c) prequalification evaluation reports ;
- (d) bid evaluation reports for goods and works ;
- (e) technical evaluation reports for consultant and non-consultant services ;
- (f) negotiated contracts for consultant and non-consultant services ;
- (g) contract variations resulting in price changes ; and
- (h) responses to complaints.

36. The Procurement Unit will have the responsibility of processing all procurement activities including the following :

- (a) submission of the procurement plan prepared by the Procurement Planning Committee to the Tenders Board for approval ;
- (b) preparation of tender notifications and request for expressions of interest ;
- (c) preparation and submission to advertising media the documents for: soliciting quotations, prequalification, bidding and request for proposals ;
- (d) issuing documents for: soliciting quotations, prequalification, bidding and request for proposals ;
- (e) receiving and arranging opening of: prequalification documents, bids, quotations and, request for proposals ;
- (f) submission of evaluation reports to the Tenders Board for: prequalification, bids, quotations and consultants' proposals, for approval ;
- (g) submission of quotations for minor value procurements (below Naira 1.0 million) to the Accounting Officer for approval ;
- (h) making arrangements for contract negotiations ;
- (i) making arrangements for contract signing by the Accounting Officer ;
- (j) preparing documentation for submission to the Bureau for approval ;
- (k) preparing responses to complaints for submission to the Tenders Board; for approval ;
- (l) preparation of documentation on complaints for submission to the Bureau ;
- (m) preparation of all data and information required by the Bureau ;
- (n) any other assignment that will be given by the Accounting Officer that may be necessary to enhance performance of the procurement function.

PART IV — PROCUREMENT METHODS

Fundamental Principles Section 16(4).

37. The appropriate methods, procedures and contract award for public procurement of goods and works shall be subject to the prior review thresholds as may be set from time to time by the BPP.

38. Value for money obtained through efficiency, fair access to bids and transparency, shall remain the main objective of the Procuring Entity.

39. Contracts shall not be split into smaller units in order to avoid competitive bidding or be distributed among various lots to different bidders to enlarge bidder participation at the cost of lesser economy and efficiency.

Open Competitive Bidding.**Section 24.**

40. Except as otherwise provided in these Regulations, all Procuring Entities shall use Open Competitive bidding for the procurement of goods and works and related services.

Procurement methods.

41. The following procurement methods are to be used by Procuring Entities :

Section 24 (3).

(a) National Competitive Bidding (NCB) for contracts below a certain monetary threshold as set from time to time by the BPP.

Section 24 and 25.

(b) International Competitive Bidding (ICB) for contracts above a certain monetary threshold as set from time to time by the BPP.

Section 39.

(c) Two-Stage Bidding for large and complex contracts where it is necessary to obtain first greater clarity in technical specifications and possible alternative technical approaches.

Section 40.

(d) Restricted Bidding (RT) for contracts for which only a limited number of qualified suppliers or contractors exist.

Section 41.

(e) Selective Bidding (or "Request for Quotations") for small contracts, where it is sufficient to obtain written quotations from at least 3 reputable suppliers or contractors.

Section 42.

(f) Single Source Procurement (or Direct Contracting) applied only in exceptional circumstances and always subject to the provision of this Act.

Thresholds for the Bid Method. Section 25(1).

42. The use of any bid methods shall be subject to monetary thresholds as set by the BPP from time to time.

Pre-qualification

43. In case of NCB and ICB for the procurement of large and complex works or equipment, or for the procurement of highly specialized contracts, prequalification of Bidders may be required in order to obtain a list of technically and financially qualified Bidders. In all cases of prequalification, only entities pre-qualified shall be invited to bid.

Invitation for Prequalification -Section 23 (1).

44. The Invitation for Prequalification shall contain the following information :

- (a) name, address, telephone/fax number(s) and website address of the Procuring Agency ;
- (b) a brief description of the works for which applicants will be pre-qualified ;
- (c) information on any particular requirements to be met by suppliers and contractors ;
- (d) a summary of the prequalification criteria ;
- (e) a statement whether domestic preference, if any, will apply ;
- (f) information on when and where the prequalification documents can be obtained and at what price ;
and
- (g) the place and approximate deadline for the submission and opening of applications for prequalification.

Contents of the Prequalification Document.**Section 23 (3).**

45. Prequalification documents shall include :

- (a) a summary of the purpose of the procurement, the principal terms and conditions of the contract ;
- (b) instructions how to prepare and submit the application for prequalification, and at what location and what deadline ;
- (c) evidence to establish the eligibility and qualifications (technical and financial) of the applicant ;
and
- (d) the criteria and procedures for evaluation.

Submission of Prequalification Documents.**Section 23.**

46. Procuring Entities shall give Bidders at least 21 days from the date when the notice to prequalify is published to submit their applications. Each applicant having expressed its interest shall be supplied the prequalification documents at a set price, which shall not exceed the reasonable cost of printing, delivery and administration.

Clarifications. Section 23 (4), (5), (6).

47. Applicants may request clarifications in writing up to 14 days before the submission deadline. A Procuring Entity shall promptly respond to such requests, and forward copies of its response, without identifying the source, to all applicants who have acquired the prequalification document. As a result,

Procuring Entities may deem it necessary to amend the prequalification document in accordance with the requirements stipulated in the Prequalification document.

Prequalification Notification. Section 23 (7), (9).

48. Upon completion of the evaluation procedure, a Procuring Entity shall notify all applicants in writing of the names of those applicants who have been prequalified, and invite them to bid. The Procuring Entity will indicate to each disqualified applicant the main reason for it not having been prequalified. It shall publish the names of the prequalified applicants in the procurement journal and on its website.

**Advertising.
Section 25(2).**

49. Procuring Entities shall give a time gap of at least six (6) weeks between the date of an advert inviting bids and the deadline for submissions of bids.

Section 25 (2).

50. The Bid solicitations for National Competitive Bidding shall be advertised in at least two English language newspapers with national circulation, on the website of the Procuring Entity and the BPP, and in the Procurement Journal in each case not less than 6 weeks before the date specified as final for bid submission.

51. The advertisement shall include the following information :

- (a) name, address, telephone/fax number(s) and website address of the Procuring Agency ;
- (b) quantity, purpose of the procurement, place of delivery or location where the works are to be carried out; ; Brief description of the item to be procured including quantity, purpose and place of delivery or location where the works will be carried out ;
- (c) a statement whether domestic preference, if any, will apply ;
- (d) information on any particular requirements to be met by suppliers and contractors ;
- (e) information where the bid documents can be obtained and at what price ; and
- (f) the place and deadline for the submission and opening of bids.

International Competitive Bidding (ICB Section 25 (2) (i).

52. Bid procedures for International Competitive Bidding shall be the same as for National Competitive Bidding except that bids shall be advertised in at least two English language newspapers with national circulation, one widely circulated international newspaper, the Procurement Journal as well as the websites of the Procuring Entity and the BPP in each case not less than 6 weeks before the date specified as final for bid submission.

OTHER BID METHODS

TWO-STAGE BIDDING

Section 39.

53. Two-stage bidding shall consist of :

(a) Launching by the Procuring Entity of competitive bids for the preparation of design and technical specifications ; and

(b) The invitation of parties with responsive designs to submit final technical and financial bids; provided in all cases that the Procuring Entity shall avail only Bidders who responded to the first stage to proceed to and participate in the second stage.

Following evaluation, the Procuring Entity may enter into confidential discussions with responsive Bidders, ask for technical clarifications and require necessary adjustments. The Procuring Entity shall in all cases ensure the confidentiality of the earlier technical proposals.

54. Use of the two-stage bidding procedure is subject to the prior no-objection of the BPP.

Restricted Tender (RT) Section 40 (1) (2) (a)-(d).

55. A Procuring Entity shall, in using Restricted Tender prepare, and submit to BPP for no-objection, a list of eligible national or international potential suppliers, or contractors as the case may be, which list shall be broad enough to assure competitive prices.

56. The Restricted Tender procedure is to be published only in the procurement journal and on the Procuring Entity's website. In all other aspects, the procedures applicable to National Competitive Bidding shall apply also to Restricted Tendering, including the submission to BPP of the draft bidding documents for no-objection, when subject to prior review.

Request for Quotations (Selective Tendering).

57. Requests for Quotations for small value goods shall be issued in writing to not less than three reputable domestic suppliers and at the international level to at least three reputable suppliers in at least two different countries.

Section 41.

58. Requests for Quotations for small civil works shall be issued to at least three reputable domestic contractors. The written requests shall state the purpose, payment source and terms, and provide for a reasonable time to submit quotations, and indicate the time and place of opening.

59. The Procuring Entity shall not allow bidding by phone or other unverifiable means.

60. Quotations for Goods shall indicate the description, technical specifications and quantity and cost of the goods, including the cost of inland transportation and insurance as the case may be, as well as the estimated delivery time if not immediately available. Quotations for small works shall include the necessary drawings, estimated quantities, and completion time. Quotations shall be given in writing. All quotations shall be opened at the same time *and read out in public before the solicited suppliers or contractors or their representatives, if present*, and evaluated and compared at the same time. All bids particularly the summary and mutually agreed vital pages, are to be counter-signed by competitive bidders or their representatives and the Secretary of the Tenders Board of the procuring entity. The contract shall be awarded to the lowest evaluated responsive Bidder.

61. The analysis and recommendation for award shall be recorded in a brief evaluation report, signed by the responsible authority of the Procuring Entity and filed in the procurement records. For contracts below a threshold set by the BPP, the Procuring Entity may proceed with the Quotation procedure without prior approval of the BPP.

Direct Contracting.**Section 42.**

62. Subject to prior approval of BPP (to be provided on the basis of sufficient justification by the Procuring Entity) a Procuring Entity may be allowed to proceed to direct contracting of a particular supplier or contractor without competition, in the following circumstances :

- (a) in response to a natural disaster ;
- (b) in the case of national security, if so justified by the BPP ;
- (c) when equipment is proprietary in character and is obtainable only from one supplier ;
- (d) when buying small or off-the-shelf items of small value ;
- (e) when standardization or compatibility is important and equipment and spare parts required for expansion or repair of existing equipment must be procured from the original supplier or from a supplier of identical goods ;
- (f) when the contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of the performance guarantee ;
- (g) when, after the goods originally envisaged for the project have been procured through ICB, an additional quantity of the same goods is urgently needed to meet the requirements of the project, and when the BPP can be satisfied that there is no advantage to obtaining these items through NCB or ICB ; and
- (h) when the civil works to be undertaken are a natural extension of an earlier or ongoing job, for which the corresponding contract had been awarded following NCB or ICB satisfactory to the BPP, and when it can be shown to the satisfaction of the BPP that the engagement of the same contractor will be more economical than normal bidding, and will ensure compatibility of results in terms of quality of work.

Direct Labour Account.

63. Direct Labour Account means the procurement of civil works by a Procuring Entity using its own personnel, equipment and resources under its control for the execution of the works in question. This method may be employed in exceptional circumstances :

- (a) when the size, nature and location of the works are such that qualified contractors are unlikely to bid ;
- (b) when the quantities of work cannot be defined in advance ;
- (c) when ongoing works are interrupted due to breach of contract or contractor failure and need to be continued to avoid serious damage ;
- (d) when the procurement would be carried out by the engineering services ; or
- (e) when there are emergencies requiring immediate attention.

64. In all cases of procurements to be carried out on a Direct Labour Account, the Procuring Entity involved shall ensure to the satisfaction of the BPP that :

- (a) personnel deployed to execute such civil works possess the requisite technical certification , professional experience, and managerial ability ;
- (b) the equipment and resources to be deployed towards the execution of the procurement are such as are technically appropriate, numerically sufficient to assure that the execution of the procurement ;
- (c) The combination of (a) and (b) above shall in every case assure that the procurement is executed expeditiously, efficiently, and at reasonable costs.

Emergency Procedures.

Section 43.

65. Following occurrence of natural disasters such as droughts, floods, pandemics, civil disturbances, insurrections, war or such times that government declares that an emergency situation has arisen, Procuring Entities may for causes directly related to the alleviation or remediation of the aforementioned circumstances carry out direct contracting of goods, works and related services in accordance with the emergency procurement guidelines formulated by the BPP. In such circumstance, every Procuring Entity shall apply principles of sound procurement, economy, efficiency, transparency and accountability.

66. At the end of the emergency situation, Procuring Entities that have applied emergency procurements shall prepare a report to BPP for its approval on the procurements so carried out. Subsequent procurements shall apply the Regulations without exception.

Use of Procurement Agents and Management Contractors.

67. Where a Procuring Entity lacks the necessary organization, resources, and experience, it may employ (or be required by BPP to employ) as its agent, a firm specializing in handling procurement. The agent shall strictly follow all the procurement procedures outlined in the contract on behalf of the Procuring Entity, including the use of BPP Standard Bid Documents, review procedures and documentation.

Inspection Agents.

68. Management Contractors may be employed in a similar manner for a fee to contract for miscellaneous works involving reconstruction, repairs, rehabilitation, and new constructions in emergency situations, or where large numbers of small contracts are involved. BPP's Guidelines for the Use of Consultants shall be used to acquire the services of the Procurement Agent or a Management Contractor on a competitive basis.

Procurement under BOT and Similar Private Sector Arrangements

69. If a Procuring Entity participating in financing the cost of a project procured under a BOO, BOT, BOOT or similar type of contract, either of the following procurement procedures shall be used, as set forth in detail in the Financing Agreement with the private entrepreneur :

- (a) The entrepreneur under the BOO, BOT, BOOT or similar type of contract shall be selected under ICB or RT procedures acceptable to BPP, which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facilities offered, the cost charged to the user or purchaser, other income generated for the Procuring Entity or purchaser by the facility, and the period of the facility's depreciation. The said entrepreneur selected in this manner shall then be free to procure the goods,

works and services required for the facility from eligible sources, using its own procedures. In this case, the Financing Agreement shall specify the type of expenditures incurred by the said entrepreneur towards which the financing of the Procuring Entity will apply.

or,

(b) If the said entrepreneur has not been selected in the manner set forth in subparagraph (a) above, the goods, works or services required for the facility and to be financed by the Procuring Entity shall be procured in accordance with open ICB or RT procedures.

70. Participation in the above arrangements shall proceed in accordance with BPP Guidelines.

II. Procedures for Bid Preparation, Submission, Opening, Evaluation and Award of Contract

Purchase of the Bid Documents

Section 23 (2), (4), (5).

71. Sequel to advertisement of a bid, bid documentation shall be made available to all prospective Bidders at reasonable prices not exceeding the cost of printing, delivery and administration. In the event of pre-qualifications, bid documents shall only be issued to prequalified Bidders. Unless otherwise agreed by the BPP, only Standard Bid and Contract documents issued by the BPP shall be used.

Section 6 (1) (m).

Section (7) (6).

72. After the advertisement/commencement of a bid proceeding, Procuring Entities may not communicate with prospective Bidders in any manner other than as provided for under the Act or these Regulations.

Pre-bid meetings.

73. For complex works or supply contracts, a pre-bid meeting may be arranged whereat potential Bidders meet with the representatives of the Procuring Entity to seek clarifications. Minutes of the meeting shall be duly recorded by the Procuring Entity and provided to all prospective Bidders.

74. Any additional information, clarification, correction of errors or modifications of the bid document provided to any prospective Bidders shall be simultaneously sent to each purchaser of the original bid document. Such information, clarification, correction of errors or modifications shall be provided or made in time sufficient before the bid submission deadline to enable Bidders to take appropriate action.

75. If necessary, the Procuring Entity may extend the submission deadline. Procuring Entities shall provide reasonable access to project sites for visits by prospective Bidders.

Bid modification or withdrawal.

Section 29 (4)

76. A Bidder may modify or withdraw its bid prior to the submission deadline in accordance with the provisions in the bid solicitation.

Validity of Bids.**Section 29 (1).**

77. Bids shall remain valid for the period specified in the bid solicitation. Such period must be sufficient to enable a Procuring Entity complete the evaluation and comparison of bids and to obtain all necessary approvals, including the no-objection of the BPP such that a contract award may be made within the validity period.

Extension of Validity of Bids.**Section 29(2)(3).**

78. If an extension of bid validity becomes necessary due to unforeseen difficulties in the bid evaluation and award process, the Procuring Entity shall subject to the approval of the BPP, request the Bidder to extend the validity of its bid for such period as would be the minimum required to complete the evaluation, obtain the necessary approvals and award the contract.

79. In the case of fixed price contracts, requests for second and subsequent extensions will be permissible only if the request for extension provides for an appropriate adjustment mechanism of the quoted price to reflect changes in the cost of inputs for the contract over the period of the extension.

80. Whenever an extension of the bid validity period is requested, a Bidder shall not be asked or be permitted to change the quoted (base) price or other conditions of its bid. A Bidder shall have the right to refuse to grant such an extension without forfeiting its bid security, but a Bidder willing to extend the validity of its bid shall be required to provide a suitable extension of its bid security.

Bid Security.**Section 26 (1), (2), (3).**

81. Procuring Entities may require Bidders to provide bid security to secure the validity of the bid within the period specified in the bid documents. The bid security shall be in the amount indicated in the bid documents, as specified by the BPP.

82. The format of the bid security shall be in accordance with the form included in the bid documents and Bidders may enquire from the Procuring Entity in advance if a particular issuing entity of a security is acceptable. If an issuing entity is foreign but the security is otherwise in conformity with the requirements in the bid document, the Procuring Entity shall not reject the security.

83. To ensure confidentiality of the bid price, bid securities should be set in amounts for all Bidders, in relation to the size of the contract, provided the amount is no more than 2% of the bid price.

84. The bid security shall remain valid for a period of four weeks beyond the validity period of the bids, in order to provide reasonable time for the Procuring Entity to act if the security is to be called or till the performance security of the successful Bidder is obtained at contract award. The Procuring Entity shall return the bid securities to the unsuccessful Bidders once it has signed the contract with the successful Bidder and obtained its performance security.

Validity and Return of the Bid Security. 29 (3), (4), (5).

85. The Procuring Entity will call the bid security (a) when a Bidder withdraws or modifies its bid after bid submission ; (b) if a Bidder fails to sign the contract or comply with any other condition of contract signature, and (c) if a Bidder fails to produce a valid performance security after acceptance of the bid award.

Calling of the Bid Security.**Bid Submission Procedure.****Section 27, (1).**

86. Bids shall be (a) properly identified by the Bidders in order not to be mistaken with other bids ; (b) signed by a legal person who is authorized to bind the Bidder, and (c) delivered in sealed envelopes at the location indicated in the bid document and no later than at the stipulated time.

Section 27 (2)-(6).

87. The Procuring Entity shall register the bids received, issue a receipt for them, and place them in a tamper-proof location. Bids received after the deadline shall be returned to the Bidders unopened.

Appointment of the Evaluation Committee.**Section 20 (b), Section 21 (4).**

88. At least two weeks prior to opening of the bids, the designated authority of the Procuring Entity shall constitute the Evaluation Committee which shall be chaired by the Secretary of the Tenders Board.

Opening Date of the Bids. Section 30 (a) (b), (c) (d).

89. The date, hour and place for the receipt of bids and for the bid opening shall be announced in the invitation to tender. The time for bid opening shall be the same as for the deadline for the receipt of bids or, if bids are received in a location different from the place of bid opening, promptly thereafter, allowing just sufficient time to take the bids to the place announced for bid opening.

Public Opening.

90. Bids shall be opened in public and Bidders or their representatives shall be allowed to be present and verify that the bids have not been tampered with. Bids received after this time shall be returned unopened. The name of the Bidders and total amount of each bid and of any alternative bids if they have been requested or permitted shall be read aloud and recorded in the Minutes of Bid Opening. Bidders or their representatives present shall sign the Register for Bid Opening. All Bids, particularly the summary and mutually agreed vital pages are to be counter-signed by competing Bidders or their representatives and the Secretary of the Tenders Board of the Procuring Entity. A copy of these Minutes signed by the designated authority shall promptly be sent to all Bidders who submitted bids in time. After the closure of the bid opening session, the Procuring Entity shall ensure the safe-keeping of the bid documents.

Examination and Comparison of Bills

Confidentiality of Procedures.

91. No information relating to the examination, clarification and evaluation of bids and recommendations concerning awards shall be communicated to any person not officially concerned with these procedures until the award of a contract to the successful Bidder is announced.

Use of Standard Evaluation Form.

92. The Procuring Entity shall use, or ensure the use of, the BPP Standard Bid Evaluation Report for the Evaluation of Goods and Works to detail the specific reasons on which the determination for the recommendation for the award of contract is made. If the procurement is subject to prior review by BPP, the Procuring Entity shall send this Report to BPP with the Procuring Entity's contract award recommendation for BPP's comments and "no-objection" before the award of contract to the successful Bidder is announced. The Report to BPP on the evaluation and comparison of bids shall be accompanied by the three lowest evaluated cost bids. If the procurement is subject to post review, the evaluation report and award recommendation as approved by the designated authority of the Procuring Entity.

Evaluation Procedure.

93. The Procuring Entity shall carry out the bid evaluation in two phases : (a) a Preliminary examination and (b) Detailed Evaluation and Comparison of Bids, in accordance with the evaluation criteria stipulated in the bid document, in order to select the lowest responsive cost bid.

Preliminary examination. Section 31 (a)-(d).

94. The Procuring Entity shall carry the preliminary examination to verify if the bids are substantially responsive to the bid document i.e. whether the bid (a) has been properly signed and changes initialed, (b) is accompanied by a valid bid security, if required, (c) meets the laid down eligibility requirements (d) is complete, (e) quote prices for all items in the lot or package as stipulated in the bid document, (f) contains computational errors, and (g) is generally in order.

95. If a bid does not substantially conform to the specifications, or contains inadmissible reservations or is not otherwise substantially responsive to the bid document, it shall not be considered further and shall be mentioned as "rejected" in the Evaluation Report. However, a bid should not be rejected on minor procedural grounds, which can be rectified through the clarification process.

Clarification or Alteration of Bids during Evaluation.

Section 31 (2).

96. If a Procuring Entity deems it necessary to seek clarifications from a Bidder after bid opening, The Bidder shall not be permitted or requested to alter their bids, or to change the substance or price of the bids.

Arithmetical Errors Section 31 (4)(5).

97. The bid price read out at bid opening shall be adjusted for any arithmetical errors, and adjustments shall be made for any quantifiable non-material deviations or reservations. Price adjustment provisions applying to the period of implementation of the contract shall not be taken into account in the evaluation. The Procuring Entity shall notify the Bidders of arithmetical errors made. If the Bidder does not agree with this notification, its bid shall be rejected.

Currency Conversion. Section 32(6).

98. When bid prices are expressed in foreign currency or several currencies, the price of the bids shall be converted into Naira at the medium exchange rate of the Central Bank of Nigeria prevailing at the date stated in the bid document.

Transportation and Insurance

Section 32 (5).

99. For the supply of imported goods, the evaluation and comparison of bids shall be on the basis of CIP or CIF price. For goods manufactured in Nigeria, Ex Works prices are evaluated and compared. If bids are on the basis of CIP (Place of Destination), the cost of inland transportation and insurance to the place of destination shall be added to the price of domestically produced goods.

Works and Turnkey Contracts.

100. Under works and turnkey contracts, contractors shall be responsible for all duties, taxes and other levies. Bidders shall take these factors into account in preparing their bids. The evaluation and comparison of such bids shall be on this basis. Bid evaluation for works shall be strictly in monetary terms. If time is a critical factor, the value of early completion to the Procuring Entity may be taken into account according to criteria presented in the bid document, but only if the conditions of contract also provide for commensurate penalties for noncompliance.

Deviations.

Section 31 (5).

101. The Procuring Entity shall notify Bidders of major deviations and the resulting rejection of their bids. Deviations may be clarified by Bidders but not withdrawn.

Major Deviations.

102. Major deviations for Goods are :

- (a) incompatibility with the technical specifications ;
- (b) unacceptable commercial terms ; and
- (c) proposed performance criteria, which do not meet those specified in the bid documents.

103. Major deviations for works are :

- (a) unacceptable subcontracting contrary to the terms in the bid document ;
- (b) unacceptable time-phasing in construction ;
- (c) unacceptable alternative design if alternative design is permitted or proposing an alternative design when none is permitted and the bid does not respond to the requested design ;
- (d) proposing a bid subject to price adjustment when the bid documents call for fixed price ; and
- (e) in the case of prequalification, a bid from a Bidder who was not prequalified.

104. Minor Deviations include :

- (a) slightly different delivery times ;
- (b) slightly different payment terms ;
- (c) minor attachments on equipment clarifications have been omitted from the bid ;
- (d) minor differences in the performance criteria but not affecting the efficiency of an equipment or a utility ;
- (e) any deviation that does not have a major impact on the cost of the bid.

Alternative Bids.

105. If the bid document asks for alternative bids or designs, the Bidders shall first quote the price for the base method and specifications indicated in the bid document and secondly indicate the price for the deviation or alternative solution. Only the alternative bid of the substantially responsive lowest evaluated bid shall be considered for contract award.

Domestic Preference.

Section 34.

106. In the case of ICB, when comparing bids from foreign contractors or suppliers with national Bidders, Procuring Entities may grant a margin of preference to domestic contractors, and suppliers for goods manufactured in Nigeria. The BPP will from time to time set the margins of preference to be granted. Bid documents may provide a domestic preference of 15% of the delivered price for goods and 7.5 % for works. The procedure for evaluating margins of preference is explained in Annex 2. Domestic preference is only applicable if provided for in the bid document.

Post qualification.

107. At the time of contract award, in the event of prequalification, the Procuring Entity shall verify that the information provided in the prequalification application of the selected Bidders is still valid. Similarly, such post qualification will be applied with reference to the information provided by selected Bidders in a bid procedure without prequalification. In both cases, the Procuring Entity may deny the award to a Bidder who is adjudged no longer to have the capability or resources to perform the contract successfully and award the contract to the next lowest evaluated responsive Bidder.

Rejection of Bids.

Section 28.

108. Before the acceptance of a bid, the Procuring Entity may reject the bids, or cancel the procurement proceedings, without incurring any liability towards the Bidders.

Reduction in scope and size to lower price.

109. Alternatively, the Procuring Entity may consider a reduction in the scope and size of the contract, which may reduce the contract price. Following no-objection from BPP, the Procuring Entity may then negotiate with the lowest evaluated Bidders to try to obtain a satisfactory contract on the basis of the revised terms and conditions.

Rejection of all bids.

110. The rejection of all Bidders requires the prior approval of BPP.

Only one bid received.

111. If following competitive bidding only one bid has been received and the bid is of good quality, meets the requirements of the bid document, is technically and financially responsive compared to market prices, and otherwise in order, the bid can be accepted and, following evaluation, awarded to the sole Bidder.

Award of Contract.

Section 33(1)

Section 16(17).

112. The Procuring Entity shall proceed with the award of contract within the period of the bid validity, with the Bidder who meets the appropriate standards of technical capability and financial resources and whose bid has been determined to be substantially responsive to the bid documents and to offer the technically acceptable lowest evaluated cost. Such Bidder shall not be required, as a condition of award, to undertake responsibilities or work not stipulated in the specifications or to modify its bid as originally submitted.

Notification of award and contract signature.

Section 33 (3),

113. Where the contract is within the approving authority of the Procuring Entity, the Tender Board shall promptly notify the successful Bidder that it has been awarded the contract and invite it to execute the contract agreement, within the time period of the validity of the bids. The terms and conditions of the contract shall not materially differ from those which were included in the bid document and on the basis of which the bids were invited.

114. In the case of ICB contracts, if there are no or only minor changes in the draft contract, the Procuring Entity and the selected Bidder may finalize the contract by facsimile or electronic mail.

115. The Procuring Entity shall furnish to BPP a copy of the signed contract. If the procurement is subject to Prior Review by BPP, notification and award are subject to BPP's prior approval. If the approving authority is based on BPP's objectives, the Procuring Entity, the Procuring Entity's notification is only to inform the Bidder and it shall be formally notified when the final approval has been obtained. In any event, notification shall be given within the bid validity period.

BPP certification of contract award.

116. If the procurement is subject to prior review and BPP determines that the proposed award is not consistent with the terms of the bid document or is otherwise inconsistent with approved procurement procedures, it will promptly inform the Procuring Entity stating the reasons for its decision, and the bid shall not receive BPP's certification for contract award.

Performance Security precondition of contract award.

Section 6.

117. Security for the guarantee of performance by the Bidders shall be provided by the selected Bidders prior to contract signature. The amount of the security will not be less than 5% or more than 10% of the contract value. However, the bid and contract documents shall require that if through change orders or for other reasons the value of the contract price exceeds the amount of the original contract price by a certain percentage (determined by the BPP), the security will be increased by a proportional amount (also determined by the BPP). The performance security shall be discharged after completion of the contract and expiration of the warranty period, if there is no default.

PART V — MAIN ASPECTS OF THE STANDARD BID DOCUMENTS.

Standard Documents.

118. Procuring Entities shall use the appropriate Standard Bid Documents issued by the BPP. Any changes to address project specific issues shall be introduced only through the Specific Instructions in the bid solicitation documents, or through Specific Conditions of contract, but not by introducing changes in the Standard Instruction to Bidders or the General Conditions of Contract of the SBDs.

Contents of the Bid Documents.

119. The bid documents shall furnish all the information necessary for a Bidder to prepare a bid for the goods, works and related services to be supplied.

120. All bid documents shall include as a minimum —

- (a) the invitation to bid ;
- (b) Instructions to Bidders (ITB) ;
- (c) Specific Instructions to Bidders ;
- (c) Form of Bid ;

- (d) Form of Contract ;
- (e) Conditions of Contract, both General and Special ;
- (f) Technical Specifications ;
- (g) Bill of Engineering Measurements and Evaluation ;
- (h) Bills of Quantities and Drawings ;
- (i) Schedule of Prices ;
- (j) Delivery time or Schedule of completion ; and
- (k) Necessary appendices, including forms for Proforma Bid bonds, Performance guarantee and Advance Payment Guarantee.

Purchase of SBDs.

Section 27 (6)

121. If a fee is charged for the bid documents, it shall be reasonable and reflect only the cost of their printing and delivery to prospective Bidders.

Language.

Section 27 (3).

122. Bid documents for ICB shall be prepared only in the English language.

Clarity of Bid Documents.

123. Bid documents and specifications shall be worded in such a manner so as to permit and encourage competitive bids, and shall set forth, as clearly and precisely as possible, the work to be accomplished, the goods, works and related services to be supplied, the place of delivery or installation, warranty and maintenance requirements, and any other pertinent terms and conditions such as the provision of domestic preference, if any.

124. The bid documents, where appropriate, shall define the tests, standards and methods that will be utilized to judge conformity with the original equipment specifications, quality of works and delivery time. Drawings shall be consistent with the text of the technical specifications and, where appropriate, an order of preference between the two shall be specified.

Essential Bid Information.

125. All prospective Bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. The documents shall clearly spell out —

- (a) all factors, including price, which will be taken into account in evaluating and comparing bids ;
- (b) how the evaluation criteria will be quantified or otherwise evaluated (methods, terms and conditions of bid evaluation) ; and
- (c) if alternative bids, based on alternative designs, materials, completion schedules, payment terms, are permitted. In this case, the bid documents shall clearly state the conditions for their acceptability and

the method of their evaluation, and require that goods, equipment and works meeting generally accepted business standards shall be of equal or higher equivalence.

Specifications.

126. Technical specifications and standards quoted in bid documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods, works and related services under procurement. As far as possible, the Procuring Entity shall specify generally accepted standards such as those issued by National and International Standards Organizations with which the equipment or materials or workmanship shall comply.

Specifications for Equipment and Use of Brand Names.

127. Specifications shall be based on relevant characteristics, performances, capabilities, and qualities, and shall not prescribe brand names, catalogue numbers, or products of a specific manufacturer. If it is necessary to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added after such reference, except in very special cases when specific spare parts are required where a degree of standardization is necessary to maintain certain essential features. In such cases, and where appropriate, the specifications shall permit acceptance of alternative goods which have similar characteristics and provide performance and quality at least equal to those specified. In all cases where brand names are deemed justified to be procured, prior approval of the BPP must be obtained.

Validity of Bids.

Section 29 (1).

128. Bidders shall be required to submit bids valid for the period specified in the bid documents. Such period must be sufficient to enable a Procuring Entity complete the evaluation and comparison of bids, obtain all necessary approvals including the no-objection of the BPP and contract signature.

129. In any case, bid validity should not be for less than 60 days or more than 180 days in the first instance.

Currency of Bids.

130. Prices for bids under NCB shall be quoted in Naira.

Section 16 (27).

131. Prices for bids under ICB shall be expressed in widely used international currencies, as stated in the bid document. However, the portion of the bid price representing local costs shall be expressed in Naira.

132. In the case of ICB, the bid solicitation document shall state the date for conversion to Naira, which should be the date of bid submission/opening. The source for the conversion rate shall be the medium selling rate of the Central Bank of Nigeria. Contract payments sequel to a contract award shall be made in the currency or currencies in which the price is expressed in the successful bid.

Pricing for international bids.

133. For goods, the Procuring Entity shall invite bids under ICB on the basis of CIF (port of destination) or CIP (place of destination) for all goods offered from and manufactured abroad, including those previously imported, and Ex Works, Ex-factory or off-the-shelf for goods manufactured in Nigeria. Bidders may arrange for ocean and other transportation and related insurance from any eligible source in accordance with national eligibility requirements. Where installation, commissioning or other similar services are required to be performed by the Bidders, as in the case of "supply and installation" contracts, the Bidders shall be required to quote additionally for these services.

134. For works, ICB contracts shall be priced to include all duties, taxes and other levies.

Pricing for Civil Works.

135. Bidders for civil works contracts shall be required to quote unit prices or lump sum prices for the performance of the works, and such prices shall include all duties, taxes, and other levies for all procurement methods.

Turnkey Contracts.

136. In the case of Turnkey Contracts, the Bidders shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation, and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation. Unless otherwise specified in the bid documents, the turnkey price shall include all duties, taxes, and other levies.

Price.

137. Bid documents shall state either that (i) bid prices will be fixed or (ii) that price adjustments will be made to reflect any changes in major cost components of the contract, such as labor, equipment, materials, and fuel.

Adjustment.

Transportation and Insurance.

138. The bid documents shall state precisely the types and terms of insurance to be provided by the Bidders and shall indicate the kinds of risks to be insured against, the liabilities to be covered, and the duration of the insurance.

139. For goods, the indemnity payable under transportation insurance shall be at least 110 *per cent* of the contract amount in the currency of the contract, to enable prompt replacement of lost or damaged goods.

140. For works, a Contractor's All Risk form of policy shall be specified. The type and extent of insurance to be taken out is to be fully covered in the Contract.

Alternative. Bids.

141. If alternative bids are allowed, the Bid Documents shall state clearly how such bids shall be submitted, prices shall be offered and how they shall be evaluated.

Main Aspects of the Contract Documents

Conditions of Contract.

142. The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the Procuring Entity, the Supplier or the Contractor, and the functions and authority of the Engineer, Architect or Construction Manager, if one is employed by the Procuring Entity in the supervision and administration of the contract, including payments and advances to be made, if any. In addition to the General Conditions of Contract, Special Conditions shall specify the types of goods and works to be procured and the location of the project site where they should be delivered. The conditions of contract shall provide a balanced allocation of risks and liabilities.

Performance security.

Section 36.

143. Bid documents for goods and works shall require a performance security in the form of a guarantee from a bank or a performance bond from an insurance company acceptable to the Procuring Entity, in accordance with the form included in the bid documents, and in an amount sufficient to protect the Procuring Entity against unsatisfactory quality of the goods, non-performance of the goods contract or the equipment installed, or non-completion of the works.

144. For Works, a portion of the security shall extend beyond the date of completion to cover the defects liability or maintenance period up to final acceptance by the Procuring Entity.

145. In contracts for Goods, guarantees to protect the Procuring Entity against non-performance of the contract are required only when this is normal commercial practice under the market conditions for the goods in question.

146. In supply and installation contracts, the performance security extends until acceptance of installed plant and is usually replaced by a warranty for the warranty period.

Terms and Methods of Payment.

Section 37(1) - (4).

147. Payment terms shall be in accordance with the national law and the commercial practices applicable to the specific goods and works to be supplied, and in accordance with the contract. Payments under the contract shall be made in the currency stipulated in the Contract.

148. Payments for Works are made on the basis of progress made and shall be certified by the supervising authority.

149. Contracts for the supply of Goods shall provide for the payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the payment may be made after the supplier has complied with all its obligations under the contract.

Mobilization Fees.

Section 35 (1) (2).

150. Contracts for works may provide for mobilization fees and advances to the contractor. If so agreed, the contract documents shall :

- (a) specify any advances that may be made for supply of equipment and machinery, mobilization expenditures, or shipment of materials on site in percentages of the contract price,
- (b) require that such advance payments shall be covered by an unconditional and irrevocable bank guarantee issued by a bank acceptable to the Procuring Entity, or an insurance bond issued by an Institution acceptable to the Procuring Entity, and
- (c) specify the modalities and the terms and conditions under which the guarantee will be recovered and released.

151. Advance payments made upon signature of the contract for mobilization and expenses should be reasonable and not exceed 15% of the contract price for domestic contractors and 10% for foreign contractors.

Change Orders.

152. During the execution of a contract, changes may occur in the quantity of work done requiring amendments to the contract agreement between the Procuring Entity and

the contractor. Such amendments are executed by a change order or variation order, provisions for which are made in the Special Conditions of Contract, and are justified in the reports on the contract execution. The Procuring Entity shall seek BPP's no-objection prior to the proposed amendment, if the contract is above the prior review threshold or the tenders board when the contract is below the prior review threshold.

Retention Fees.

153. If retention fee is required by the Procuring Entity it should not exceed 10% of the contract price.

Use of both a performance security and retention money.

154. If the contract provides for both a performance security and retention fee, the total amount of both performance security and retention money should not exceed 20% of the contract sum.

Interest on delayed payments.

Section 37 (1) (4) (d).

155. Procuring Entities should endeavour to make payments promptly and in accordance with the terms and conditions of the contract. Any payment due for more than sixty days following submission and verification of an invoice shall be deemed a delayed payment. The contract document shall state the period of sixty days for delayed payments and specify the rate at which interest (being penalties for late payments) will be paid.

Indemnification Requirements.

156. Contracts shall clearly state that the proceeds of any claim arising from performance guarantees, advance payment guarantees and any insurance policies entered into by the contractor under the terms of the contract, shall be payable to the Procuring Entity.

Liquidated Damages and Bonus Clauses.

157. Contracts shall provide for liquidated damages or similar clauses in an appropriate amount to cover the cost of delays in the delivery of goods or failure to meet performance requirements, or non-completion of the works, which result in loss of revenues or other benefits to the Procuring Entity.

Force Majeure.

158. The Conditions of Contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is due to force majeure as defined in the contract.

Applicable Law and Settlement of Disputes.

159. The Conditions of Contract shall contain provisions dealing with the applicable law and the forum for the settlement of disputes and for NCB, the national law of Nigeria shall prevail.

PART VI — DISPOSAL OF PUBLIC PROPERTY
(Procurement Act Sections 55 and 56)

160.—(1) Disposal of public assets shall be carried out in accordance with the Act, these Regulations and the Procurement Manual. For the purpose of this Act, public property is defined as resources in the form of tangible and non-tangible assets (ranging from serviceable to unserviceable) :

- (a) created through public expenditure ;
- (b) acquired as a gift or through deeds ;

- (c) acquired in respect of intellectual proprietary rights ;
- (d) acquired on financial instruments (including shares, stocks, bonds .. etc) ; and
- (e) acquired by good will and any other gifts of the Federal Government.

161.—(1) A procuring entity shall maintain a record of its disposal proceedings and contract management for a period of ten years from the date of a decision to terminate a disposal activity or the date of completion of a disposal activity, whichever comes first.

(2) Where a contract is on-going or is challenged, the records shall be kept for one additional year after the completion of the contract or the settlement of the dispute, whichever comes earlier.

(3) The records of a procuring entity specified in this regulation shall be open to inspection by the Bureau during working hours.

162.—(1) The Accounting Officer shall ensure that the assets of a procuring entity are reviewed on an annual basis, to identify those which are obsolete and should be subject to disposal.

(2) Assets to be disposed of shall be grouped in contracts or lots in a manner which attracts maximum possible competition.

(3) Where an asset is to be disposed of through a public auction, a procuring entity shall maximise the number of assets to be disposed of at a time in order to reduce the administration and transaction costs.

(4) A procuring entity may pool assets for purposes of common disposal.

(5) A procuring entity may appoint a Committee to identify assets to be disposed of on a periodic basis.

(6) The disposal of assets whether or not listed in the Assets register for a procuring entity shall be planned and integrated into the income and expenditure budget projection of the procuring entity.

(7) Before slating any public property for disposal, the Accounting Officer (whether acting in his own authority or at the direction of any superior or other authority) in charge of any public property set for disposal shall authorize the preparation of an evaluation report for such property by an independent Evaluator, or such professional with appropriate competence to carry out the valuation.

163.—(1) A user department or a procuring entity shall initiate the disposal process for assets under its management.

(2) Initiation of disposal requirement may follow the recommendation of the Committee appointed by the Accounting Officer.

(3) A disposal requirement shall include a clear indication of the assets to be disposed of and the approval to commence disposal proceedings for the specified assets.

(4) Approval to commence disposal proceedings shall be approved by Tenders Board or the Accounting Officer.

(5) Documentation related to the disposal requirement shall state the appropriate reference number from the asset register.

164.—(1) A procuring entity shall select one of the following disposal methods.

- (a) public auction ;
- (b) public bidding ;
- (c) sale to public officers ;
- (d) trade-in ;
- (e) transfer to another procuring entity ;
- (f) destruction of assets.

(2) A procuring entity shall take into account the following factors in selecting a disposal method—

- (a) the potential market value of the asset ;
- (b) the volume of the asset, whether one-off or bulk ;
- (c) the number and location of potential bidders ;
- (d) the location of the asset ;
- (e) restrictions on export or end-users ;
- (f) national security and public interest issues ;
- (g) health and safety issues ;
- (h) legal or human rights issues ;
- (i) environmental considerations ;
- (j) the trade-in value of the asset ; and
- (k) the possibility of transferring the asset to another procuring entity.

165. A public auction may be used where—

- (a) there are no conditions of end-user or export restrictions attached to the sale ; or
- (b) there is a large number of potential bidders or assets to be disposed of in one location and where an on site auction is arranged to avoid transport costs.

166. Public bidding may be used—

- (a) for high-value or unusual assets ;

- (b) for assets located in remote areas ;
- (c) for assets that have a geographically dispersed potential market ;
- (d) for assets with end-user or export restrictions attached to their sale ;
- (e) where conditions need to be attached to the sale of the asset ; or
- (f) where post-bid negotiations may be required.

167.—(1) To promote probity, fairness and competition, a procuring entity shall not dispose of a public asset outside of a public process where an open and competitive process may be successful.

168. Disposal by Sale to a public officer may be used where :

- (a) where there is no likely benefit or financial advantage to a procuring entity, in using any other disposal method ;
- (b) where the assets for disposal are a small number of low value items which are unlikely to attract public interest ;
- (c) where the personal use of disposal assets would directly benefit the performance of a public officer in the execution of his or her duties within a procuring entity ; or
- (d) in remote locations, where any other method of disposal would be difficult.

(3) Disposal by sale to public officials shall be contracted to an independent agent.

(4) Assets for sale to public officers shall be for personal use but not business or commercial use.

(5) An asset shall be considered as an asset for business or commercial use where—

- (a) an excessive number of purchases of a similar asset is made within a limited time period ;
- (b) there is frequent resale of assets purchased within a limited time period following the disposal ; or
- (c) there is purchase of more than one similar asset during the same disposal process.

(6) A public officer shall not be permitted to participate in any disposal process as a bidder, except under the sale to public officers method.

169.—(1) Trade-in may be used where the trade-in of surplus assets to offset the purchase price of new items provides a convenient, economic and efficient way of upgrading equipment.

(2) Notwithstanding subregulation (1), trade-in shall not be used where it prevents the operation of open and fair competition or where it reduces the value for money in a procurement process.

(3) Trade-in shall not be used where factors other than price have to be taken into account in the disposal process.

170. Destruction of an asset shall be the least favoured method of disposal, but may be used—

(a) on grounds of national security or public interest, health and safety, legal or human rights issues or environment considerations ; or

(b) where the asset has no residual value and it cannot be transferred to any other procuring entity or converted or classified into another form with any value.

171.—(1) Transfer to any other procuring entity may be used where the other procuring entity shall make further use of the asset.

(2) The cost of the asset shall be agreed between the two procuring entities.

(3) Transfer may be at no cost, if it is uneconomic to charge for the asset.

SCHEDULE 1

Review and Approval of Procurement Decisions

Review of Procurement Decisions

1. *For all procurement subject to prior review* in accordance with thresholds [specified below...] [announced separately in BPP Procurement Notes], *BPP shall fulfill the review function.* For this purpose, BPP shall review the procurement arrangements proposed by the Procuring Entity, including contract packaging, applicable procedures, and the planning of the procurement process, for its conformity with the Regulations and the Procurement Law. The Procuring Entity shall promptly inform BPP of any delay, or other changes in the implementation of the procurement plan and agree with BPP on corrective measures.

Internal Procurement Review at the Procuring Entity.

2. For all procurements below the prior review threshold, the Tenders Board of the Procuring Entity shall be the *Approving Authority*.

3. The *Procurement Unit (PU)* of a Procuring Entity prepares all procurement documents, including procurement plans, in collaboration with the project and budget units, and prepares requests for approvals by the Approving Authority.

4. The *Procurement Planning Committee (PCC)*, which is composed of representatives of various departments in a Procuring Entity, reviews procurement plans to ensure that they meet the needs and budget of the Procuring Entity and bids are on schedule with the needs assessment.

5. *Above the Prior Review Thresholds.* With respect to all contracts above the amount indicated [below] [in the BPP Procurement Note, issue #1.....] the following will apply :

6. In cases of prior review contracts where *prequalification* is used, the Procuring Entity shall, before prequalification submissions are invited, furnish BPP with the draft documents to be used, including the text of the invitation to prequalify, the prequalification questionnaire, and the evaluation

methodology, together with a description of the advertising procedures to be followed, and shall introduce such modifications in said procedure and documents, as BPP shall direct.

7. Subsequently, the Procuring Entity shall evaluate the submissions of the applicants in accordance with the standard evaluation form for prequalification; furnish to BPP for its comments the report evaluating the applications it received, the list of the recommended prequalified bidders, together with a statement of their qualifications and of the reasons for the exclusion of any applicant for prequalification. The Procuring Entity shall furnish this information to BPP before the applicants are notified of the Procuring Entity's decision, and the Procuring Entity shall make such additions to, deletions from or modifications in the said list as BPP shall direct.

8. *Before bids are invited*, either for contracts with or without prequalification, the Procuring Entity shall furnish to BPP for its comments, draft bid documents, including the invitation to bid; instructions to Bidders, which also include the basis of bid evaluation and contract award; and the conditions of contract and specifications for supply of goods, or installation of equipment, or the civil works, as the case may be, together with a description of the advertising procedures to be followed for bidding when prequalification has not been used, and shall make such modifications in said documents as BPP shall reasonably request. Any further modification shall require BPP's approval before it is issued to the prospective Bidders.

9. For the *evaluation of bids*, the Procuring Entity shall use BPP's Standard Bid Evaluation Report.

10. After bids have been received and evaluated, the Procuring Entity shall, before a final decision on the award is made, furnish to BPP in sufficient time for its review, a detailed report (prepared, if BPP shall so request, by experts acceptable to BPP), on the evaluation and comparison of the bids received, together with the recommendations for award, the draft contract submitted by the lowest evaluated Bidders, and such other information as BPP shall reasonably request. The Report to BPP on the evaluation and comparison of bids shall be accompanied by the three lowest evaluated cost bids.

11. When BPP determines that the intended award would be inconsistent with the bid document and the approved procurement procedures, it shall promptly inform the Procuring Entity and state the reasons for such determination. Otherwise, BPP shall provide its no-objection to the draft contract and authorize the Procuring Entity to proceed with the award and the signature of the contract. The Procuring Entity shall promptly confirm the award to the selected Bidders.

12. If the approving authority is at a higher level than the Accounting Officer or Director General of a Procuring Entity, the Tenders Board with will after no-objection by the BPP, submit the proposed award to the designated approving authority and if approval is obtained, so inform the Bidders. If approval is not given, the Tenders Board shall discuss with the BPP what next steps to take. This procedure may lead to a cancellation of the procurement procedure. Because cancellations of procurement are very costly to the State and to the Bidders as well, and may undermine the trust between the public and private sectors, cancellation of the procurement procedure shall only be considered in cases where there is absolute certainty about the critical flaws in the procurement process.

13. If the Procuring Entity requires an extension of bid validity to complete the process of evaluation, obtain necessary approvals and clearances and to make the award, it should seek BPP's prior approval for the extension of the bid validity period.

14. If the Procuring Entity receives protests or complaints from bidders about the evaluation, the Procuring Entity shall send a copy of the Procuring Entity's response to BPP for information.

15. The terms and conditions of a contract shall not, without BPP's prior approval, materially differ from those on which bids were issued or prequalification of contractors was carried out.

16. One certified copy of the contract shall be furnished to BPP promptly after its signing.

17. The description and amount of the contract, together with the name and address of the successful bid, shall be subject to public disclosure by the Procuring Entity and BPP, when the contract is signed and duly recorded by the Procuring Entity.

18. *Below the Prior Review thresholds*, In all cases below the prior review thresholds of the BPP, the Procurement Unit shall prepare the procurement documents for submission to the Accounting Officer or the Tenders Board for approval.

19. *Post Procurement Review*. The BPP shall order a bi-annual post review by independent consultants of at least 20% of all the contracts in a Procuring Entity that are not subject to prior review, representing a representative sample of small medium and large contracts, to verify if procurement procedures were carried out in accordance with the Regulations. The results of the Independent Procurement Reviews shall be shared with the Auditor General and the Accountant General.

20. *Amendments, Modifications or Extensions*. The Procuring Entity shall inform the BPP of the following during contract administration, giving the reasons :

If an amendment to the contract, or change order, or extension would increase the original amount of the contract price by more than 15%. BPP has the right to approve or reject such changes, and in the latter case, to propose alternative less costly modifications or recommend a reduction in the scope and size of the contract.

SCHEDULE 2

Domestic Preference

Domestic Preferences

Procurement Law.

Section 36.

1. Principles of Domestic Preference. A Procuring Entity may, and subject to the conditions below, grant a margin of preference in the evaluation of bids for goods and works launched under ICB. Such preferences may be granted :

(a) Up to 15% for bids from domestic suppliers for goods domestically produced ;

(b) Up to 7.5% for bids for works by domestic contractors.

2. In such cases, advertising and the bid documents shall clearly indicate the level of the preference to be granted, the information required to establish the eligibility of a bid for such preference (paragraphs.....). The bid document shall describe the evaluation procedure described below.

Preference for Goods

1. Where a margin of preference is granted for goods manufactured in Nigeria, responsive bids shall be classified in one of the following three groups :

Group A : Bids from eligible domestic suppliers exclusively offering goods manufactured in Nigeria, if the eligible bidder establishes to the satisfaction of the Procuring Entity and BPP that (1) labor, raw material and components from within the country of the Procuring Entity will account for 30 percent or more of the EXW (ex factory or off-the-shelf) price of the product offered, and (2) the production facility, in which those goods will be manufactured or assembled, has been engaged in manufacturing/assembling such goods at least since the time of bid submission.

Group B : All other bids offering goods manufactured in Nigeria.

Group C : Bids offering goods manufactured outside Nigeria that have already been or will be directly imported.

2. The Procuring Entity will first review the bids to confirm the appropriateness of, and to modify as necessary, the bid group classification to which Bidders assigned their bids in preparing their Bid Forms and Price Schedules.

3. The prices quoted for goods in Group A and B shall include all duties and taxes paid or payable on the basic materials or components purchased in the domestic market or imported, but shall exclude the sales and similar taxes on the finished product.

4. The prices quoted for goods in Group C shall be on CIP basis (place of destination) which is plus cost of inland transportation and insurance to the place of destination, but exclusive of customs duties and other import taxes already paid or to be paid.

5. The evaluation of bids is carried out in the following steps.

(a) In the first step, all bids in each group are compared to determine the lowest responsive bid in each group. Such lowest evaluated bids are then compared with each other, and if, as a result of this comparison, a bid from Group A or B is the lowest, it will be selected for award (i.e. no preference is needed.)

(b) If as a result of the comparison under (a), the lowest evaluated bid is a bid from Group C, 15 percent of the evaluated CIP bid price of this bid from Group C is added to the price of this bid (for comparison only) and the resulting price is then further compared with the lowest evaluated bid from Group A (which includes a minimum of 30 percent of value added locally). The lowest evaluated bid from this last comparison is then selected for award.

6. In the case of turnkey contracts for the supply of a number of distinct items of equipment as well as major installation and/or construction services, no margin of preference shall apply.

Preference for Domestic Contractors

1. For the purpose of the application of preference for domestic contractors, such contractors must first provide the evidence that the contractor, either as an individual or as a group, qualifies with the following provisions :

(a) it is incorporated or otherwise organized in Nigeria ;

(b) its principal place of business is located in Nigeria ;

(c) at least 51% of the equity is held by nationals of Nigeria and its assets are not controlled by a foreign firm or firms ;

(d) its chief officers are nationals of Nigeria ; and

(e) at least 50% of the persons who will perform services under the contract, whether employed directly or by a subcontractor, are nationals of Nigeria.

2. Where a preference is granted for domestic contractors for works to be awarded on the basis of ICB, responsive bids shall be classified in one of the following two groups :

Group A: bids from eligible domestic contractors, which have established to the satisfaction of the Procuring Entity and BPP to be eligible for domestic preference.

Group B : bids from other (foreign) contractors.

3. For the purpose of evaluation and comparison of bids, after having compared and adjusted all bids where necessary, an amount equal to 7.5 percent of the bid amount of the lowest evaluated bid of group B will be added to that bid. If the bid from Group B is still the lowest evaluated responsive bid, this bid from Group B will be selected for award. If as a result of adding the 7.5 percent of the bid price of the lowest evaluated bid in Group B to that bid, the lowest evaluated responsive bid of Group A becomes the lowest, that bid from Group A will be selected for award.

4. In the case of turnkey contracts for the supply of a number of distinct items of equipment as well as major installation and/or construction services, no margin of preference shall apply.

SCHEDULE 3

Information to Bidders

Information for Bidders

Procurement Bill.
Sections 5, 6, 17.

This Annex provides information to potential Bidders interested in participating in public procurement.

Procuring Entity's Role.

The Procuring Entity is responsible for the procurement. It invites, receives, and evaluates Bids, and awards the contract. The Standard Bid Document and the terms and conditions of the standard contract between the Procuring Entity and the Supplier or Contractor define the rights and obligations of each contracting party.

The Procuring Entity reviews the procurement procedures, documents, Bid evaluations, award recommendations and the contract to ensure that the process is carried out in accordance with agreed procedures, and administers the contract during execution.

Role of the Bureau of Public Procurement (BPP).

The BPP sets thresholds for the prior review of public procurement launched by Procuring Entities, and for contracts subject to "prior review" the BPP reviews the documents for their correctness and issues "Certificates of no-objection for contract award" and for large contracts "Certificates of no-objection for payments"..

If at any time in the procurement process the BPP concludes that the agreed procedures were not followed in any material respect, or if the certification was done on the basis of incomplete, inaccurate or misleading information, the BPP may declare misprocurement.

The BPP has the power to blacklist/debar any supplier, contractor, or service provider that contravenes the Procurement Act or the Regulations made pursuant to this Act, and to maintain a list of firms and persons that have been blacklisted/debarred from participating in public procurement, and to publish this list in the Procurement Journal and or any media it deems fit.

If the BPP determines the engagement in corrupt or fraudulent practices by representatives of the Procuring Entity or of the Bidders, the BPP may impose or cause to be imposed the applicable sanctions in the Procurement Act.

The BPP publishes the details of major contracts in the Procurement Journal and on its website

The BPP publishes Standard Bidding Documents (SBDs) for various types of procurement. The Regulations require that the Procuring Entities use these documents, with minimum changes as necessary to deal with project-specific aspects. The Procuring Entity also issues standard prequalification documents.

Information on Bidding. Invitation on bids may be obtained from the BPP Procurement Journal, the websites of the Procuring Entities and advertisements in leading national newspapers for national competitive bidding and other procurement methods and widely used international newspapers for international competitive bidding. This is also the case for prequalification

Bidders' Role

Once a Bidder receives the prequalification or Bid solicitation document, the Bidder should study the documents carefully to decide if it can meet the technical, commercial and contractual conditions, and if so, proceed to prepare its Bid. Bidders should then critically review the documents to see if there are ambiguities, omissions, internal contradictions, or any feature of specifications or other conditions which are unclear or appear discriminatory or restrictive; if so, it should seek clarification from the Procuring Entity, in writing, within the time period specified in the Bid documents.

The criteria and methodology for the selection of the successful Bidders are outlined in the Bid solicitation documents, generally under Instructions to Bidders and in the section on Specifications. If these are not clear, clarification should be sought from the Procuring Entity. If a Bidders feels that any of the provisions in the bid document are inconsistent with the Regulations, it should also raise this with the Procuring Entity.

It is the responsibility of Bidders to ensure the timely submission of fully responsive and compliant Bids, including all the supporting documents requested in the Bid solicitation document. Noncompliance with critical (technical and commercial) requirements will result in rejection of the Bid. If a Bidder wishes to propose deviations to a non-critical requirement, or propose an alternative solution, the Bidder should first quote the price for the fully compliant Bid and then separately indicate the adjustment in price that can be offered if the deviation or alternative solution is accepted. Once Bids are received and publicly opened, Bidders will not be required or permitted to change the price or substance of a Bid.

Confidentiality. As stated in paragraphs 91 of the Regulations, the process of Bid evaluation shall be confidential until the award is notified to the successful Bidder. This is essential for the Procuring Entity reviewers to avoid corruption or breaching confidentiality, or even the perception of it. If during evaluation, a Bidder wishes to bring additional information to the notice of the Procuring Entity, it should do so in writing in accordance with the Bid Document.

Complaints. The Procuring Entity is responsible for the selection and award procedure and Bidders should address themselves to the Procuring Entity for any queries, issues and possible complaints. In the case of a complaint regarding the procurement process for a specific bid, such complaint should first be introduced in writing to the Procuring Entity, in accordance with paragraph 16-19 of these Regulations.

Information on contract award. Information on contract award will be published in the Procurement Journal and on the websites of the Procuring Entities concerned and the website of the BPP. If, after notification of award, a Bidder wishes to ascertain the grounds on which its Bid was not selected, it should address its request to the Procuring Entity. If a discussion is arranged, only the Bidder's Bid can be discussed and not the Bids of competitors

SCHEDULE 4

Procurement Filing

1. The experience is that lack of an efficient filing system causes long and costly delays in the search for documents at critical moments when procurement issues arise (or when procurement post reviews need to be done, complaints arise, Independent Post Reviews are needed by BPP, or procurement audits are required by the Auditor-General. BPP will issue guidelines separately on maintaining an adequate procurement filing system in Procuring Entities Below are some main elements of records of procurement proceedings.

- Description of the goods, works or consulting services requested, usually in the invitation to bid (for goods and works) or the request for proposals for consulting services)
- Document prescribing the selection of the bid method or consultant selection method and the reason for this.
- Lists of Bidders who submitted bids or proposals, with names and addresses, usually obtained from the registration of bid or proposal submissions and from the minutes of opening of bids and proposals.
- Minutes of bid and proposal opening, with recording of prices.
- Bid and proposal evaluation reports.
- List and summary of clarifications asked during prequalification, bid/proposal submission and evaluation (per bid and per proposal).
- Records of formal rejection of bids or proposals and the grounds thereof .
- Records of procurement proceedings involving other than open competitive bidding, which did not result in a procurement contract and a statement on the likely reasons.

- Document by which it was decided to proceed with direct contracting and the reason for this.
- Document whereby it was decided to proceed to limited bidding and to grant a margin of preference and the grounds for this.
- Record of any complaints received from Bidders and the responses sent.

SCHEDULE 5

Standard Procurement Processing Time

(a) National Competitive Tendering for Procuring Entities

<i>S/No.</i>	<i>Activity</i>	<i>Period (calendar days)</i>
1.	Preparation of prequalification documents	7
2.	Advertise and issue pre-qualification documents	14
3.	Evaluation of pre-qualification documents and preparation of shortlist and approval of the same	14
4.	Preparation of tender documents	14
5.	Advertise and issue tender documents	14
7.	Evaluation of tenders and notification of award and obtaining necessary approvals	30
8.	Award of contract	7

(b) International Competitive Tendering for Procuring Entities

<i>S/No.</i>	<i>Activity</i>	<i>Period (calendar days)</i>
1.	Preparation of prequalification documents	7
2.	Advertise and issue prequalification documents	14
3.	Evaluation of prequalification documents and preparation of shortlist and approval of the same	14
4.	Preparation of tender documents	14

5.	Advertise and issue tender documents	14
6.	Evaluation of tenders and notification of award and obtaining necessary approvals	30
7.	Award of contract	7

(c) Minimum Time for Preparation and Submission of
Prequalification Documents and Tenders for Tenderers

<i>S/No.</i>	<i>Method of Procurement</i>	<i>Period (calendar days)</i>
PREQUALIFICATION STAGE		
1.	International competitive bidding	30
2.	National competitive bidding	21
TENDERING STAGE		
3.	International competitive bidding	45
4.	National competitive bidding	30
5.	Restricted international competitive bidding	30
6.	Restricted national competitive bidding	21
7.	International shopping	14
8.	National shopping	7
9.	Where large works are involved	90