



**FEDERAL REPUBLIC OF NIGERIA**

**PROCUREMENT PROCEDURES MANUAL**

*For*

**PUBLIC PROCUREMENT**

*In*

**NIGERIA**

**BUREAU OF PUBLIC PROCUREMENT (BPP)**

**SECOND EDITION**

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## **USE OF THE PROCUREMENT PROCEDURES MANUAL**

The policies on public procurement are defined in the relevant laws and regulations governing procurement in Nigeria. This manual provides procurement guidance or direction to all Federal Ministries, extra-ministerial offices, departments, agencies, parastatals, corporations and all other public entities set up by the Constitution or Act of the National Assembly and/or whose funding derives from the Federation Accounts, their own internally generated revenue, the Federation share of the Consolidated Revenue Fund and special allocations in the federal budget whatever form this may take or being entities outside of the foregoing description, derive at least 35% of the funds appropriated or proposed to be appropriated for any type of procurement described in the Public Procurement Act.

### ***The Public Procurement Act 2007— Section 15***

The Manual is intended to give advice and assistance to procurement staff to help them carry out their procurement responsibilities, and explains in more detail how specific aspects of procurement should be handled in line with the policies referred to above. It is a source of “how-to” information about the tasks and elements that comprise the procurement process.

The Manual begins in Chapter I with a review of policy and institutional aspects of procurement that have broad applicability and about which questions arise most frequently. Subsequent chapters deal with procurement implementation and contract administration. Where necessary, topics are cross-referenced to other relevant sections of the Manual and the Public Procurement Act to enable a clearer understanding of the topics in issue.

## **ABBREVIATIONS AND ACRONYMS**

APG	Advance Payment Guarantee
Bureau	Bureau of Public Procurement
CQ	Consultants Qualification (Selection Method)
DPO	Due Process Office
GPN	General Procurement Notice
ICB/ICT	International Competitive Bidding/Tendering
IFB/IFT	Invitation for Bid / Tender
IS	International Shopping
LCS	Least Cost Selection
MTB	Ministerial Tenders Board
NCT	National Competitive Tendering
NCB	National Competitive Bidding
LIB	Limited International Bidding
DC	Direct Contracting
FA	Force Account
NS	National Shopping
QBS	Quality Based Selection
QCBS	Quality, Cost Based Selection
REoI	Request for Expression of Interest
SFB	Selection under Fixed Budget
SPN	Special Procurement Notice
STD	Standard Tender Document
SBD	Standard Bidding Document

## **Background**

1.1 The Manual recognizes that sound public procurement policies and practices are one of the essential elements of good governance. Good practices reduce costs and produce timely results; poor practices lead to waste and delays and are often the cause of allegations of corruption and government inefficiency.

1.2 Before describing, step-by-step, how public procurement should be planned and implemented, it is appropriate to establish at the outset why this topic is worthy of attention. This inquiry can be fruitfully addressed by approaching it from three linked perspectives:

- (a) What constitutes sound public procurement i.e. what are its distinguishing characteristics?
- (b) Why is it so important?
- (c) Why should its achievement and maintenance be a priority concern for Government and major stakeholders?

## **What Is Good Public Procurement? What Does It Look Like?**

2.1 The principal hallmarks of proficient public procurement are:

- Economy;
- Efficiency;
- Fairness;
- Reliability;
- Transparency; and
- Accountability and Ethical Standards.

2.1.1 ***Economy***: Procurement is a purchasing activity whose purpose is to give the purchaser best value for money. For complex purchases, value may imply more than just

price, for example, since quality issues also need to be addressed. Moreover, lowest initial price may not equate to lowest cost over the operating life of the item procured. But the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money.

2.1.2 **Efficiency:** The best public procurement is simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the purchasing entity and its procurement personnel.

2.1.3 **Fairness:** Good procurement is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to compete and thereby, directly expands the purchaser's options and opportunities.

2.1.4 **Transparency:** Good procurement establishes and then maintains rules and procedures that are accessible and unambiguous. It is not only fair, but it is seen to be fair.

2.1.5 **Accountability and Ethical Standards:** Good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to challenge and to sanction, if appropriate, for neglecting or bending those rules. Accountability is at once a key inducement to individual and institutional probity, a key deterrent to collusion and corruption, and a key prerequisite for procurement credibility.

A sound procurement system is one that combines all the above elements. The desired impact is to inspire the confidence and willingness-to-compete of well-qualified vendors. This directly and concretely benefits the purchasing entity and its constituents, responsive contractors and suppliers, and donor agencies providing project finance.

Conversely, a procurement system that fails to take the above elements stimulates hesitation to compete, submission of inflated tenders containing a risk premium, or submission of deflated tenders followed by delayed or defective performance. Other direct results include collusion in bribery by frustrated or unscrupulous vendors and purchasing entities, bad value for those entities and their constituents, and betrayal and abuse of the public trust for personal gain.

In sum, proficient public procurement is not difficult to describe in principle or to distinguish from its antithesis in practice. But it does require varied professional and technical know-how to establish, as well as discipline and determination to administer.

## **Why Is Sound Public Procurement So Important?**

3.1 Public procurement is the process by which governments buy inputs for vital public-sector investments. Those investments, both in physical infrastructure and in strengthened institutional and human capacities, lay foundations for national development. In procurement terms, those inputs are generally grouped into three categories:

- Civil works — for example, bridges and buildings, highways and basic physical infrastructure;
- Goods — typically equipment, material and supplies, commodities, textbooks, medical supplies; and
- Services — expert advice and training, as well as such things as building maintenance, computer programming, etc.

3.2 The quality, timeliness, suitability and affordability of those procured inputs can largely determine whether the public investments will succeed or fail. So the beneficial impact and contribution of the input, particularly in the case of technical assistance services, can exceed their direct costs. Yet procurement costs can be substantial, consuming scarce resources of tightly constrained government budgets. Often the required funding must be borrowed. Moreover, the process also consumes scarce skilled public-sector human resources. It takes time, not merely for procurement planning and contracting but also for contract supervision and execution. And much of this process is highly visible, as well as controversial; exposing public sector executives and civil servants to scrutiny and second-guessing for procurement choices they made deferred or discarded.

3.3 There are five basic concerns that govern procurement policies:

- To ensure that goods and services needed are procured with due attention to economy and efficiency;
- To ensure that public fund is used to buy only those goods and services needed for national development;
- To give all qualified bidders an equal opportunity to compete for contracts;
- To encourage development of local contractors and manufacturers; and

- To ensure that the procurement process is transparent.

3.4 The procurement policies and procedures contained in this Manual have been designed to promote fairness and equal treatment.

## **SECTION I — PROCUREMENT POLICY AND INSTITUTIONAL TOPICS**

### **Why Is Sound Public Procurement So Important?**

4.1 The Bureau of Public Procurement has established general policies and guidelines relating to public sector procurement, and for supervising procurement implementation as well as reviewing the procurement and award of contract procedures of every public entity to which the Public Procurement Act applies, including certifying all Federal wide procurement (subject to the Bureau's prior review) prior to the award of contracts.

### **GENERAL PROCUREMENT POLICIES**

The objective of Procurement is to obtain the best possible value for money on behalf of the Federal Government of Nigeria while rigorously maintaining the Procuring Entity's business principles and the agreements under which it operates.

It is the Bureau's policy that Procuring Entities outsource those services that are either not part of their core business activity or for which there is a fluctuating requirement in terms of specialist skills or equipment, or where the open market provides a more efficient and commercial alternative.

It is the Bureau's policy that services, materials and equipment shall be acquired by Procuring Entities at the most favourable terms compatible with the desired quality and delivery requirements, taking account of total life cycle costs and in a manner that safeguards and preserves the reputation of the procuring entity.

It is the Bureau's policy to support the development of an indigenous contractor base in Nigeria and particularly in the areas in which the various Procuring Entities operate.

The implications of these policies are as follows:

- i) contractual arrangements shall be fair and reasonable
- ii) contractual arrangements shall provide 'value for money' to the Procuring Entity
- iii) contractual arrangements shall be designed to fairly reward the

contractor for services rendered, whilst safeguarding the long term commercial relationships between the Procuring Entity and its contractors.

- iv) contractual arrangements with third parties shall be executed in strict conformity with BPP Procurement Policies and Procedures Manual' (this manual)
  - v) bids shall be invited only from qualified/approved contractors/suppliers. competent to do the work or provide the services to the nominated standards.
  - vi) contracts shall be awarded to the lowest evaluated responsive bidder meeting all technical requirements and standards on the basis of competitive tendering unless overriding technical grounds exist to justify any other course of action.
- vii) domestic preference may be given to Nigerian Contractors or Suppliers within the boundaries outlined in the Public Procurement Act 2007 and in this Procurement Procedures Manual

### **BPP's Statement of Business Principles**

These Policies reaffirm the business principles that govern how BPP and all Public Procurement Entities within the various Federal Government Ministries, Departments and Agencies shall conduct their affairs.

"Upholding and improving a reputation of a Procuring Entity with good business principles is paramount. We are judged by how we act and our reputation will be upheld if we act with honesty and integrity in all our dealings and we do what we think is right at all times within the legitimate role of governance.

We have as our core values honesty, integrity, transparency, accountability, fair competition, economy & efficiency and value for money. We also firmly believe in the fundamental importance of the promotion of trust, openness, teamwork, professionalism, and pride in what we do.

These underlying values determine our principles. These principles apply to all transactions, large or small, and describe the behaviour expected of every public officer in the conduct of public procurement.

In turn, the application of these principles is underpinned by procedures which are designed to make sure that public officers fully understand the principles and that they act in accordance with them. We recognise that it is crucial that our behaviour matches our intentions.

BPP recognises that maintaining the trust and confidence of stakeholders, public officers, contractors, civil society, development partners and other people with whom the government does business, as well as the communities in which we work, is crucial to our continued growth and success as a Nation.

BPP and all Procurement Entities intend to merit this trust by conducting ourselves according to the standards set out in our principles. These principles meet International Standards and it is the responsibility of BPP and Accounting Officers in Federal MDAs

to ensure that all officers and contractors doing business in all Federal Government establishments are aware of these principles, and behave in accordance with the spirit as well as the letter of this statement."

### ***Public Procurement Act – Section 16***

4.2 All public procurement shall be conducted:

- (a) Subject to the prior review thresholds may from time to time be set by the Bureau of Public Procurement;
- (b) Based only on procurement plans supported by prior budgetary appropriations; and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and has obtained a "Certificate of 'No Objection' to Contract Award" from the Bureau (subject to approval threshold vide SGF's circular ref. No..... ;
- (c) By open competitive bidding, except as otherwise exempted;
- (d) In a manner which is transparent, timely, and equitable for ensuring accountability and conformity with the Public Procurement Act and regulations deriving therefrom;
- (e) With the aim of achieving value for money and fitness for purpose;
- (f) In a manner which promotes competition, economy and efficiency; and
- (g) In accordance with the laid down procedures and timelines.

4.3 Where the Bureau has set prior review thresholds, no funds shall be disbursed from the Treasury/Federation Account/ or any bank account of any procuring entity for any procurement falling above the set thresholds unless the cheque, warrant or other form of request for payment is accompanied by a "Certificate of 'No Objection' to Award of Contract" duly issued by the Bureau.

4.4 The Bureau of Public Procurement shall prescribe by regulation, guidelines and the conditions precedent to the award of Certificate of No Objection under the Public Procurement Act

4.5 Every procurement contract within the purview of the Public Procurement Act shall contain a clause stipulating that the non-issue by the Bureau of a “Certificate of ‘No Objection’ to Contract Award” (for prior review items) shall render the contract null and void.

4.6 All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision, and use of genuine materials and inputs in execution.

4.7 The values in procurement documents shall be stated in Nigerian currency and where stated in a foreign currency, shall be converted to Nigerian currency using the exchange rate of the Central Bank of Nigeria valid on the day of opening a tender or bid.

4.8 Four considerations guide these policies:

- (a) Ensuring economy and efficiency in project implementation including the procurement of goods, works and services;
- (b) Giving bidders a fair opportunity to compete in procurement;
- (c) Encouraging the development of domestic industries and consulting services;  
and
- (d) Providing for transparency in the procurement process.

## **Eligibility**

5.1 As a general rule, all suppliers, contractors and consultants are entitled to a fair opportunity to tender for provision of goods, works and services in public entities. However, a Public Procuring entity may exclude suppliers, contractors and consultants from tendering for procurement opportunities on the following basis:

- 5.1.1 If there is verifiable evidence that any supplier, contractor or service provider has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, any item or a service that

can be quantified in monetary terms to a current or former employee of a procuring entity or the Bureau, in an attempt to influence any action, decision making or the further course of any procurement activity;

- 5.1.2 Being a supplier, contractor or service provider during the last three years prior to the commencement of the procurement proceeding in issue, failed to perform or to provide due care in performance of any public procurement ;
- 5.1.3 If the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromises with their creditors within two calendar years prior to the initiation of the procurement proceeding;
- 5.1.4 If the bidder is in arrears regarding payment of due taxes, charges, pensions or social insurance contributions, unless such bidders have obtained a lawful permit with respect to allowance, deference of such outstanding payments or payment thereof in installments,
- 5.1.5 If the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;
- 5.1.6 If the bidder has in its management or is in any portion owned by any person that has been validly sentenced for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit;
- 5.1.7 If the bidder has been blacklisted/debarred from participating in public procurement activity.
- 5.1.8 If the bidder fails to submit a statement regarding it's dominating or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or who remain in subordinate relationship with other participants to the proceedings.
- 5.1.9 An individual or a firm or its affiliates provided consulting services for the preparation and implementation of a project, and in order to prevent a conflict of interest, they and their affiliates are disqualified from subsequently providing goods and works for the same project.

5.1.10 Firms or individuals who have been debarred by the Procuring Entity/the Bureau for having been engaged in fraudulent or corrupt practices.

### ***Public Procurement Act – Section 16***

#### **Roles and Responsibilities in Procurement**

6.1 Every public procuring entity shall have the ultimate responsibility for all aspects of procurement planning and implementation. The Bureau of Public Procurement exercises its fiduciary and developmental responsibilities with respect to procurement by:

- Certifying all prior review Federal-wide procurement prior to the award of contracts;
- Supervising the implementation of established procurement policies;
- Undertaking procurement research and surveys;
- Organizing relevant training and development of procurement professionals;
- Coordinating relevant training programs to build institutional capacity;
- Introducing, developing, updating, and maintaining related database and technology;
- Performing procurement audits; monitoring and field inspection of on going projects and
- Applying administrative sanctions where necessary

### ***Public Procurement Act – Section 16,17***

6.2 The Chief Executive of a government agency, parastatal or corporation or the Permanent Secretary or Accounting Officer in the case of a ministry or extra-ministerial entity has an obligation to commit adequate procurement resources for the proper performance of their respective responsibilities. Subject to the monetary and prior review thresholds for procurements, the Parastatal Tenders' Board of a government agency, parastatal, or corporation or in the case of a ministry or extra-ministerial entity, the Ministerial Tenders' Board shall be the Approving Authority for the conduct of public procurement.

## ***Public Procurement Act – Section 17***

### **Notice Board**

7.1 A Notice Board, located in a public area must be maintained for the public posting of procurement notices and solicitations. The following actions are posted on the Notice Board:

- Requests for Proposals (RFPs) - RFPs must also be advertised in at least two National newspapers of general circulation – *and the Federal Tender's Journal*.
- Invitations for Bids (IFB),
- Single source determinations, and
- Emergency determinations.

7.2 If the procuring entity maintains an internet web site, that web site should contain a page on which the above information is also posted.

### **Handling Request for Clarifications**

8.1 It shall be the responsibility of the respective procuring entity to provide any clarifications on prequalification or tendering documents within the stipulated time limit. Every procuring entity must respond to the communication from potential bidders and, if appropriate, send copies to others who purchased the tendering documents.

### **Transparency and Anti-Corruption Measures**

9.1 The Bureau of Public Procurement is committed to vigorously addressing instances of fraud, corruption, collusion and coercion in government financed contracts and to taking appropriate action whenever any contractor, consultant or staff member is found to have engaged in a fraudulent or corrupt practice.

The Bureau has introduced a Whistle Blowing Policy which will enable all stakeholders, contractors, civil society and the general public to report any observed and verifiable incidents of fraud, corruption, collusion and coercion in any government financed contracts. A Direct telephone Hotline has been established to which people can make confidential calls to lodge reports and a secure e-Mail account is also established to receive reports or information leads that can help the Bureau conduct necessary

investigations. These are available on the BPP Website [www.bpp.gov.ng](http://www.bpp.gov.ng). The identity of Whistle Blowers will be kept strictly confidential.

9.2 Procurement offences relating to public procurement are defined in Sections 58 and 59 of the Public Procurement Act.

## **SECTION 2 — INSTITUTIONS, PROCUREMENT COMMITTEES AND THEIR FUNCTIONS**

### **National Council on Public Procurement**

10.1 Objectives of the National Council on Public Procurement.

10.1.1 ~~The~~ Council shall consider, approve and amend the monetary and prior review thresholds for procuring entities to the Public Procurement Act applies.

10.1.2 ~~Consider~~ and approve policies on public procurement.

10.1.3 Approve the appointment of the Directors of the Public Procurement Bureau.

10.1.4 ~~Receive~~ and consider for approval the audited accounts of the Bureau of Public Procurement.

10.1.5 Approve changes in the procurement process to adapt to improvements in modern technology.

10.1.6 Give such other directives and perform such other functions as may be necessary to achieve the objectives of the Public Procurement Act.

### **The Bureau of Public Procurement**

11.1 The Bureau of Public Procurement (BPP) was established with the principal authority for:

11.1.1 Establishing general policies and guidelines relating to public sector procurement

11.1.2 Supervising procurement implementation as well as reviewing the procurement and award of contract procedures of every public entity,

including certifying all Federal wide procurement prior to, during, and after award of contracts.

11.1.3 Formulating and effecting amendments to the Procurement Guidelines; issuance of Procurement Manual, Standard Bidding Documents, Evaluation Methodologies, Standard Contracts, and Specifications.

11.1.4 Providing clarifications for any of the provisions of the Procurement Manual or the afore-mentioned documents.

## 11.2 Objectives of the Public Procurement Bureau

The Bureau of Public Procurement was established with the following objectives:

1121 To harmonize existing government policies and practices on public procurement by streamlining the government procurement system and standardizing the same to be of equal application to all public sector entities.

1122 To ensure better transparency and good governance in relation to government procurement awards.

1123 To promote application of fair and competitive standards and practices, by ensuring that all parties who are eligible and desirous of participating in public bidding are given an equal opportunity.

1124 To ensure that the government will get the best value for money in terms of price, quality and timely delivery of procurement.

1125 To ensure that the government procurement system is made efficient and simplified in order to promote development needs of the country.

1126 To put in place a monitoring system in relation to selection of successful bidders and award of government tenders.

## 11.3 Key Functions of the Bureau of Public Procurement.

11.3.1 Formulate the general policies and guidelines relating to public sector procurement of goods, works and services for the approval of the National Council on Public Procurement.

- 11.3.2 Subject to thresholds as may be set by the Council, certify Federal procurement prior to the award of contracts within the prior review thresholds for all procurements under the Public Procurement Act.
- 11.3.3 Supervise the implementation of established procurement policies.
- 11.3.4 Monitor the prices of tendered items and keep a national database of standard prices.
- 11.3.5 Publish the details of major contracts in the procurement journal.
- 11.3.6 Maintain a national database of the particulars and classifications and categorization of federal contractors and service providers.
- 11.3.7 Collate and maintain in an archival system, all federal procurement plans and information.
- 11.3.8 Undertake procurement research and surveys.
- 11.3.9 Organize procurement training and development programs for procurement professionals.
- 11.3.10 Coordinate relevant training programs to build institutional capacity.
- 11.3.11 Prepare and update Standard Bidding and Contract Documents.
- 11.3.12 Prevent fraudulent and unfair procurement and where necessary apply administrative sanctions.
- 11.3.13 Review the procurement and award of contract procedures of every public sector entity to which the Public Procurement Act applies.
- 11.3.14 Perform procurement audits and submit such report to the National Assembly bi-annually.
- 11.3.15 Introduce, develop, update, and maintain related database and technology.
- 11.3.16 Periodically reviews the socio-economic effect of the policies on procurement and advice the National Council on Public Procurement accordingly.

11.3.17 From time to time, stipulate to all procuring entities, the procedures and documentation pre-requisite for the issuance of “Certificate of No Objection” under the Public Procurement Act.

## **Ministerial or Parastatal Tenders’ Board**

### ***Public Procurement Act - Section 17***

#### **12.1 Composition of the Tenders’ Board.**

12.1.1 The Accounting Officer, that is, the Permanent Secretary, in the case of Ministries and the Director General or CEO in the case of Extra-Ministerial Departments and Corporations shall appoint the Ministerial Tenders’ Board (for Ministries) or the Parastatal Tenders’ Board (Extra Ministerial Departments and Corporations) to handle procurement actions.

12.1.2 The Ministerial Tenders’ Board (for individual Ministry) and the Parastatal Tenders’ Board (for each Extra-Ministerial Department or Agency) shall be the approving authority for the conduct of public procurement for their respective entities.

12.1.3 Subject to the approval of the National Council on Public Procurement, the Bureau of Public Procurement shall, from time to time, prescribe guidelines for the membership of the Tenders’ Board. However, best practice principle is to have the membership limited to five as follows:

- (i) The Accounting Officer i.e. Permanent Secretary or the Director General or CEO shall be the Chairperson.
- (ii) Other Heads of Department within the Ministry or the Parastatal,
- (iii) The Procurement Director of the Procuring Entity or his Representative shall be the Secretary to the Tenders’ Board. If the Procurement Director or his Representative is unavailable, a senior officer from the Ministry or Parastatal, not below the rank of an Assistant Director (or equivalent) may serve as the non member Secretary.

(iv)

Each permanent member on the Tender’s Board shall have an Alternate member to ensure business continuity in the absence of any of the permanent members.

## 12.2 Functions of the Tenders' Board

The Tenders Board is primarily responsible to ensure that all contracting and procurement processes are executed in accordance with

- i) good commercial practice
- ii) BPP's Policies and Statements of Business Principles
- iii) The Public Procurement Act 2007 and
- iv) This Procurement Procedures Manual

### Quorum

A Quorum for a meeting to consider submissions shall be the Chairperson or his/her Alternate and two other members; one of whom must be from the procurement unit. However where the Chairperson of a Tender Board is unavailable, the substantive member from the Procurement unit must be present to form a Quorum

All meetings shall be held in the presence of the Secretary or his/her Alternate

### Resolution

Resolution will generally be achieved by consensus rather than majority vote. Where further clarification of issues raised is required, particularly where they are in contention, presentation or submission of a Note of explanation/additional information shall be necessary.

1221 The Tenders' Board shall be responsible for the award of procurements of goods, works, and services within the stipulated thresholds as contained in the procurement regulations from time to time.

1222 Where there is a need for pre-qualification, the Chairperson of the Tenders' Board shall constitute a Technical Evaluation Subcommittee of the Tenders' Board.

1223 The decisions of the Tenders' Board is final and shall be communicated to the Minister for information

## **Technical Evaluation Subcommittee of the Tenders' Board**

13.1 The Chairperson of the Tenders' Board shall constitute a Technical Evaluation Subcommittee with the responsibility for the evaluation of bids and assisting with prequalification, where necessary.

13.2 The Technical Evaluation Subcommittee of the Tenders' Board shall be made up of relevant qualified and experienced professional staff of the Procuring entity. However, the user department, subject matter expert and procurement officer shall be members of the subcommittee.

13.3 The Secretary of the Tenders Board shall be the Chairperson of the Technical Evaluation Subcommittee.

### **Ministry or Parastatal Procurement Planning Committees (MPPC/PPPC) *Public Procurement Act - Section 18, 21***

14.1 The Accounting Officer i.e. Permanent Secretary (for Ministries) or the Director General or CEO (for Parastatals) shall appoint the Procurement Planning Committee for each financial year to carry out procurement planning functions. The composition of the Procurement Planning Committee is given below:

14.2 The membership of the Procurement Planning Committee shall be as follows:

- (i) The Accounting Officer i.e. Permanent Secretary (for Ministry)/Director General or CEO (for Parastatal) of the Procuring Entity or his or her representative, who shall be the Chairperson;
- (ii) A representative of:
  - The Unit directly in requirement of the procurement,
  - The Financial unit of the Procuring Entity,
  - The Planning, Research and Statistics unit of the Procuring Entity,
  - Technical personnel of the Procuring Entity with expertise in the subject matter for each particular procurement,
  - The Legal unit of the Procuring Entity, and
  - The Procurement unit of the Ministry/Parastatal, who shall be the Secretary.

### 14.3 Functions of the Procurement Planning Committee.

14.3.1 The Procurement Planning Committee shall be responsible for:

- (i) Preparing the needs assessment and evaluation of the Procuring Entity;
- (ii) Identifying the goods, works, and services required;
- (iii) Carrying out appropriate market and statistical surveys in conjunction with the Department of Planning, Research and Statistics (where available);
- (iv) Preparing an analysis of the cost implications of the proposed procurement;
- (v) Aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (vi) Integrating the Ministry's/Parastatal's procurement expenditure into the yearly budget;
- (vii) Prescribing appropriate method for effecting the procurement and securing necessary Approval for its implementation.

## **The Procurement Unit or Department**

15.1 The Accounting Officer i.e. Permanent Secretary (for Ministries) or the Director General or CEO (for Parastatals) shall set up a Procurement Department for the purpose of implementing its procurement plans.

### 15.2 Functions of the Procurement Unit or Department.

15.2.1 The Procurement Department shall:

- (a) Advertise and solicit for bids in compliance with guidelines issued by the Bureau from time to time.

(b) Receive and maintain appropriate documentation for bids received, examine bids received, obtain a “Certificate of ‘No Objection’ to Contract Award” from the Bureau of Public Procurement, and make submissions to the entity’s Tenders’ Board.

(c) Debrief the bid losers on request.

(d) Resolve complaints and disputes, if any.

(e) Obtain and confirm the validity of any performance guarantee.

(f) Announce and publicize Contract Awards.

(g) Execute all Contract Agreements.

(c

### **The Technical & Financial Evaluation Sub Committees**

16. Upon completion of the evaluation process, the Tender Evaluation Sub Committee prepares a tender evaluation report setting out the process by which it evaluated the tenders, to be submitted to the Tenders’ Board for approval. A Standard Tender Evaluation Report covers among other things:

- Key dates and steps in the tendering process;
  - Technical evaluations if any
- Tender prices, corrections, and discounts;
- Additions, adjustments and price deviations;
- ;
- Post qualification results;
- Names of bidders rejected and reasons for rejection of tenders; and
- The proposed contract award.

## **Communication with Bidders**

17. At no stage shall the composition, names or any other details of any of the above Committee members be divulged to the bidders. Other than when direct negotiations are required with the bidders, members of the above named Committees shall not communicate directly with the bidders. All such communications shall be done through the Procuring Entity.

### **Section 32 (8)**

After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to bidders or to persons not officially concerned with the evaluation process until the successful bidder is notified of the award.

## **SECTION 3 — ORGANISATION OF THE PROCUREMENT FUNCTION *PPA Section 20(2)***

18. Chief Executive or Permanent Secretary shall have overall responsibility for control and coordination of procurement process under a public procuring entity.

19.

20. A prior no-objection to award of contracts shall be required from the Bureau of Public Procurement for all prior review public procurements.

### ***PPA Section 5(p)***

21. The Bureau shall carry out procurement reviews of public entities procurement activities on a periodic basis.

21.1 The Bureau shall perform procurement audits on post review items and submit such report to the National Assembly bi-annually.

### ***Public Procurement Act – Section 17***

21.2 Subject to the monetary and prior review thresholds for procurements, the Parastatal Tenders' Board of a government agency, parastatal, or corporation or in the case of a ministry or extra-ministerial entity, the Ministerial Tenders' Board shall be the Approving Authority for the conduct of public procurement. Tender Board decision is final.

## **Budgeting / Annual Procurement Plan**

23.1 Planning of Project expenditures (budgeting) is a critical aspect in Financial Management and Procurement. Budgeting should be based upon the following stages:

23.2 The procuring entity, with the support of the procurement department, the procurement planning committee, and the finance team shall prepare the annual procurement plan with the corresponding Budget for each financial year. The Plan shall show the short description of the estimated procurement, value, time schedule, method of procurement, packages/lots, approving authorities based on BPP thresholds etc

***Public Procurement Act – Section 5(i)***

23.3 The Accounting Officer (Permanent Secretary/Chief Executive) shall submit the Procurement Plan and the related Budget for the year to the Bureau for review and retention. Changes to the procurement plan shall be accordingly notified to the Bureau prior to initiation of the procurement process.

**Procurement Monitoring and Evaluation**

24. The Procurement Unit shall establish a system to continuously monitor all procurement and financial information related to procurement implementation. The monitoring should provide information on procurement implementation at all levels. Procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year and copies of all procurement records shall be transmitted to the Bureau of Public Procurement not later than 3 months after the end of the financial year, and shall show: ***(Public Procurement Act - Section 16 (13))***

- Information identifying the procuring entity and the contractors;
- The date of the contract award;
- The value of the contract; and
- The detailed records of the procurement proceedings.

***Public Procurement Act – Section 16***

Procurement monitoring reports will be issued quarterly to ensure standards and procedures are being observed.

**Record Keeping**

25. The availability and completeness of procurement records is critical. In addition to overall data on numbers, types, values and dates of contracts awarded and names of awardees, procuring entities should maintain for all contracts, a record which includes, inter alia:

- Public notices of tendering opportunities
- Tendering documents and addenda
  - Tender clarifications if any
- Tender opening information
- Tender evaluation reports
- Formal appeals by bidders and outcomes
- Signed contract documents and addenda and amendments
- Records of claims and dispute resolutions
- Record of time taken to complete key steps in the process
- Comprehensive disbursements data in relation to payments

## **Staffing**

26. The quality and sufficiency of staff in the unit are essential to good procurement administration. Each procuring entity will ensure it has sufficient qualified staff available to carry out the normal procurement tasks assigned to them and regular assessment will be carried out to determine the extent of assistance required in the form of training, additional staff or recruiting consultants or procurement agents.

## **Revisions to the Procurement Manual**

27.1 Users of this manual are encouraged to recommend revisions by:

- Contacting:

The Director General  
Bureau of Public Procurement  
11 Suleiman Barau Crescent  
Three Arms Zone  
Asokoro, Abuja.

- Providing chapter, page and recommended change.

27.2 Consecutively numbered update bulletins will be issued to effect changes to this Manual after due consideration and approval by the National Council on Public Procurement. The bulletins will:

- Give instructions for the insertion and removal of pages,
- State the purpose of the new or revised material and
- Specify any policies or procedures which have been superseded.

### **Quick Reference**

**28.** This Manual provides a quick reference to questions that must be answered in making Procurement, such as:

- Are these goods or services exempt from the requirement of competition?
- How can qualified vendors be located?
- Which competitive procurement method should be used?
- How are adequate specifications written?
- How is a procurement solicitation constructed?
- How should bids or proposals be evaluated?
- What about contract administration?
- What can the Procuring Entity do if a vendor does not perform?
- What are the consequences for a vendor who fails to perform?
- What remedies do vendors have in contractual disputes?
- What are the ethical questions that must be considered in procurement? Etc.

## **SECTION 4 — PROCUREMENT PLANNING**

## **Strategic Considerations**

29.1 Procurement planning is much more than just choosing which procurement methods to use for various goods, works and services contracts and when to schedule activities. These are important parts of planning but are closer to the end of the process than the beginning. Before reaching this stage, a number of more fundamental decisions should have been made first. The starting question is: Does the entity really Need this activity ( proper needs assessment and evaluation) and if yes, what are the most effective and efficient procurement arrangements for achieving entity's objectives?

29.2 This section covers these subjects in the general order in which they need to be addressed in procurement planning. It will soon become evident to a planner, however, that this is not a linear process but rather an iterative procedure that should explore various options. Quite different levels of planning details will be appropriate for different situations: a specific infrastructure investment; a social sector project; etc.

29.3 Whatever the situation or the effort and detail that go into the procurement planning, the results must be reviewed and updated throughout the life of a capital project. Estimates of time requirements, assumptions about institutional capacity, changing priorities and other factors will require plan adjustments. The need for changes does not invalidate the plan; it simply emphasizes that planning is a dynamic process rather than a static picture.

## **Procurement Planning Committee**

30.1 For each financial year, every procuring entity shall establish a Procurement Planning Committee comprising of:

- The Accounting Officer of the procuring entity or his/her representative who shall chair the committee;
- A representative of the procurement function of the procuring entity who shall be the secretary;
- A representative of the unit directly in requirement of the procurement;
- A representative of the financial function of the procuring entity;

- A representative of the planning, research and statistics function of the procuring entity;
- A representative of the legal function of the procuring entity; and
- Technical personnel of the procuring entity with expertise in the subject matter for each particular procurement.

## ***Public Procurement Act – Section 21***

### **Preparing the Plan**

**31.1** Procurement planning may take either of two fundamentally different approaches, depending on whether it is for a specific investment project or one of consolidating the various project or department plans into one single plan for a Ministry, Parastatal or Agency.. Regardless of which type of project, it is essential to develop a plan that clearly sets out the framework in which procurement will be executed.

**31.2** The conventional approach for specific investment projects is to start by compiling a list of all known goods, works and services needed to achieve the set objectives. This list then becomes the basis for deciding how these items should be combined or divided into contract packages, what method of procurement should be used for each, and the scheduling for procurement activities. Even this seemingly straight forward preparation of the list of needs already implies a strategic decision about how procurement and contracting will be executed.

### **The Procurement Planning Software**

The Bureau of Public Procurement (BPP) has developed and commissioned a web-based procurement planning software based on the need to achieve one of its functions stipulated in Section 5(i) of the Public procurement Act, 2007 and to ensure that procurement plans submitted by MDAs contain the right information and in the approved format.

The Procurement Planning Software automates the preparation and submission of procurement plans to the Bureau.

The system offers the following:

- As a Web-based Planning Software, users who have internet connection can access it from anywhere at any time.
- It has eliminated the difficulties associated with the collation of procurement items from units/departments within an MDA

- It minimizes embarrassing data entry errors
- The Software guides the officers through the procurement planning process (in its sequential order)
- It guides officers in the selection of appropriate Procurement Methods and Approval Authority based on estimated Contract amount and the Approval threshold.
- It eliminates selection of over-lapping dates and non-working days in the planning process, hence realistic time lines in the procurement plan.
- At the click of a button, it generates Report which contains the entire Procurement Plan for a Procuring entity in the acceptable format.

**How to access the Procurement Planning Software**

The software authenticates a user before s/he can use it to create and submit a procurement plan of their MDA to the Bureau.

- (A) Consequently, procuring entities are required to write officially to the Bureau forwarding the names of at least five (5) Users for whom access will be granted to create and submit the MDA’s procurement plan using the Procurement Planning Software. The required details of the User should be forwarded in the format below;

Surname	First Name	e-mail address	Mobile number	Designation

- (B) Within 48 hours of submission, the Bureau will create profile for the users and register them on the software accordingly.
- (C) The details about the “Login ID” which is the User name for the system, the “Password” and how to log in will then be sent to the User’s e-mail box as indicated in the request letter.
- (D) The following steps will act as a guide to all users on how to gain access into the procurement management system:

**Step ONE**

The registered User can access the Procurement Planning Software from BPP website <http://www.bpp.gov.ng/> then click ‘*Procurement Management System (PMS)*’ This will take you to a log-in page of the software.

### **Step TWO**

After entering your ***Login ID*** and the ***Password***, Click on the ***SIGN IN*** button and the system will take you to the Welcome page of the Software.

### **Step THREE**

The procurement planning tool is a module in the Bureau’s software called Procurement Management Software. PMS is built to handle every part of the procurement process and the entire system consists of six modules. However, users are to focus on the **Procurement Planning Module (PPM)** which is presently the only module that is highlighted on the welcome page of the PMS. Then Click on the **Procurement Planning Module** to start the planning process.

### **Step FOUR**

On the Procurement Planning Module page, Click on the “+ **New Procurement Plan**” to start the process of creating the Procurement Plan.

31.3 The Procurement Planning Committee shall have the responsibility for planning the procuring entity’s procurement as follows:

- (i) Prepare the list of all known goods, works and services needed to achieve the set goals for the Procuring Entity;
- (ii) Evaluate the list and divide into contract packaging;
- (iii) Carry out appropriate market and statistical survey;
- (iv) Prepare an analysis of the cost implications of the proposed procurement;
- (v) Aggregate the procurement requirements both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (vi) Prescribe appropriate method for effecting procurement subject to the necessary approval of the Procurement Planning Committee;
- (vii) Integrate procurement expenditure into the entity’s yearly budget;

- (viii) Ensure that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method; and
- (ix) Ensure that adequate appropriation is provided specifically for the procurement in the Federal budget.
- (x) upload the procurement plan on the BPP web portal using the approved planning software/tool

### ***Public Procurement Act – Section 18***

31.4 In addition to the above, the Procurement Planning Committee shall have responsibilities for:

- Prescribing any method for effecting the procurement subject to necessary approval;
- Developing the tender;
- Advertising or soliciting for bids in accordance to established procedures and guidelines; and
- Receiving and preparing for evaluation any bids received in response to solicitations.

### ***Public Procurement Act – Sections 19***

#### **Procurement Scheduling**

**32.** One of the considerations in choosing contract packaging is the timing when goods or services are needed. After preliminary packaging plans have been formulated and, by implication, the method of procurement to be used for each is tentatively determined by the nature and size of the packages, it is necessary to verify that these combinations will permit the goods or services to be delivered at the times they are needed. The best way to check this is to work backwards from the desired date of delivery to determine whether sufficient time is available to carry out the necessary procurement steps for each element.

#### **Procurement Time Requirements**

33. Each method of procurement involves different steps and/or different time requirements. The following table gives typical ranges of time needed for the most common methods, from the time the procurement process is started until a winner is selected and a contract signed.

***Table 1 - Procurement Time Requirements***

<i>Procurement Method</i>	<i>Suitable Applications</i>	<i>Approximate/ Indicative Range of Times for Each Method</i>
<b>International Competitive Bidding (ICB)</b>	<ul style="list-style-type: none"> <li>• Preferred method of Procurement, for large contracts for goods, works and related services.</li> <li>• There is an interest by foreign suppliers or contractors in supplying the required goods or works.</li> <li>• The requirements for procurement are widely available, and</li> <li>• Although efficiency is important, there is no specific urgency in processing the procurement.</li> </ul>	<ul style="list-style-type: none"> <li>• ICB for works with prequalification needs: 9-12 months</li> <li>• ICB for works without prequalification needs: 5-7 months</li> <li>• ICB for goods: 5-7 months</li> </ul>
<b>Limited International Bidding</b>	<ul style="list-style-type: none"> <li>• There are only a few known suppliers. Best practice is for all eligible suppliers to be invited to bid.</li> <li>• Small amounts of money are involved E.g. in procurement of a small number of vehicles or machine tools; or</li> <li>• Exceptional reasons such as emergency actions related to a major natural disaster, which may justify the waiving of advertising of competitive bids.</li> </ul>	<ul style="list-style-type: none"> <li>• LIB goods: 4-6 months</li> </ul>

**National  
Competitive  
Bidding  
(NCB)**

- The capability and competitiveness of local bidders make it unattractive for foreign bidders to compete for contracts below a certain value;
- In the case of works, they are spread geographically over time in a manner that upsets the economies of scale; and
- The goods or works are available locally at prices significantly below those in the international markets.

NCB goods:  
4-6 months

**Direct  
Contracting**

- Where extension of an existing contract is necessary as works are already underway;
- Similar goods as those purchased under an existing contract is required (subject to reasonableness of price and where no benefit can be gained from competition);
- Standardization of equipment and spare parts of compatibility with existing equipment is required;
- Equipment required is proprietary and there is only one source and no alternative equipment or products with equivalent performance characteristics are available;
- Critical components or materials from a particular supplier are required by the contractor responsible for a process design as a condition for the guarantee for performance; or
- Direct contracting is also used where, in exceptional cases, early delivery of essential goods is needed in emergency operations.

Direct contracting:  
1-3 months

**National**

<b>Shopping</b>	<ul style="list-style-type: none"> <li>• Goods required are readily available off-the-shelf goods or standard commodities in quantities of small value;</li> <li>• In some cases, small simple works for E.g. for essential repairs to restore a basic industry or service, or other reconstruction work after natural disasters where delays may result in greater damage and loss of life or property; desired goods are ordinarily available from more than one source in the country.</li> </ul>	Shopping goods: 1-2 months
<b>Force Account (Direct Labour)</b>	<ul style="list-style-type: none"> <li>• The procuring entity has ascertained that a schedule of rates, cost - plus or target contract would not be feasible, as quantities of work to be carried out cannot be defined in advance;</li> <li>• Works are small and scattered or in remote locations with no local contractors and demobilization costs for outside contractors would be too high;</li> <li>• Works must be carried out without disrupting existing operations;</li> <li>• The risk of unavoidable work interruptions is better borne by procuring entity than by a contractor;</li> <li>• No contractor is interested in conducting the work at a reasonable price;</li> <li>• It has been demonstrated that Force Account (Direct Labour) is the only practical method for constructing and maintaining works under special circumstances; or</li> <li>• Where national security would be compromised if any other method was used.</li> </ul>	Force account: 1-3 months

33.2 In some cases, it may be possible to modify certain contract packages and procurement methods and shorten the time needed until delivery in order to meet desired schedules, provided that the modified approach is still consistent with the procedures

required and the types of approaches permitted under the Act. In other cases, it will have to be recognized that no other approach is permissible for that particular procurement need and that the time required cannot be shortened by changing packaging or procurement methods. An appropriate solution to bring forward the date of delivery or completion of a contract is by starting the procurement process earlier.

### **Procurement Plan Presentation**

**34.** A Procurement Plan shall be developed for each Procuring Entity based on its procurement requirements and will contain, to the extent possible, proposed procurement arrangements for all the main components, including the overall procurement strategy, methods of selection and timing sequence for the major contracts.

## **SECTION 5 — PROCUREMENT IMPLEMENTATION**

### **Advertising and Notification of Procurement Opportunities**

**35.** Timely appropriate notification of procurement opportunities for goods, works and consulting services is essential for economic and efficient project execution, and is the basis for eliciting maximum competition with fair opportunities for all potential bidders.

### ***Public Procurement Act – Section 19***

#### **General Procurement Notice**

**36.1** The General Procurement Notice (GPN) contains advance information on the major procurement packages being considered or approved for funding by the procuring entity. The information is intended to alert suppliers and contractors of NCB and ICB procurement and consultants of upcoming opportunities. The information to be included in the GPN includes:

- The name of the procuring entity;
- Description of the entity's program of activity;
- The scope of procurement under NCB and ICB and consulting assignments (i.e. technical services) estimated to cost US\$ ——— equivalent or more; and
- If known, the schedule dates for availability of the tendering documents or, as appropriate, the prequalification documents.

## **Specific Procurement Notice**

37.1 A Specific Procurement Notice (SPN), for each of the major procurement packages in the procurement plan should also be issued. SPNs are issued either as a public Invitation for Prequalification, or in the absence of pre-qualification, as an Invitation for Tenders. It is recommended in practice that the invitation also be incorporated in the front of the prequalification or tender documents as appropriate for reference purposes. SPNs should provide adequate notification of specific contract opportunities or Invitation for Tenders (IFT) by a procuring entity regardless of what procurement method is used.

38.2 The SPN should be issued in the following way:

- As an advertisement in at least two national newspapers and the Federal tenders Journal;
- By an announcement in the government official gazette
  - By placement on the procuring entities website

If there has been prequalification, the procuring entity sends the Invitation for Tender (IFT) and tendering documents only to the pre-qualified potential bidders, with notification of their successful prequalification. No additional notices or any advertising for tendering are required or should be issued under these circumstances.

38.3 The SPN contains information concerning:

- The name of the procuring entity;
- The name or nature of the contract;
- Items to be procured;
- Contact information for obtaining tendering documents;
- Cost of the tendering documents;
- Place and deadline for tender submission;
- Required Bid security amount and format;

- The place, date and time of tender opening; and
- The minimum qualifications that bidders must meet. An invitation for prequalification includes similar information including the place and deadline for submission of the application to pre-qualify.

### **Requests for Expressions of Interest**

**38.** A Request for Expression of Interest (REOI) should also be published in at least two national newspapers. Interested consultants should be requested to provide the minimum information required to make a judgment on the firm's suitability for being short-listed. Sufficient time (not less than 14 days) shall be provided for responses before preparation of the short list.

### **Other Notifications**

**39.** The procuring entity may also use other means of publishing information on tendering opportunities including on any procurement websites or other electronic media.

### **Prequalification of Bidders**

**40.1** Best practice is that the procurement plan usually specifies whether prequalification is required and for which categories of contracts. Prequalification is common for large works, civil works, turnkey plants, Build Operate & Transfer, some special goods and complex information technology systems. However, prequalification is not generally needed for vehicles, PC supply and ordinary goods.

### ***Public Procurement Act Section 23***

**40.2** Where a procuring entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the prequalification documents and no more.

**40.3** Procuring entities shall supply a set of prequalification documents to each supplier, contractor or service provider that requests them; and the price that a procuring entity **may** charge for the prequalification documents shall reflect only the cost of printing and provision to suppliers or contractors and service providers.

**40.4** The prequalification documents shall include:

- Instructions to prepare and submit prequalification applications;

- A summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
- Any documentary evidence or other information that must be submitted by suppliers, contractors or service providers to demonstrate their qualifications;
- The manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or service providers to prepare and submit their applications, taking into account the reasonable needs of the procuring entity; and
- Any other requirement that may be established by the procuring entity in conformity with this Act and procurement regulations relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.

### ***Public Procurement Act – Section 23***

40.5 The procurement entity shall respond to any request by a supplier, contractor or service provider for clarification of the prequalification documents if the request is made at least ten days before the deadline for the submission of applications to pre-qualify.

40.6 The response by the procuring entity shall be given within a reasonable time and in any event within a period of at most seven working days so as to enable the supplier, contractor or service provider to make a timely submission of its application to pre-qualify. The response to any request that might reasonably be expected to be of interest to one supplier, contractor or service provider shall, without identifying the source of the request, be communicated to all other suppliers or contractors or service providers provided with the prequalification documents by the procuring entity.

40.7 A procuring entity shall promptly notify each supplier, contractor or service provider which submitted an application to pre-qualify of whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the suppliers, contractors or service providers who have been pre-qualified.

40.8 Suppliers, contractors or service providers who have been pre-qualified **may** participate further in the procurement proceedings. The procuring entity shall upon request communicate to suppliers, contractors or service providers who have not been

pre-qualified, the grounds for disqualification but the procuring entity is not required to specify the evidence or give the reasons for its findings.

### **Post Qualification of Bidders**

40.9 The procuring entity may require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or service provider.

40.10 The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so. The procuring entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or service provider has done so to the satisfaction of the procuring entity.

### **Invitations to Bid**

41.1 Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under either system.

41.2 Every invitation to an Open Competitive Bid shall:

In the case of goods and works under International Competitive Bidding be advertised in at least two national newspapers, the relevant internationally recognized newspapers, any official websites of the procuring entity and the Bureau as well as the tenders journal not less than six weeks before the deadline for submission of the bids for the goods and works ;

41.3 In the case of goods and works valued under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, any official websites of the procuring entity, at least two national newspapers, and in the tenders journal not less than six weeks before the deadline for submission of the bids for the goods and works

### ***Public Procurement Act – Section 25***

41.4 Every advert of an invitation to an Open Competitive Bid shall include:

- The name and address of the procuring entity;

- The nature, quantity, category and place of delivery of goods to be procured or the nature, category, and location of the works to be procured;
- A statement that submissions must be made only in the English language;
- The deadline for delivering or performing the procurement;
- Information about the requirements to be met by suppliers and contractors;
- A statement of the application of domestic preferences if any;
- The instructions for obtaining the documents containing the specifications of the essential provisions of the procurement and the price, if any, for these documents;
- The place and deadline for the submission of the bids;
- The place, date and time for the opening of the bids.

41.5 If the procuring entity had previously conducted pre-qualification for the procurement in question, the tender documents shall be issued only to those suppliers and contractors who had been pre-qualified and paid the necessary fee for the tender documents.

41.6 The price to be stipulated for any tender documents must not exceed the reasonable cost of printing, compilation and delivery of the documents plus a commensurate administrative fee.

41.7 Any person may after collecting the tender documents, request for clarifications of matters contained in the tender documents. All such requests for clarifications shall be in writing addressed to the procuring entity no later than 10 days before the deadline for the submission of the bids.

41.8 The response by the procuring entity shall provide a written response within a reasonable time and in any event not later than 7 working days before the deadline for submission of bids so as to enable the supplier or contractor to make a timely submission of its bid.

41.9 The response to any requests for clarifications shall, without identifying the source of the request, be copied to all other prospective suppliers and contractors who had paid for and collected the tender documents.

41.10 At any time before the deadline for submission of bids, the procuring entity may modify the tender documents by issuing an addendum either in response to a request for clarification or for any other reason. The addendum shall be sent in writing to all prospective suppliers and contractors who had obtained the tender documents.

41.11 A procuring entity if it finds it expedient so to do may convene a pre-tender conference for the suppliers and contractors in order to clarify all matters pertaining to the tender documents. All requests for clarifications and the responses provided during the conference shall be recorded in the minutes of the meeting without identifying the source of the requests and the minutes shall be distributed to all prospective suppliers and contractors who had obtained the tender documents.

41.12 In all such cases where addendums have been issued, the procuring entity shall be obliged to extend the deadline by such a length of time as would be reasonable to allow the suppliers and contractors to consider the clarifications and, or addendums to the tender documents and make the appropriate inputs to their bids. Notice of the extension shall be promptly dispatched to every supplier or contractor who had obtained the bid documents.

## **Submission of Bids**

42.1 All bids in response to an invitation to Open Competitive Bidding shall be submitted in writing and, or any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in a SEALED envelope.

- All submitted bids shall be deposited in a secured tamper-proof bid-box.
- All bids must be in English language.
- The procuring entity shall issue a receipt showing the date and time the bid was delivered and record same in a Bids Return register.
- Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or the contractor which submitted it.

- All bids submitted shall be securely kept in a tamper-proof bid-box.
- No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than for the purpose of providing additional clarifications

***Public Procurement Act – Section 28 Rejection of Bids***

43.1 A procuring entity may:

- Reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders,
- The rejection of all Bidders requires prior approval of the BPP
- Cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

43.2 Bidding documents usually carry provision for the rejection of all bids received. However, rejection of all bids shall be done only under exceptional circumstances and can be justified when there is lack of effective competition; or no substantially responsive bid received; inadequate competition; all bid prices were unreasonably high and substantially above the Procuring Entity’s budget provision; bidding documents found to be defective; or the requirements of the Procuring Entity has changed. However, if following competitive bidding only one bid has been received and the bid is of good quality, meets the requirements of the bidding 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.

***Public Procurement Act – Section 29***

**Validity Period for Bids; Modification and Withdrawal of Tenders**

44.1 The period of validity for a bid shall be the period specified in the tender documents. A procuring entity may request suppliers or contractors to extend the period of validity for an additional specified period of time. A supplier or contractor may refuse the request and the effectiveness of its bid will terminate upon the expiry of the un-extended period of effectiveness.

44.2 A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids. The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.

### ***Public Procurement Act – Section 19***

#### **Bid Opening**

45.1 All bids shall be submitted before or by the deadline or date specified in the tender documents or any extension of the deadline for submission and the procuring entity shall:

- Invite two credible persons as observers, one person each representing a recognized (i) private sector professional organization whose expertise is relevant to the particular goods or service being procured and (ii) non-governmental organization working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have the right to submit their observation report to the Bureau and any other relevant agency including their own organizations or associations.
- Permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
- cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public;
- ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof ;
- ensure that a register is taken of the names and addresses of all those present at the bid opening and the organizations they represent which is recorded by the Secretary of the tenders board ; and
- call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and ensure that these details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening.
- Ensure that relevant pages of financial bids are endorsed by all bidders present to avoid substitution of documents

## ***Public Procurement Act – Section 31***

### **Examination of Bids**

46.1 All bids shall be first examined to determine if they –

- Meet the minimum eligibility requirements stipulated in the bidding documents;
- Have been duly signed;
- Are substantially responsive to the bidding documents; and
- Are generally, otherwise, in order.

46.2 A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.

46.3 The following shall not be sought, offered or permitted –

- Changes in prices;
- Changes of substance in a bid; and
- Changes to make an unresponsive bid responsive.

46.4 Notwithstanding the above, the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders.

The bid price read out at bid opening shall be adjusted for any arithmetic 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.

46.5 The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender. If bidder does not agree with this notification, its bid shall be rejected.

A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification. The following shall be considered as major deviations:

With respect to clauses in an offer:

- Unacceptable sub-contracting;
- Unacceptable time schedule if time is of the essence;
- Unacceptable alternative design; and
- Unacceptable price adjustment.

With respect to the status of the bidder

- The fact that he is ineligible or not pre-qualified; and
- The fact that he is uninvited.

With respect to bid documents

- An unsigned bid;

With respect to time, date and location for submission

- Any bid received after the date and time for submission stipulated in the solicitation document; and
- Any bid submitted at the wrong location.

46.6 In cases of major deviations, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder. In all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.

46.7 On the contrary, the following shall be considered as minor deviations:

- The use of codes;
- The difference in standards;
- The difference in materials;
- Alternative design;

- Alternative workmanship;
- Modified liquidated damages;
- Omission in minor items;
- Discovery of arithmetical errors;
- Sub-contracting that is unclear and questionable;
- Different methods of construction;
- Difference in final delivery date;
- Difference in delivery schedule;
- Completion period where these are not of the essence;
- Non-compliance with some technical local regulation;
- Payment terms; and
- Any other condition that has little impact on the bid.

46.8 In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply –

- Where the impact on the costs is major, it shall be regarded as a major deviation; and
- Where the impact on the costs is minor, it shall be regarded as a minor deviation.

46.9 In cases of minor deviations, written clarification may be obtained from the supplier or contractor and, where applicable, an offer made for the correction of the minor deviation.

46.10 Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected. At the stage of evaluation and comparison, all minor

deviations shall be quantified in monetary terms. For the rejection of a bid, a written notice shall be given promptly to the supplier.

## **Bid Security**      *Public Procurement Act – Section 26*

47.1 Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau, all procurements valued in excess of the sums prescribed by the Bureau shall require a bid security in an amount not more than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity.

47.2 The Bureau shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.

47.3 When the procuring entity requires suppliers or contractors submitting tenders to provide a bid security:

- (a) The requirement shall apply to each supplier or contractor;
- (b) The bid security shall be submitted in exactly the same format attached in the Standard Bidding Documents or otherwise be rejected by the procuring entity;
- (c) Notwithstanding paragraph (b), a tender security shall not be rejected by the procuring entity on the grounds that the tender security was not issued by an issuer in the country, if the tender security and the issuer otherwise conform to requirements and format prescribed in the bidding documents;
- (d) A supplier or contractor may request the procuring entity to confirm the acceptability of a proposed issuer or a proposed confirmer of a tender security before submitting a tender and the procuring entity shall respond promptly to the request ;
- (e) Confirmation of the acceptability of a proposed issuer or of a proposed confirmer does not preclude the procuring entity from rejecting the tender security on the ground that the issuer or confirmer has become insolvent or is otherwise not creditworthy.

47.4 Any requirement on bid security that refers directly or indirectly to conduct by the supplier or contractor submitting the bid may only relate to:

- Withdrawal or modification of the bid after the deadline for submission of bids, or before the deadline if stipulated in the tender documents;
- Failure to sign the procurement contract if required by the procuring entity to do so;
- Failure to provide a required security for the performance of the contract after the bid has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the tender documents.

47.5 The procuring entity shall not make a claim to the amount of the bid security and shall promptly return or procure the return of the bid security document after whichever of the following occurs first:

- (i) The expiry of the tender security;
- (ii) The entry into force of a procurement contract and the provision of security for the performance of the contract, if the security is required by the tender documents;
- (iii) The termination of the procurement proceedings without the entry into force of a procurement contract; or
- (iv) The withdrawal of the bid prior to the deadline for the submission of bids.

## **Bid Evaluation**

### **48.1 Time Frame for Bid Evaluation & Extension of Bid Validity**

It is required to keep bids valid for a specific period to allow the Procuring Entity to examine and evaluate them, select the lowest evaluated responsive bid, obtain the necessary approvals from different authorities. Thus Bid evaluation shall be undertaken expeditiously, leaving ample time to seek all the requisite formal approvals. Hence bids shall be evaluated within the period specified in the agreed time schedule i.e. the Procurement Time Schedule. To enable the Procuring Entity to award the contract within such bid validity period after carrying out the other procedures, it is required that Technical Evaluation Committee should complete the evaluation report generally within 50 % of the bid validity period.

48.2 Where there is a delay in bid evaluation so that above requirement is unlikely to be achieved, the Procuring Entity with the concurrence of the respective Approval Authority shall request the bidders to extend the period of bid validity of their bids.

However, when such a request is made in the case of fixed-price bids, bidders have to choose between:

(i) Refusing to grant extension of bid validity of their bids: and

(ii) Absorbing any cost increases that might occur during such extensions (bidders are not allowed to increase their bid prices as a condition of extending the validity of their bids).

48.3 Due to the above reason a bidder who has submitted a low bid may refuse to extend their bid validity resulting additional cost to the Procuring Entity. Hence the extension of bid validity should be requested only under exceptional situation.

### **Bid Evaluation Stages**

49.1 Regardless of how well the other steps in the procurement process are conducted, if bids are not evaluated correctly and fairly, the process will fail. Unfortunately, bid evaluation is the step that is mostly manipulated if one wants to favor a particular bidder. Therefore it is required that Procurement Planning Committees and Technical Evaluation Sub Committees are familiar with and understand how it should be done and to know how to review and what to look for. Departures from the bidding documents are a common feature of the bids submitted by the bidders. A bid that complies fully with the requirements of the bidding document may be an extremely rare instant. What is important is how critically the departure will affect the outcome of the procurement. Hence during the bid evaluation, substantially responsive concept is used rather than following fully responsive bids.

49.2 Therefore main objective of bid evaluation is to determine the bid that will result in the lowest evaluated cost to be incurred by the Procuring Entity (PE) in accepting the bid, among the substantially responsive bids received from qualified bidders. All criteria to be used in the bid evaluation and the method of their application must be specified in the bidding documents. The bidding document must contain a statement on the manner in which the Procuring Entity proposes to evaluate the bids received. This statement must include:

(a) A listing of the factors other than the price which it proposes to consider; and

(b) An explanation of the method to be used in applying the evaluation factors. (Both for those factors susceptible to monetary adjustment and those to which other criteria must be applied).

49.3 The lack of clarity in statements on bid evaluation, or an incomplete statement, will leave bidders in doubt about the treatment on their bids by the Procuring Entity and has frequently been cause of uncertainty and disagreement during the evaluation of bids. All the criteria specified must be applied to the extent necessary and in the manner in accordance with the bidding documents. Evaluation factors not specified in the bidding document should not be used in bid evaluation. No information relating to bid evaluation shall be communicated, after the bid opening, to the bidders or any other person unless they are officially involved in the process until after the contract award recommendation is officially notified to the successful bidder. No information can be communicated to any bidder at any stage other than at a debriefing requested by a bidder, where only the reasons for not selecting the bidder as the successful bidder is discussed.

49.4 The basic sequence for bid evaluation is the same for goods and works, and consists of the following steps:

- (a) Preliminary examination of bids;
- (b) Detailed evaluation and comparison of bids;
- (c) Post qualification verification; and
- (d) Writing bid evaluation report.

### **Preliminary Bid Examination**

50.1 All the bids received before the scheduled closing time should be considered for preliminary bid examination. The purpose of this examination is to eliminate any bid from further and more complicated consideration if it does not meet the minimum standards of acceptability as set out in the bidding documents and therefore not substantially responsive. However, the Procuring Entity should exercise reasonable judgment in applying these tests and should avoid rejecting bids on trivial procedural grounds. For e.g., if the bidding documents stipulated that each page of the bid should be signed or initialed and a bidder failed to initial one or more pages of supporting information, this should not be a ground for bid disqualification. These can be rectified through the clarification process without giving any benefit to the bidder and without prejudice to the interest of other bidders. Such discrepancies should be noted, however, and decisions about their acceptance or rejection should be recorded in the bid evaluation report.

50.2 The preliminary examination of bids determines whether the bids meet the general procedural requirements of the bidding documents, in particular the compliance

with the following requirements should be examined using the bidding documents as the reference point:

**Stage 1:** To ascertain whether the:

The bidder is eligible - Example:

- (a) The bidder shall not be blacklisted;
- (b) In case of goods, works and consultancy contracts the domestic bidder should have required CAC registration; Tax Clearance Certificate, comply with Pension Fund and Industrial Training Fund (ITF) contributions.
- (c) For foreign funded projects, if so specified by the funding agency:
  - (i) In the case of works contracts, the bidder shall be from the member country of the funding agency; and
  - (ii) In the case of goods contracts the goods shall be manufactured in one of the member countries of the funding agency.
- (d) Bid is signed properly by an authorized party, including the power of attorney if stipulated and generally in order;
- (e) Bid securities submitted are in acceptable format, for required amount and duration;
- (f) Bid is containing all required critical documents including supporting evidence of bidder eligibility and qualifications;
- (g) Bid is complete and quotes for all items in the lot or packages, if so stipulated in the bidding document.

**Stage 2:** To ascertain the deviations from the provisions of bidding documents and categorize such deviations into major or minor deviations. Also, to identify deviations (debatable deviations) which may be categorized as either minor or major deviations depending upon the requirements of the specific provisions in the bidding document, the criticality of the deviation, the value of the contract in comparison to the value of the deviation and the judgment of the Technical Evaluation Committee. The purpose is to identify substantially responsive Bids with a view to subjecting such Bids for detailed bid evaluation.

50.3 Deviation from any provisions of the bidding documents (instruction to bidders, Bid Form, price schedules, Bills of Quantities, condition of contracts and technical specifications, etc.) is a common feature in many Bids. These deviations fall in to two basic categories, Major deviations by the bidder result in a finding of “non responsiveness” and consequent rejection of the bid. Bids with minor deviations, on the other hand, are considered as “substantially responsive” and are, therefore, evaluated and considered for contract award by determining any financial value of each deviation and adding to the bid price. The sum of the bid price and the total of adjustments made for deviations and other evaluation factors specified in the bidding documents is the “evaluated bid price”. The question is to determine which deviations are to be classified as “major” and which as “minor”. In the absence of clearly defined distinction between major and minor deviations there is room for different interpretations. To facilitate the categorization of deviations the following approach may be used.

A major deviation would be one which either:

- (a) Has an effect on the validity of the bid; or
- (b) Has been specified in the bidding documents as grounds for rejection of the bid;  
or
- (c) Has an effect in substantial way to the scope, quality, functionality or performance; or
- (d) Will limit in any substantial way the Procuring Entity’s rights or bidders obligations or
- (e) Is a deviation from the terms or the technical specifications in the bidding documents whose effect on the bid price is substantial but cannot be given a monetary value?

A minor deviation would be one which either:

- (a) Has no effect on the validity of the bid; or
- (b) Has no effect in a substantial way to the scope, quality, functionality or performance; or
- (c) Has no effect on the price, quality or delivery of the goods or services offered;  
or

- (d) Will not limit in any substantial way the Procuring Entity's rights or bidders obligations: or
- (e) has such effect but the difference from the commercial terms or technical specifications in the bidding documents is such that it can be given a monetary value; or
- (f) Has not been specified in the bidding documents as grounds for rejection of the bid, provided that the total amount of adjustments for such deviations does not exceed a previously determined percentage of the bid price.

#### 50.4 Ways of treating most frequent deviations:

- (a) **General:** In establishing the substantial responsiveness of bids, a specific clause in the ICB take precedence over general clauses; for example, if the bidding documents required bids to be submitted for all items and stated that incomplete bids will be rejected, the Procuring Entity should not propose to base the award by accepting a bid which is incomplete, based on a clause in the bidding documents in which it reserved the right to waive irregularities in bids.
- (b) **Completeness of Bids:** If the Procuring Entity intends to reject incomplete bids, it shall be clearly stated in the bidding documents. If Procuring Entity intends to consider incomplete bids, the bidding document shall specify the minimum number of items for which prices must be quoted in the bid, or the minimum value of the items to be quoted. Bidding documents should also state how incomplete bids meeting the minimum requirements will be evaluated. In such cases incomplete bids would have to be adjusted (loaded) for missing items to make the bids comparable. If Procuring Entity can estimate the actual cost that will be incurred in procuring the missing items, that cost should be added (loaded) to the bid for purpose of comparison. If such estimate is not available, standard practice is to apply the highest price quoted by other bidders for adjustment (loading) purposes . Items for which no bids were received may be ignored in the comparison. . If the bidding documents do not indicate whether incomplete bids will be accepted or rejected, the question whether such bids are “substantially responsive” must be decided during bid evaluation.
- (c) **Procedural Deviations in Submission of Bids:** Most deviations in submission of bids (such as the marking of envelopes, sealing of bids) other than the signature to the form of bid are normally considered as minor. Absence of signature on the form of bid and similar deviations are considered as major deviations.

- (d) **Bid Security:** If the bidders are required to furnish a bid security with his bid, failure to submit it in the prescribed format is considered as a major deviation and sufficient grounds for rejection. The submission of bid security after the bids are opened should be treated in the same manner as not submitting a bid security. If the amount of the bid security submitted is less than the amount stated the bid, it shall be rejected. Similarly if the period of the bid security submitted is less than the period stated the bid it shall be rejected. If the form of the bid security is in a different format from that prescribed in the bidding documents, the bid should be rejected.
- (e) **Lack of Supporting Documents:** The bidding documents should specify what documentary evidence is required to support the bid. In addition they should specify whether a bidder's failure to submit any of the requested documentation with the bid will be considered as grounds for rejection of bid. If so specified the evaluation should be carried out accordingly. Otherwise it may be treated as follows:

There are two kinds of documentation which may be required to be submitted with bids.

These must be treated differently, depending on their purpose.

- (i) One kind is intended to substantiate the legitimacy of the bid (i.e., that the bid is not "speculative", "exploratory", "frivolous" or "wait- and -see", and/or the source and reliability of the equipment offered;
- (ii) The other is to provide additional details on the technical part of the bid (e.g. brochures describing the equipment offered.

50.5 Lack of documentation of the first kind is normally considered as major deviation and, grounds for rejection of the bid. Lack of the second kind of documentation is usually considered as a minor deviation which can be remedied by subsequent submissions.

- (f) **Fixed Price against Variable Price:** When bids are required at a firm price, proposal in bids to apply an escalation clause to the bid price should be regarded as a major deviation and the bid should be rejected.

(g) **Technical Specifications:** The variety of possible deviations from technical specifications is infinite, making it impossible to discuss all such deviation in a manual. The basic principles governing the treatment of technical deviations can, however, be stated. First, the bidding documents should indicate those parts of the technical specifications which the Procuring Entity considers so important that deviations from them will not be accepted. If the Procuring Entity is willing to accept deviations on technical specifications not designated as major in the bidding documents, a decision must be made whether the Procuring Entity is prepared to:

(i) Accept such deviations proposed by a bidder, not only for the purpose of evaluating the bid; and

(ii) Consider as a contractual obligation, if the bid is accepted for the contract award.

If the deviation is acceptable, the monetary value of the minor deviation should be determined and loaded to the bid price. If on the other hand, the deviation offered is not acceptable for an eventual contract, the deviation should be classified as major and the bid rejected.

(h) **Subcontracting:** The bidding document for works contract should indicate to what extent subcontracting is permitted and whether the proposed subcontractor has to be named in the bid. Any bid not complying with this stated requirement may be considered as non responsive and grounds for rejection. If the bidding document did not contain any statement regarding the permissible extent of subcontracting, the Procuring Entity should review the extent of subcontracting of major works by the bidder and if found as excess to affect the main responsibilities of the bidder, the bid may be considered as non responsive.

(i) **Alternative Bids:** Submission of a bid based on entirely different design, where such had not been permitted is considered as a major deviation.

(j) **Delivery Period:** If goods are offered outside the delivery period or in the case of works contract unacceptable time phasing, not conforming to specified key dates or program is considered as a major deviation.

(k) **Conditional bids:** Bids that are offered with conditions such as prior sale of the equipment offered, availability of material in the market are considered as non responsive.

#### **50.6 Debatable Deviations:**

There may be some deviations which do not appear to consider at first sight as a major departure but at the same time cannot be considered as a minor departure either. In some cases it may be considered as major whereas in some other cases it may be considered as minor. However, if it is specifically mentioned in the bidding document such deviations are reason for rejection or the applicable procurement guideline does not allow to accept such departures, then the bid should be rejected. Otherwise the Procuring Entity may consider such deviation as minor and bid may be considered for further evaluation.

50.7 In such situation the bid evaluation report should contain a statement, justifying considering such departures as minor deviation. Some of the examples for debatable deviations are as follows:

- (a) Requesting different amount of advance and other payment terms (including liquidated damages and retention): If such proposals are accepted the additional cost that will be incurred by the Procuring Entity should be loaded to the bid price for evaluation; In the case of advances and payment stages the additional cost may be the respective interests and in the case of liquidated damages and retention it may be the maximum amounts specified in the bidding documents for liquidated damages and retention respectively.
- (b) Proposed changes in construction period which is not critical: Similarly if such proposals are accepted the additional cost (may include additional rentals, supervision cost, effects to liquidated damages) that will be incurred by the Procuring Entity should be loaded to the bid price for evaluation.
- (c) Omissions of minor works or items included in the scope of work; if such omissions are acceptable there cannot be any effect to the balance works or items if the omitted items or works are procured differently.

### **General Principles of Detailed Bid Evaluation and Comparison of Bids**

51.1 The main objective of detailed bid evaluation is to determine the cost that Procuring Entity will incur if the contract is awarded to each of the bid which was determined as a substantially responsive bid. Therefore only the bids that have been determined to be substantially responsive to the bidding documents, i.e. do not contain material deviation, should be considered for detailed evaluation. Out of the three stages

of bid evaluation described in this manual only during this stage the bids are compared with each other. The purpose of comparison is to determine the lowest evaluated cost that will be incurred by the Procuring Entity from the substantially responsive bids received. The lowest evaluated bid may or may not necessarily be the lowest quoted bid. In order to determine the lowest evaluated bid the Procuring Entity should only use the evaluation criteria disclosed in the bidding document. No additional evaluation criteria other than those which were disclosed in the Advertisement or bidding documents should be used during the evaluation. A systematic and logical sequence as described in this manual should be followed during the detailed evaluation and comparison of bids,

#### 51.2 Detailed Bid Evaluation – Principles and Methodologies

It is again emphasized that Procuring Entity should only use the evaluation criteria disclosed in the bidding document. Most frequently used evaluation criteria are given below. The Procuring Entity may use other appropriate criteria for a particular procurement and disclose such factors together with the evaluation methodology in the bidding document:

Exclude VAT, contingencies and provisional sum amounts;

- Correction of arithmetical errors;
- Application of applicable discount;
- Adjustment to bid prices for omissions;
- Adjustments for acceptable departures;
- Adjustments for delivery period;
- Adjustments for inland transportation;
- Operational costs and life cycle costing;
- Conversion to common currency;
- Domestic preference;
- Reassess ranking order;

- Examine for unbalanced bidding;
- After sales services;
- Clarifications during evaluation;
- Alternate Bids

(a) Exclude VAT, contingencies and provisional sum amounts:

Before commencing evaluation of bids under other steps the VAT and the amounts stated as provisional sum and contingencies should be excluded from the bid prices.

(b) Correction of arithmetical errors:

Bids should be checked carefully for arithmetical errors in the bid to ensure the stated quantities and prices are consistent. The quantities should be same as that stated in the bidding documents. The total bid price should be the total of all line items. The line item total should be the product of quantity and unit rate quoted or, when a lump sum is quoted, the lump sum amount. If there is a discrepancy a correction has to be made and the corrected price as described below is considered as the bid price. After the correction of arithmetical errors the Procuring Entity should notify, in writing, each bidder of the detailed changes. A bidder shall agree for such arithmetical corrections made to his bid. If the bidder refuses to accept the corrections, its bid shall be rejected and action is taken against the bid security submitted.

The correction of arithmetical errors should be made as follows:

- (i) Where there is a discrepancy between the amounts in figures and in words, the amount in words will prevail;
- (ii) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Procuring Entity that there is an obviously gross mis-placement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected; and

- (iii) If the bid price changes by the above procedure, the amount stated in the Form of Bid shall be adjusted with the concurrence of the bidder and shall be considered as binding upon the bidder.

If a bid price of any bid is adjusted as above, the Financial Evaluation Committee (FEC) shall give a detailed report explaining where and how such adjustments were made rather than merely saying the bid price was adjusted due to arithmetical error by an amount equal to .....

(c) Application of applicable discount;

Discounts offered by the bidders prior to closing of bids which are valid for the entire bid validity period should be considered for evaluation. If conditional discounts are offered which will create more than one bid price within the bid validity period, such discounts should be ignored for the purpose of evaluation. These discounts should be considered in the manner the bidder has offered them:

- (i) If discounts are offered to limited items it should be applicable to such items;
- (ii) If the discount offered is to the total bid price as a percentage it should be applicable to all the items at the percentage discount offered, excluding for contingencies and provisional sum items;
- (iii) If the discount offered is to the total bid price as a lump sum, such lump sum amount should be considered for evaluation and before the award of contract such lump sum amount shall be uniformly distributed to all the items, excluding for contingencies and provisional sums.

(d) Adjustment to bid prices for omissions;

In many cases, bidders will present their bids without quoting for certain items, accidentally or deliberately. Regardless of the reason such omissions should be quantified in money terms whenever possible, to permit direct comparison with other bids, provided such omissions were considered as minor deviations during the preliminary examination of bids.

Generally for works contracts, instructions to bidders will include clauses, if a bidder fails to quote for any item in bills of quantities the bidder will not be paid by the Procuring Entity for such items when executed and shall be deemed covered by the rates of other items and prices in the bills of quantities. In that case no further adjustment is needed during the bid evaluation. If such provision is not included, in the case of

omission of one or more items from the bid, rather than rejecting the bid entirely and if it is already considered as substantially responsive during the preliminary examination, the bid price should be loaded for the comparison purposes. To that effect surrogate prices for these items may be obtained from printed price lists if available or the highest of the other bids for the corresponding items should be used.

(e) Adjustments for acceptable departures;

In many cases, bidders will present their bids that deviate from bidding document requirements, accidentally or deliberately. Regardless of the reason such deviations should be quantified in money terms whenever possible, to permit fair comparison with other bids, provided such deviations were considered as minor deviations during the preliminary examination of bids. The most common deviations in bids are possible due to different commercial terms offered; i.e., for amounts of advances, changes in payment schedules etc. These can usually be adjusted by applying an appropriate discount rate (preferably disclosed in the bidding documents) and converting them to their equivalent present values. Another form of bid deviation is to offer a higher capacity or standard performance than is specified in the bidding document: i.e., a larger engine capacity, greater carrying capacity or storage, etc. No additional advantage should be given to such offers unless the bid document specifically provides for this and set out how the difference will be evaluated.

(f) Adjustments for delivery periods;

In many cases, bidders will present their bids where the delivery periods deviate from bidding document requirements, accidentally or deliberately. Regardless of the reason, such deviations should be quantified in money terms whenever possible, to permit fair comparison with other bids, provided such deviations were considered as minor deviations during the preliminary examination of bids. The adjustments to the bid prices should be done in the manner described in the bidding documents. Generally no advantage is given to a bid offering early delivery than that specified in the bidding document. Any bid offering a delivery beyond a finally acceptable cutoff date specified in the bidding documents should be rejected as non responsive bid.

(g) Adjustments for inland transportation;

For works contracts, no adjustments for inland transportation are needed. However, for supply contracts, an adjustment may be needed if the price offered are based on FOB or CIF basis for goods to be imported and supplied and Ex works basis for goods already imported or that will be supplied within the country, and the bidder's were not requested to include such inland transportation costs within the bid price.

(h) Operational costs and life cycle costing;

Life cycle cost is the assessment of the initial acquisition cost plus the follow-on ownership cost to determine the total cost during the life of a plant or equipment. In the procurement of equipment in which the follow-on cost of operation and maintenance are substantial, a minor difference in the initial purchase price between two competing bids can easily be overcome by the difference in follow-on cost. In these cases, it is most appropriate for the Procuring Entity to evaluate bids on the basis of life cycle cost. The following elements (but not limited) would generally comprise a typical life cycle assessment:

- Initial purchase price;
- Adjustments for extras, options, delivery, variations, deviations;
- Estimated operational costs (fuel, labor etc.);
- Estimated cost of spare parts and other consumables;
- Efficiency and productivity;
- Depreciation cost.

The follow-on cost such as fuel, spare parts, maintenance cost and depreciation costs should be discounted to net present value.

(i) Conversion to common currency;

In order to minimize the foreign exchange risk for bidders in certain procurement (especially in ICB procedures) the bidders are allowed to bid in foreign currencies. This results in bids being presented in a wide variety of currencies which must be converted to a single common currency, generally to Nigerian Naira. These conversions are made using the prevailing selling rates established for similar transactions by the Central Bank of Nigeria on the specified date. In works contracts mostly used method is to specify that all the bidders should price the bid in Naira and to specify the percentages in different currencies. In some works contracts and in supply contracts it is customary that the bidders are allowed to quote proportions in different currencies for the same item.

(j) Domestic preference (applicable under the International Competitive Bidding only);

In the case of goods or works contracts, when procurement is carried out using public funds where foreign bidders are allowed to participate in bidding the applicable domestic preference clauses shall be included in the bidding document. In the case of goods contracts, if the goods required are manufactured in Nigeria the applicable domestic preference clauses shall be included in the bidding document. When applying domestic preference the following guidance should be used:

***Goods:***

- The application of the applicable preference should be used only if it was disclosed in the bidding documents;
- The goods being procured are “manufactured goods” involving assembly, fabrication, processing etc., where a commercially recognized final product is substantially different from the basic characteristics of its components and raw materials;
- The goods qualified for domestic preference are identical or comparable to requirements given in the bidding documents with respect to quality, capacity and performance;
- Satisfying the minimum domestic values as specified in the bidding documents;
- The margin of price is added to the bid price of foreign product rather than subtracting from the domestic product.

***Works:***

- The application of the applicable preference should be used only if it was disclosed in the bidding documents;
- Satisfying the minimum domestic values as specified in the bidding documents;
- The margin of price is added to the bid price of foreign bidders rather than subtracting from the domestic bids.

(k) Comparison with engineers estimate in the case of works contracts;

A bid should not be rejected solely because the bid price exceeds by some predetermined margin of the engineers estimate; nor should they be rejected solely on the grounds that they are substantially lower than such estimates. The measure of acceptability should rather be the “reasonableness” of a bid price as determined during the evaluation. The reasonableness may be established by considering all factors such as market conditions, special terms specified in the bidding documents, prices of similar items procured in the recent past, any other relevant factors. If great differences between the bid price and engineer’s estimate are found, the reasons for the discrepancy must be analyzed.

- Review engineers estimate to discover whether any unusual provisions are included which may have affected the prices;
- Analyze current market conditions to discover whether they would tend to increase or decrease the bid prices;

If these reviews would account for the discrepancy three alternative conclusions may be reached.

- Bid is reasonable under given circumstances and should be accepted;
- If the bid prices are marginally low the bidder shall be requested to prove to the satisfaction of the Procuring Entity, how the bidder intends to procure such items/perform the Works/provide the Services as per the quoted rates, for such purposes the bidder may be asked to provide a rate analysis; If the Procuring Entity is of the view that the justification/explanation provided by the bidder is unacceptable, and hence the bidder would fail in the performance of his obligations within the quoted rates, a higher performance security may be requested to mitigate such risks; If the bidder refuses to provide such additional performance security, his Bid shall be rejected.
- Aspect of bidding documents are suspected to be the likely cause; all bids may be rejected and initiate re-bidding with modified bidding documents. Rejection of all bids requires the prior approval of BPP.

## ***Public Procurement Act Section 29***

### **Extension of Tender Validity**

**52.1** Bidders are required to keep their offers valid for a specified period to allow the Procuring Entity to examine and evaluate offers, select the lowest evaluated responsive tender, obtain the necessary approvals from the competent authorities and also obtain a no objection from the Bureau (prior review items) for the proposed award of the contract. Tenders should thus remain valid for the period stated in tendering documents. A tender that is valid for a shorter period than required by the tendering documents should be rejected by the Procuring Entity as non-responsive.

**52.2** Where there is a delay in tender evaluation, the Procuring Entity may request bidders to extend the period of validity of their tenders. Bidders may refuse to grant any extension of validity of their tenders without losing their Bid security, if any. Bidders are not allowed to increase their prices as a condition of extending the validity of their tenders, unless the tendering documents provide for an adjustment in price.

### **Bid Evaluation Report**

**53.1** After the completion of the evaluation process the Procuring Entity should prepare a bid evaluation report setting out the process of evaluation. The Procuring Entity shall use standard forms available for the purpose. This report covers amongst other things:

- Key dates and steps in bidding process (copy of the invitation to bid as advertised attached);
- Bid opening information (copy of the bid opening minutes should be attached);
- For all bidders: Table showing the bidders compliance with major commercial conditions (e.g. completeness, bid security. Bid validity, delivery or completion period. Payment terms);
- For all bidders: Table showing bidder's compliance with key provisions of the technical specifications (e.g. capacity, operating characteristics, etc.);
- For all substantially responsive bids: Table showing arithmetical errors, discounts and currency conversion;
- For all substantially responsive bids: Table showing additions and adjustments (indicating methods used in computing the adjustments);
- For all substantially responsive bids: Table showing currency conversion;

- For all substantially responsive bids: Table showing domestic preference;
- For all substantially responsive bids: Table showing various steps from bid price announced to evaluated bid price);
- Record of clarifications made from all bidders;
- For lowest evaluated responsive bidder: Post qualification verification;
- Names of bidder's rejected and reasons for rejection;
- The proposed contract award recommendation;

53.2 In addition, the evaluation report should include narrative section in which any information not suitable for presentation in the form of tables, together with any supplementary information necessary for a complete understanding of all the factors considered during bid evaluation.

### **Acceptance of Bids *Public Procurement Act – Section 33***

54.1 The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive as to the bid solicitation, but need not necessarily be the lowest cost bidder provided the procuring entity can show good grounds for its award decision.

54.2 Notice of the acceptance of the bid shall immediately be given to the successful bidder after due consideration and approval by the procuring entity's Tenders Board or the BPP (for prior review items).

54.3 Notwithstanding the above, where the procurement proceeding is with regard to a value threshold for which approval should be sought from either the Minister or Federal Executive Council, notice given to a successful bidder shall serve for notification purposes only and shall not howsoever be construed as a procurement award until after all such approvals have been obtained.

54.4 Where the procurement proceeding is with regard to a value threshold for which the Tenders Board is the approving authority, then subject to the fulfillment by the successful bidder of any special conditions expressed in the bid solicitation document and the execution of the procurement contract, the notice shall serve as notice of a procurement award.

## **Contract Performance Guarantee *Public Procurement Act – Section 36***

**55.1** The provision of a Performance Guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid, provided however it shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilization fee requested by the supplier or contractor – whichever is higher.

### **Award and Signing of the Contract**

**56.1** Prior to contract award, the Procuring Entity shall ensure that budgetary provision is confirmed to meet the cost of the contract. Thereafter, the Letter of Acceptance shall be issued within the validity period of the bid, and no sooner the final decision of contract award is completed. This Letter of acceptance should be free from any new conditions.

**56.2** This should essentially state the sum that will be paid to the contractor by the Employer in consideration of the execution and completion of construction as prescribed in the contract. The issuance of this letter constitutes the formation of the contract. The Letter of Acceptance should be sent to the successful bidder only after evaluation of Bids and after obtaining approval from the relevant authorities.

**56.3** Once the Procuring Entity has evaluated the tenders and made a determination on the lowest evaluated responsive tender, and a decision has been made about the award, the Procuring Entity should:

- Request and obtain the Bureau’s “no-objection” prior to awarding the contract, if applicable;
- **Not** negotiate the award with the successful bidder without approval from relevant authorities;
- **Not** require the selected bidder to provide performance in excess of that specified in the Tendering Documents;
- Send notification of the award, and a contract form to the successful Bidder in a manner and within the time specified in the tendering documents;

- Request the Bidder to return the signed contract together with the required performance security within the time specified in the tendering documents; and
- Notify unsuccessful Bidders as soon as possible after receiving the signed contract and the performance security from the successful bidder.

56.4 If the successful Bidder fails to return the signed contract or provide the required performance security, the Procuring Entity may:

- Require forfeiture of the Bidder's Bid Security; and
- Proceed to offer the contract to the second lowest evaluated responsive Bidder, provided that he is capable of performing satisfactorily.

### **Execution of Contract Agreement**

57. Following the acceptance of a bid submitted by a bidder, a formal letter of acceptance shall be issued forthwith to the bidder by the Procuring Entity. This shall be followed by the execution of a formal contract.

### **Default on Bid Security**

58. When a bid security declaration is requested with the bid and any particular bidder fails to fulfill any of the conditions in the bid security declaration (namely does not accept the arithmetical errors as described in the instruction to bidders, fail to submit a performance security before the time period given or refuse/fails to execute the contract agreement the Procuring Entity shall promptly inform the Bureau of such failure, with relevant details of the supplier or contractor. Summary of the nature of the default (should include copies of all relevant correspondents, and explain the proceedings in chronological order starting from close of bids with dates.

### **Contract Administration – Payment of Value Added Tax (VAT)**

59.1 In respect of VAT registered contractors or suppliers, the amount of VAT on the value of work done, value of goods supplied or value of services provided, should be paid by the Procuring Entity, provided such goods or services are not exempted or not excluded from VAT;

59.2 Such payment of VAT will apply in respect of advance payments as well

59.3 When retention money is paid, relevant amount of VAT should also be paid by the Procuring Entity

## **Variation to Contracts**

60.1 The variations to contracts during the implementation stage cause very high burden on the Procuring Entity and to the Government. If the contribution from the variation to the final contract sum is high it will dilute the procurement process that was carried out when awarding the contract. Therefore Procuring Entity must ensure that all professional and human efforts are taken to minimize this situation. Variations are mainly due to change of scope and quantity variations.

60.2 To minimize variations due to change of scope the Procuring Entity shall ensure that the detailed design and drawings are ready prior to the award of contracts for major projects or get a comprehensive briefing from the persons who are involved in design, whether they are internal or external consultant before inviting bids. In case the aggregate variation exceed the contingency amount, the Procuring Entity requires approval from the BPP for the varied amount.

60.3 To minimize variations due to inaccurate quantities or omissions in the Bill of Qualities (BOQ)/ Bill of Engineering Measurement and Evaluation (BEME), it is recommended that before the start of preparation of bidding documents, Procuring Entity should obtain a certificate from the persons who have prepared the Bill of Engineering Measurement and Evaluation (BEME)/Bill of Quantities (BOQ) that a second person has checked the BOQ for its accuracy and completeness. It is also highly recommended that when “Type” structures or buildings are constructed, to compare the Bill of Engineering Measurement and Evaluation (BEME)/Bill of Quantities (BOQ) with the final measurements made to such “Type” structure or building before finalizing the Bill of Engineering Measurement and Evaluation (BEME)/Bill of Quantities (BOQ).

60.4 Despite all of the above, if the aggregate amount of the variations (due to quantity changes and extra works orders issued), is within the contingency provision (which should be 10% maximum) the Accounting Officer of the Procuring Entity may approve the change order with notification to the Bureau. Otherwise, it should be referred to the Tenders’ Board and the Bureau.

## **Record of Procurement Proceedings *Public Procurement Act – Section 38***

61.1 Every procuring entity shall maintain a record of the procurement proceedings containing the information specified in the Public Procurement Act. Such information shall include overall data on numbers, types, values and dates of contracts awarded and names of awardees, and procuring organizations. A procuring entity shall also maintain for all contracts, a record which includes, inter alia:

- Public notices of tendering opportunities
- tendering documents and addenda
- Tender opening information
- Tender evaluation reports
- Formal appeals by bidders and outcomes
- Signed contract documents and addenda and amendments
- Records of claims and dispute resolutions
- Record of time taken to complete key steps in the process
- Comprehensive disbursements data in relation to payments

61.2 The procuring entity shall not be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings.

61.3 Records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau, an investigator appointed by the Bureau and the Auditor-General upon request; and where donor funds have been used for the procurement, donor officials shall also have access, upon request, to procurement files for the purpose of audit and review.

### **Mobilization Fees *Public Procurement Act – Section 35***

**62.1** In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of no more than 15% may be paid to a supplier or contractor supported by the following:

- In the case of National Competitive Bidding - an unconditional bank guarantee issued by an institution acceptable to the procuring entity;
- In the case of International Competitive Bidding - an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity.

62.2 Once a mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an interim performance certificate issued in accordance with the contract agreement.

### **Retention Money Security *Public Procurement Regulation 153/154***

63.1 Retention money on the other hand is a portion of the payments due under the contract which is retained to ensure performance by the supplier/contractor. When used as a guarantee, it should not exceed 10% of the contract value. Instead of the Procuring Entity retaining part of the due payments, the supplier/contractor may also provide a money retention security in form of a bank guarantee or irrevocable Letter of Credit. If the contract provides for both a performance security and retention fees, the total amount of both performance security and retention fee should not exceed 20% of the contract sum.

### **Publication of Contract Awards**

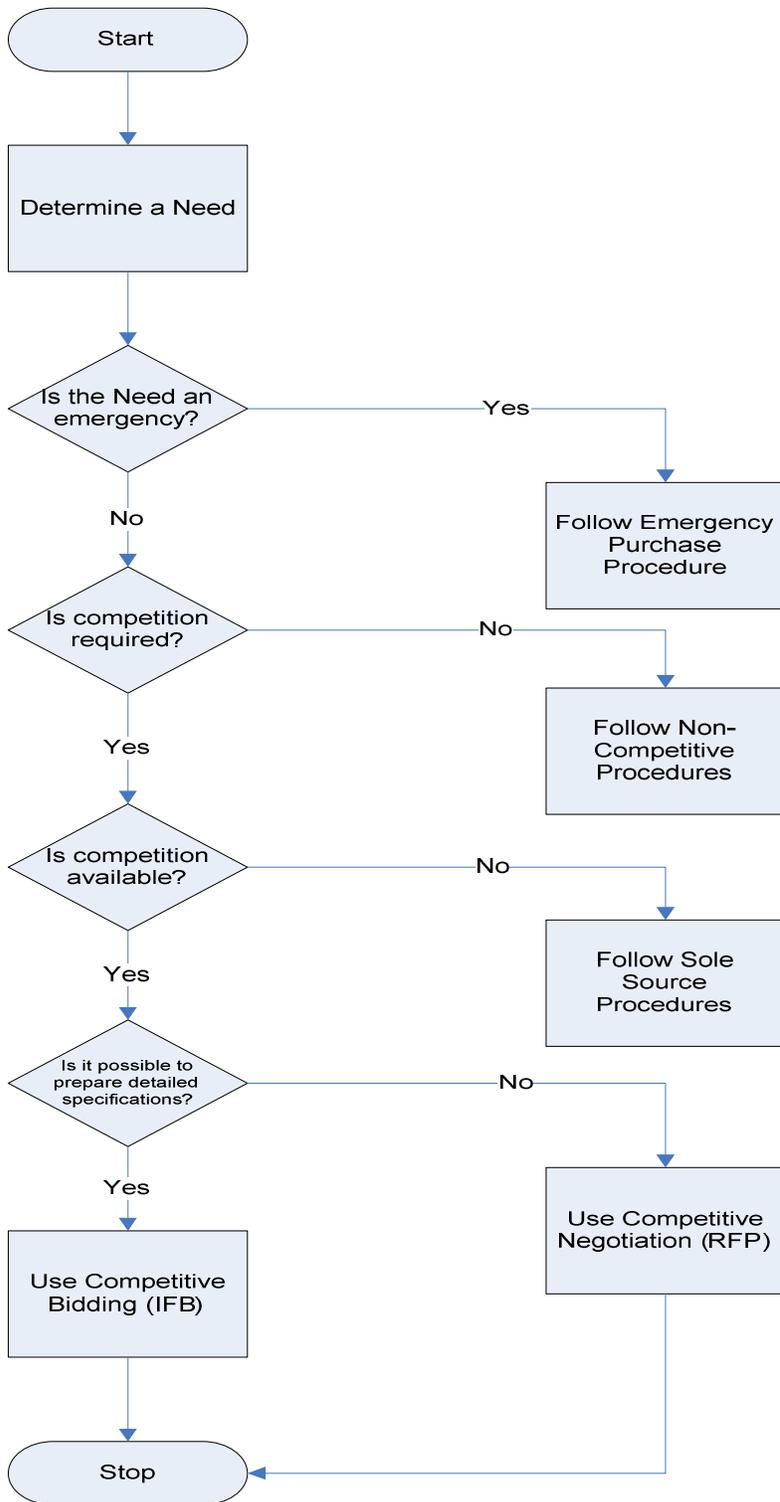
64. The award of all contracts should be notified to the Bureau of Public Procurement and should be published in two national dailies with description of the contract, name of contractor/supplier and the contract price clearly stated.

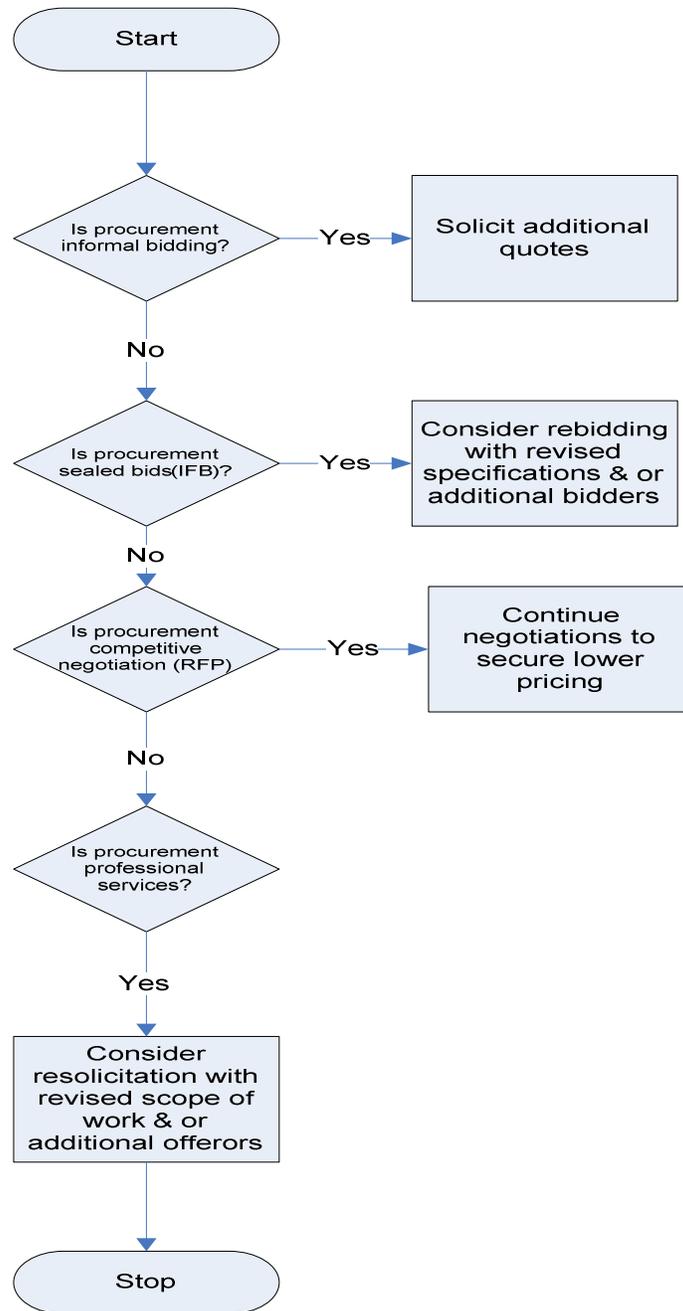
### **Confidentiality**

65. This Procurement Manual stresses the confidential nature of the evaluation process. After suppliers, contractors and consultants have submitted their tenders to the Procuring Entity by the required deadline, the tender evaluation process outlined above begins on the date indicated in the tendering documents for tender opening.

## **66. FLOW CHART OF THE COMPETITIVE PROCUREMENT PROCESS**

Public procurement should be handled as follows:





**SECTION 6 — PROCUREMENT METHODS FOR GOODS, WORKS AND SERVICES**

**Introduction: Open Competitive Bidding *Public Procurement Act - Section 16***

67.1 All procurements of goods and works by all procuring entities shall be conducted by Open Competitive Bidding. Any reference to Open Competitive Bidding means the process by which a procuring entity, based on previously defined criteria, effects public procurements by offering to every interested bidder, equal, simultaneous information and opportunity to offer the goods and works needed.

The winning bid shall be the lowest evaluated responsive bid which has been responsive to the bid with regards to work specifications and quality standards.

### ***Public Procurement Act – Section 24***

67.2 The following steps shall be adopted for procuring goods, works and services:

- (i) preparation of a procurement plan based on proper needs assessment
- (ii) Selection of a method of procurement
- (iii) Preparation of the relevant procurement documents
- (iv) Transparent Pre-qualification of bidders
- (v) Submission/receipt of tenders
- (vi) Evaluation of tenders
- (vii) Comparison of tenders
- (viii) Recommendation of the winning bid to Tenders Board or Accounting Officer
- (ix) Certification of the procurement action by the Bureau (prior review items only)
- (ix) Award of the contract.

### **Selecting the Method of Procurement**

68.1 The procurement method to be adopted by a procuring entity will depend on the nature and size of procurement and the urgency with which the goods or services to be procured are required. The key to the selection of method is to understand what situations are suitable for each of them. Depending on the nature and size of the procurement and its elements, Procuring Entity may use any of the methods set out in this Manual to procure goods, works and services. The choice of procurement method should depend on:

- (a) The nature of the goods and services to be procured;
- (b) The value of the procurement;
- (c) The local availability and cost of goods and services;
- (d) Critical dates for delivery;
- (e) Agreement with the funding agency; and
- (f) Transparency of procedures proposed.

68.2 Commonly used methods of procurement include International Competitive Bidding (ICB), National Competitive Bidding (NCB), Limited International Bidding (LIB), International and National Shopping, Direct Contracting, and Force Account (Direct Labour). Contract packaging, scheduling and choice of procurement methods are all interlinked. In most cases, arriving at the procurement plan requires iterative adjustments in all three of these aspects. It is impossible, for example, to think about what contract packaging would be appropriate without having in mind how this affects the choice of procurement method and the time that will be needed to carry it out.

### **International Competitive Bidding (ICB)**

69.1 The purpose of ICB is to give all prospective and qualified bidders adequate and timely notifications of the Procuring Entity's requirements and to give them equal access and a fair opportunity to compete for contracts for required goods and services. Bidding opportunities must therefore be advertised internationally and all eligible bidders given reasonable possibilities to participate. These notification requirements distinguish ICB from other methods of procurement. ICB may be the most suited method of Procurement, for large contracts for goods, works and services under following circumstances:

- (a) When the capacity of the domestic contractors, suppliers and service providers are limited;
- (b) For foreign funded projects, where the funding agency agreement requires the Procuring Entity to resort to ICB procedures;

However, in the case of Works contracts in view of the development of domestic construction industry, the possibility of slicing the contract and following “slice and package approach” to suit domestic contractors may be considered.

69.2 When ICB is used, domestic preference criteria stipulated under the Procurement Guideline shall be used. All other conditions including currencies, taxes and other statutory levies shall be equally applied to foreign and domestic bidders. Any supplier, service provider or contractor, who desires to obtain the bidding document, whether a foreign or domestic bidder shall be allowed to purchase same, provided the bidder is prepared to pay the specified fees. The Procuring Entity is required to give worldwide publicity to the tender notice in various media to ensure maximum competition.

When ICB is used: ***Public Procurement Act – Section 25(2)***

69.3 The Procuring Entity is required to:

- (i) Advertise, in at least, two widely circulated national newspapers and one relevant internationally recognized publication such as in World Bank UN Business Development and;
- (ii) Transmit such invitations to embassies and trade representatives of countries from where suppliers and contractors are likely to participate, and post them in relevant websites.
- (iii) Advertise in any official websites of the procuring entity and the Bureau as well as the Tenders Journal
- (iv) For Foreign bidders, evidence of company registration and tax payment in their home country shall be admissible under ICB

(iv)

69.4 ICB for works contract with prequalification may need 16-20 months procurement lead time and works contracts without prequalification may require 8-12 months. Similarly ICB for Goods contract may require 8-10 months of lead time.

## **Types of ICB**

70.1 Procurement using ICB method can follow either a one-stage and two-stage tendering process. In a one-stage process, the procuring entity will prepare a tendering document which will include, among other things, detailed functional and technical requirements. In response, suppliers submit tenders containing their technical and financial proposals, in two separate envelopes, at the same time, to be opened in one single public opening. The Procuring Entity then evaluates each of the bidders' technical proposals and prepares a shortlist of qualified bidders whose financial proposals can be opened and evaluated and then awards the contract to the lowest evaluated responsive bidder, according to the method and criteria specified in the tendering documents.

70.2 In a two-stage process, the procuring entity prepares a first stage tendering document with functional performance specifications, rather than detailed technical specifications. In response, bidders offer un-priced technical proposals (i.e., no financial proposal is submitted at this time). The procuring entity then:

- Assesses the suppliers' qualifications;
- Evaluates the technical proposals;

70.3 Following the first stage evaluation, the procuring entity prepares a memorandum of changes for each bidder and may prepare an addendum to the tendering documents, including revisions to the technical requirements made in the light of the first stage technical evaluation, and initiates the second stage tendering process. During the second stage tendering process, bidders offer final tenders containing their final technical proposal and a financial proposal. The procuring entity then evaluates the proposals (technical and financial) according to the criteria specified in the tendering documents.

70.4 The advantages of the two-stage process include the ability of the procuring entity, during the first stage, to interact extensively on technical matters with bidders which are not permissible in a one-stage process. In this way, an agency can learn from the market and adapt its requirements to maximize competition. In addition, a two stage process allows a procuring entity, in the first stage, to state its requirements in more general functional terms than the detailed functional and technical requirements necessary to carry out a one-stage process. By knowing the bidders and their technologies prior to the second stage, this reduces the burden of preparing detailed functional and technical requirements which are so comprehensive as to accommodate the entire universe of potential technical proposals.

70.5 A one-stage process is most appropriate for relatively straightforward procurement of fairly standard technologies and ancillary services. In contrast, the

additional capacity to review technical proposals, revise technical requirements and interact directly with the suppliers during the first stage make the two stage process much more suitable for the procurement of goods such as complex information systems and procurements which involve extensive technical services.

## **Procedures for Two-Stage Tendering**

### ***Public Procurement Act –Section 39***

71.1 The procuring entity shall call upon suppliers or contractors to submit, in the first stage of two-stage tendering proceedings, initial tenders which contain their proposals without a tender price. Such proposals may relate to technical, quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and the professional competence and technical qualifications of the suppliers or contractors.

71.2 The procuring entity may, in the first stage, engage in negotiations with any supplier or contractor whose tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its tender.

71.3 In the second stage of the two tender proceedings the procuring entity, shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications. The procuring entity may, in the invitation to submit final tenders, communicate to the suppliers or contractors, any deletion, modification or addition; and may permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering proceedings.

71.4 The final tenders shall be evaluated and compared in order to ascertain the successful tender as defined in an open competitive bid.

## **National Competitive Bidding (NCB)**

72.1 NCB is the competitive Bidding procedure that shall be applicable for most Government of Nigeria funded projects when the Goods or Works are available within Nigeria at prices significantly below those in the international markets.

72.2 When NCB is used: ***Public Procurement Act – Section 25(2)***

- (i) The invitation to bid should be advertised on the notice board of the procuring entity, any official websites of the procuring entity and the Bureau, at least two widely circulated national newspapers such as in This Day, Guardian, The Punch, Daily Trust and Daily Independent etc, and in the tenders journal ;
- (ii) Any supplier, service provider or contractor who desires to obtain the Bidding document should be allowed to purchase same, provided the Bidder is prepared to pay the specified fees;
- (iii) The contractors/suppliers/service providers should be allowed to purchase the Bidding document up to a day prior to the Bid closing date;
- (v) In the case of contract for works, to be eligible for contract award, the domestic contractors shall have a valid and appropriate registration with Corporate Affairs Commission (CAC) at the time of submitting the Bid.
- (vi) However registration with the procuring entity shall not be an eligibility criterion for purchasing the Bidding document or submitting a Bid.

72.3 NCB may be used in foreign funded projects on the following conditions:

- (a) With the agreement of the funding agency;
- (b) By allowing foreign contractors or suppliers to Bid on same terms with the domestic contractors or suppliers;
- (c) By not giving preference to domestic bidders.

NCB contract may require up to six months of lead time.

### **Limited / Restricted International & National Bidding (LIB/LNB)** ***Public Procurement Act – Section 40***

73.1 Limited/Restricted bidding procedures are followed when the invitation to bid is directly addressed to a pre-selected list of international or national suppliers or contractors. Bids should be solicited from a list of potential suppliers broad enough to ensure competitive prices, including all known suppliers if their number is small.

73.2 Subject to the approval by the Bureau, a procuring entity may for reasons of economy and efficiency engage in procurement by means of limited or restricted tendering if:

- (i) Only a few known sources are available (e.g. in procurement of a small number of vehicles or machine tools);
- (ii) Advertising would be a waste or for small value procurements in which the cost of advertising is disproportionately high;
- (iii) There are exceptional reasons such as emergency actions related to a major natural disaster, which may justify the waiving of advertising for competitive bids;
- (iv) Goods to be procured are such as pharmaceuticals, or highly specialized equipment for construction of dams or where there are only a limited number of known suppliers or manufacturers.
- (v) the procedure is used as an exception rather than the norm.

74.3 All procedures itemized under ICB or NCB shall apply except the requirement for advertising and in the case of foreign funded projects, the domestic preference.

## **National Shopping**

74.1 Shopping is an appropriate procurement method for procuring frequently used:

- (i) Readily available off the shelf goods of small value;
- (ii) Small value (threshold to be specified by BPP) commodities for which specifications are standard;
- (iii) Small value (threshold to be specified by BPP ) works or services

74.2 Under National Shopping Procuring Entity may:

- (a) publish a notice for inviting applications from suppliers; and after evaluating the past experience and other qualifications such as capacity of the applicant, by a committee consisting of not less than three members appointed by the Accounting Officer of the procuring entity, prepare a list comprising names of at least three suppliers who are able to supply particular categories of goods and

services such as stationery, electrical items, motor vehicle repairs, periodicals and publications etc.

- (b) Remove any supplier or contractor who has not responded twice for an invitation to submit a quotation or performed unsatisfactorily under any contract previously awarded.
- (c) The selection shall be based on comparison of price quotations obtained from invited bidders appearing on the bidders list.
- (d) When the appropriate authority is satisfied, in the case of supplies of goods, that sufficient number of reputed vendors are available, quotations may be invited from the list.
- (e) Requests for quotations shall be addressed to firms in the approved bidders list of suppliers and shall indicate:
  - (i) The description and quantity of the goods;
  - (ii) Time and place of delivery; and
  - (iii) Warranties
- (f) When shopping procedures are used for works, request for quotation shall be only from the shortlisted contractors and the minimum number of quotation shall be three. The comparison of quotations shall follow NCB principles wherever applicable but the terms of the accepted offer shall be incorporated in a purchase order.

#### 74.3 Applicable Procedures for National Shopping:

- Quotations must be obtained from at least 3 unrelated contractors or suppliers.
- Each contractor or supplier from whom a quotation is requested shall be informed whether any factors other than the charges for the goods, works or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes are to be included in the price.
- Each contractor or supplier shall give only one quotation and shall not be allowed to change or vary the quotation.

- No negotiations shall take place between a procuring entity and a contractor or supplier with respect to a quotation.
- Telephone or verbal quotations shall not be accepted, but on-line or email quotations are acceptable
- The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation.

74.4 In evaluating quotations submitted by bidders under shopping, price and ability to meet required delivery requirements are usually the main selection considerations for these simple purchases. However, the procuring entity may also take into account, things such as the availability and costs of maintenance services and spare-parts. The terms of the accepted offer are incorporated in the purchase order.

74.5 Where the total value of the procurement is below the threshold specified by the Bureau of Public Procurement, the procuring entity need not obtain the Bureau's certification for award of contract but shall include in the record of the procurement a statement giving justification for the use of this procedure.

## **Direct Contracting/Procurement *Public Procurement Act – Section 42***

75.1 Direct contracting is a means of Procurement of Goods or Services or Works from a single supplier or source. Direct contracting entails no competition and shall be used only under exceptional circumstances, for instance when carrying out any emergency procurement where:

- (i) Goods, works and services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;
- (ii) There is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impracticable due to unforeseeable circumstances giving rise to the urgency which is not of dilatory conduct on the part of the procuring entity;

- (iii) Owing to a catastrophic event, there is an urgent need for goods, works, or services, making it impracticable to use other methods of procurement because of time constraint;
- (iv) Additional supplies need to be procured from a supplier or contractor because of standardization;
- (v) An extension of an existing contract is necessary as works are already underway and were procured through competitive procurement procedures;
- (vi) A Repeat procurement of goods, works or services which has recently been competitively tendered and satisfactorily executed/received or still work in progress and for which the supplier or contractor is willing to maintain his tender prices/rates. Repeat procurement can be applied only within a period not exceeding two years from the date of original tender.
- (vii) There's need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity.
- (viii) The required equipment is proprietary and obtainable only from one source (such as proprietary software, text books, spare parts, defense items) and no alternative equipment or products with equivalent performance characteristics are available;
- (ix) The process design requires the purchase of critical components or materials from a particular supplier as a condition of a performance guarantee.

#### 75.2 Procedure for direct contracting:

In any of the above cases, the procuring entity may procure the goods, works or services by inviting a proposal or price quotation from a single supplier or contractor. Where this is done, the procuring entity shall include in the record of procurement proceedings a statement of the grounds for its decision and the circumstances in justification of single source procurement.

### **Emergency Procurement *Public Procurement Act – Section 43***

**76.1** A Procuring entity may carry out an emergency procurement where:

- i) the country is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or Act of God;

- ii) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
- iii) A public project may be seriously delayed for want of an item of a minor value or usefulness.

Where this method is to be used, the following procedures shall be followed:

- (a) The bidding document will disclose an itemized priced Bills of Quantity based on the Engineer's/Consultant's estimate;
- (b) All bidders who participate in bidding will be allowed to bid a percentage above or below the Engineer's/Consultant's estimate;
- (c) The lowest Bid price shall be selected as the winner provided the Bid is substantially responsive otherwise;
- (d) The bidding period may not be reduced below three (03) days in the case of limited bidding by invitation and seven (07) days when open advertisement is used ;
- (e) Lump sum contracts shall be used wherever possible, with milestone payments identified at intermediate levels;
- (f) Purchases from government institutions must be given preference.

76.2 Immediately after the cessation of the situation warranting any emergency procurement, the procuring entity shall file a detailed report thereof with the Bureau of Public Procurement which shall verify same and if appropriate, issue a Certificate of No Objection.

All procurements under emergencies shall be handled with expedition but along the principles of accountability, due consideration being given to the gravity of each emergency.

## **SELECTION AND EMPLOYMENT OF CONSULTANTS**

### ***Public Procurement Act – Section 44***

#### **Introduction**

77.1 The procurement of consultancy services is a specialized form of procurement requiring procedures and documents which are very different from those for goods and works. The use of a short list of candidates, a merit-point evaluation system and two-envelope procedures are standard features in selection of consultants. Selecting consultants on the basis of cost alone is unlikely to achieve the required quality of services.

77.2 Where a procuring entity wishes to procure services for its needs which are precise and ascertainable:

- Generally, it shall solicit for expressions of interest or applications to pre-qualify to provide the services by publishing a notice to that effect in at least 2 national newspapers and the tenders journal;

- However, where the value of the services to be procured is less than one million naira, or with the approval of the Bureau, of such a low value that only national consultants would be interested, the procuring entity may without placing a notice as indicated above, request at least 3 and not more than 10 consultants or service providers to make proposals for the provision of the services in a format stipulating:

- (i) A statement of qualifications of the consultant to provide the service;

- (ii) A statement of understanding of the procuring entity's needs;

- (iii) The methodology for providing the service;

- (iv) The timeframe for providing the service; and

- (v) The cost or fee for the service.

### 77.3 The Steps of the Selection Process

The procurement of consultancy services will normally include the following steps:

- Preparation of the Terms of Reference (TOR).

- Preparation of a cost estimate and confirmation of available budgeted funds.

- Choice of Selection Method.
- Advertising for expressions of interest
- Preparation of the shortlist of consultants on the basis of the expressions of interest received.
- Preparation and issue of the Request for Proposals (RFP), including:
  - Letter of Invitation (LOI);
  - Information for Consultants (IFC);
  - Draft contract.
  - Receipt of proposals in two envelopes.
  - Opening and Evaluation of technical proposals first.
  - Opening and evaluation of financial proposals.
  - Consolidated evaluation according to the criteria and selection method stated in the RFP.
- Negotiations and award of the contract to the selected firm.

#### 77.4 The Terms of Reference (TOR)

The TOR must define clearly the objectives and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to enable the consultant to prepare a proposal.

The TOR should:

- Describe the background to the assignment;
- State the objectives of the assignment including:
  - The scope of the services;
  - The duration of the assignment;

- A detailed list of the consultants' duties and responsibilities;
- Where applicable, the required inputs in terms of expert days, or months;
- Detail the required outputs, e.g.: reports, detailed designs, recommendations, draft laws etc. which the consultants will be required to produce (also referred to as 'deliverables');
- Set the time periods for the deliverables;
- Not be over-detailed or inflexible, so that competing consultants may propose their own methodology and staffing.
- List any services and surveys necessary to carry out the assignment;
- Include details of the services, facilities and counterpart staff to be provided by the Client.
- Specify detailed requirements when transfer of knowledge or training is an objective, to allow candidates to estimate the required resources.

#### 77.5 Preparation of Cost Estimates and Budget

After preparation of the TOR, the Procuring Entity shall prepare a budget estimate. The budget is to be estimated based on assignment breakdown to detailed tasks. Each task should be associated with appropriate quality and quantity staff, adequate time schedule with breakdown of duration for home and field works, and all other charges. Budget estimates should reflect the following costs:

- Key and support staff remuneration, including social charges;
- Mobilization and demobilization;
- Transportation;
- Reimbursables;
- Communications;
- Office rent and consumables;

- Documents and reports preparation;
- Training;
- Miscellaneous (computer equipment, insurance, translations, etc.);
- Duties and taxes.

***Public Procurement Act – Section 45***

77.6 A procuring entity wishing to procure services for its needs may do so by requesting for proposals when:

- It is not feasible to formulate detailed specifications of the services or to identify their characteristics; or
- It intends to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development cost.

77.7 Procuring entities shall procure the services of consultants by soliciting for expressions of interest to submit proposals or to pre-qualify to submit proposals by publishing a notice to that effect in 2 national newspapers and the tenders journal.

77.8 A procuring entity may make direct requests to a limited number of service providers or consultants, requesting proposals for the provision of a service for unascertained needs if:

- The services are only be available from no more than 3 service providers or consultants; or
- The time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the services to be performed, provided that it invites enough consultants to ensure transparent competition ; or
- It is in the interest of national defence and security or similar reason of confidentiality.

Please refer to the Standard Requests for Proposals for a detailed content.

### ***Public Procurement Act – Section 47***

77.9 Clarification and modification of requests for proposals.

A consultant may request clarification of the request for proposals from the procuring entity and where such a request is made, the procuring entity shall:

- Where the clarification is sought more than 10 days before the deadline for submissions, respond to the request within 7 working days and shall, without identifying the source of the request, simultaneously communicate the clarification response to the other consultants to whom the procurement entity has provided the request for proposals (RfP);

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77.10 A procuring entity may, whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time prior to the deadline for submission of proposals.

77.11 The addendum shall be communicated promptly before the deadline for the submission of proposals to the short listed consultants to whom the procuring entity has provided the request for proposals and shall be binding on those consultants.

### ***Public Procurement Act – Section 47***

77.12 If the procuring entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of the request for proposal and its responses to those issues, without identifying the sources of the requests for clarifications.

77.13 The minutes shall be provided promptly before the deadlines for the submission of proposals to the consultants participating in the selection proceedings to enable them take the minutes into account in preparing their proposals.

### ***Submission of Proposals Public Procurement Act – Section 48***

78.1 The procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than **30 days** between the issue of the notice or request and the deadline for submission.

78.2 The technical and financial proposals shall be submitted simultaneously but in separate envelopes. Any proposal received after the deadline for submission of proposals shall be returned to the sender unopened. Immediately after the deadline for submission of proposals, the technical proposals shall be opened for evaluation whilst the financial proposals shall remain sealed and kept in a secure bid-box until they are opened publicly. Only the financial proposals of shortlisted consultants who have satisfied the technical requirements shall be opened on a stipulated date. Consultants who are not successful at the technical evaluation stage shall have their financial bids returned to them unopened.

78.3 Under no circumstances should the technical evaluation committee have access to or insights to the financial proposals until the evaluations including any Tenders Board review are concluded.

### **Criteria for Evaluation of Proposals**

79.1 The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which they are to be applied in the evaluation of proposals. The criteria may concern only the following;

- The qualifications, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;
- experience on similar assignments and in similar conditions
- evidence of similar assignments successfully completed in the past 3-5 years
  
- The effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity;
  
- The proposal price, subject to any margin of preference applied, including any ancillary or related costs;
  
- The effect that the acceptance of the proposal will have on the balance of payments position and foreign reserves of the government, the extent of participation by local personnel, the economic development potential offered by the proposal, including domestic investment or other business activity, the

encouragement of employment, the transfer of technology, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers ; and

- National defense and security considerations.

***Domestic Preferences Public Procurement Act – Section 34***

79.2

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. Domestic preference is only applicable if provided for in the bid document.

79.3 The following table shows the normal range of points to be specified for each criterion, which may be adjusted for specific circumstances. The proposed maximum points must be stated in the RFP.

***Table 1: Indicative Weighting of Evaluation Criteria  
(Consultant Services)***

Specific relevant experience:	5 to 10 points
Response to the TOR and Methodology Proposed:	20 to 50 points
Key personnel:	30 to 60 points
Training:	0 to 10 points
Participation by nationals:	0 to 10 points
Total:	100 points

***Consultant’s Specific Experience:***

The points given to experience are relatively low as this criterion has already been taken into account when short-listing the bidders.

### ***Methodology:***

A large number of points should be allocated to the proposed methodology for more complex assignments (for example, multidisciplinary feasibility or management studies).

### ***Key Personnel:***

Only the key personnel should normally be evaluated since they will determine the quality of performance. More points should be assigned if the staffs are critical to the success of the proposed assignment. When the assignment depends critically on the performance of a Project Manager or key specialist in a team of individuals, more points should be allocated for this person. Individuals should be evaluated on the following sub-criteria as relevant to the task:

### ***General Qualifications:***

General education and training, professional qualifications, length of experience, positions held, time with the consulting firm, experience in similar countries, etc;

### ***Adequacy for the Assignment:***

Specific experience relevant to the assignment in the sector, field, subject, process or activity; and

### ***Experience in the Region:***

Knowledge of local languages, administrative systems, government organizations, etc.

79.4 The criteria may be divided into sub-criteria to enhance the objectivity of the evaluation. For example, sub-criteria under methodology might be innovation and level of detail. It is usual to use sub-criteria for key staff to evaluate their qualifications, technical experience and language capabilities. The number of sub-criteria should be kept to the essential minimum and must be fully detailed within the RFP. The minimum qualifying technical score to be achieved for a bid to proceed to the Financial Evaluation must be specified in the RFP.

In all cases, the procuring entity shall ensure that the criteria are clearly defined, unambiguous and are measurable.

### **General Selection Procedure (Services) *Public Procurement Act – Section 50***

**80.1** The procuring entity shall select the successful proposal by either:

- Choosing the proposal with the lowest price or;
- Choosing the proposal with the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.

The procuring entity shall include in the record of procurement a statement of the grounds and circumstances on which it relied to select either of the procedures above.

Nothing in this section shall prevent the procuring entity from resorting to the use of an impartial panel of experts to make the selection. e. g. where the procuring entity lacks in house expertise/capacity to carry out a proper technical and financial bids evaluation, it may resource committee or panel of experts from other relevant MDAs or hire individual consultants to execute the process.

### **80.2 Where price is not a factor. *Quality Based Selection Method (QBS): Public Procurement Act – Section 52***

Selection based solely on the technical quality of proposals, where the degree of technical quality is of paramount importance and decisive for the success of the project, based on consultant's qualification.

This selection method is based on evaluating only the quality of the technical proposals and the subsequent negotiation of the financial proposal with the highest ranked consultant. When QBS is applied, the RfP shall clearly state that the selection of the first consultant to be invited to negotiate a contract will be made solely on the basis of the ranking of the technical proposals.

QBS can be applied only to the following types of assignments:

- a) Complex or highly specialized assignments for which it is difficult to define a precise TOR and the required input from the consultants;
- b) Assignments where the downstream impact is so large that the quality of the service is of overriding importance for the outcome of the project e.g. engineering design of major infrastructure;

- c) Assignments that can be carried out in substantially different ways such that financial proposals may be difficult to compare; and
- d) Assignments including supervision of large and complex construction works for which it is particularly important to take safety precautions.

Where the procuring entity elects to make a quality-based selection, based on consultant's qualifications or single-source selection, it shall engage in negotiations with consultants in accordance with this section

#### 80.3 The procurement entity shall:

- i) Establish a weight with respect to quality and technical aspects of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals;
- ii) Invite for negotiations on the price of its proposal, the consultant that has attained the best rating.
- iii) Inform the consultants that attained ratings above the minimum score to be considered for negotiations if negotiations with the consultant with the best rating do not result in a procurement contract
- iv) Inform the consultant with the best rating, that it is terminating the negotiations if it becomes apparent that the negotiations with that consultant, invited under (ii) above will not result in a procurement contract
- v) If negotiations with the consultant with the best rating fails, invite the consultant that obtained the second best rating, and if negotiations with that consultant does not result in a contract, invite the other consultants for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.
- vi) Shall treat proposals and any negotiations on selection procedure as confidential and avoid disclosure of their contents to competing consultants.
- vii)

#### **Sole/Single-Source Selection (or Direct Contracting) (SSS):**

This selection method shall be allowed only in exceptional circumstances, subject to BPP prior certification and generally for small assignments only. The justification for SSS shall be examined in the context of the overall interests of the project and BPPs responsibility to ensure efficiency and transparency in the selection process and non-discrimination among eligible consultants for contracts. SSS may be appropriate if only it presents a clear advantage over competition:

- (i) for tasks that represent a natural continuation of previous work carried out by the firm;

- (ii) in emergency cases, such as in response to disasters;
- (iii) for very small assignments; or
- (iv) when only one firm is qualified or has the experience of exceptional worth for the assignment.

**80.4 Where price is a factor: Quality and Cost Based Selection**  
***Public Procurement Act – Section 51***

This method takes into account the quality of the proposal and the cost of the services. Selection based on the technical quality with price consideration. Using this method, quality and price factors are combined and weighted in varying proportions depending on the importance of the quality versus price. The weight given to price in the overall ranking of the consultants shall depend on the technical complexity of the assignment and the nature of the project. Careful consideration shall be given to evaluations to assure that price considerations do not compromise quality. Generally, the proportional weights shall be set at 80 points for quality and 20 points for price, but could be 70 and 30 points, respectively, for assignments of standard or routine nature, or conversely 90 and 10 points respectively, for assignments where technical quality is of critical importance. Only the technical proposals which have passed the minimum technical score set in the RfP will proceed to the financial evaluation stage. The required methodology shall be explained in the RfP.

Where the procuring entity elects to choose the successful proposal based on technical and price factors , it shall:

- Establish a weight with respect to quality and technical aspects of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals; and then
- The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold;

- The procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of 14 working days after the decision has been taken by the procurement entity ;
- The procuring entity shall then invite the qualifying consultants for the opening of their financial proposals on a set date and time for all the consultants;
- The name of the qualifying consultants, the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened ;
- The procuring entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record;
- [The total score shall be obtained by weighting and adding the technical and financial scores to determine the overall ranking of the consultants' proposals.
- The successful proposals shall be:
  - The proposals with the best combined evaluation in terms of the criteria earlier established above from price in the case of quality and cost-based selection i.e. the proposal with the highest ranking from a combined evaluation of criteria earlier established for both the technical and financial bids;
  - .

The consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals. Proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons.

#### **80.5 Least-Cost Selection – LCS :**

Selection based on the technical quality of comparable smaller and routine assignments, where the technically qualified lowest financial proposal is selected.

#### **80.6 Fixed Budget Selection – FBS :**

Selection based on a fixed budget, for simple assignments for which the budget is fixed and cannot be increased. Only the technical proposals which have passed the minimum technical score set in the RfP will proceed to the financial evaluation. Financial proposals higher than the fixed budget amount indicated in the RfP are rejected.

## 80.7 Hiring of Government Officials.

Government officials and civil servants cannot be hired under consulting contract financed by public funds since the principle of transparency would be compromised and the opportunity for abuse heightened. This applies regardless of their being on leave, with or without pay, or secondment. University professors or scientists from research institutes can, however, be contracted individually provided that they have fulltime employment contract with their institutions and have regularly exercised their function for a year or more before they are contracted.

### ***Bureau's Review of Procurement Actions***

81.1 The Bureau staff's fiduciary responsibilities involve prior review and post review of procurement documentation as the procurement process is carried out. The Bureau's review process ensures that public funds are used for the purposes intended and that procurement procedures outlined in the Public Procurement Act are followed.

81.2 The prior review process protects the Procuring Entity at each stage of the procurement transaction and also provides advice and suggestions to the Procuring Entity for enhancing the quality of the documents and procedures. Post review is carried out on a sample basis after action has been taken by the Procuring Entity.

81.3 The Procuring Entity shall furnish to the Bureau, after the contract signing, one confirmed copy of such contract, together with the Bid Document/ RFP package, a copy of the evaluation reports and the winning proposal.

81.4 The Bureau may carry out normal procurement audit aimed at reviewing the procurement activities of a procuring entity or conduct an investigation into any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract if it considers that an investigation is necessary or desirable to prevent or detect a contravention of procurement policies and practices.

### **Scope of Prior Review**

**82.1** The following procurement documentation should be reviewed by the Bureau before the Procuring Entity issues the Certificate of “No Objection” for Contract Award for contract packages within the prior review thresholds:

- Advertising procedures including the GPN and the SPN;
- Prequalification invitation, documents and subsequent evaluation;
- Tendering documents and addenda;
- Tender evaluation and the proposal for award of contract; and
- Modifications to the contract during execution.

### ***Post Review of Procurement Documentation***

**83.1** Post review is similar in scope to prior review, but is carried out only on a sampling basis, on procurement documentation usually retained by the Procuring Entity.

The review usually covers the following documents:

Budget appropriation

- The Invitation for Tenders;
- Tendering Documents;
- Public tender opening record;
- Tender evaluation report;
- Final contracts;
- Other documents as appropriate to check if the agreed procedures were correctly followed, whether the documents are consistent with procurement rules; and
- Whether the lowest evaluated (responsive) bidder was indeed awarded the contract.

Procurement -post reviews are also used to examine the Procuring Entity’s capacity to maintain adequate accounting records, systems for control and auditing arrangements.

83.2 After conducting the -post review, the Bureau team prepares a report of its findings and conclusions. If the audit reports are not satisfactory, corrective actions are introduced which may include, lowering of prior review thresholds, training of Procuring Entity's staff and hiring of procurement agents/consultants.

## SECTION 7 — STANDARD BIDDING DOCUMENTS

### Preparing the Relevant Procurement Documents

#### Standard Bidding Documents

84.1 The Procuring Entity shall use the BPP approved Standard Bidding Documents and Requests For Proposal (RfP) for each proposed procurement involving international and national competitive tendering, both to inform and instruct potential bidders, suppliers and contractors of the requirements expected of them in particular procurement opportunities. Tendering documents are to be drafted so as to permit bidders to submit responsive tenders. Tender documents should clearly define the scope of works, goods or services to be supplied, the rights and obligations of the Procuring Entity (purchaser) and of suppliers and contractors, and the conditions to be met in order for a tender to be declared valid and responsive. They should also set out fair and non - discriminatory criteria for selecting the winning tender. Tendering documents should thus:

- Encourage eligible potentially qualified firms to tender, by making reasonable demands for information and form-filling;
- Not discriminate against any potential bidder; and
- Provide a clear, objective means of evaluating the bidders.

85.2 The details and complexity of tendering documents vary according to the nature and size of the contract but they generally include the following:

- ***Invitation for Bid/Tender***; the IFB/IFT (or SPN) is used by the procuring entity to invite potential bidders to present their tenders for the requirement at hand, and it describes the Procuring Entity and source of financing and indicates the goods, works or services to be procured.
- ***Instructions to Bidders***; providing information to bidders regarding the form, procedure and timing of tendering.
- ***The Tender Data Sheet*** ; which specifies the parameters of the Instructions to Bidders for the particular procurement including source of funds, eligibility

- requirements, procedure for clarification, tender preparation form, number of copies to be submitted, language of the tenders, pricing and currencies and currency conversion mechanism, instructions on modification and withdrawal of tenders, tender submission procedures, closing date, tender validity period, opening and evaluation of tenders, and award of contract procedures, procedure for correction of mathematical discrepancies in tenders, purchaser's right to accept any tender and reject any or all tenders; award criteria; notification of award and procedures for signing of contract.
- ***Evaluation and Qualification Criteria;*** this section specifies the criteria that the Procuring Entity will use to evaluate the tenders and post-qualify the lowest evaluated Bidder.
  - ***The General Conditions of Contract;*** setting out the general provisions of the contract between the Procuring Entity and the bidder awarded the contract.
  - ***Particular Conditions of Contract;*** which complement the General Conditions of Contract for the particular procurement.
  - ***For Goods: Schedule of Supply;*** which specifies the quantities, delivery locations and dates for the items required by the purchaser.
  - ***For Works: Bill of Quantities or Schedule of Works*** which specifies the quantities, unit rates or payment items for the works required to be carried out.
  - ***The Technical Specifications and drawings;*** which provide details of the characteristics of the technologies and technical services required (and for goods/equipment specify the common format in which bidders must present their materials, including a technical responsiveness cross – reference form).
  - ***Tendering Forms;*** which include forms for Tender Submission and Price Schedules, Tender Security, Contract Agreement, Performance Security, Bank Guarantee for Advanced Payment and/or the Manufacturer's Authorization.
  - ***Eligibility for Provision of Goods, Works and Services in Public Procurement;*** which lists the grounds of disqualification for participating in public procurement.

84.3 In procurement through ICB procedures, Procuring Entities are required to use Standard Bidding Documents (SBDs) issued by the Bureau, with minimum changes acceptable to the Bureau. No changes should be introduced to the Instructions to Bidders

and the General Conditions of Contract. However, if changes are necessary to address specific issues they may be introduced only through tender or contract data sheets or through Special Conditions of Contract. The following Standard Documents currently exist for use by Procuring Entity.

- Standard Bidding Document for the Procurement of Small Works
- Standard Bidding Document for the Procurement of Works
- Standard Bidding Document for the Procurement of Goods
- Sample Document for National Shopping
- Standard Request for Proposals for the Selection of Consulting Firms (Small Assignments – Time Based)
- Standard Request for Proposals for the Selection of Consulting Firms (Complex Time Based)
- Standard Request for Proposals for the Selection of Consulting Firms (Small Assignments – Lump Sum)
- Standard Request for Proposals for the Selection of Consulting Firms (Complex Lump Sum)
- Standard Request for Proposals for the Selection of Individual Consultants

## **Technical Specifications**

**85.1** Precise and clear specifications are prerequisite for bidders to respond realistically and competitively to the requirements of the Purchaser/Procuring Entity without qualifying or conditioning their tenders. In the context of ICB/ICT, the specification must be drafted to permit the widest possible competition, and at the same time make a clear statement of the required standards of workmanship to be provided, standards of plant and other supplies and performance of the goods and services to be procured. Only if this is done will the objectives of economy, efficiency and fairness in procurement be realized, responsiveness of tenders be ensured, and the subsequent task of tender evaluation be facilitated.

**85.2** For the goods, plant and other supplies to be incorporated in the works, the specification should require that they be new, unused, and of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. For

works contracts, a clause setting out the scope of works is often included at the beginning of the Specifications, and it is customary to give a list of the Drawings. Where the contractor is responsible for the design of any part of permanent works the extent of his obligations must be stated.

85.3 In the procurement of works, specifications are usually written by the Procuring Entity or Engineer to suit specific contracts. There are no standard specifications for universal application in all sectors in all countries, but there are established principles and practices that are acceptable. Technical specifications in this instance should be descriptive and give the full requirements in respect of, but not limited to, the following:

- Standards of materials and workmanship required;
- Details of all factory tests required (type and number);
- Details of all work required to achieve completion;
- Details of all pre-commissioning and commissioning activities to be performed by the Contractor; and
- Details of all functional guarantees required and liquidated damages to be applied in the event that such guarantees are not met.

85.4 It is recommended that essential technical and performance characteristics and requirements, including maximum or minimum acceptable values, as appropriate, be summarized in a specific section, to be completed by the bidder providing the characteristics of the equipment offered, and submitted as an Attachment to the tender form.

### **Contract Provisions in the STDs**

86.1 Refer to the Standard Bidding Documents for Procurements for the details of General Conditions and Special Conditions of Contracts. However, please note that where there is a conflict between the provisions of the General Conditions of Contract and those of the Special Conditions of Contract, the provisions of the latter prevail.

## **SECTION 8 — CONTRACT MANAGEMENT AND PROCUREMENT REPORTING**

### **Contract Management, Delivery and Payment**

87.1 Effective management of contracts is essential to ensure that the objectives of the procurement process are achieved and that all contractual obligations and activities are completed

efficiently by both parties to the contract. The Procurement function or the Technical Department concerned must ensure that routine monitoring of all current contracts is maintained so that prompt remedial or preventive action can be taken when problems arise or are foreseen. There are a number of post-contract issues that need to be addressed, monitored and resolved before any contract is completed including :

- Contract Effectiveness;
- Delivery and Inspections of Goods;
- Insurance Claims;
- Payments to the Supplier, Contractor, or Consultant;
- Performance Monitoring & Evaluation for Services and Works;
- Contractual Disputes;
- Delays in Performance;
- Claims for Damages;
- Taking-over and Issuing Defect Liability Certificate of construction works;
- Installation and Commissioning of Equipment;
- Acceptance of Deliverables;
- Release of Performance Securities and Retention Monies;
- Contract Closure.

87.2 Contract supervision and administration for goods will be undertaken by the Procurement & Stores Department or the Technical Department as appropriate. Supervision and administration is straightforward in most contracts for goods. Monitoring delivery schedules, processing of documents and organizing/performing the inspection of goods are essential to ensure that the correct goods are delivered on time.

87.3 Contract supervision and administration of works contracts is usually more complex than for goods due to the nature of works, the fact that they are usually

implemented in the outside, in remote areas, and that the circumstances (soil, climate) may be different than what was foreseen at the time the detailed design of the works was made. The daily control and supervision of such contract is usually the responsibility of a Supervising Engineer appointed or hired by the Procuring Entity. The Procuring Entity must therefore ensure that it is kept informed of progress and problems which arise through routine reports. The Supervising Engineer is obliged to obtain approval from the Procuring Entity (the Procuring Entity) for major contract management decisions (e.g. issuing variation orders above a specified value, granting extension of time, approving additional payments, issuing taking-over or defect liability certificates).

Where necessary, it is advisable for the procuring entity to establish a multi discipline monitoring and evaluation team for periodic field inspection and monitoring of projects.

87.4 Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury/Federation Account/ or any Bank account of any procuring entity for any procurement falling above the set thresholds unless the cheque, warrant or other form of request for payment is accompanied by a “Certificate of ‘No Objection’ to the award of Contract” duly issued by the Bureau.

### ***Interest on Delayed Payments Public Procurement Act – Section 37***

87.5 Payment for the procurement of goods, works, and services shall be settled promptly and diligently. Any payment due for more than sixty days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by the Ministry, Extra-Ministerial Office, government agency, parastatal or corporation shall be deemed a delayed payment. All delayed payments shall attract interest at the rate specified in the contract document. All contracts shall include terms, specifying the penalty for late payment of more than sixty days.

87.6 Payment for works contracts will normally be made against Payment Certificates approved in strict accordance with the terms of the Contract.

### **Contract Performance**

#### **88.1 Monitoring Supplier’s or Contractor’s Obligations**

The Supplier, Contractor, Service Provider or Consultant’s performance against the contract must be monitored on a routine basis. The Supervising Department will:

- Notify the Supplier, Contractor, Service Provider or Consultant immediately in writing of any failings in performance and seek an agreed solution;
- Update the contract file regularly to reflect the monitoring of performance;
- Ensure that the Chief Executive or the Accounting Officer of the Procuring Entity and the Bureau are informed of any serious failings in performance.

### 88.2 Contract *Termination*

Both parties to the contract normally have the right to terminate the contract, but to protect the Procuring Entity, the advice of the Legal Department and the Bureau should always be sought if the Procuring Entity is considering such action.

Contracts should not normally be terminated without examining all possible alternatives, unless the termination is agreed by all parties to the contract. Procuring Entity must therefore examine the Contract carefully to be aware of all contract conditions, penalties and payments relating to the Contract Termination. The advice of the Legal Department should also be taken into consideration in the preparation of any correspondence and settlement of any contractual penalties.

### 88.3 Contract *Amendment*

Contract amendment may become necessary as a result of the application of additional or reduced requirements by the Procuring Entity, agreements to extend the time schedule, or from accepted increases or decreases in prices.

The Supervising Department will:

- Identify and agree with the Supplier, Contractor, Service Provider, or Consultant the specific clauses in the contract which need to be changed, and the new values or terms and conditions which are to apply;
- Prepare a draft contract amendment document for approval by the relevant authority together with a report justifying the reasons for the amendment;
- Obtain approval from the relevant authority (and no-objection to amendment of Contract terms from the Bureau);
- Distribute copies in the same way as the original contract.

## **SECTION 9—DISPOSAL OF PUBLIC PROPERTY**

### ***Public Procurement Act – Section 55 & 56***

#### **Disposal of Public Property**

**89.** Open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale. The Bureau shall with approval of Council:

- Determine the applicable policies and practices in relation to the disposal of all public property;
- Issue guidelines detailing operational principles and organizational modalities to be adopted by all procuring entities engaged in the disposal of public property;
- Issue standardized document, monitor implementation, enforce compliance and set reporting standards that shall be used by all procuring entities involved in the disposal of public property.

#### **Planning of Disposals**

**90.** 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 a valuation report for such property by an independent Evaluator, or such professional with the appropriate competence to carry out the valuation.

Disposal of assets whether or not listed in the Assets register of a procuring entity shall be planned and integrated into the income and expenditure budget projection of the procuring entity.

Disposal of assets shall be timed to take place when the most advantageous returns can be obtained for the asset in order to maximize revenue accruing to the Procuring Entity.

All procuring entities shall distribute responsibilities for the disposal of public property between the procurement unit and the Tenders Board.

#### **Disposal Methods**

91. Procuring Entity's property, which is no longer needed, may be disposed of in accordance with the methods indicated below:

• ***Trade-in***

Property may be traded in on other similar equipment; i.e., office equipment traded on other office equipment and scientific equipment traded on other scientific equipment.

If the estimated value of the new equipment being purchased (without the trade-in) exceeds the amount for which competitive quotations must be solicited, then:

- The procurement must be competed.
  
- Both the item to be purchased and the item to be traded in are listed separately on the solicitation.
  
- The low bidder is determined by subtracting the priced offered on the trade in from the price of the new equipment.

• ***Sales to other governmental agencies***

Sales of surplus property may be made to other governmental agencies at a fair market price.

• ***Public Auctions***

A public auction may be held to dispose of surplus property. Auction notices should be placed in area papers and the services of an auctioneer obtained.

• ***Sales by Sealed Bid***

Property may be sold on sealed bid (Invitation for Bids). This procedure is handled similar to the purchase of goods except of course that the award is made to the highest bidder.

• ***Negotiated Sale***

If competitive methods (public auctions or sealed bid) have been attempted with no success, it may be sold at a negotiated price.

• ***Set Price***

If other methods are not practicable, surplus property may be priced at a fair market value and offered for sale to the public on a first come, first served basis. The time and place of these sales should be advertised so that the public is aware of the sale.

### **Destruction or Abandonment**

**92.** Property which is unusable and determined to have no commercial value, or that the cost of sale would exceed the expected returns, may be destroyed or abandoned. Documentation should be made of this property and signed by the person who destroyed the property as well as by the Chief Executive.

### **Documentation**

**93.** As with other procurement related actions, actions taken to dispose of surplus property must be fully documented to indicate the why, who, what, when, where and how of the transaction.

### **Approval.**

**94.** Federally funded acquisitions often carry stipulations regarding disposal. These stipulations should be reviewed prior to disposing of equipment that was originally purchased with federal funds.

## **SECTION 10 — PROCUREMENT REPORTING**

**95.** The routine reporting of procurement activity is essential for procurement planning and budgeting, and for the monitoring and tracking of procurement. Pending the introduction and full operation of a Management Information System in each of the Procuring Entities, regular monthly reporting of procurement to the Chief Executives/Permanent Secretaries is required.

**96.** Monthly Report of Procurement shall be submitted to the Bureau by each Procuring Entity highlighting procurement in process i.e. procurements which have passed the initial stage of approval during the month; contracts signed i.e. all new contracts signed during the month together with any procurements which have been cancelled after receiving an initial procurement approval by the relevant authority or cancelled/terminated; and contracts completed, i.e. Contracts completed during the month following performance by the supplier, contractor, service provider or consultant; final payment by the Procuring Entity, and the release of any performance security.

## **SECTION 11 — PROCUREMENT SURVEILLANCE AND REVIEW** *Public Procurement Act – Section 53 & 54*

97. The Bureau may review and recommend for investigation by any relevant authority any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of the Act.
98. The Bureau may pursuant to the advice of a procuring entity, results of its review of a procurement or report of investigation by a relevant government agency issue a variation order requiring a contractor at its own expense to repair, replace, or to do anything in his or her contract left undone or found to be carried out with inferior or defective materials or with less skill and expertise than required by the contract award.
99. The Bureau shall, if satisfied that there has been a contravention of the Act or any regulations in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which action shall include:
- a) Nullification of the procurement proceedings
  - b) Cancellation of the procurement contract
  - c) Change the award recommendation to reflect the right decision
  - d) Ratification of anything done in relation to the proceedings which is consistent with any relevant provisions of the Act
100. On completion of any investigation, the relevant authority shall, if an offence is disclosed, take all necessary steps to commence prosecution and inform the Bureau and procuring entity accordingly, but where no offence is disclosed, the file shall be closed and the Bureau and procuring entity shall be duly informed.
101. A Bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of the Act or any regulations or guidelines made under the Act or bidding documents.
102. A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer within 15 working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier.
- The accounting officer shall:
- a) On reviewing a complaint make a decision in writing within 15 working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision; or

- b) Where the accounting officer does not make a decision within the period specified above or the bidder is not satisfied with the decision of the accounting officer, he/she may make a complaint to the Bureau within 10 working days from the date of communication of the decision of the accounting officer.
103. Upon receipt of a complaint, the Bureau shall promptly
- a) Give notice of the complaint to the affected procuring entity for its response and suspend any further action on procurement proceedings until the Bureau has settled the matter;
  - b) Unless the Bureau dismisses the complaint;
    - Prohibit a procuring entity from taking any further action;
    - Nullify in whole or in part an unlawful act or decision made by the procuring entity;
    - Declare the rules or principles that govern the subject matter of the complaint
    - Revise an improper decision by the procuring or disposing entity or substitute the Bureau's decision for such a decision
104. Before taking any decision on a complaint, the Bureau shall notify all interested bidders and/or convene a Right of Reply meeting with all interested bidders and the affected procuring or disposing entity in attendance for a transparent discussion of all the issues raised in the complaint.
105. The Bureau shall make its decision within 21 working days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.
106. Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Bureau, the bidder may appeal to the Federal High Court within 30 days after the receipt of the decision of the Bureau, or expiration of the time stipulated for the Bureau to deliver a decision.

## **SECTION 12 — CODE OF CONDUCT FOR PROCUREMENT PROCEEDINGS**

### ***Public Procurement Act – Section 57***

107. The Bureau shall, with the approval of the Council, stipulate a Code of Conduct for all public officers, suppliers, contractors and service providers with regards to their standards of conduct acceptable in matters involving the procurement and disposal of public assets.
108. The conduct of all persons involved with public procurement, whether as official of the Bureau, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity.

109. All officers of the Bureau, members of Tenders Boards and other persons that may come to act regarding the conduct of public procurements shall subscribe to an oath as approved by Council.
110. Where a transaction involves the procurement or disposal of public assets, the following principles shall apply:
111. In carrying out their duties all public officers shall maintain the highest standard of ethical conduct in dealing with Contractors and suppliers and shall conduct their activities in accordance with the following Code of Ethics:
112. all contractors, suppliers and their staff shall be dealt with in an equitable and businesslike manner; staff shall declare any potential as well as actual conflicts of interest.
113. The law and international regulations shall be fully complied with; any unlawful act is unacceptable, whatever the justification. Public Officers should reject any practice which is, or might reasonably be deemed to be, improper."

114. **Compliance with the Law**

Compliance with the law is the basis of sound business conduct. Although a detailed knowledge of all applicable laws is not expected, public officers should take reasonable care to acquaint themselves with the main requirements of the Public Procurement Act 2007 and other Laws, circulars and guidelines which affect their area of business, and seek the assistance of BPP in case of doubt.

Unlawful acts are not acceptable whatever the justification. Good motives are not excuse for committing illegal acts. Furthermore, the form which a transaction takes is of no significance in determining its acceptability - an illegal agreement, for example, is not rendered acceptable because it is made vaguely or informally.

115. **Compliance with Contractual Obligations**

Contractual agreements are considered to be fully binding. It is not acceptable to coerce/arm-twist a contractor or supplier to avoid compliance with the provisions of a contract. The same principle applies, of course, should the reverse situation occur.

116. **Accurate Records**

All procurement dealings, and in particular all payments and receipts, should be fully and accurately recorded. No individual public officer should take or permit

others to take any action that would not accurately, fairly and completely reflect the results of such transactions. No one should make false or misleading entries in any Entity's record for any reason.

117. **Abuse of Office**

Public Officers should not use their positions within their Entity for personal gain, nor should they use Entity's funds or assets for unauthorised or improper purposes. In particular public officers should not use their positions to exert improper influence over contractors or suppliers. The offer, payment, soliciting and acceptance of bribes in any form are not acceptable under any circumstances.

118. **Declaration of Interest**

Any personal interest which may affect or be deemed by others to affect a public officer's impartiality in any matter relevant to his duties should be declared to the Entity. The obligation is on the public officer to volunteer this information and not to wait until specifically asked.

Public Officers should inform their supervisor of any Directorships or Advisory positions which may be offered to them by other companies and they should obtain formal approval from their entity before accepting such positions.

Public Officers should declare any Share-Holdings or other financial interest which they might have in companies which are contractors or suppliers to their entity. Public Officers should also notify their supervisor of close family members employed by contractors or suppliers to their entity.

Specifically within the Procurement Units, the following shall apply:

119. Procurement Unit Heads shall maintain Conflict of Interest Registers in which all their officers shall declare, by recording in the register, whenever they are likely to enter into a conflict of interest situation which may have an impact on their relationship with the procuring entity.

120. Procurement Units shall maintain a departmental register, which will be updated half-yearly by procurement Unit heads. The register shall be presented to the Accounting officer on an annual basis for review and signature. The

register must be available for Unit Heads to complete should they become aware of a conflict involving themselves.

121. These registers must include any entertainment or gifts offered or provided by contractors or suppliers whatever the value and any interests officers or their families may have in companies dealing directly or indirectly with the entity. It is strongly recommended that public officers include all items which could possibly have or be construed to have an effect on their relationship. Ideally they should seek the approval of their Unit Head before accepting any gift or entertainment from third parties.

122. **Impropriety by Others**

Public Officers who become aware of, or suspect impropriety by others in connection with the conduct of an entity's business, have a duty to report it to the appropriate official. Of particular concern is the role of 'information brokers'. Public Officers who are involved in standard contracts should be aware of the threat that information brokers pose to ethical business conduct and should report any approaches from brokers' representatives to the appropriate level of management.

123. **Contractor and Supplier Relations**

The procuring or disposing entity desires to maintain its reputation by meeting the highest standards of ethical conduct in all its dealings with contractors and suppliers. Accordingly such contractors and suppliers should be informed of the ethical standards and code of Ethics for public officers, especially those policies and standards concerned with contractor and supplier relationships. The Code of Ethics on entertainment and gifts should be explicitly communicated to them.

124. **Hospitality**

Public Officers must never allow themselves to get into a situation in which accepting hospitality from a supplier of goods or services influences their business decisions or causes others to perceive an influence. There are nonetheless, cases in which accepting hospitality is appropriate for business reasons. When accepting an invitation from a supplier the key question to ask is, "what is the business purpose?" If there is no clear business purpose, then the

offer should be declined.

In all cases, public officers should inform their supervisors in writing of the event, including who attended, when and where the event took place, and why.

#### 125. **Gifts**

Public Officers must never allow themselves to get into a situation in which accepting a Gift from a contractor or supplier of goods or services influences their business decisions or causes others to perceive an influence. Consequently, the acceptance of business gifts by public officers is, as a general principle, discouraged. This not only affords a measure of protection for the Entity but also protects public officers against unfounded allegations of improper behaviour.

In all cases, public officers should inform their supervisor in writing of the offer and/or acceptance of gifts. In the case of procurement or disposal officers an appropriate entry should be made in the relevant Conflict of Interest Register.

Public Officers should consider with particular care any gifts or services which are provided by suppliers or contractors direct to their home or to members of the family. Suppliers or contractors may, for example, attempt to circumvent Procuring Entity policies on gifts by saying that a gift is a "personal present to the children - nothing to do with business". Such a justification is almost always spurious, and should be rejected.

#### 126. **Corporate Gifts and Entertainment**

Management discretion needs to be exercised when a supplier or contractor offers substantial gifts or hospitality at the corporate level, e.g. a major contribution to an Entity's function, a valuable Contract Holdership for a competition or other activity at an entity's club, or large-scale entertainment of Entity's staff.

#### 127. **Improper Conduct by Contractors and Suppliers**

The Procuring or Disposal Entity should avoid dealing with contractors or suppliers of goods and services who adopt practices which the Entity would regard as unethical. Contractors should not be used to perform unacceptable practices on behalf of the procuring entity.

**128. Official Authorities**

All dealings with other government departments and agencies must be open and above suspicion. Statements and declarations to such bodies must be true and correct. Any payments made must be in line with the prevailing rules, regulations and applicable law and accounting for the receipt and disposition of funds must be in accordance with the facts.

**129. Whistle Blowing**

A person who raises a concern under this policy will not be at risk of losing his/her job or suffering any form of victimization or retribution from his/her organization as a result. This assurance does not however extend to those who are found to have raised a matter falsely or maliciously.

If a person wishes to raise a concern anonymously or with his/her identity known to only specific persons, this will be respected. A Whistle Blower may wish to raise a concern in confidence under this Code. In that case identity will not be disclosed outside the Special Investigation team without his/her consent.

However, a situation may arise where it will not be possible to fully resolve an issue without revealing his/her identity for e.g. where you are required to give evidence in court. In such a case, the investigation team will dialogue with the whistle blower on whether to proceed and how best to do so.

A 24/7 confidential and secure hotline which provides an alternative means of raising concerns of a legal or ethical compliance nature in the public procurement or disposal process shall be established by each Procuring Entity and the Bureau.

All reports will be handled confidentially and a whistle blower or his/her company will not suffer any retribution for reports made in good faith.