



THE STATE OF OSUN

PUBLIC PROCUREMENT AGENCY (PPA)

PUBLIC PROCUREMENT MANUAL

AUGUST 2017

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FOREWORD

1. The legal framework of the public procurement system for the State of Osun, Nigeria was strengthened with the enactment of the Public Procurement Law, 2015 which came to operation on 10th February 2016. This was further supported by the publication of the Public Procurement Manual 2017. The Law provides the general rules governing Public Procurement, while this manual provides guidelines and step-by-step procedures to assist Procurement Entities to undertake public procurement in accordance with the Law.

The Law and the Manual were provided to establish procedures for public organizations in the State to achieve the following objectives in the course of their procurement and disposal activities:

OBJECTIVE	REMARKS
Economy	Best value for money, without compromising quality.
Efficiency	Simple and swift, producing results without delays, practicality in terms of compatibility with administrative resources and professional capabilities of the procuring entity.
Fairness	Impartial, consistent, provides interested service providers equal opportunities to compete.
Reliability	Can be trusted by interested service providers, expands competition and the purchaser's options and opportunities.
Transparency	Establishes and maintains rules/procedures that are accessible and unambiguous. It is not only fair, but should be seen to be fair.
Accountability and Ethical Standards	Practitioners are held responsible for their actions, subject to challenge and sanction, enforces probity, deterrent to collusion and corruption, enhances credibility.

2. In a developing country like Nigeria, where the public organizations constitute the largest domestic market, the public procurement system serves as the link between public procurements and the private sector service providers. It is the responsibility of the government to provide some basic amenities to the citizens. Most of the requirements are acquired from external sources to the government which is the private sector through the procurement process. The necessity for public procurement law and also clearly defined procurement system arises from the fact that, unlike the private sector, public procurement is a business within a national and political system, whose pillars of strength are integrity, fairness, accountability, competition, transparency, national interest, promotion of local industry and economic development, in addition to economy.

3. The public procurement system affects many aspects of society including: -

(a) The procuring entities, which must fulfill their mandates through provision of public goods and services.

(b) The business community of actual or potential suppliers, contractors and consultants who satisfy the procuring entities identified needs.

(c) The professional associations, academic entities and public interest groups, which have important concerns and views on how public institutions are managed and perform and

(d) The general public which is more likely to feel satisfied when they know that expenditures by the procuring entities made through public procurement system realise value for money.

(e) Development partners

4. This Public Procurement Manual (PPM) has been issued by the Public Procurement Agency (PPA) for the purpose of: -

(a) Providing guidance to public officials who are responsible for the public procurement processes, Auditors, Public Finance Managers, Accountants, Administrators, Engineers, Quantity Surveyors, Economists, Computer Scientists, Procurement Officers, and Architects etc in their everyday work relating to public procurement.

(b) It is also expected to be useful to all other parties participating in public procurement in one way or other and in particular the suppliers contractors and consultants.

(c) It will also play a significant role in development of sector specific manuals that are unique to entities that are performing specialized services with a view of enhancing the quality service delivery to their internal and external customers.

The Manual shall assist participants in public procurement in the application of the Public Procurement Law, 2015. It will also play a big role in the standardization of the public procurement practices across all procuring entities in the State of Osun, Nigeria.

5. In the preparation of this manual, efforts have been made not to produce a sophisticated or highly technical document, but to provide balanced information and instructions which can be readily understood and followed by all users. The PPM has been issued under the authority of the Public Procurement Law, 2015 section 10 (5). The instructions in the manual are therefore to be complied with by all participants in the public procurement process.

6. The Public Procurement Manual shall be made available by the PPA at a reasonable fee to all MDAs and interested individuals. This manual is subject to review as may be necessary to accommodate any changes affecting the public procurement system. Where this manual is found inadequate for the specific requirement(s) of some MDAs due to the diversity of services being rendered across the State by public organizations, concerned procuring entities are encouraged to produce their own internal procurement manuals suiting their situations and circumstances. In doing this, they must however ensure that such internal manuals are consistent with the Public Procurement Law, 2015 and this PPM. The PPA shall also be available to render technical assistance as may be required in the production of such internal manuals.

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ACRONYMS

AA	Approving Authority
AO	Accounting Officer
APG	Advance Payment Guarantee
BDS	Bid Data Sheet
BER	Bid Evaluation Report
BOQ	Bill of Quantity
CBN	Central Bank of Nigeria
CIF	Cost, Insurance and Freight (to named port of destination)
CIP	Cost and Insurance Paid (to named place of destination)
CQS	Consultants Qualifications Selection
FBS	Fixed Budget Selection
IAC	Inspection and Acceptance Committee
ICB	International Competitive Bidding
ICT	Information Communication Technology
ITB	Instruction to Bidders
LC	Letter of Credit
LCS	Least Cost Selection
LPO	Local Purchase Order
NCB	National Competitive Bidding
NGO	Non-Governmental Organization
PC	Procurement Committee
PE	Procuring Entity
PEs	Procuring Entities
PPM	Public Procurement Manual
PPA	Public Procurement Agency
PPC	Procurement Planning Committee
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
RFP	Request for Proposal
RFQ	Request for Quotations
SSS	Single Source Selection
TB	TendersBoard
TEC	Technical Evaluation Committee
TS	Technical Specifications
TOR	Terms of Reference
U.N.	United Nations
UNICEF	United Nations Children's Education Fund
VAT	Value Added Tax
WHO	World Health Organization

GLOSSARY

Acceptance	means the acceptance of goods, works or services by the Inspection and Acceptance Committee in part or in full, qualified or not following an inspection
Accounting Officer	means the person charged with line supervision of the conduct of all procurement processes
Approving Authority	means the person charged with overall responsibility for the functioning of a ministry, extra-ministerial department or corporation
Assets	includes tangible and intangible things which have been or may be sold or procured for consideration
Aggregation	Process by which procurement requirements are pulled together to gain economies of Scale
Appeal	means a request for administrative review filed with the Administrative Review Panel over procurement proceedings
Announcement	the act of announcing publicly through appropriate media the forecast or opening or results of procurement proceedings
Auction (Public)	An auction is a process of buying and selling goods or services by offering them up for bid, taking bids, and then selling the item to the winning bidder. In economic theory, an auction may refer to any mechanism or set of trading rules for exchange. There are several variations on the basic auction form, including time limits, minimum or maximum limits on bid prices, and special rules for determining the winning bidder(s) and sale price(s).
Authorization	The act of granting an approval by the person or body specified in the manual, Law, or relevant regulations to validate a stage of the procurement proceedings
Award	The process of awarding a contract ensues from the notification to the selected vendor.
Bidding documents	The standard documents elaborated by the PPA or the procuring entity for the purpose of procuring goods, works, services or consulting services. These documents must be used by the procuring entities
Bid Security	means a form of security assuring the bidder shall not withdraw a bid within the period specified for acceptance and shall execute a written contract within the time specified in the bid
BOO	means Build, Own, Operate contracts
BOT	means Build, Operate, Transfer contracts
BOOT	means Build, Own, Operate and Transfer contracts
Certificate of Compliance	means the document evidencing and authenticating that due process and the letters of this Law have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers from the Treasury
Coercive practice	means force or threatening to use force, directly or indirectly, against persons or their property with intent to influence the manner of their participation in and/or their appropriate conduct of a procurement process and/ or the execution of a contract
Contract	means an agreement entered in writing
Contract File	The file that contains all supporting documentation pertaining to a specific contract and its execution by both parties such as all correspondence, interim payments, survey reports, delivery data, inspection reports, etc. The contract file contents are compulsory requirements for providing audit trails. The Contract file is closely linked with the Procurement file.
Contract Manager/Administrator	The official nominated to manage and supervise the contract execution by the contractor on behalf of the procuring entity. The contract Manager/Administrator is the only official responsible for the contract management and is responsible for maintaining the contract file. All other functions such as accounting and payment cannot be performed by the contract administrator alone and are subject to internal controls.
Contractor or supplier	means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, individual, sole proprietor, joint stock company, joint venture or any other legal entity through which business is conducted
Collusive practice	means a scheme or an arrangement between two or more Bidders with or without the knowledge of the Procuring Entity, including non-disclosure of subsidiary relationships, designed to establish bid prices at artificial, non-competitive levels thereby depriving the Procuring Entity of the benefits of free and open competition

Corruption or corrupt practice	means the offering, giving, receiving, or soliciting for anything of value to influence the action of a public official in the procurement process or in contract execution
Debar	means the placing of a firm, company or natural person on a list of person ineligible to participate in any procurement proceedings under the Public Procurement Law
Direct Contracting or Direct Procurement	A method of procurement that does not requires the use of the competitive bidding. Direct procurement is strictly regulated; see chapter 7.7 of the manual.
Direct labour	Also known as 'Force Account', means the procurement of civil works by a procuring entity using its own internal personnel , equipment and resources
Domestic firm	means a business or professional organization incorporated or otherwise organized in Nigeria; andhaving its principal place of business located in Nigeria; andhaving at least 50% of its equity held by nationals of Nigeria; andnot having its assets controlled by foreign national or organization incorporated or organized outside Nigeria; andwith more than 50% of persons who will perform services under the contract whether employed directly or by a subcontractor being nationals of Nigeria
Disposal (Cycle)	The cycle that starts with the initiation of the process of disposing of unserviceable, obsolete or surplus stores, other assets and equipment and is considered ended when the disposal has been completed and accepted.
Disposal Plan	the document prepared by each procuring entity annually to plan all disposal decided to be necessary
Dumping, burning and burying	a method of disposal of obsolete or unserviceable of stores, assets and property regulated in chapter 10
Eligible	the status that means a bidder satisfies all criteria to participate to public procurement and disposal Proceedings
Emergency	In relation to procurement derives from an "urgent need" as interpreted within the Public Procurement Law. A procurement proceeding that is justified by an emergency means the need for goods, works, services or consulting in circumstances where there is an imminent or actual threat to public health, welfare, safety, or damage to property such that engaging in competitive bidding proceedings or other procurement methods would not be practicable
Fake Competition	False competition where the bid received is coming from one source
Feasibility study	A feasibility study is an early study of a problem to assess if a solution is feasible. The study will normally scope the problem, identify and explore a number of solutions and make a recommendation on what action to take. Part of the work in developing options is to calculate an Outline Business Case for each as one aspect of comparison. The Framework includes a Feasibility Study as the first phase of a project, although it is sometimes necessary to have a large study carried out as a project in its' own right.
Force Majeure	Means an event or series of event which were not foreseeable and are not the result of dilatory conduct and result in the temporary delay or permanent stopping of the contract execution. Such cases are related to natural disasters, climatic events and wars. Force Majeure cannot unilaterally be declared and has to be approved by the Tenders' Board. The PPA may provide guidance on the cases and necessary conditions to be met to apply force Majeure. In case of Force Majeure, a contractor's performance security cannot be forfeited nor can the contractor make claims other than demobilisation costs if provided for under the contract.
Framework Contract	Means a contractual arrangement which allows a Procuring Entity to procure goods, works or services that are needed continuously or repeatedly at an agreed price over an agreed period of time, through placement or a number of orders which may include consortium buying.
Fraudulent practice	means any act or combined misrepresentation or omission of facts that affects the procurement process or contract execution to the detriment of the Procuring Entity
Goods	means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form and electricity as well as services incidental to the supply of the goods
Government	shall mean The State of Osun
Interim Performance Certificate	means evidence that a contractor or supplier or service provider has performed its obligations under a procurement contract up to a level stipulated by the contract but not meaning completion
International Competitive Bidding	means the solicitation of bids from both domestic and foreign contractors and suppliers
Inspection	An inspection is, most generally, an organised examination or formal evaluation exercise. It involves the measurements, tests, and gauges applied to certain characteristics in regard to an object or activity. The results are usually compared to specified requirements and standards fordetermining whether the item or activity is in line with these targets. Inspections are usuallynon-destructive.
Joint Venture	means an association where all member firms or persons are jointly and severally liable for the entire contract, and shall designate one party to act as a leader with authority to bind the joint venture and to sign contract with the Procurement Entity
Lotting	Process by which procurement requirements are divided into lots to segregate into smaller

	packages or packages that requires specific set of qualifications
Margin of Preference	means extra mark up on price allowed any domestic contractor or supplier bidding under International Competitive Bidding without being otherwise disadvantageous to the bid in terms of price
Minor Value	means a monetary value which is not in excess of the monetary thresholds set for any approving authority by the PPA
National Competitive Bidding	means the solicitation of bids from domestic contractors and suppliers registered or incorporated to carry on business under Nigeria Law
Negotiation	means discussions to determine the terms and conditions of a contract or procurement
Non Consulting Services	are services which are bid and contracted on the basis of performance of a measurable physical output and for which performance standard can be clearly identified and consistently applied such as drilling, area photographing, satellite imagery, mapping and similar operations
Obsolete item/property	Obsolescence is the state of being which occurs when an object or service is no longer wanted even though it may still be in good working order. Obsolescence frequently occurs because a replacement has become available that is superior in one or more aspects.
Open Competitive Bidding	means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services
Payment	The transfer of monies operated from the procuring entity to the contractor following partial or full acceptance of the goods, works and services.
Procurement	means acquisition
Procurement File	The file that contains all supporting documentation pertaining to a specific procurement requirement . The file contents are compulsory requirements for providing audit trails. See also contract file
Procurement Proceedings	means the initiation of the process of effecting a procurement up to award of a procurement contract
Procurement Plan	The document prepared by each procuring entity annually to plan all procurement requirements necessary to perform the activity plan of the procuring entity. Procurement plan can include procurement for multi-annual delivery, multi-annual contracts, and next fiscal year delivery.
Procuring Entity	means any public body engaged in procurement and includes a Ministry, Extra-Ministerial Office, Government Agency, Parastatal and Corporation
Public Property	Public property is property which is owned by a government or community, as opposed to private property, which is owned by non-government parties such as individuals, groups, or corporations. Most public properties are accessible to the general public, such as zoos, libraries, schools, and parks; some are reserved for restricted use, such as military bases and research laboratories.
Quality Assurance	Refers to planned and systematic processes that provide confidence in a product's suitability for its intended purpose. It is a set of activities intended to ensure that goods, works and/or services satisfy the requirements.
Receipt (of goods, works and services)	Corresponds to the phase of the procurement cycle when the contractors delivers to the procuring entity. At that stage the entity may accept or reject the delivery partially or fully. Once goods, works or services are received and accepted, the procuring entity takes responsible for their custody, unless otherwise specified in the contract for partial receipt of works.
Relevant Authority	includes Economic and Financial Crimes Commission and Independent Corrupt Practices Commission
Request for Proposal	A procurement method specifically applied to consulting and other intellectual services.
Request for Quotation	A procurement method, also known as Shopping, specifically applied below a specified threshold allowing for a faster bidding process than in the case of open competitive bidding.
Retroactive Approvals	Procurement approvals given by the authority's entity or person after the action approved has already taken place or has happened.
Restricted Tender	A procurement method that relies on the establishment of a list of authorised bidders who will be offered the opportunity to bid for a specific procurement package. The establishment of the list is subject to conditions defined in Chapters 6 and 7 of the manual and in the Public Procurement Law.
Reserve Price	The minimum price at which a seller is willing to sell a good or service. Reservation prices are commonly used in auctions
Review Report	the report issued by the Review Board or Review Panel
Services	means the rendering by a contractor or supplier or service provider of his time and effort and technical expertise and includes any object of procurement other than goods, works or construction
Stakeholders	Any person or organization having an interest in the progress or outcomes of a Project or Programme– usually because they are either part of it or affected by what it delivers. The process of working out which stakeholders are most and least important to successful project delivery is called Stakeholder Analysis and the processes by which input from, and communications with, them are collectively controlled is called Stakeholder Management.
Single Source	Refers to the procurement that is made through a non-competitive bidding process relying on one

Selection	bidder only. See the conditions pertaining to single source selection in chapter 7
Solicitation Documents	means the bid solicitation documents or any other documents for solicitation of offers proposals or quotations
Special Purpose Goods	means any object of armaments, ammunition, mechanical, electrical equipment or other things as may be determined by the Government needed by the Armed Forces or Police Force as well as the services incidental to the supply of the objects
Specification	An explicit set of requirements to be satisfied by a material, product, or service
Standards	A technical standard is an established norm or requirement. It is usually a formal document that establishes uniform engineering or technical criteria, methods, processes and practices. A technical standard can also be a controlled artifact or similar formal means used for calibration.
Subcontractor	means natural person, a legal person or combination of the above to whom any part of the goods to be supplied or works to be executed is subcontracted by the supplier or contractor
Substantially Responsive	means the response to bid solicitations which virtually answers to all the needs of a procuring entity as stipulated in the bid solicitation documents
Supplier	means a real or legal person that provides supply of goods, contracting of works or consultants
Threshold	Reference is made by this term to the nominal amount above which a procurement method cannot be applied. It represents the highest estimated amount for applying a method, irrespective of any other considerations.
Transfer	refers to a method of disposal by which a procuring entity transfers an asset or any other property to another procuring entity
Unserviceable	the state of being which occurs when an equipment cannot be service to be made functional or at least at a reasonable cost
Urgent Need	shall be interpreted to be applicable only where there is an imminent or actual threat to public health, welfare, safety, or damage to property such that engaging in tendering proceedings or any other procurement methods would not be practicable
Validity Period	means the period during which a bidder agrees not to increase the cost of its bid or to remove any components of the bid
Valuation	Valuation is the process of estimating the market value of an asset. Valuations can be done on assets, for example, such as stores, equipment, physical assets such as buildings, business enterprises, or intangible assets such as patents and trademarks
Vendor (Bidder)	A private or parastatal operator that is competing in a procurement proceeding or is a contractor to a procuring entity.
Works	means all activities associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement of contract, where the value of those services does not exceed that of the construction itself

Chapter 1

PROCUREMENT POLICY AND PURPOSE OF THE MANUAL

Chapter 1—PROCUREMENT POLICY AND PURPOSE OF THE MANUAL

1.0 PROCUREMENT POLICY AND PURPOSE OF THE MANUAL

S/N	Topics
1.1	Public Procurement Policy in the State of Osun, Nigeria
1.2	Purpose of the Public Procurement Manual (PPM)
1.3	Authority and Scope of the public Procurement manual
1.4	The Procurement cycle
1.5	Linkage to Public Finance Management
1.6	Layout of the Public Procurement manual
1.7	Circulars and Guidelines

1.1 PUBLIC PROCUREMENT POLICY IN THE STATE OF OSUN, NIGERIA

The State Government of Osun, has it as a policy that funds budgeted and approved by the State House of Assembly are spent for the intended purposes. This applies to both capital and recurrent expenditures. As entrenched in Section 23(1) (a) of the Public Procurement Law 2015, it is also a government policy to allow open competition for procurement without discrimination in a transparent, fair and accountable manner to ensure achievement of value for money in all procurement. The State Government of Osun also expects public procurement to contribute to the economic development and reduce poverty in the State.

Government policy, among other things, seeks to achieve economic development and poverty reduction and also show tangible improvements in the delivery of services to the people of the State of Osun, Nigeria. These objectives can only be achieved if public procurement in the State is substantially improved. It warrants a point of focus of public sector activity. The importance of procurement stems in part from its central role in budget implementation; in its role in achieving value for money through optimized resource application; and its roles in achieving and maintaining aggregate fiscal discipline through the implementation of a robust commitment control system. No matter how sound our budget plans are, the objectives may not be achieved if there is a disconnect between the budget planning process and the budget implementation process.

Procurement is the overall process of acquiring goods, civil works and services which includes all functions from the identification of needs, selection and solicitation of sources, preparation and award of contract, and all phases of the contract administration through the end of a services' contract or useful life of an asset. **The application of sound policies, efficient procedures as well as fair and ethical practices is indispensable to this process.** Public Procurement therefore, 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 foundation for development.** The success in the delivery of services is also predicated on the efficient allocation of resources and the timely delivery of such services.

Procurement also provides important linkages to the Private Sector. It can promote expansion of the private sector by the way of expanding commercial opportunities and emphasis on fair competition.

1.2 PURPOSE OF THE PUBLIC PROCUREMENT MANUAL (PPM)

The purpose of this manual is to provide guidance to public officials responsible for public procurement, Auditors, Public Finance Managers, Accountants, Administrators, Engineers, Quantity Surveyors, Economists, Computer Scientists, Procurement Officers, and Architects etc, in their day-to-day activities relating to public procurement. It provides a way for the

user to apply the Public Procurement Law, 2015 and facilitates the standardization of procurement practice across the Procuring Entities in the State of Osun, Nigeria. It serves as a reference tool for guiding the practice of public procurement in the State of Osun and ensuring full compliance with the requirements of the Public Procurement Law. No public procurement should therefore be carried out in contravention of the requirements set out in this manual.

The Manual aims at helping all participants in public procurement to comply with the legal and regulatory framework comprised of the Procurement Law, this Manual, Standard Bidding Documents and all Circulars issued by the Public Procurement Agency (PPA). Whereas this manual was not specifically designed as a training manual, the didactic approach in its design has also made it a useful tool for learning about the Public Procurement systems and procedures of the State of Osun, Nigeria.

The consistent and diligent application of the guidelines and principles presented in this Manual would not only significantly curtail the abuse of the public procurement process; it would also drastically reduce the suspicion of corruption in the procurement process in the State of Osun, Nigeria. Further, it will increase public confidence, and encourage both potential and active service providers to participate in the execution of procurement contracts. The expanded competition due to the trust in the process, invariably will impact positively on the achievement of value for money, and on the overall public finance management objectives of fiscal discipline, effective and efficient service delivery.

1.3 THE AUTHORITY AND SCOPE OF THE PPM

This Public Procurement Manual is issued by the Public Procurement Agency (PPA) of the State of Osun, Nigeria in accordance with Section 10 (5) of the Public Procurement Law, 2015. Also, Section 23 of the Law stipulated that ‘Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any Regulations made from time to time by the Agency’. Compliance to the instructions contained in this manual is therefore mandatory.

In the special case of a conflict between the requirements set out in this manual or any directives of the PPA and a condition imposed by an international donor funds, the donor condition shall prevail with respect to a procurement that uses those donor funds. Where there can be clear separation of the procurement process to effect the program or project without contributing to unreasonable delay or undue additional cost then the requirement set out in this manual must be applied to the Government’s portion of the funds.

The scope and jurisdiction of this Public Procurement manual includes all Procurement Entities (PEs). The Manual sets out the guidelines for carrying out public procurement and also provides guidance on:

SCOPE OF THE MANUAL	REMARKS
The Institutional Arrangements	<ul style="list-style-type: none"> i. The roles and responsibilities of the different institutions responsible for managing and overseeing procurement in the State of Osun, Nigeria; ii. The creation of specified procurement committees and the assignment of responsibilities and functions within a public entity; iii. The delegation of procurement authority;
Planning for Procurement	Procurement planning and its linkage with financial management
Procurement and Disposal Cycle	<ul style="list-style-type: none"> i. How decisions relating to procurement and the disposal of assets by public entities are to be made; ii. The procedures, application of controls, selections and approvals procedures to be carried out by the different procurement officers within the complete procurement cycle and also on the disposal of unserviceable, obsolete or surplus assets
Contract management	Improved contract administration to ensure that Contractors' performance meet contractual requirements, through Supervision, Performance reporting/Certification, Payments, and adequate Change Control System.
Procurement Principles	<ul style="list-style-type: none"> i. The achievement of Value for Money through economy, efficiency and fair competition, as well as the discouragement of fake competition; ii. The promotion of the highest standards in the practice of procurement and limit and discourage corrupt practices and the promotion of integrity and fairness in the procurement proceedings so as to increase public confidence in public procurement procedures;
Procurement Filing and Record Management	The filing and record management of procurement documentation to better manage and control procurement procedures

This Public Procurement Manual is applicable to all procurement covered by the Public Procurement law, 2015. In the same vein, this Manual shall apply to all Procuring Entities and Participants in Public Contracts and to all Public Procurement of Goods, Works and Non-Consulting Services, as well as all Consulting Services.

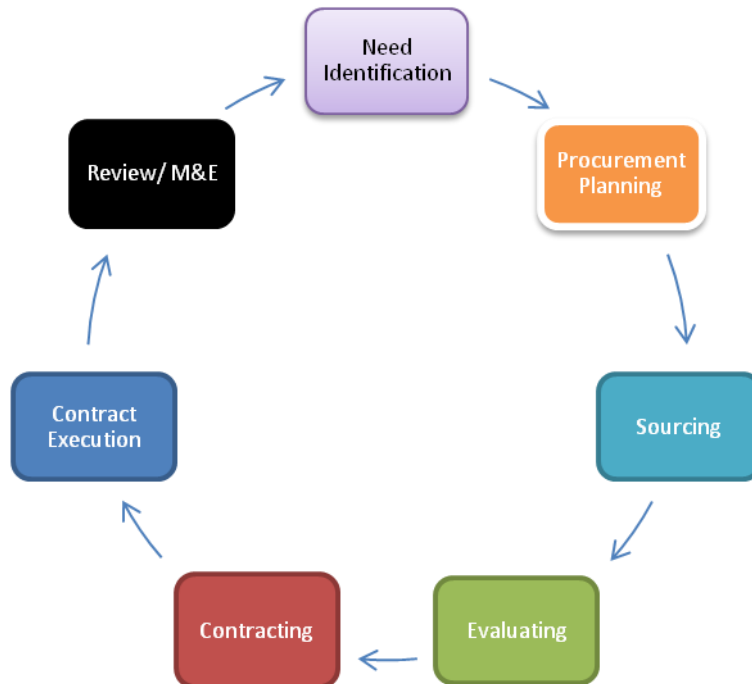
Section 72 of the Public Procurement Law, 2015 stipulates thus: The Provisions of this Law shall apply to all procurement of goods, works and services carried out by:

- (a)** the State Government, Local Government Councils/Development Authority and all procuring entities in the State;
- (b)** any public body in the State engaged in procurement, and shall include Ministries, Departments, Bureaux, Offices and Agencies of the State, extra-ministerial offices, parastatals and corporations; and
- (c)** all entities outside the foregoing description which derive any funds appropriated or proposed to be appropriated for any type of procurement described in this Law from the State Government's share of Consolidated Revenue Fund.

Effective application of this Manual is expected, amongst other things to engender,

- (a)**The promotion of economy and efficiency through appropriate planning of public procurement well linked with budget preparation and budget execution;
- (b)** Drastic reduction in corrupt practices in public procurement by instituting transparency and accountability in the process;
- (c)** The facilitation of adherence by procuring entities and procurement officers to the sound institutional arrangements put in place for service delivery through procurement;
- (d)**Selection of the appropriate procurement method for every procurement activity and adherence to the control procedures stipulated for each of the steps in the procurement cycle.

1.4 THE PROCUREMENT CYCLE



It is the responsibility of each Procuring Entity to carry out the following specific steps leading to a complete procurement cycle:

- (a) Preparation of Procurement Plans
- (b) Preparation of procurement specifications and initiation of the procurement process
- (c) Preparation of Pre-qualification/Tender/Bid documents
- (d) Advertisement/Invitation to bids
- (e) Receiving and Opening of Bids
- (f) Evaluation of Bids and Recommendation of Contract Award
- (g) Notification of Contract Award
- (h) Negotiations (where applicable)
- (i) Preparation and Signing of Contract Agreement
- (j) Contract Administration
- (k) Receipt, Inspection and Acceptance of goods, works and services.
- (l) Storage and Inventory Management.

Documentation is so important in procurement; hence all the activities in the procurement cycle must be properly documented, and each step approved by the designated authority. All procurement documentation shall be properly filed to allow for review either for administrative purposes and/or in case of a complaint from a service provider.

1.5 LINKAGE TO PUBLIC FINANCE MANAGEMENT

The procurement process must also be coordinated with the budget process, commitment control, finance and expenditure management, and audit. Heads of Procuring

Entities/Accounting Officers must therefore ensure close coordination between the procurement function and the other budget functions.

The need for linkages between public procurement, budget preparation and budget implementation is elaborated below.

- (a) The desired objectives of any government policy would not be achieved if not supported and driven by effective public procurement procedures. A procurement system not well linked to the budget can totally undermine the budget process.
- (b) The fiduciary risks typically associated with poor procurement procedures, improper institutional arrangements, ineffective procurement controls, and too much ambiguity to apply effective audit standards undermines the objectives of the budget, and
- (c) As mentioned earlier, Public Procurement is the process by which governments buy inputs for vital public-sector investments; procurement is therefore critical and fundamental to the basic function of Government.

There are many links between procurement and expenditure control. The instrument for budget implementation is the procurement process. It is therefore very important we institute direct links between Procurement and other areas of Financial Management including Budget, Finance, Accounts and Audit.

From the financial management side, the quality of Procurement is affected by:

- i. a poor budget structure with little basis for supporting expenditure management;
- ii. budget estimates that have little relationship to procurement requirements; and
- iii. a weak and ineffective Internal Audit function that merely serves as a basis for unnecessary delays and other unethical practices.

Procurement, on the other side, affects the budget preparation process as follows:

- i. Without proper procurement plans, budget preparation with a bottom up approach is unachievable;
- ii. poor procurement management also affects Cash Management which is based on pro forma cash flows for effective commitment control which in turn should properly be based upon the approved procurement plans.

1.6 LAYOUT OF THE PUBLIC PROCUREMENT MANUAL

This manual is organised into four sections, while the four sections contained a total of twelve chapters.

The four sections are as follow:

SECTION A: This section provides the guiding principles to be adhered to by all public entities for carrying out public procurement in the State of Osun, Nigeria. It sets the foundation of all activities to ensure that the budget is executed economically, efficiently, effectively and that the processes are transparent thus rendering the Government accountable to its citizens.

SECTION B: This section sets out the institutional framework for procurement. It presents the key actors in the procurement process and how the public and the private sectors interact through the procurement process, their respective roles and responsibilities.

SECTION C: This section provides the practical guide to the public procurement of goods, works and services in the State of Osun, Nigeria. It lays out the steps to be taken to complete every procurement process in a time and effective manner, and in full compliance with the Public Procurement Law, 2015. This section also guides the user on selecting the appropriate procurement method, managing the procurement cycle, properly administering the contract, recording the procurement cycle steps and filing procurement documentation.

SECTION D: This section provides guidelines on the disposal of public properties. It helps the user select the appropriate disposal method and to apply same in compliance with the Public Procurement Law, 2015. Disposal is a critical element of procurement as it is the basis for securing the public assets. The section also guides the user on managing the disposal cycle, properly administering the disposal contract, recording the disposal cycle steps and filing disposal process documentation.

1.7 CIRCULARS AND ADMINISTRATIVE GUIDELINES

This Public Procurement Manual is one of the complementary instruments employed by the PPA to achieve sound public procurement practice that is compliant with the Public Procurement Law, 2015. It is complemented by a number of other instruments including Standard Bidding Documents, Standard Request for Proposals, Procurement Circulars and Guidelines issued by the Public Procurement Agency. Each Procuring Entity must therefore maintain within a single comprehensive repository of all Procurement Circulars and Guidelines issued by the Authority. These Circulars and Guidelines must be filed in sequence for ease of access and reference.

Chapter 2

PUBLIC PROCUREMENT LAW AND GENERAL PROCUREMENT PRINCIPLES

Chapter 2—Public Procurement Law and General Procurement Principles

Topics

S/N	Topics
2.1	General Principles
2.2	Compliance with the Public Procurement Law
2.3	Obtaining Value for Money through Economy and Efficiency
2.4	Good Practices and Linkages with Larger Public Finance Management
2.5	Applicable Ethics in Procurement
2.6	Promotion of Transparency
2.7	Investigation by the Public Procurement Agency
2.8	Complaints over Procurement Activities
2.9	Blacklist/Debarment of Bidders and Contractors
2.10	Authority for Procurement Decisions

2.1 GENERAL PRINCIPLES

This chapter deals with the basic principles required for a sound procurement practice. These principles were incorporated into the Procurement Law and this Manual. It is therefore important to appreciate these basic procurement principles and to apply them in those areas of procurement procedure, especially in situations where discretion and judgment are required.

The procurement principles include, and not limited to the following:

1. Compliance with the legal and regulatory framework ;
2. Value for money through economy and efficiency in service delivery;
3. Effective competition and careful procurement planning;
4. Promoting transparency and accountability in the Procurement Process;
5. Striking a balance between the level of control necessary to mitigate against risk of loss and the size of transaction costs with respect to both direct costs as well as administrative burden and delay;
6. Separation of authority between procurement initiation, vendor selection, commitment, and receipt inspection and acceptance of procurement object;
7. Promoting sound Public Finance Management through linkage of procurement to other areas of Public Finance Management; such as budget preparation, budget execution, finance, accounts and audit;
8. Ensuring fairness and equity, and avoiding discrimination in the invitation, evaluation and award of procurement contracts;
9. Observing high ethical standards in all aspects of procurement and ensuring procurement practice is devoid of real or perceived corruption;
10. Ensuring appropriate documentation of the procurement process, and maintaining a comprehensive record of procurement transactions.

The above principles should be adopted in taking decisions pertaining to procurement practice. Where the Public Procurement Law, 2015 does not provide specific guidance and discretion or judgment to be employed, these principles should guide the process of decisions making.

2.2 COMPLIANCE WITH THE PUBLIC PROCUREMENT LAW

The Public Procurement Law, 2015 provides a basis for the State of Osun, Nigeria to achieve, among other things, a sound public finance management, an all-encompassing fiscal discipline, strategic allocation of resources and the efficient delivery of services. Sound Public Procurement practice, no doubt, is crucial to achieve all these important objectives. It is therefore imperative for Procuring Entities to strictly adhere to the requirements of the legal and regulatory framework by complying with the procedures and guidelines outlined in this Manual.

This manual provides guidelines that, if adopted by all Procuring Entities, will have a remarkable positive impact on the practice of public procurement in the State of Osun, Nigeria. All Heads of Procuring Entities are therefore required to ensure that their organizations and Officers fully adopt and implement the procedures outlined in this Manual.

2.3 OBTAINING VALUE FOR MONEY THROUGH ECONOMY AND EFFICIENCY

A major requirement for public administration is the quest for value for money in public procurement through the maximization of economy and efficiency. With the promotion of economy, efficiency and value for money practices, a substantial savings of public funds can be achieved. Procurement entities must therefore adopt practices that promote fair competition in all public procurements; discourage the use of fake competition; and aggregate demand, where possible, to take advantage of economies of scale.

Section 23(1) b. of the Public Procurement law, 2015 emphasized the need for the promotion of competition, economy, efficiency and equal opportunities to all parties who are eligible and qualified to participate in public contracts.

Procuring Entity should therefore specifically do the following:

- (a) Promote fair competition by selecting the appropriate procurement methods; provide clear evaluation criteria in bidding documents, request for proposal, or any other offer solicitation documents, and avoid deliberate use of fake competition.

Section 23(15) of the Public Procurement law, 2015 provides that criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceedings.

- (b) Aggregate requirements, where possible, in order to take advantage of economies of scale and adopt more efficient procurement methods. Section 27 (d) of the Public Procurement law 2015 provides that subject to regulations as may from time to time be issued by the Public Procurement Agency, a procuring entity shall plan its procurement by ‘aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost’.

In doing this however, adequate consideration must be given to associated costs/risks of holding large stock such as warehouse losses due to such factors as insect, fungal and bacterial infestation, theft, water damage, and chemical decomposition. Also consideration should be given to direct costs between the different Procuring Entities taking part in the aggregation process.

- (c) Adopt life cycle costs, as far as possible, in selecting procurement alternatives, taking into consideration all elements of cost such as operational costs, after sale services and maintenance costs, environmental degradation impact, energy conservation savings, expected operating life, and disposal value, all of which sum up to Total Actual Ultimate Cost, (TAUC).
- (d) Consider scalability for easy upgrading when dealing with Information and Communication Technology (ICT) items to avoid the costs associated with rapid obsolescence.
- (e) Take into account the issue of seasonality in prices especially where it pertains to the procurement of commodities.

- (f) Discourage the practice of fake competition by watching out for identical presentation, errors, signatures, addresses, telephone numbers etc. in separate bids.

This manual provides some guidance on the selection of specific procurement methods. In selecting a procurement method, the Procuring Entity must consider and balance the following interrelated factors: the cost savings achievable by expanding competition and adopting more effective procedure controls versus the increased transaction costs of using more highly controlled procurement methods.

Great improvements in economy and efficiency may be achieved through careful procurement planning. Procuring Entities should carefully plan individual procurement to ensure that the precise quantities required and accurate specifications are included in the procurement plan to minimize the incidences of contract variations and the attendant risks.

The Public Procurement Law, 2015 and this Manual set up guidelines for the use of procurement methods, the authorizations and approval of steps within the procurement cycle, documentation and filing requirements for procurement and disposal of assets. The procurement methods have been recommended following careful considerations of the balance between risk and administrative burden. The effectiveness of the recommendations will however be undermined by if procurement packages are sliced into smaller lots as a way of by-passing the use of the appropriate procurement methods.

Contract packaging is the process of grouping the procurement requirements in a manner that will ensure economy and efficiency in processing and delivery of the right goods and services at the right time for the project

This involves decision on:

- i. What to procure – like items, large, small, values slice and packages;
- ii. How to procure – method to apply i.e. ICB, NCB, NS etc., as appropriate;
- iii. When to take procurement steps – as appropriate for each of the items vis-à-vis the proposed method
- iv. Who is to take different actions – for implementation as well as for review.

In contract packaging, decision on bulk buying should also be carefully taken. Within each category of contracts, there is need to examine whether it is possible or reasonable to combine similar or related items in a single package. As much as bulk order seems desirable on the surface, care should be taken to examine whether the items will actually be required at the same or about the same time. If there will be long gaps between the desirable delivery times, then bulk buying may not be the best choice. Also it should be examined whether the items are intended for ownership and use by a single entity or multiple entities. In case of multiple users, it may be simpler to allow for separate contracting.

It is also important to mention that, in the past, there was the general belief that substantial savings would be achieved by bulk buying taking advantage of economies of scale. The modern order processing and shipping methods have however shown that significant price differences will only occur with very large differences in quantities.

Procurement Scheduling and Timing:

- The first and a major consideration in contract packaging is the determination of the times when the various goods and services are actually needed;

- Prepare preliminary packaging plans based on like items;
- Propose tentative procurement methods based on nature and size of packages; and
- Verify if the proposed procurement method for each of the preliminary packages will deliver the goods and services at the times they are needed.
- This is best done by working backwards from the desired delivery date to ascertain whether sufficient time is available to carry out the necessary steps in the proposed procurement method.

Each procurement method involves different steps and/or different time requirements. In procurement timing therefore, adequate attention must be given to, and time provided for the preparation/documentation for every step, and approval(s), as may be necessary. Areas of possible delays must be factored into the plan.

Common areas of constraints to procurement plan timing include, technical, legal, Staffing of the Procuring Entity, training, etc.

Also, in procurement plan timing, the various lead times in the procurement process must be considered. Some of the major lead times are administrative, manufacture, delivery, construction period etc.

- (g) Procuring Entities must not structure procurement as two or more procurements to lower the estimated value of a given procurement for the purpose of avoiding the use of a particular procurement procedure. Section 27 (f) of the Public Procurement law 2015 provides that subject to regulations as may from time to time be issued by the Public Procurement Agency, a procuring entity shall plan its procurement by ‘ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method or circumvent the approved threshold’.

The Public Procurement Law, 2015 and this Manual emphasize the need to strike a balance between procurement control, administrative burden and process delay while promoting competition and achieving value for money. When effecting procurement the user must select the most appropriate method for ensuring an effective level of competition and consequently value for money.

2.4 GOOD PRACTICES AND LINKAGES WITH LARGER PUBLIC FINANCE MANAGEMENT

Procurement should be an integral part of the Budget Execution process. In the same vein, Procurement Planning should be a crucial input to Budget Preparation and the management of Budget Releases. Consequently, the effectiveness of Audit is duly dependent on how effective procurement is managed, documented and reported.

(a) Budget Preparation:

Procurement Planning should form the basis for budget preparation. Upon approval of the budget by the State House of Assembly, Procuring Entities may need to revise their Procurement Plans to reflect the actual budgetary allocations. Revised Procurement Plans will form the basis for preparing the cash flow projections that will inform the budgetary release process to the Procuring Entity.

(b) Budget Execution:

The effectiveness of procurement along with these other areas of Public Finance Management requires that Procurement Plans be prepared by all Procuring Entities each

year as part of the response to the Budget Circular. The Cash Flow submissions of Line Ministries and other budget entities to the Ministry of Finance to inform budget releases should properly be based upon procurement plans. In turn, predictable and timely budget releases serve to facilitate effective commitment controls and hence more economical and efficient procurement.

(c) Commitment Control – Availability of Funds:

A procurement process should not be initiated without due consideration to the availability of funds. This underscores the effectiveness of the commitment control system which in turn is a necessary requirement for a public finance management system to deliver on aggregate fiscal discipline.

Section 23(1) g. of the Public Procurement law, 2015 stipulated that Procurement Plans shall be supported by prior budgetary appropriation; no procurement proceedings shall be formalized until the procuring entity has ensured that funds are budgeted and appropriated to meet the obligations.

(d) Labeling and Filing of Procurement Documentation

Procurement Officers of Procurement Units must, in conjunction with Finance and Accounting Officers, ensure that all procurement files are labeled with a unique and sequential identification numbers and date, along with the unique number of the corresponding expenditure file that contains the documentation reflecting the contractor claims, payment vouchers, receipts of Goods, Services, Works and Consulting services delivered. In this way it becomes possible to facilitate effective contract administration, to keep adequate records management and to ensure that the procuring entities procurements are easily auditable.

(e) Audit

All procuring Entities must comply with the documentation, recording, minuting and filing requirements as specified in this manual. These together form a firm and sound basis for effective expenditure control and audit.

In order to meet the audit requirements, Section 23 (12) stipulated that ‘Every Procuring Entities shall maintain both file and electronic records of all procurement proceedings made within each financial year. The procurement records shall be maintained for a period of ten years from the date of the award.

2.5 APPLICABLE ETHICS IN PROCUREMENT

In order to achieve value for money and to effectively contribute to the efficient service delivery, public procurement practice must adopt a strong ethical standard. It must be devoid of leakages and loss, corruption and favoritism. Pursuant to section 71 (2) (d) of the Public Procurement Law, 2015, it shall be an offence to engage in procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, corruption, bribery or any other way.

Some guidelines for curbing unethical practices in public procurement are provided as follows:

(a) Avoidance of Collusion: “collusive practice”¹ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

Section 23 (4) of the Public Procurement Law, 2015 provides that ‘A supplier, contractor or service provider may be a natural person, a legal person or a natural/legal person. Suppliers, contractors or service providers acting jointly are jointly and severally liable for all obligations and responsibilities arising from this Law 'and the non-performance or improper performance of any contract awarded pursuant to this Law.’

Pursuant to section 71 (2) (C) of the Public Procurement Law, 2015, it shall be an offence to enter or attempt to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or service provider where the prices quoted in their respective tenders, proposals or quotations are or would be higher than what it would have been if there is no collusion between the persons concerned.

Section 71, subsections (7) (8) and (9) of the Public Procurement law, 2015 addressed the subject of collusion as follows:

Section 71 (7) ‘Collusion shall be presumed from a set of acts from which it can be assumed that there was an understanding, implicit, formal or informal, overt or covert under which each person involved reasonably expected that the other would adopt a particular course of action which would interfere with the faithful and proper application of the provisions of this Law.’

Section 71 (8) ‘Bid-rigging pursuant to subsection (2) (g) of this section means an agreement between persons where; (i) offers submitted have been prearranged between them; or (ii) their conduct has had the effect of directly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs and /or loss of value to the State Treasury.’

Section 71 (9) ‘For the purpose of subsection (7) of this Section, consideration shall be given to a suspect’s ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether totally, partially, directly or indirectly.’

It should be noted that if a person contravenes any of these requirements the following may apply: Both vendors and or persons referred to above may be disqualified from entering into a contract for the procurement; or if a contract has already been entered into with either person referred to above, the contract may be voided at the option of the Procuring Entity and the vendor or person may be debarred from any future procurement.

The voiding of a contract by the Procuring Entity does not limit any other legal remedy the Procuring Entity may have.

(b) Avoidance of Conflict of Interest: A person has a conflict of interest with respect to aprocurement if the person or a “relative” of the person seeks, or has a direct or indirect pecuniary interest in another person or vendor who seeks, a contract for the procurement; or owns or has a right in any property or has a direct or indirect pecuniary interest that results in the private interest of the person conflicting with his duties with respect to the procurement.

For the purposes of clarity a “relative” means:

- (a) a spouse ,child, parent, brother or sister
- (b) a child, parent, brother or sister of a spouse

¹ “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

It is imperative that all officials involved in procurement avoid at all times any conflict or perception of a conflict of interest. Any official who has a conflict of interest or potential conflict of interest with respect to a particular procurement may not take part in the procurement proceedings; and may not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract. When such an officer refrains from doing his duties pertaining to a specific procurement he or she must disclose the conflict of interest or potential conflict of interest in writing to the head of the Procuring Entity.

For the avoidance of Conflict of Interest, Section 5 (1) of the Supplementary Provision to the Public Procurement Law 2015 specified the following disclosure requirements for the members of the Public Procurement Board. 'A member of the Board who is in any way directly or indirectly interested in a transaction or project of the Board shall disclose the nature of his interest at a meeting of the Board, and such disclosure shall be recorded in the minute book and the member shall not take part in any deliberation or decision of the Board with respect to that transaction or project.

If a person participates in a procurement procedure despite a conflict of interest or a potential conflict of interest and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be voidable at the option of the Procuring Entity.

Note that the voiding of a contract by the Procuring Entity under such circumstances does not limit any other legal remedy the Procuring Entity may have.

For the purpose of this section, a person has a potential conflict of interest with respect to a procurement procedure if the person could benefit financially due to ongoing business relations with one of the vendors seeking a contract or the possibility of receiving sub contracts from one of the vendors seeking a contract should he or she win the contract.

Similarly, a bidder also shall not have a conflict of interest. All bidders found to have conflict of interest shall be disqualified. Bidders may be considered to have a conflict of interest with one or more parties in a bidding process, if they:

(a) are or have been associated in the past, with a firm or any of its affiliates which have been engaged by the procuring entity to provide consulting services for the preparation of the design, specifications, drawing, Bill of Quantities etc. to be used for the procurement of goods, works and/or non-consulting services to be procured; or

(b) submit more than one bid in a bidding process, except for alternative offers as may be permitted under bidding process. However, this does not limit the participation of subcontractors in more than one bid.

Section 23, sub-section 24 of the Public Procurement Law 2015 addressed the issue of conflict of interest as follows: 'Any person who has been engaged in preparing for a procurement or a part of the proceedings shall not bid for the procurement in question or any part of it either as main contractor or sub-contractor and may not cooperate in any manner with bidders in the course of preparing their tenders'.

Section 23 (7) (g) of the Public Procurement Law 2015 stipulates that a bid or a tender shall be excluded from any particular procurement proceedings if 'the bidder fails to submit a statement regarding its domination or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceedings or who remain in subordinate relationship with other participants to the proceedings'

(c) Equal Opportunity: Discrimination discourages participation in public procurement and hinders the realization of value for money that would have been achieved through open and expanded competition. Procuring Entities and/or Officer should therefore actions that may discriminate against any potential bidders or bidders based upon gender, ethnicity, religious affiliation, physical disability, or party affiliation in any procurement proceeding, except specifically and only where such discrimination is a direct and unavoidable consequence of a preference program instituted by the PPA. Procuring Entities should therefore ensure that shortlists, where applicable, comprise of a mixture of potential bidders that reflect the diversity in the communities within which they operate.

(d) Confidentiality and Limited Disclosure: Confidentiality is very important to the success of a competitive process, otherwise the whole process could be marred with irregularities and abuse. Section 23 Sub-section 20 of the Public Procurement law 2015 provides that ‘A procuring entity shall not disclose any information relating to the examination and evaluation of bids, including pre-qualification, submissions and actual contents of the tender proposals or quotations other than in the summary form stating the evaluation and comparison of tender proposals or quotations received until the successful bidder is notified of the award’.

Note that such information disclosure restrictions do not apply to information requests from the PPA, the Auditor-General and other oversight organs authorized by the Public Procurement Law 2015 or the laws of Federal Republic of Nigeria.

(e) Avoidance of all Corrupt Practices in Procurement: “corrupt practice”² is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

It is a direct breach of the Procurement Law to participate in any corrupt practices and the penalties, if discovered, are severe. Pursuant to Section 23 (7) (a) A bid or a tender shall be excluded from any particular procurement proceeding 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 Agency in an attempt to influence any action decision making or any procurement activity’.

Note that the voiding of a contract by the Procuring Entity does not limit any other legal remedy the Procuring Entity may have.

(f) Avoidance of all Fraudulent Practice in Procurement: “fraudulent practice”³ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation. Fraudulent practices greatly undermine the realization of value for money and efficient service delivery. If a person contravenes this requirement the following shall apply: (1)

² “another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes PPA staff and employees of other organizations taking or reviewing procurement decisions.

³ a “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

The person shall be disqualified from entering into a contract for the procurement; or (2) If a contract has already been entered into with the person, the contract shall be voidable at the option of the Procuring Entity.

Note that the voiding of a contract by the Procuring Entity does not limit any other legal remedy the Procuring Entity may have

(g) Avoidance of Obstruction and Undue Delay in Procurement Processing: “obstructive practice” is

i. deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

ii. acts intended to materially impede the exercise of the inspection and audit.

No person may obstruct or hinder a person carrying out a duty or function under the Procurement Law or exercising a power under the Law or knowingly lie to or mislead a person carrying out a duty or function under the or exercising a power under the Public Procurement Law. No delay without justifiable cause may be accommodated with regards to the opening or evaluation of bids or the awarding of contract beyond the prescribed period.

Pursuant to section 71 (2) (b) of the Public Procurement Law 2015, it shall be an offence to delay, without any justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids and awarding of contracts beyond the prescribed periods of action provided for in this Law or its Regulations

(h) Avoidance of Coercive Practices in Procurement: “coercive practice”⁴ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(i) Exerting Undue Influence on any Procurement Procedure: Pursuant to section 71 (2) (e) of the Public Procurement Law 2015, it shall be an offence to directly or indirectly attempting to influence in any manner the procurement process to obtain an advantage in the award of a procurement contract.

No Person should therefore unduly influence or exert pressure on any member of a Tenders Board or any employee or agent of a Procuring Entity to take a particular action which favours or tend to favour a particular bidder. Neither may any person open any bid, including such bids as may be submitted through an electronic system nor any document required to be sealed; or may he or she divulge their contents prior to the appointed time for the public opening of the bid or documents.

(j) Avoiding Contract Splitting, Bid Rigging, Fake/Alteration of Document, and Refusal of Access to Procurement Record. It is an offence to engage in any of the above listed acts. Section 71 (2) (f) (g) (h) (i) and (j) provide that it shall be an offence to:

(f) Split tenders to enable the evasion of monetary threshold set;

(g) bid-rigging;

(h) alter any procurement document with intent to influence the outcome of a tender proceedings;

(i) use fake documents or encouraging their use;

(j) willfully refuse to allow the Agency or its Officer to have access to any procurement record.

⁴ a “party” refers to a participant in the procurement process or contract execution.

(k) Mandatory Associations Prohibited: Pursuant to section 23(25) of the Public Procurement law, 2015, no Procuring Entity shall require mandatory joint ventures, subcontracting or other forms of association or cooperation between firms whether domestic or otherwise.

2.6 PROMOTION OF TRANSPARENCY

The promotion of transparency in procurement practices not only enhances the realization of value for money, it is a veritable tool for combating corruption. Procuring Entities should, as much as possible make the public to be aware of their procurement opportunities and equally provide update on procurement activities and a feedback on the outcome of the procurement process. Ensuring that the Procuring Entity satisfies this requirement is a major responsibility of the Procurement Office as provided for in Section 25 of the Public Procurement Law, 2015.

With the advancement and wider availability of Information Communication Technology (ICT), the use of internet facility has assisted promoting transparency. Procuring Entities can now provide procurement laws, regulations, manuals, bidding documents, evaluation results, contract notifications etc. to the public and to bidders as appropriate. Where such facility is not available the Procuring entity can still promote transparency by posting procurement opportunities and outcome of evaluation on notice boards, relevant newsletters and journals etc.

A Bidder requiring any clarification on a Bidding Document shall contact the Procuring Entity in writing at the Procuring Entity's address **specified in the Bid Data Sheet (BDS)**. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids within a period **specified in the BDS**. The Procuring Entity shall forward copies of its response to all Bidders who have acquired the Bidding Documents, including a description of the inquiry but without identifying its source. If so **specified in the BDS**, the Procuring Entity shall also promptly publish its response at the web page **identified in the BDS**. Should the clarification result in changes to the essential elements of the Bidding Documents, the Procuring Entity shall amend the Bidding Documents, following the procedure stipulated in the appropriate sections of the Instruction to Bidders (ITB).

(1) Procurement Records

Transparency and accountability is promoted through the appropriate recording of procurement procedures. The Procuring Entity shall maintain an individual file for each procurement requirement, which shall be marked with the relevant procurement reference number. The file shall contain all information, documents and communications related to that procurement proceeding, including, but not limited to:

- i. The authorised procurement requisition, including the description of goods, works or services required;
- ii. The procurement plan, including the justification for the use of any method other than open tendering or request for proposals;

- iii. A copy of any invitation to pre-qualify or call for expressions of interest notice and any pre-qualification documents;
- iv. All applications to pre-qualify or expressions of interest received and the evaluation of qualifications or comparison of expressions of interest;
- v. The invitation to bid notice or any shortlist or list of pre-qualified bidders;
- vi. The bidding documents, request for proposals or other solicitation document issued, including any clarifications or amendments issued and minutes of any pre-bid meetings;
- vii. The record of solicitation documents issued, bids received and all bid or proposal openings;
- viii. All bids, proposals or quotations received, other than bids or proposals returned unopened to bidders;
- ix. Copies of all clarifications requested and received;
- x. The evaluation report, including any individual score sheets or other documentation;
- xi. Records of any negotiations;
- xii. Any notice of proposed award;
- xiii. Any notice of bid acceptance;
- xiv. A copy of the contract or purchase order document;
- xv. Copies of letters rejecting and debriefing unsuccessful bidders;
- xvi. A copy of any published notice of contract award;
- xvii. Copies of all contract variations and modifications;
- xviii. All documentation and correspondence relating to contract administration;
- xix. Copies of all documentation demonstrating performance of the contract, such as inspection reports, delivery documentation and interim certificates;
- xx. Any documentation relating to cancellation of a procurement process or termination of a contract;
- xxi. Information relating to any applications for review; and
- xxii. All approvals from the Procurement Committee and any other award authority;

Procurement records shall be kept for a minimum period of Ten years following completion or termination of the contract or cancellation of the procurement proceedings as required by Section 23 (12) of the Public Procurement Law, 2015

(2) Summary Record of Procurement Proceedings

The Procuring Entity must maintain a complete record of the procurement proceedings. Pursuant to Section 23 (13) of the Public Procurement Law, 2015 Copies of all procurement records shall be forwarded to the Agency not later than three (3) months after the end of the financial year and shall include:

- (a) information identifying the procuring entity and the contractors;
- (b) the date of the contract award;
- (c) the value of the contract; and
- (d) the detailed records of the procurement proceedings.

As much as possible the summary record must contain information such as : a description of the object of the procurement; the announcement or copy (or description) of the advertisement and the media employed, a list of the participating bidders and their qualifications; bid prices; a summary of the evaluation of bids; summary of any review proceedings and the decisions taken therein; requests for clarifications, and responses thereto; statement of grounds for cancellation of procurement proceedings; statement of grounds for choice of a procurement method other than tendering or request for proposals for services; any information concerning rejection of bids.

Pursuant to section 23 (14) of the Law, ‘All unclassified procurement records shall be open to inspection by the public at the cost of copying and certifying the documents in addition to an administrative charge as may be prescribed from time to time by the Agency’.

The record shall, on request, be made available to any person after a bid has been accepted, unless any portion of the record is required to be disclosed at an earlier point in time pursuant to law or regulation, or by order of a competent court or a duly appointed arbitrator.

The record shall be prepared and disclosed in a manner that avoids disclosure of proprietary commercial information.

(3) Publication and Register of Contract Awards

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

In compliance with Section 58 of the Public Procurement Law 2015 the PPA shall maintain a register of awards, where the details of all procurement contract awarded by the agency shall be kept. It is expected that the register will contain particulars of contracts awarded by Procuring Entities indicating the amount, the name of the winning bidder, the date, the procurement method employed, whether there was an application to administratively review the transaction and a summary of the findings.

(4) Communications

Section 23 (11) of the Public Procurement Law, 2015 stipulates that ‘all communications regarding any matter deriving from this law or proceedings of public procurement shall be in writing or such other form as may be stipulated by the Agency.’ Consequently all communications between the Procuring Entity and bidders or contractors shall be in

writing and communications in any other form shall be referred to and transcripts of any conversations made in writing.

2.7 INVESTIGATION BY THE PUBLIC PROCUREMENT AGENCY

(1) The Agency may 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 it necessary or desirable to prevent or detect a contravention of the Public Procurement Law 2015, and/or this Manual.

(2) The Agency may in the course of its investigation:

- (i) at any time during normal office hours, enter the premises of procuring entity, bidder, supplier, contractor, or service provider concerned with the procurement proceedings under investigation;
- (ii) require an officer, employee or agent of the procuring entity or bidder, supplier, contractor, or consultant to produce any book, record, account or document;
- (iii) search premises for any book, records account or documents;
- (iv) examine and make extracts from books, records, accounts or documents of any procuring entity, bidder, supplier, contractor, or consultant;
- (v) remove books, records, accounts or documents of the procuring entity, bidder, supplier, contractor or consultant for as long as may be necessary to examine them or make extracts from or copies of them but the investigator shall give a detailed receipt for the books, records, accounts or documents removed;
- (vi) require any officer, employee or agent of the procuring entity or bidder, supplier, contractor or consultant to explain an entry in their books, records, accounts or documents; and
- (vii) provide the investigator with information concerning the management or activities of the procuring entity or bidders as may be reasonably required.

(3) The power of entry and search conferred by subclause (2) (i) and (ii) of this Clause shall not be exercised except the Agency has first obtained an order of the State High Court without the necessity of putting the procuring entity or bidder, supplier, contractor or consultant concerned or the person in charge of the premises on notice.

(4) The Agency shall, if satisfied that there has been a contravention of the provisions of the Public Procurement Law 2015 or any of its Regulation in relation to procurement proceedings or procurement contracts, take action to rectify the contravention which shall include recommending:

- (i) nullification of the procurement proceedings;
- (ii) cancellation of the procurement contracts;
- (iii) ratification of anything done in relation to the proceedings; or

- (iv) a declaration consistent with any relevant provisions of the Public procurement Law 2015.
- (5) On completion of an investigation, the Agency shall send a summary of its findings and recommendations to the concerned procuring entity, bidder, supplier, contractor or consultant.
- (6) The Agency shall afford any procuring entity, bidder, supplier or contractor adequate opportunity to make representation in a matter being investigated before taking any of the actions prescribed under subclause (4) of this Clause.
- (7) The Agency may pursuant to an advice of a procuring entity, result of its review on a procurement or report of investigation by a relevant government Agency, issue a remediation order, requiring a contractor at his own expense to repair, replace, or to do anything in his or her contract left undone or found to have been carried out with inferior or defective materials or with less skill and expertise than required under the contract.

2.8 COMPLAINTS OVER PROCUREMENT ACTIVITIES

Pursuant to section 68 of the Public Procurement Law 2015, where a Bidder considers that its proposal has not been given appropriate attention and that it has or may suffer undue disadvantage due to a breach of an obligation in the selection procedure by a Procuring Entity with regards to the Law or this Manual, the Bidder may seek administrative review by submitting a complaint in writing not later than 15 working days after it becomes aware of the circumstances giving rise to the complaint or when it should have become aware of such circumstances, whichever is earlier.

(a) Procedure for Complaints against Procuring Entity

i.As provided for in section 69 of the Law, the Bidder shall first submit its complaint to the Accounting Officer of the Procuring Entity. The Accounting Officer shall respond in writing to the Bidder within 15 working days stating what corrective action has or will be taken, including the suspension of the proceedings where he deems it necessary, or if the complaint is rejected, stating the reasons for the decision(s).

ii.If the Bidder considers that its complaint has not been equitably dealt with or is otherwise dissatisfied with the decision of the Accounting Officer, the bidder may submit an appeal to the Agency within 10 working days of its receipt of the Accounting Officer's decision. The Agency shall notify the concerned Procuring Entity and all other interested bidders of the receipt of the complaint and suspend any further action on the subject matter by the Procuring Entity until the Agency settles the matter. The Agency shall obtain and consider submission from the concerned Procuring Entity as well as the other interested bidders and make its decision within 21 working days after receiving the

complaint, stating what corrective action has or will be taken or if the appeal is rejected, stating the reasons for the rejection.

(b) Matters not subject to Complaints

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

1. choice of the procurement method;
2. rejection of all Bidders by the Procuring Entity;
3. bid returned unopened because it was received after the submission deadline; and
4. bid rejected because it was unsigned and/or not accompanied by a valid bid security, if required, or submitted by a Bidder who was not prequalified.

(c) Complaints against the Agency

The following procedures shall apply to complaints against the Agency:

- (i) a complaint by a bidder against the Agency shall first be submitted in writing to the General Manager of the Agency who shall bring the complaint to the attention of the Agency. The Board shall notify all interested bidders of the complaint and consider all representations from the bidders and procuring or disposing entities;
- (ii) the Board shall make its decision within twenty-one (21) working days after receiving the complaint, stating the reasons for its decision and remedies granted;
- (iii) where a bidder is not satisfied with the decision of the Board, the bidder shall lodge an appeal against the decision to the Osun Executive Council; and
- (iv) the decision of the Osun Executive Council may include any or all of the following:
 - (a) dismissal of the complaint;
 - (b) nullifying in whole or in part an unlawful act or decision made by the procuring or disposing entity or the Board;
 - (c) declaring the rules or principles governing the subject matter of the complaint; and
 - (d) revising an improper decision by the procuring or disposing entity or the Board substituting same with its own decision.

2.9BLACKLIST/DEBARMENT OF BIDDERS AND CONTRACTORS

The PPA, pursuant to sections 11 (1) (d) and 71(4) of the Public Procurement Law 2015 may debar a bidder or contractor from participating in procurement proceedings on the ground that the bidder or contractor:

- i. Has committed an offence under the Public Procurement Law or is in contravention of any of the clauses of the Regulations;
- ii. Has committed an offence relating to procurement under any Act;
- iii. Has breached a contract for a procurement by a public entity;
- iv. Has, in procurement proceedings, given false information about his qualifications or capabilities; or

- v. Has refused to enter into a written contract as required under Section 71(1)(k) of the Public Procurement Law 2015.

The General Manager, with the approval of the Governing Board, may also debar a person from participating in procurement proceedings. Such debarment shall extend to other firms owned or controlled by the debarred person

Note that 71(4) of the Public Procurement Law 2015 stipulates that any corporate body or firm that contravenes any provision of the law and its regulation commits an offence and is liable on conviction to a cumulative penalty of;

- (a) being barred from all public procurement for a period not less than ten (10) years; and
- (b) a fine equivalent to the value of the procurement in issue..

(a) Submission of a Request to Debar

A request to debar a bidder or contractor may be submitted by a Procuring Entity, office of the State Auditor-General or any other oversight organ authorized by the State Government of Osun.

A request for debarment of a bidder or contractor shall be submitted to the PPA, pursuant to section 11 (1) (h), and shall contain:

- i. The name of the bidder or contractor;
- ii. The grounds for recommending debarment;
- iii. Details of the procurement proceedings or contract to which the request relates; and
- iv. Documentary or other evidence supporting the allegation.

(b) Investigation of Petitions to Debar

When the PPA receives a request to debar, it shall immediately notify the bidder or contractor, giving details of the allegation and informing the bidder or contractor of its right to a hearing or to submit written evidence, prior to any decision to debar within ten (10) working days of receipt of the notice. The PPA may institute an investigation on the basis of the submitted evidence.

In investigating the allegation, the PPA shall consider, where appropriate:

The information contained in the allegation and other information obtained through consultation with the affected Procuring Entity and the body or person submitting the allegation:

- (i) Information provided by the bidder or contractor, through a hearing or in written form; and
- (ii) Any other relevant sources of information, including audits already conducted by the PPA or other oversight bodies or information from other bidder.

During the investigation of any petition to debar a bidder or contractor, the bidder shall be permitted to participate in public procurement and shall be required to continue performance of any ongoing contract, but any recommended contract award to the bidder shall be delayed, pending the outcome of the investigation.

(c) Decisions to Debar

Upon completion of its investigation and following any hearing, the PPA shall issue a written decision indicating:

- (i) Whether the petition is upheld or rejected;
- (ii) The reasons for its decision; and
- (iii) The length of the debarment period.

The written decision shall be sent to:

- (i) The bidders or contractor'
- (ii) The person who submitted the allegation; and
- (iii) The affected Procuring Entity, where the allegation was not submitted by the Procuring Entity;
- (iv) PPA Website

Any debarment imposed shall take effect immediately upon issue of the written decision. During the period of any debarment, a bidder shall not be permitted to participate in any public procurement proceedings, but shall be required to continue performance of any contracts already awarded.

The PPA shall maintain a list of debarred bidders and contractors. The PPA shall immediately inform all Procuring Entities of any changes to the list, including bidders and contractors removed from the list following expiry of their debarment period.

(d) Request for a Review of a Debarment

Pursuant to Section 69 (2), a person who is debarred by the PPA may request the Governing Board to review the debarment.

A request for a review may only be made within twenty-one days after the person was debarred.

(e) Maintaining a List of Debarred Contractors

The PPA, pursuant to 11 (1) (g) shall maintain and make available to Procuring Entities a list of all firms and persons that have been debarred from participating in the public procurement system and publish them in the State Procurement Journal.

The PPA shall publish a current list of all firms and persons debarred from participating in procurement proceedings on its official website and any other appropriate media.

2.10 AUTHORITY FOR PROCUREMENT DECISIONS

There are a number of important principles necessary to ensure sound procurement practice and mitigate opportunities for collusion, fraudulent practices corruption and conflicts of interest. These include:

- (i) The separation of authorities
- (ii) Having all approvals in writing
- (iii) Not allowing retrospective approvals

(a) Clear Separation of Approval Authorities:

There must be clear separation of works received certification. In the case of approvals not explicitly identified within the Regulations, all Procuring Entities shall strictly adhere to the principle of separation of authorities in respect to origination of procurement proceedings, the selection of vendor, committing of the Procuring Entity to contract with the vendor, and the acceptance of the item by the Procuring Entity. Where the Procuring Entity has too few staff to achieve total separation of authorities then use a second signature by a senior officer

to endorse the approval shall be allowed. Advice may also be sought from the PPA on the matter.

(b) Requirement for all Approvals to be in Writing:

All approvals pertaining to any procedures in the procurement cycle or associated administrative procedures shall be in writing and properly dated, documented and filed.

Original records of all such approvals shall be filed. The filing of photocopies shall be deemed in contravention of this instruction.

(c) No Retrospective Approvals:

There shall be no retrospective approvals on procurement and disposal proceedings by any of the bodies or officials involved with any of the proceedings in the procurement and disposal cycles, or in any of the administrative procedures pertaining to procurement or disposal. Such bodies shall include but not be limited to the Public Procurement Agency, the Administrative Review Panel, the Procuring Entities, the Procurement Planning Committees, the Tender Boards, the Tender Evaluation Committees, the Disposal Committees, and the Goods Inspection and Acceptance Committees.

Chapter 3

OVERSIGHT, REGULATION AND POLICY

3. OVERSIGHT, REGULATION AND POLICY

Topics

3.1 The House of Assembly of the State Government of Osun

3.2 Osun Public Procurement Agency Governing Board

3.3 Osun Public Procurement Agency (PPA)

3.1 THE HOUSE OF ASSEMBLY OF THE STATE GOVERNMENT OF OSUN

The Public Procurement Law, 2015 is the main law governing Public Procurement in the State of Osun, Nigeria. This Law can only be amended by the state legislature. The State House of assembly therefore has the responsibility of giving guidance on how public procurement should be conducted in the State by enacting appropriate laws.

The Public Procurement Law, 2015 has established the Public Procurement Agency (PPA) which is a body corporate with perpetual succession and a common seal;

The PPA has the power to sue and be sued in its corporate capacity; and is capable of acquiring, holding or disposing of any property, movable or immovable for the purpose of carrying out its functions under the Law.

This is the body charged with the responsibility of oversight and regulating public procurement deriving its powers from the Law

The State House of assembly therefore shall oversee the performance of public procurement. To facilitate this, the PPA through the Governing Board, pursuant to sections 4(e) and 22 (2) of the Law, shall, within six (6) months after the end of each financial year, furnish the House of assembly with a copy of its audited account along with a report of the State of Affairs of the Agency for the year reported on.

Also, pursuant to section 17, the Power of the PPA to make Regulations is subject to the approval of the House of Assembly with respect to all or any of the following matters:

- (a) the structure and contents of Annual Procurement Plans;
- (b) the standard and content of all bid solicitation documents;
- (c) the standard and content of all procurement contracts;
- (d) the use of any procurement method;
- (e) fees chargeable by any procuring entity for matters relating to public procurements; and
- (f) the prevention and detection by the Agency of any act amounting to an infringement on the provisions of the Law and its Regulations.

As required by section 20(1) of the Law, the Agency shall also prepare a comprehensive report quarterly on all procurement activities carried out by all procuring entities within the purview of the Law to the House of Assembly.

3.2 OSUN PUBLIC PROCUREMENT AGENCY GOVERNING BOARD

Section 3 of the Public Procurement Law 2015 provides for the establishment of the body to be known as the Osun Public Procurement Agency Governing Board (referred to in the Law as “the Board”); and that the affairs of the Public Procurement Agency shall be administered by the Board.

According to Section 4 of the law, the powers of the Board are to:

- (a) consider, set, amend and review prior benchmark for the application of the provisions of the law by procuring entities;
- (b) consider and approve policies on Public Procurement;
- (c) make recommendations in respect of any Procurement guidelines or regulations to be made pursuant to the provisions of the law;
- (d) approve the appointment of the Directors of the Osun Public Procurement Agency;
- (e) receive and forward to the House of Assembly for approval, the audited accounts of the Osun Public Procurement Agency; and

- (f) give such other directives and perform such other functions not being inconsistent with the provisions of the Law, as may be necessary to achieve the objectives of the Law.

3.3 PUBLIC PROCUREMENT AGENCY (PPA)

The Public Procurement Agency (PPA) was established in May, 2016, in accordance with the requirement of section 2 of the Public Procurement Law, 2015.

(a) Objectives of the Public Procurement Agency

In line with section 9 of the Law, the objectives of the Agency are to:

- (1) ensure probity, accountability and transparency;
- (2) establish fair pricing standards and benchmarks;
- (3) ensure the application of fair, competitive value- for-money standards and practices for the procurement and disposal of public assets and services;
- (4) create ample opportunities for the citizenry particularly, small and medium scale enterprises to participate in the economic opportunities and benefits of public procurement;
- (5) create a cost and time efficient and effective adjudicatory mechanism for the resolution of complaints arising from public procurement process in the State and its Local Governments filed by procuring entities, bidders and the general public; and
- (6) attain transparency, competitiveness professionalism and guarantee integrity and public trust in the public procurement procedure

(b) Functions of the Public Procurement Agency

Pursuant to section 10 of the Law, the Agency shall:

- (1) consider, amend and review the monetary benchmark for the application of the Law;
- (2) approve the employment of junior staff of the Agency;
- (3) approve changes in procurement process to adapt to changes in technology;
- (4) give such other directives and perform such other functions as may be necessary to achieve the objectives of the Law;
- (5) formulate the general policies and guidelines relating to public sector procurement for the approval of the Governor;
- (6) publicise the provisions of the Law;
- (7) certify all State procurements prior to, during and after the award of any contract;
- (8) supervise the implementation of established procurement policies;
- (9) oversee and superintend compliance by all procuring entities with the procurement policies of the State;
- (10) monitor the prices of tendered items and keep a database of standard prices;
- (11) publish the details of major contracts in the State Procurement Journal;
- (12) publish paper and electronic editions of the State Procurement Journal and Procurement Manual and maintain an archival system for the State Procurement Journal; and
- (13) carry out such other functions which are essential to run an efficient procurement process and the effective implementation of its functions under the Law.

(c) Powers of the Public Procurement Agency

In accordance with Section 11 of the Law:

- (1) The Agency shall have the power to:
 - (a) enforce the rules and review thresholds set pursuant to the Law;

- (b) inspect and review any procurement transaction to ensure compliance with the provisions of the law;
 - (c) investigate and determine whether any procuring entity has violated any provision of the Law;
 - (d) blacklist or ban any supplier, contractor or consultant that contravenes any provision of the Law and Regulations made pursuant to the law;
 - (e) maintain a database of contractors and service providers to the exclusion of all procuring entities;
 - (f) prescribe classifications and categorizations for the Companies or Limited Liability, Partnerships on the register;
 - (g) maintain a list of firms and persons that have been blacklisted or banned from participating in the public procurement system and publish them in the State Procurement Journal;
 - (h) call for information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement or collusion has been alleged, reported or proved against a procuring entity or service provider;
 - (i) call for the production of books of account, plans, documents, and examine persons or parties in connection with any procurement proceeding;
 - (j) act on complaints by public procurement entities in accordance with the procedures set out in the law;
 - (k) nullify the whole or part of any procurement proceeding or award which is in contravention of the law;
 - (l) recommend the discontinuance, stoppage, or suspension of any payment due from the State Treasury under any procurement contract, activity or proceeding which has contravened or is likely to contravene any provision of the Law;
 - (m) undertake procurement and contract performance audit;
 - (n) train personnel and build state-wide institutional capacities for a sustainable and efficient public procurement system;
 - (o) recommend to the approving authority contracts for the award of procurement of goods, works and services within the provisions of the Law;
 - (p) constitute a Technical Review Committee comprising technical, financial and legal experts to assist in the re-evaluation of a bid where it deems necessary in the public interest; and
 - (q) issue a Certificate of Compliance after it has certified compliance by a procuring entity within the provisions of the Law.
- (2) Where there are persistent or serious breach of the Law, its Regulations or any other guideline made under the Law, the Agency shall recommend to the Governor the following:
- (a) the suspension from Office of Officers concerned with the procurement or disposal proceeding in issue;
 - (b) the removal from Office of the head of any Procuring or Disposal Unit;
 - (c) the discipline of the Accounting Officer of any Procuring entity;
 - (d) temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant; or
 - (e) any other sanction that the Agency may consider appropriate.
- (3) The Agency shall have power to do all such things as are reasonably necessary for the purpose of carrying out its functions under the law and may carry on in that behalf either alone or in association with any other person or body.

Chapter 4

RESPONSIBILITIES FOR PROCUREMENT AND DISPOSAL BY PUBLIC PROCURING ENTITIES

4. RESPONSIBILITIES FOR PROCUREMENT AND DISPOSAL BY PUBLIC PROCURING ENTITIES

Topics

- 4.1 The Procuring Entities.
- 4.2 The Approving Authority.
- 4.3 The Accounting Officer.
- 4.4 The Tenders Board.
- 4.5 Tender Evaluation Committee.
- 4.6 The Procurement Unit.
- 4.7 Procurement Planning Committee
- 4.8 Inspection and Acceptance Committee
- 4.9 The User Department

4.1 THE PROCURING ENTITY

The different procedures and functions in carrying out procurement are required to be undertaken within an institutional framework. It is important to understand the institutional arrangements and to ensure cooperation if the objectives of sound procurement are to be met. This chapter presents the institutional arrangements and responsibilities for effecting procurement in a procuring entity, in particular:

- i. The public procuring entities legal definition and organization
- ii. The role of the accounting officer and of the procurement unit
- iii. The role of the head of user department
- iv. The roles of the tender and procurement committee
- v. The roles of the technical and financial evaluation committees
- vi. The role of the inspection and acceptance committee, and
- vii. The role of disposal committee.

The objective of this section is to guide the procuring entities on the required institutional arrangements for effecting procurement, and to specify the roles and responsibilities within the procuring entity. It details out the structure, the roles and functions of each of the parties involved in the procurement and disposal process.

It is the primary responsibility of a Procuring Entity to ensure that the Public Procurement Law 2015, the Regulations, Standard Bidding Documents, Manuals and any directives of the PPA are complied with in respect of each and all of its procurements and disposals. The Accounting Officer, his/her employees and each member of a board or committee of the Procuring Entity must ensure, within their areas of responsibility that the Public Procurement Law, the Regulations, Standard Bidding Documents, this Manual and any directives specified by the Law are complied with.

Subject to regulations as may from time to time be issued by the PPA, a procuring entity shall implement its procurement plans as follows:

- (a) solicit/advertise for bids in adherence to the Law and guidelines as may be issued by the Agency from time to time;
- (b) invite as an observer, at least a non-governmental organization working in transparency, accountability and anti-corruption areas, and the observer shall not intervene in the procurement process but shall have the right to submit their (her) observation report to the Agency and any other relevant agency or body including their own organizations or association;
- (c) receive, evaluate and make a selection of the bids received in adherence to the Law and guidelines as may be issued by the Agency from time to time;
- (d) obtain approval of the Approving Authority before making an award;
- (e) debrief the bid losers on request;
- (f) resolve complaints/disputes if any;
- (g) obtain and confirm the validity of any performance guarantee;
- (h) execute the Contract Agreement and
- (i) announce and publicize the award in the format stipulated by the Law and guidelines as may be issued by the Agency from time to time.

4.2 THE APPROVING AUTHORITY

Subject to the monetary and prior review benchmark for procurements as may from time to time be determined by the Agency, and pursuant to section 26 of the Law, the following shall be the Approving Authority (AA) for the conduct of public procurement:

- (a) in the case of a government agency, parastatal or corporation, a Parastatal Tenders' Board;
- (b) in the case of a ministry or extra-ministerial entity, the Ministerial Tenders' Board;
- (c) after three (3) years from the commencement of the Public Procurement Law, 2015, when procurement capacity has been built in the public service, all contracts irrespective of value shall be approved in line with the provisions set in (a) and (b) above.

4.3 THE ACCOUNTING OFFICER

(1) WHO IS THE ACCOUNTING OFFICER?

Section 30 (1) of the Law stipulates that the Accounting Officer (AO) of a procuring entity shall be the person charged with the supervision of the conduct of all procurement processes; in the case of Ministries, the Permanent Secretary and in the case of extra-ministerial departments and corporations, the Director General or officer of coordinate responsibility. This includes Executive Secretaries and General Managers of MDAs, where applicable.

(2) RESPONSIBILITIES OF THE ACCOUNTING OFFICER:

The Accounting Officer of every procuring entity shall have overall responsibility for the planning and organization of tenders, evaluation of tenders and execution of all procurement and in particular shall be responsible for:

- (a) ensuring compliance with the provisions of this Bill by his entity and liable in person for the breach or contravention of this Bill or any regulation made hereunder whether or not the act or omission was carried out by him personally or any of his subordinates and it shall not be material that he had delegated any function, duty or power to any person or group of persons;
- (b) constituting the Procurement Planning Committee and its decisions;
- (c) ensuring that adequate appropriation is provided specifically for the procurement in the State budget;
- (d) integrating his entity's procurement expenditure into its yearly budget;
- (e) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method;
- (f) constituting the Evaluations Committee; and
- (g) liaising with the Agency and ensure the implementation of its regulations.

4.4 THE TENDERS BOARD:

Section 31 (1) of the Law stipulates as follows:

- (1) There is established by this Law, in each of the State's Ministry, Extra-Ministerial Office/Department/Agency, Parastatal and Corporation, a Tenders' Board (TB).
- (2) Subject to the approval of the Board, the Agency shall from time to time prescribe the membership of the Tenders' Board.
- (3) The Tenders' Board shall have power to award and be responsible for the procurements of goods, works and services within the benchmark set in the Regulations to the Law.
- (4) In all cases where there is a need for pre-qualifications, the Chairman of the Tenders' Board shall constitute a technical evaluation subcommittee of the Tenders' Board charged with the responsibility for the evaluation of bids which

shall be made up of professional staff of the procuring entity and the Secretary of the Tenders' Board who shall also be the Chairman of the Evaluation subcommittee.

- (5) The decision of the Tenders' Board shall be communicated to the Commissioner for implementation.

4.5 TENDER EVALUATION COMMITTEE

The main role of the Tender Evaluation committee (TEC) is to select bids based upon technical and financial considerations the best submittal for a particular procurement request. It is important that the Tender Evaluation Committee has the appropriate competence to properly assess the bids and it is crucial that the highest ethical standards be applied in carrying out their duties.

Establishment and Composition of the Tender Evaluation Committees

Pursuant to section 30 (2) (f) of the Public Procurement Law, 2015 it is a part of the responsibilities of the Accounting Officer to constitute Evaluation Committees. Also in accordance with section 31 (4) In all cases where there is a need for pre-qualifications, the Chairman of the Tenders' Board shall constitute a technical evaluation subcommittee of the Tenders' Board charged with the responsibility for the evaluation of bids which shall be made up of professional staff of the procuring entity and the Secretary of the Tenders' Board who shall also be the Chairman of the Evaluation subcommittee. This has the meaning that for every contract award made by the tender committee there must be an evaluation report made by an evaluation committee. Every procuring entity and particularly every tender committee must understand this requirement.

It is therefore very critical for the procuring entity to decide how the evaluation of the procurement will be done and provide for it in the bidding documents. This is very important because the evaluation criteria to be applied to any procurement must be provided for in the bidding documents.

Any member of staff can be appointed to be a member of an evaluation committee provided the person is capable of performing the work of the evaluation committee.

A member of an evaluation committee should have the following:

- i. Knowledge of the overall operations of the procuring entity;
- ii. Knowledge of the technical aspects of the procurement such as engineering, architecture, medical and pharmaceutical sciences, agriculture, information and communications technology and software development;
- iii. Knowledge of the accounting and financial principles to secure accurate financial evaluation.

4.6 THE PROCUREMENT UNIT

In order to carry out and manage the procurement procedures each Procuring Entity shall establish a Procurement Unit and, where appropriate, subsidiary Procurement Units. The size and level of staffing of the Procurement Unit, and any subsidiary Procurement Units, shall be determined by the procurement and disposal workload of the Procuring Entity, taking into account the volume, value, complexity and type of procurement and disposal conducted.

The Procurement Unit must be staffed with procurement professionals and may include staff with relevant technical skills, where a Procuring Entity has a significant volume of specialized procurement or procurement requiring significant technical input.

Members of the Procurement Unit shall be appointed in accordance with the normal procedures applicable to the Procuring Entity, taking into account the certification and approval requirements which may be issued by the PPA.

The head of the procurement unit shall be a procurement professional who shall report directly to the accounting officer or the head of the procuring entity.

Functions of Procurement Units:

There are many functions and responsibilities that are to be carried out by the Procurement Unit. Below are listed the main functions and responsibilities. They include, but are not limited to the following:

- (a) initiate the entity's procurement process;
- (b) carry out appropriate market and statistical surveys and prepare analysis of cost implication of a proposed procurement;
- (c) aggregate its requirement, within and between procuring entities to obtain economical and reduce procurement cost;
- (d) conduct pre-qualification exercise for suppliers, contractors or consultants based on requisite expression of interest;
- (e) develop technical specifications;
- (f) conduct pre-bid conferences/meetings when necessary;
- (g) ensure that the advertisement and publications in solicitation for bids are in conformity with the provisions of this Law and Regulations as may be issued from time to time;
- (h) prepare bid documents;
- (i) issue bid documents;
- (j) supervise the development of all tenders;
- (k) organise communications with bidders;
- (l) issue receipt and keep bids in safe custody until opening;
- (m) receive and evaluate any bids received in response to solicitation;
- (n) maintain procurement records; and
- (o) evaluate expression of interest by suppliers, contractors, or consultants and forward lists of qualified submissions to the Board.

4.7 PROCUREMENT PLANNING COMMITTEE

- (1) Every Procuring Entity shall establish a Procurement Planning Committee (PPC) for every financial year.
- (2) The Procurement Planning Committee shall comprise of the following members:
 - (a) the Accounting Officer of the procuring entity or his representative who shall be the Chairman of the committee;
 - (b) a representative of the procurement function of the procuring entity who shall be the Secretary;
 - (c) a representative of the Unit directly in requirement of the procurement;
 - (d) a representative of the financial function of the procuring entity;
 - (e) a representative of the planning, research and statistics function of the procuring entity;
 - (f) technical personnel of the procuring entity with expertise in the subject matter for each particular procurement; and
 - (g) a representative of the legal Unit of the procuring entity.

4.8 INSPECTION AND ACCEPTANCE COMMITTEE

The Inspection and Acceptance Committee (IAC), though not provided for in the Public Procurement Law, 2015, the creation is important because a major source of losses to Procuring Entities is not having complete delivery and/or deliveries not compliant with the contract specifications. This greatly undermines the objective of achieving value for money. The Inspection and Acceptance Committee serves as an important element to ensure that goods, works and services received are fully in accordance with the terms of the procurement contracts.

(a) Establishment of the Inspection and Acceptance Committee

Just as in the case of the Tender Evaluation Committees, it is recommended that Inspection and Acceptance Committees have to be established by Procuring Entities to inspect and where required; to test goods received, or to inspect and review services, works and consulting and design in order to certify compliance with the terms and specifications of the contract and accept or reject on behalf of the Procuring Entity the delivered goods, works, services or consultancy services.

It is also recommended that an inspection and acceptance committee is composed of a chairman and at least two other members appointed by the accounting officer or head of the procuring entity on the recommendations of the procuring unit. It is also suggested that, for the purpose of efficiency and practicability, flexibility is allowed. Membership is open to all members of staff with the relevant technical skill and subject to them being able to handle the responsibility of inspecting and accepting or rejecting the procurement object.

All three members of inspection and acceptance committee per procurement object should be present and sign the certification documents.

Consultancy services may be excluded from inspection by the IAC where the Procuring Entity delegates inspection and acceptance to the contract manager.

(b) Functions of the Inspections and Acceptance Committee

It is recommended that the inspection and acceptance committee shall immediately after the delivery of goods, work, or services

- (i) Inspect and where necessary test the goods received.
- (ii) Inspect and review the goods, works, or services in order to ensure compliance with the terms and specifications of the contract.
- (iii) Accept or reject on behalf of the procuring entity, the delivered goods, works, or services.

The inspection and acceptance committee shall ensure that:

- i. The correct quantity has been received.
- ii. The goods, works, or services meet the technical standards defined in the contract.
- iii. The goods, works, or services have been delivered or completed on time, or that any delay has been noted.
- iv. All required manuals or documentation have been received and
- v. Issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract

It is important to mention that proper and effective management of procurement contracts will make the work of the inspection and acceptance committee a lot easier. Procuring entities should therefore make a clear distinction between the procurement contracts management and inspection and acceptance committee which should be distinct but may collaborate in the performance of their responsibilities. This committee is very important, hence it is recommended that no procurement object should be accepted or payment processed without the approval of the IAC.

4.9 THE USER DEPARTMENT

The end user department is also not a creation of the Public Procurement Law 2015, however it is also an important element of a procuring entity as the end user departments are the structures which make up the procuring entity.

The Law recognizes this and hence the representative of the unit directly in requirement of the procurement is included as a member of the Procurement Planning Committee as provided for in section 28 (2) (c). To this end, it is recommended that the user department is responsible for:

- (i) Initiating procurement and disposal requirements and forwarding them to the procurement unit.
- (ii) Participate in the evaluation of tenders, proposals and quotations.
- (iii) Reporting any departure from the terms and conditions of the contract to the procurement unit.
- (iv) Forwarding details of any required variations to contracts to the procurement unit for consideration and action.
- (v) Maintaining and archiving records of contract management.
- (vi) Preparing any reports required for submission to the procurement unit, the procurement planning committee, the tender evaluation committee, the head of procurement entity or the accounting officer.
- (vii) Undertaking conformity assessment of supplied goods works and services with the specifications of the contract documents.
- (viii) Endorsing the issuance of goods, works and services received notes.
- (ix) Preparation of Technical Specifications (TS)/Terms of Reference (TOR) and submitting the same to the procurement unit.
- (x) Assisting in the preparation of procurement and disposal plans.
- (xi) Making clarifications on tenders, TOR, request for quotations and any other matter as may be required and
- (xii) Carrying out any other functions and duties as may be assigned by the Agency.

The procuring entities should therefore note that departments are not passive observers in the procurement process wanting to be supplied with their requirements. They must be actively involved all the way from the time of budgeting and procurement plans to the inspection and acceptance of the procurement object.

Chapter 5

ELIGIBILITY AND QUALIFICATION OF BIDDERS

Chapter 5. ELIGIBILITY AND QUALIFICATION OF BIDDERS

Topics

5.1 Eligibility

5.2 Qualifications

5.3 Qualification Procedures

5.1 ELIGIBILITY

Procurement serves as one window through which the public sector interacts with the private sector. How such interaction is managed is very important in fostering a sense of fairness and widening the base of participation by the private sector in public procurement.

Clearly, public procurement should only be carried out with bidders who are legal entities and who have not been debarred from carrying out public procurement. In this Chapter the criteria for selecting eligible bidders is (are) presented and the basis for ensuring that bidders are properly screened so as not to introduce bias and unfairness to the selection process while ensuring that only eligible bidders are included .

The details on the eligibility and qualification of bidders are worked out to ensure that all bidders are entitled to bid and that the competition is fair amongst comparable entities and that these entities are legally established and can enter into enforceable contracts with public institutions.

The eligibility criteria should be clearly stated in the bidding documents for each procurement. To ensure that these criteria are met, signed statements or documentary evidence may be requested to certify the eligibility. Consideration should be given to time and costs constraints when requesting documentary evidence as obtained up-to-date certificate from several administration may take time.

Documentary evidence for eligibility may include:

- a. Certified or notarized copies of the bidder's certificate of business registration, certificate of incorporation, business license or similar document;
- b. Certified or notarized copies of the bidder's tax registration, tax clearance certificates or similar document;
- c. A list of all of the directors of the bidding Company;
- d. The principal shareholders of the bidding Company, or list or partners or the proprietor as may be appropriate;
- e. A signed statement that the bidder does not have a conflict of interest in relation to the procurement;
- f. A signed statement that the bidder, or any of its directors or officers, have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three years preceding the commencement of procurement proceedings; and
- g. A signed statement that the bidder is not debarred from participating in Public Procurement.

To take account of the international dimension of procurement requirements in Nigeria, the documentary evidence should be substitutable by equivalent documents from the relevant authorities in the bidder's country of origin or submission of statements certifying that equivalent documentation is not issued in the bidder's

country of origin. The bidders are always responsible for providing certified translations of all submitted documentation whose originals are not in English.

Procuring entities must ensure that the eligibility criteria are clear in the bidding documents as it will form part of the evaluation criteria.

5.2 QUALIFICATIONS

It is the responsibility of the PE to state clearly any qualification criteria in the pre-qualification or solicitation document and to ensure that bidders provide signed statements or documentary evidence to certify their qualifications. In order to award a contract to a bidder, the Procuring Entity needs to verify that the bidder is qualified.

Section 23 (5) of the Public Procurement law 2015 provides that, in addition to the requirements contained in any solicitation document, all bidders shall:

- (a) possess the following:
 - (i) professional and technical qualification to carry out particular procurement;
 - (ii) financial capacity;
 - (iii) equipment and other relevant infrastructure;
 - (iv) personnel to perform the obligations of the procurement contract; and
 - (v) possess the legal capacity to enter into the procurement contract;
- (b) not be in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding-up petition or proceedings;
- (c) have fulfilled all its obligations to pay taxes, pensions and social security contributions; and
- (d) not have directors who have been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter

To determine eligibility, the Procuring Entity has to require evidence or information to establish that the criteria are fully satisfied for qualification. The information and evidence required has to be specified in details in the bidding document and cannot be requested from one bidder only.

Note that Pursuant to section 44 of the Public Procurement Law, 2015, a procurement entity shall disqualify a bidder who submits documents containing false information or documents forged for purposes of qualification at any time, such disqualification shall be published in the State Official Gazette.

No person can be excluded from submitting a tender, proposal or quotation in procurement proceedings on other grounds other than those provided in the Law, PPA Regulations or this Manual.

5.3 QUALIFICATIONS PROCEDURES

The procedure for qualification may be done at different stages of the procurement proceedings but in any case, the qualification must be ascertained by the Procuring Entity prior to award of contract.

Three qualification methods can be applied:

- (a) **Pre-qualification:** where the bidders first bid to prove their qualification and are then short-listed for tendering. In applying this method, the time and costs constraints versus the size and estimated value of the procurement requirement should be duly considered;
- (b) **Qualification as part of the bidding:** where bidders are presenting documentary evidence in their bids. In such cases, the evaluation of the qualification of the bidders should be done separately from the technical and financial evaluations;
- (c) **Post-Qualification:** where bidders present statements, of qualification as required by the bidding documents on their qualification and these statements are verified by the Procuring Entity after evaluation and recommendation of the contract award but before the contract is awarded. The bidding documents must clearly state this method shall be applied.

The qualification criteria are designed to ensure that the bidder is capable of effectively performing the proposed contract, but not to restrict competition to a particular brand or business process or patent. Therefore, these criteria are defined along the following principles:

- i. Qualification criteria are limited to those necessary for the effective performance of the proposed contract
- ii. Qualification criteria have to be prepared for each procurement requirement, taking into account the size, complexity and technical requirements of each proposed contract.

Chapter 6

PROCUREMENT PLANNING AND BUDGETTING

Chapter 6 PROCUREMENT PLANNING AND BUDGETING

Topics

- 6.1 Procurement Planning
- 6.2 The Budget Preparation Process
- 6.3 Guidelines for Determining Completion Timescale
- 6.4 Plan Monitoring and Updating

6.1 PROCUREMENT PLANNING

Section 27 of the Public Procurement Law requires each Procurement Entity to prepare a procurement plan for each fiscal year by:

- (a) preparing needs assessment and evaluation;
- (b) identifying based on (a) above, the goods, works or services required;
- (c) preparing an analysis of the cost implications of the proposed procurement;
- (d) aggregating its requirements whenever possible, both within the procuring entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (e) integrating its procurement expenditure into its yearly budget;
- (f) ensuring that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method; and
- (g) ensuring that the procurement entity functions stipulated in this clause shall be carried out by a Procurement Planning Committee.

Note:

The need for the establishment and composition of the Procurement Planning Committee, stipulated in section 27 (g) above, has been covered in Chapter 4 (section 4.7) of this manual.

The Law requires that the procurement planning process is fully integrated with applicable budget processes and circulars issued by the Public Procurement Agency and the budget preparation instructions of the Ministry of Finance.

Adequate procurement planning and prioritisation of needs by each Procurement Entity is an essential prerequisite to effective purchasing for the following reasons:

- Funding for procurement is unlikely to be sufficient to meet all requirements, and scarce financial resources must be channelled to ensure that the priority aims of a Procurement Entity are adequately met before spending on less essential procurements.
- Effective planning allows requirements to be aggregated into larger purchases at lower unit costs, rather than frequent sourcing of quotations for identical items and issuing many individual Local Purchase Orders.
- Procurement of Common User items may also be aggregated for more than one Procurement Entity into Framework (Call-off) Contracts for six months or a year, to permit further economies of bulk purchasing, saving of time wasted by separate procurements, and a reduction of the need to maintain high stock levels.
- Publication of realistic annual procurement plans allows the private sector to respond more effectively to the requirements and specifications of Government, through investment in staff and equipment, manufacture and importing of goods, and financial planning.

Structured development of procurement plans is an essential part of the annual budget preparation process and provides a ready checklist for the approval of procurements by the Approving Authorities as well as the Tenders' Boards. It

is also essential for the monitoring of procurement activities by the Public Procurement Agency.

6.2 THE BUDGET PREPARATION PROCESS

Annual budgets are prepared each year in accordance with the procedures specified by the Ministry of Finance. Detailed instructions for the preparation of Annual Procurement Plans (APP) will be issued by the Public Procurement Agency in consultation with the Ministry of Finance.

The Accounting Officer of each Procurement Entity has the responsibility to coordinate the preparation of the budget for the Procurement Entity, including procurement plans based on previous consumption and estimated requirements for stores replenishment, and the submissions of Departments, Units and Projects. The compilation, costing and prioritization of expenditure for the Procurement Plan will be carried out with the assistance of the Procurement Unit.

It is recommended that the preparation of the Annual Procurement Plans should commence at least four months before the start of the Financial Year to allow sufficient time for a realistic and accurately costed plan to be compiled.

6.2.1 Contents of the Procurement Plan

The procurement plan for each Procurement Entity shall include:

- ❖ a detailed breakdown of the goods, works and services required;
- ❖ a schedule of the delivery, implementation or completion dates for all goods, works and services required;
- ❖ the source of funding;
- ❖ an indication of any items that can be aggregated for procurement as a single package, or for procurement through any applicable arrangements for common use items;
- ❖ an estimate of the value of each package of goods, works and services required and the source of funding; and
- ❖ details of any committed or planned procurement expenditure under existing multi-year contracts.

In determining the optimum packaging of planned contracts a Procurement Entity shall aggregate procurement requirements, where appropriate, to achieve economies of scale. In deciding where aggregation is appropriate, the Procurement Entity shall consider all relevant factors, such as:

- ❖ which procurements are of a similar nature and likely to attract the same potential tenderers;
- ❖ shelf-life and storage constraints;
- ❖ when delivery, implementation or completion is required;
- ❖ the optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market structure for the requirement;

- ❖ which procurements will be subject to the same tendering requirements and conditions of contract; and
- ❖ the potential to realise savings in time or transaction costs or to facilitate contract administration by the Procurement Entity.

6.2.2 Roles of Accounting Officer under Procurement Planning

- ❖ Instruct the Procurement Unit to commence development of the Annual Procurement Plan in accordance with the instructions issued by the Public Procurement Agency and the Ministry of Finance.
- ❖ Ensure that the draft annual procurement plan is reviewed and approved by the Tenders' Board not less than one month before the commencement of the new financial year.
- ❖ Upon notification of Approved budget by the Ministry of Finance through the Tenders' Board, Instruct the Procurement unit to review the Procurement Plan based on the priorities of the Procuring Entity.
- ❖ Obtain the approval of the final Annual Procurement Plan from the Tenders' Board and forward a copy to the Public Procurement Agency.
- ❖ Include the approved annual procurement plan and costings in the Annual Budget submission to the Ministry of Finance.
- ❖ Ensure that quarterly updates of the procurement plan are prepared for approval by the Tenders' Board, and forward a copy of the approved Plan to the Public Procurement Agency.

6.2.3 Roles of Procurement Unit under Procurement Planning

- ❖ Subject to the instructions of the Accounting Officer, the Public Procurement Agency and the Ministry of Finance, commence the preparation process for the Annual Procurement Plan at least four months before the start of the next Financial Year.
- ❖ Issue detailed instructions to the Heads of departments, units, projects and programmes on the format and content of submissions for the Procurement Plan. The instructions should clearly indicate that items omitted from the submissions may not be purchased in the Financial Year without adjustment to the quantities of other items under the same detailed Vote Sub-Head, or the formal issue of a supplementary budget. Note that the Public Procurement Agency will provide Procurement planning software and planning templates for use by Procurement Entities, together with detailed instructions and timetables for compilation of the Procurement Plan.
- ❖ Receive submissions, check quantities and costing, obtain necessary clarifications on submissions, analyse and compile all submissions into a procurement plan for the Procurement Entity.
- ❖ Submit the draft Annual Procurement Plan through the Accounting Officer to the Tenders' Board for review and approval.
- ❖ Upon notification of approved of the Annual Budget, and in full consultation with Accounting Officer, units, projects and programmes, review the Procurement Plan according to the priorities of the Procuring entity.

- ❖ Compile the final Annual Procurement Plan and submit through the Head of Procurement Entity to the Tenders' Board for approval.
- ❖ Notify individual Heads of departments, units, projects and programmes of their approved procurement plans and annual procurement budgets.

6.2.4 Roles of Stores Departments under Procurement Planning

- ❖ Analyse the stores ledger and extract stock descriptions, annual issues and seasonal usage patterns, current stock levels, average purchase quantities, anticipated requirements for the next Financial Year and costings.
- ❖ Submit detailed schedules of the annual requirement for stock items, the costs analysed between detailed Vote Codes, and supporting information to the Procurement Unit in accordance with the instructions received.
- ❖ Respond to request for clarifications raised by the Procurement Unit.
- ❖ Receive notification of the final approved Annual Procurement Plan and budget and use this as an essential guideline for all procurement processes to be undertaken in the new Financial Year.

6.2.5 Heads of Department, Units, Projects and Programmes

Heads of departments, units, projects and programmes are required to ensure the analysis and preparation of Annual Procurement Plans for their own and subordinate areas of control.

Procurements for development partner-funded projects and programmes should also be included but identified in a separate section of the Procurement Plan.

Principal stages are as follows:

- ❖ Review previous procurement plans to determine if any planned procurements will need to be carried forward into the new financial year.
- ❖ Identify specific procurement requirements and categorise them into the types of procurement, i.e., Goods, Works or Services.
- ❖ Aggregate similar items into suitable packages or lots and estimate the cost of each package or lot.
- ❖ Determine the procurement method to be used based on the procurement thresholds issued from time to time by the Public Procurement Agency, pursuant to section 33(1) of the Public Procurement Law, 2015. Note that procurement requirement must not be spilt into parts to avoid the use of a specified procurement method.
- ❖ Determine the appropriate body responsible for approval, i.e. Accounting Officer, Procurement Planning committee, or the Entity Tenders' Board.
- ❖ Complete the procurement template with realistic Lead Time deadlines, taking cognizance of:
 - Administrative activities
 - Manufacture, Construction or Service periods
 - Delivery

➤ Contract completion

- ❖ Note that the dates to appear on the plan are ‘Completion Dates’ i.e. the projected date by which the whole task would have been accomplished
- ❖ Respond to any request for clarification raised by the Procurement Unit.
- ❖ Receive notification of the final approved Annual Procurement Plan and budget and use this as an essential guideline for all procurement processes undertaken in the new Financial Year.

6.3 GUIDELINES FOR DETERMINING COMPLETION TIME SCALES

3.3.1 Estimated lead times for ICB (Goods)

1.	Preparation of Bidding Documents	-	1-6 weeks
2.	Prior review/PPC/TB approval	-	1-2 weeks
3.	Adverts/Bid Invitation	-	6weeks minimum
4.	Close of Bid Submission/ Opening	-	same date
5.	Bid Evaluation and Report Submission	-	2-4 weeks
6.	Approval by PPC/TB	-	1-2 weeks
7.	Contract Award	-	0-2 weeks
8.	Contract Signature	-	1-4 weeks
9.	Letters of Credit (Goods)	-	2-4 weeks
10.	Delivery	-	6-16 weeks
11.	Inspection and Acceptance	-	0-4 weeks

If there is the need for Prequalification of Suppliers or Contractors then total time for the delivery of the goods or works will have to be expanded by 7-13 weeks to allow for the completion of the prequalification procedures.

6.3.2 Estimated lead times for NCB (Goods)

1.	Preparation of Bidding Document	-	1-3 weeks
2.	Prior Review/PPC/TB approval	-	1-2 weeks
3.	Advert/Tender Invitation	-	2-4 weeks
4.	Close of Bid Submission/Opening	-	same date
6.	Bid Evaluation and Report Submission	-	1-2 weeks
7.	Post Review/No objection	-	1-2 weeks
8.	Contract Award	-	0-2 weeks
9.	Contract Signature	-	1-3 weeks
10.	Letter of Credit (LC)	-	1-4 weeks
11.	Delivery	-	As per contract
12.	Inspection and Acceptance	-	0-1 weeks

6.3.3 Estimated lead times for ICB (Works)

1.	Preparation of Bidding Documents	-	2-4 weeks
2.	Prior Review/PPC/TB approval	-	1-2 weeks
3.	Advert/Bid Invitation	-	6-8 weeks
4.	Close of Bid Submission/Opening	-	same date
5.	Bid Evaluation and Report Submission	-	2-4 weeks
6.	Post Review / PPC/TB Approval	-	1-2 weeks
7.	Contract Award	-	1-2 Weeks
8.	Contract Signature	-	2-3 Weeks
9.	Mobilisation (Advance Payment)	-	2-4 weeks

10.	Completion Period	-	As per contract
11.	Final Acceptance	-	24-52 weeks

6.3.4 Estimated lead times for NCB (Works)

1.	Preparation of Bidding Documents	-	2weeks minimum
2.	Prior Review/PPC/TB	-	1-2 weeks
3.	Advertising/Bid Invitation	-	2-4 weeks
4.	Close of Bid Submission/Opening	-	same date
5.	Bid Evaluation and Report Submission	-	2-4 weeks
6.	Post Review /PPC/TB approval	-	1-2 weeks
7.	Contract Award	-	1-2 Weeks
8.	Contract Signature	-	1-3 Weeks
9.	Mobilisation (Advance Payment)	-	2-4 weeks
10.	Completion Period	-	As per contract
11.	Final Acceptance	-	24 weeks

6.3.5 Estimated lead times - Request for Quotation

1.	Preparation of documents	-	0-1 weeks
2.	Invitation or Solicitation letter	-	0-2 weeks
3.	Close of Bid Submission/Opening	-	same date
4.	Evaluation and Submission of Report	-	0-1 week
5.	Award of Contract	-	0-1 week
6.	Contract Signature	-	1 week
7.	Delivery/Completion period	-	1-4 weeks
8.	Inspection and Acceptance	-	0-1 weeks
9.	Final Acceptance (works)	-	As per Contract

6.4 PLAN MONITORING AND UPDATING

During project execution the original procurement plan should be regularly monitored and updated. The essence is to see how actual performance compares with the planned activities and to make changes in the plan if necessary.

If slippage occurs in the award or execution of one major contract, it may require rescheduling of other related contract awards and deliveries.

The purpose of monitoring is to complete the details of what has actually been executed, to note whether there are major discrepancies with what was anticipated, and make adjustments in the plans so as to give a complete picture of procurement performance.

A full revision and update of the Procurement Plan must be submitted to the Procurement Planning Committee for review and approval on a Quarterly basis throughout each Financial Year.

Chapter 7

PROCURING GOODS, WORKS AND NON-CONSULTING SERVICES

Chapter 7 PROCURING GOODS, WORKS AND NON-CONSULTING SERVICES

Topics

- 7.1 Preparation of Procurement Specifications
- 7.2 Selecting Procurement Methods
- 7.3 Open Competitive Bidding
- 7.4 Two-Stage Bidding
- 7.5 Restricted Tendering
- 7.6 Request for Quotation (Shopping)
- 7.7 Direct Contracting
- 7.8 Force Account (Direct Labour)
- 7.9 Emergency Procurement

INTRODUCTION

This chapter addresses the procurement of Goods, Works and Non-Consulting Services as well as the Procurement Methods available to the Procuring Entities to carry out the procurements, in accordance with the Public Procurement law, 2015.

7.1 PREPARATION OF PROCUREMENT SPECIFICATIONS

After preparation and approval of the Procurement plan, the next important issue to consider is the preparation of specifications for each procurement package to be procured. Section 35 (1) (e) and (f) of the Law requires that the procuring entity has the responsibility to prepare the specific requirements relating to the goods, works, services or consultancies. The specifications must be clear to give the correct and complete description of what is to be procured and thus allow fair and open competition among the prospective service providers.

In case of works the specifications shall include Bills of Quantities (BOQ), designs and drawings. In case of technical specifications for equipment reference should not be made to particular trademarks, names, brands, patents, design, type, product or service provided or to a specific origin unless it is unavoidable in which case there shall be a statement allowing equivalents of what is referred to.

The specifications should be as neutral as possible and not to appear to favour particular bidder. In case of consultancies the terms of reference (TOR) must be adequate to enable the participating consultants to understand the requirements of the assignment. Specifications are so crucial to the success of procurement and the following points should be noted:

- (a) Specifications must be prepared by qualified staff.
- (b) The responsibility for preparation of the specifications is shared by the user and technical departments and coordinated by the procurement unit.
- (c) Specifications must be updated and based on adequate market trends.
- (d) A procurement agent or consultant may be engaged to prepare complex specifications.
- (e) Specifications form a very critical part of the bidding documents.
- (f) The evaluation criteria which must be disclosed in the bidding documents shall be partly based on the specifications.
- (g) Specifications must include packing if necessary.
- (h) Preparation of the bidding documents should not be commenced before the specifications are ready.
- (i) Specifications should take into account total cost of ownership.

7.2 SELECTING PROCUREMENT METHODS

The fundamental principles for selecting procurement methods are as follow:

- i. The appropriate methods, procedures and contract award for public procurement of goods and works shall be subject to the prior review thresholds as may be set from time to time by the PPA.
- ii. Value for money obtained through efficiency, fair access to bids and transparency, shall remain the main objective of the Procuring Entity.

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

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

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.

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.

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

1. National Competitive Bidding (NCB) for contracts above N50,000,000.00 (Fifty Million Naira) as specified by section 32 (4) of the Law, and below a certain monetary threshold as set from time to time by the PPA.
2. International Competitive Bidding (ICB) for contracts above monetary threshold for NCB as specified by section 32 (4) of the Law and for which there is responsive inadequate number of qualified and bidders within the Country a certain monetary threshold as set from time to time by the PPA.
3. Two-Stage Bidding for large and complex contracts where it is necessary to obtain first greater clarity in technical specifications and possible alternative technical approaches.
4. Restricted Tendering (RT) for contracts for which only a limited number of qualified suppliers or contractors exist. Pursuant to section 59 of the Law.

5. Selective Bidding (or “Request for Quotations”) for small contracts, where it is sufficient to obtain written quotations from at least 3 reputable suppliers or contractors.
6. Single Source Procurement (or Direct Contracting) applied only in exceptional circumstances and always subject to the provision of the Law.
7. Force Account (Direct Labour)

Framework Contracting:

A framework contract is a schedule of rates or indefinite delivery contract and shall be used:

1. where a requirement is needed "on call", but where the quantity and timing of the requirement cannot be defined in advance; or
2. to reduce procurement costs or lead times for a requirement which is needed repeatedly or continuously over a period of time by having them available on a "call off" basis

A bidder shall indicate the unit rate for each item.

A procuring entity shall indicate the estimated quantity or value where this is possible or necessary to obtain competitive bids, but shall not make a commitment to purchase the full quantity or value.

A procuring entity may make a commitment to purchase a minimum quantity or value or to purchase all similar requirements from a successful bidder, where this is necessary or preferable to obtain competitive prices.

A framework contract shall state the arrangements for obtaining specific requirements during the period of the contract, using placement of "call-off" or delivery orders where appropriate.

Payment shall be made on the basis of the works, services or supplies actually delivered or performed.

A framework contract may include fixed prices or provide for price adjustment in accordance with a pre-determined formula

Pursuant to section 33 (1) of the Law, the use of any bidding methods shall be subject to monetary thresholds set by the Agency from time to time.

7.3 OPEN COMPETITIVE BIDDING

(7.3.1) Use of Open Competitive Bidding Method

The Open Competitive Bidding Methods (International Competitive Bidding –ICB, and National Competitive Bidding – NCB)are the preferred methods of procurement. Alternative Procurement methods are used only if specific conditions are met. The Procurement Threshold issued by the PPA must be adhered to in the selection of Procurement Method. The Open Competitive Bidding Method should thus be considered as the default method when no special circumstances permit the application

of restrictions to the level of competition and when the estimated value is not below the thresholds permitting the application of a restricted competition such as Request for Quotation or Restricted Tender for efficiency purposes.

(7.3.2) Procurement Thresholds for Open Competitive Bidding Method

If the Open Competitive Bidding Methods (International Competitive Bidding –ICB, and National Competitive Bidding – NCB) for Goods, Works and Services are used, they should be applied in accordance with the Procurement Thresholds issued by the PPA. The procedures for applying the International Competitive Bidding, and the National Competitive Bidding, for Goods, Works and Services, whether applying direct advertisement requirements or two-stage tender proceedings are presented in this section.

The choice of method largely depends on the estimated value of procurement. It also includes consideration of the desirable level of competition. Market knowledge is therefore necessary to ensure that the level of competition is adequately appreciated. The procurement planning should have sufficient time provision to allow publication of the tender announcement and submission. Competition is thus a composite result of clarity of specifications, time and transparency of the method selected. It is the responsibility of the procurement unit to ensure the selection of the most appropriate method to achieve value for money.

(7.3.3) Pre-qualification or Open Competitive Bidding without Prequalification

Open Competitive Bidding may sometimes be costly to administer as it requires evaluating all bids with fairness and equality in order to select the winning bid. In cases where the procurement requirement is large but simple, this may mean dealing with a large number of bids. It is thus better to first identify potential bidders on the basis of compliance criteria to determine their qualification and then to conduct the tender on a short-list of pre-qualified bidders having demonstrated their capacity and intention to respond.

(7.3.4) Justification for Conducting Pre-qualification

Prequalification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plant, specialized services, some complex information and technology and contracts to be let under turnkey, design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources.

Prequalification enables the Procuring Entity to reduce the number of bids to be evaluated technically and financially as this is a complex and costly task without reducing the level of competition as the prequalification stage is open to all competitors but simply seeks to evaluate the technical and financial capabilities of competitors.

The justification for deciding that a procurement package is complex such that the best way to handle it is by prequalification shall be based on the technical complexity of the procurement object and not the value or estimated cost of the procurement. Prequalification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account:

- (i) experience and past performance on similar contracts,
- (ii) capabilities with respect to personnel, equipment, and construction or manufacturing facilities, and

(iii) financial capabilities.

(7.3.5) Procedure for Pre-qualification

Section 34 of the Public procurement Law 2015 deals with prequalification. The prequalification procedure is as follows:

(i) A request for prequalification or expression of interest is advertised inviting interested service provider to submit applications to be prequalified.

(ii) The standard prequalification document issued by the PPA shall be used.

(iii) The prequalification document shall include an outline of the procurement requirements including the nature and quantity of goods, works or services and the location and timetable for delivery and performance of the resultant contract. It does not require to have detailed specifications of the procurement object.

(iv) The criteria for prequalification must be disclosed.

(v) All the information necessary for the service provider to prepare and submit applications to be prequalified must be given.

(vi) The procedure for processing prequalification bids including the opening and evaluation must be the same as that of open competitive bidding.

(vii) Interested Service Providers shall be given not less than 14 days to prepare and submit pre-qualification bids.

(viii) Evaluation of the prequalification bids shall consider only the criteria set out in the issued prequalification documents.

(ix) All applicants who meet the specified prequalification criteria shall be enlisted.

(x) The evaluation report containing the list of recommended applicants shall be submitted to the Tenders' Board for approval.

(xi) The evaluation report shall also indicate reasons why other candidates were not qualified.

(xii) Bidding documents for the procurement shall be issued directly to all the prequalified applicants and then the normal procurement procedures for open competitive bidding are followed.

(7.3.6) Invitation to Bid

Two possibilities exist:

- i.** Invitation through the publication of an announcement of procurement proceedings in the case of open competitive bidding, where no prequalification has been conducted; or
- ii.** Invitation to prequalified bidders where a pre-qualification stage has been conducted.

The content of the invitation to bid should be sufficient to inform all the bidders on the procurement requirements key specifications and conditions of execution so as to allow the bidders to make informed decisions in order to be responsive and competitive. The following is a minimum prescription:

i. The name, address and contact details of the Procuring Entity;

ii. The unique procurement package number assigned to the procurement proceedings by the Procuring Entity;

iii. The nature of the procurement requirement, including a description, the quantity of goods, works or services and the location and timetable for delivery or performance of the contract.

iv. An indication of the procurement method being used;

v. A statement that those submitting tenders or their representatives may attend the opening of tenders;

- vi.** A statement of any key technical requirements, qualification requirements and evaluation criteria, and/or any applications of preference margins;
- vii.** Instructions on obtaining the bidding documents, including any price payable and the language of the documents; and
- viii.** Instructions on the location and deadline for submission of bids.

Section 33 (2) of the Public procurement law 2015 stipulates that requires that in the case of goods, works and services valued under International Competitive Bidding, the invitation for bids shall be advertised in at least two (2) national newspapers, one (1) relevant internationally recognized newspaper, the official website of the procuring entity, the Agency and the State Procurement Journal not less than six weeks before the deadline for submission of the bids for the goods, works and services. Also Section 33 (3) requires that in the case of goods, works and services under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity and the State Procurement Journal not less than six (6) weeks before the deadline for submission of the bids for the goods, works and services. This manual however recommends that in the case of National Competitive Bidding; where there is need to shorten the procurement period, the deadline for submission of bids can be fixed for not less than four (4) weeks. The Procuring Entity shall however obtain the approval of the PPA to that effect before issuing the Invitation to Bid with such a shorter duration.

(7.3.7) Deciding Between ICB and NCB

The Procuring Entity's choice of either International Competitive Bidding or National Competitive Bidding for a procurement package affects the level of competition, the costs as well as the timing of the proceedings. Thus, the decision is based on two aspects:

- i.** The technical specifications of the procurement requirement: are the technology, skills, knowledge, know-how, business process and available on the national market? These conditions should imply that the advertisement and level of effort made for achieving an appropriate amount of competition is either deemed sufficient at national level or requires wider competition through international competition. Market knowledge is essential as the Procuring Entity will be responsible for justifying the choice of method.
- ii.** The existence of potentially more competitive bidders or appropriate solutions for the procurement requirement on the international market. For example, specific systems or business processes may have been developed internationally. International bidders may contribute to the transfer of technology.

As a matter of principle, the Procuring Entity should always choose the method that ensures the maximum level of competition. However, there might be a preference scheme to be taken into account. Further, the costs of the proceedings should be kept in balance with the estimated value of the procurement requirement.

When a Procuring Entity employs International Competitive Bidding, in addition to the requirements of section 33 (2) of the Law stated under (7.3.6) above, the following rules should be applied:

- i.** The invitation to bid and the bidding documents shall be in English language;
- ii.** The technical requirements should be expressed, to the extent compatible with requirements under the Law of Federal Republic of Nigeria, in international standards or standards widely used in the industry

- iii. A bidder submitting a bid may, in quoting prices or providing security, use a currency that is widely used in international trade and that the tender documents specifically allow to be used;
- iv. If and when a bid is submitted in an acceptable, convertible and widely used international currency the currency conversion value to be used for the purposes of the evaluation shall be the Naira, using the Central Bank of Nigeria selling rate on the date of bid opening or any other date specified in the bid documents.
- v. Contract payments sequel to a contract award shall be made in the currency or currencies in which the price is expressed in the successful bid;
- vi. **For goods**, the Procuring Entity shall invite bids under ICB on the basis of CIF (port of destination) or CIP (place of destination) for all goods offered from and manufactured abroad, including those previously imported, and Ex Works, Ex-factory or off-the-shelf for goods manufactured in Nigeria. Bidders may arrange for ocean and other transportation and related insurance from any eligible source in accordance with national eligibility requirements. Where installation, commissioning or other similar services are required to be performed by the Bidders, as in the case of “supply and installation” contracts, the Bidders shall be required to quote additionally for these services.
- vii. **For works**, ICB contracts shall be priced to include all duties, taxes and other levies. Bidders for civil works contracts shall be required to quote unit prices or lump sum prices for the performance of the works, and such prices shall include all duties, taxes, and other levies for all procurement methods.
- viii. In the case of **Turnkey Contracts**, the Bidders shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation, and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, and operation. Unless otherwise specified in the bid documents, the turnkey price shall include all duties, taxes, and other levies.
- ix. Any general and specific conditions to which the contract will be subject must be of a kind generally used in international bidding and must be provided in the bidding documents.

(7.3.8) Contents of Bidding Documents

Standard Bidding Documents have been developed by the Public Procurement Agency and must be used with minor necessary modifications. Use of other tender documents developed by a procuring entity shall require approval of the PPA.

The bidding documents are an essential interaction document between the Procuring Entity and the potential bidders the bidding documents officially specify the procurement requirements and the proceedings in a legally binding manner. It is therefore critical to dedicate sufficient time and care for their preparation.

The bidding documents have to provide bidders with all the information they may require in order to submit bids that are responsive to the needs of the Procuring Entity. At this stage, the bidder is not seeking information to make up his decision on whether he will respond to the tender, but is seeking direction to respond technically and financially, be responsive and be competitive. If not, in the case where many bidders would compete but not in accordance with the specifications, it may mean that the bidding process have to be declared non responsive for lack of effective competition.

Effective competition is thus achieved by designing with care the bidding document to reflect the requirements and the specifications that are essential to the success of the project and that permits clear, unambiguous comparison to these specifications and amongst the bids. With these principles in mind, the bidding documents should contain:

- i. A clear description of the goods, works or services required;
- ii. If works are being procured, relevant drawings and bills of quantities prepared by qualified professionals;
- iii. The general and specific conditions to which the contract will be subject, including any requirement for performance security;
- iv. Instructions to bidders on the preparation of bids, including any standard forms to be submitted and the required documentary evidence and information including:
 - The bidding forms;
 - The number of copies to be submitted with the original tender;
 - Any requirement that bid security be provided and the form and amount of any such security;
 - Any requirement that evidence be provided of the qualifications of the person submitting the bid;
 - An explanation of where and when bid must be submitted, a statement that the bids will be opened immediately after the deadline for submitting them and a detailed description of where the bids will be opened;
 - Instructions on the sealing, packaging, labelling and submission of bids, including the location and deadline for submission and procedures for the withdrawal, modification or substitution of bids;
 - A statement that those submitting bids or their representatives may attend the opening of bids;
 - A statement of the period during which bids must remain valid.
- v. A statement of whether alternative bids are permitted or should be submitted only in addition to the response to the bid (variant proposal) and any instructions relating to alternative bids;
- vi. Any applicable preference programs and the margin of preference to be applied;
- vii. Information on the methodology for the evaluation of bids, the evaluation criteria to be applied and the manner in which the criteria shall be applied (with clear scale and scoring);
- viii. Information on the procedure for contract award, including the requirement for publication of a notice of proposed award and the bidders' right to appeal;
- ix. A statement that the Procuring Entity may, at any time, terminate the procurement proceedings without entering into a contract;
- x. The type of contract to be awarded;
- xi. The terms and conditions of the proposed contract; and
- xii. Information on the Government's policy on fraudulent activities and corrupt practices.
- xiii. A statement on the bidder right to appeal under administrative review.

The bidding documents must detail all specific conditions and requirements.

In describing the specific requirements of the procurement, the Procurement Unit is responsible to provide the necessary advice to the User Department so that specifications are clear, give a correct and complete description of what is being procured and allow for fair and open competition among those who may wish to participate in the procurement proceedings. Such specifications may relate to the performance rather than to design or descriptive characteristics. To the extent possible, they should as much as possible be based on national or international standards but should not refer to a particular trademark, name, patent, design, type, producer or service provider or to a specific origin unless there is no other sufficiently precise or intelligible way of describing the requirements. In such an event, the requirements should allow for equivalents to what is referred to.

(7.3.9) Issuance and Sale of Bidding Documents

The issuance of Bidding Document shall be organized by the Procuring Entity so as to ensure access and costs efficiency. All bidders responding to the notice of invitation to bid must receive by mail and/or electronic mail the bidding document or be able to obtain them at the premises of the Entity. The Procuring Entity shall maintain names and addresses of all bidders to whom the documents are issued.

Where bidders have been pre-qualified, the bidding documents shall be issued to all bidders on this list at the same time. To the extent possible, the procuring entity shall issue the bidding documents by electronic mail or any other method the same day.

The Procuring Entity may charge a fee for the bidding documents. Fees charged for Bidding Documents shall be calculated to cover the costs related to printing, copying and distribution of the documents only and shall not include any element of profit. In this event, signed receipts for the documents have to be issued and the bidders may be required to submit a copy of the receipt with their bid. Bidders may request to inspect the bidding documents at the premises of the entity prior to purchasing them.

(7.3.10) Bidding Period

The minimum bidding period shall be 42 calendar days for International Competitive Bidding and 28 calendar days for National Competitive Bidding. Pre-qualified bidders shall be given not less than 14 calendar days.

Bidders are allowed to ask for clarifications. The Bidding Documents have to specify the period after which no questions or request for clarifications shall be responded to. Should questions raised by the bidders induce a need for change or should the bidders require changes acceptable to the procuring entity, the bidding documents should be amended and all the bidders should be informed simultaneously, without specifying the source of the question. Importantly, because such changes may have ramifications, the time remaining before the deadline for submitting bid when informing the bidders should not be less than one third of the time allowed for the preparation of tenders. If this is not the case, the Procuring Entity has to extend the deadline to allow the amendment to the bidding documents to be taken into account in the preparation or amendment of the bids.

(7.3.11) Extension of Bid Closing Date

The closing date for submission of Bids may be extended at the discretion of the Procurement Entity for practical or justifiable reasons. The reasons may include

modification to the Bidding Document after issue and requests for an extension of time by tenderers.

Action:

The Head of Procurement Unit should:

- Ensure that there is an adequate practical justification for extending the closing date. Extensions should not be granted, for example, where a bidder has by his own inactivity failed to purchase the bidding Document early enough to permit submission of a responsive bid.
- Issue an addendum notifying all bidders of the revised date for submission of bids.
- Place copies of all relevant correspondence in the Procurement record file.

(7.3.12) Submission and Receipt of Bids

Bidders shall submit their bids in accordance with the instructions given in the bidding documents.

The submission and receipt of bids is strictly regulated in order to ensure fairness and equal treatment of all the bidders as well as securing the bids to avoid any collusion. The following criteria must be verified when receiving a bid:

- i. A bid must be in writing, it must be signed by an authorized officer of the bidder and it must be sealed in an envelope;
- ii. A bid and the envelope it is sealed in must bear the procurement package number assigned by the procuring Entity and any other reference as specified in the bidding documents;
- iii. A bid must be submitted before the specified deadline for submission and any bid received after that deadline shall be declared late and returned unopened. It will be important for the bidding documents to state how late tenders shall be treated but whatever the case they shall be rejected.

(7.3.13) Bid Validity Period

Pursuant to Section 40 of the Law, Bidders shall be required to submit bids valid for the period specified in the bid documents. Such period must be sufficient to enable a Procuring Entity complete the evaluation and comparison of bids, obtain all necessary approvals including the Certificate of Compliance of the Agency and contract signature.

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

Any bidder who provides less than the required bid validity period shall be declared non-responsive.

(7.3.14) Extension of Bid Validity Period

The duration of bid validity is specified in the Bidding Document and should be confirmed in the signed Form or Letter of Bid submitted by each Bidder.

- ❖ If circumstances occur in which award cannot be made within the original bid validity period, extensions in writing should be requested from Bidders, in accordance with the Bidding Document.
- ❖ The evaluation and award of contract should be completed within the period set for the validity of bids. The date for expiry of bid validity must be

monitored and attention drawn to this deadline not less than two weeks before the expiry date.

- ❖ If, due to unforeseen circumstances, the task cannot be completed within the set period, the Procurement Unit may contact bidders to seek their agreement to an extension of the bid validity.
- ❖ Bidders who refuse this request may withdraw from the Bid without incurring any penalty, but bidders who agree to an extension will also be required to extend their Bid Securities (where applicable) for an appropriate period.
- ❖ When an extension of bid validity period is requested, bidders shall not normally be requested or be permitted to change the quoted price or other conditions of their bids. However, the Bidding Document may provide for an appropriate price adjustment mechanism when requests for second or subsequent extensions are made, to reflect changes in the cost of inputs for the contract over the period of extension.

Action by Procurement Unit:

- Maintain a diary reminder of all bid validity dates and advise the responsible officer not less than two weeks before the expiry date so that appropriate action can be taken in time.
- Determine the additional time required to complete the evaluation and award of the specific contract. Any extension of bid validity should be for the minimum period required to complete the evaluation, to obtain the necessary approvals and to award the contract.
- Prepare an individual letter to each bidder requesting their formal approval to an extension of the validity of bids and an extension of their Bid Securities (where necessary) for the required period. Set a date for written responses to be received by the Procurement Entity, stressing that bidders who do not respond in time will be considered to have withdrawn their bids.
- Send the letter by registered post or deliver by hand to each bidder and obtain a receipt.

Bidders have the right to refuse to grant an extension of bid validity without forfeiting their Bid Security. If a bidder refuses to extend the validity of his bid then, upon expiry of the original bid validity period, the Bid Security shall be returned and the Bid shall not be considered further.

Only bidders who respond confirming their unconditional acceptance and enclosing any required extension to their Bid Security may be considered for further evaluation and award of contract.

(7.3.15) Bid Securities

A Procuring Entity may require bid securities, in order to deter irresponsible bids and encourage bidders to fulfill the conditions of their bids. The bidding documents shall clearly state any requirement for a bid security and specify the acceptable forms of the bid security.

Section 36 (1) provides that the Bid Security shall not be less than 1% of the bid price in form of a bank guarantee issued by a reputable bank acceptable to the procuring entity or an insurance bond issued by an insurance company acceptable to the PPA. It is important to mention here that a bid security shall not be applicable where the bids

are not expected to result into a contract like in the case of prequalification bids and expressions of interest.

The value of any required bid security may be expressed as a fixed amount or as a percentage of the bid price. In any case, the amount of the bid security requested by the Procuring Entity should not be in excess of two percent (2%) of the estimated value of the contract.

In determining the amount of bid security required, the Procuring Entity should then take into account the cost to bidders of obtaining a bid security, the estimated value of the contract and the risk of bidders being deterred to bid or to fulfill the conditions of their bids. The amount shall be high enough to deter irresponsible bids, but not so high as to discourage competition.

The bidding documents shall state that bid securities must be:

- i. In accordance with the format and wording provided in the bidding document;
- ii. In a form acceptable to the Procuring Entity, which may be: – cash;
– a bank guarantee; – A letter of credit (LC);
– An Insurance Company Bond where approved by PPA or
- iii. Valid for the period prescribed in the bidding document which should normally be at least 28 calendar days beyond the bid validity period to provide reasonable time for the Procuring Entity to act if the security is to be called or till the performance security of the successful Bidder is obtained at contract award;
- iv. Bid securities shall be on demand terms.

The Procuring Entity has to release bid securities promptly to unsuccessful bidders before expiry of the term of the security on formation of a contract with successful bidder and submission of any required performance security. The bid security of the successful bidder shall not be released, until the contract or any required performance security has been received (where such a performance security is required).

(7.3.16) Forfeiture of Bid Securities

The bidder shall forfeit the bid security under the following conditions:

- i. Withdrawal or modification of the bid during the period of bid validity set forth in the bidder's Letter of Bid ("the Bid Validity Period"), or any extension thereto provided by the bidder; or
- ii. failure to execute the contract agreement after being notified of the acceptance of its bid by the Procuring Entity during the Bid Validity Period or any extension thereto provided by the bidder; or
- iii. failure to furnish the performance security or to comply with any other conditions precedent to signing of the procurement contract specified in the bidding documents.

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 bid 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 bidding 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.

The conditions for forfeiture of a bid security shall be specified in the bidding documents. The bidding documents shall state that bidders may withdraw, substitute or modify their bids at any time prior to the deadline for submission of bids, without forfeiting the bid security. The bidding documents shall state the procedures to be followed for withdrawal, substitution or modification.

In exceptional circumstances, the procuring entity may solicit the bidder's consent to an extension of the period of bid validity. The request and responses thereto shall be made in writing. The bid security shall also be suitably extended. A bidder may refuse the request without forfeiting its bid security. A bidder granting the request will not be required nor permitted to modify its bid.

(7.3.17) Modifications to Bids

Before the deadline for submitting bids, a bidder who has already submitted his bid may change or withdraw it. The change or the withdrawal must be submitted in writing before the deadline for bid submission and following the instruction to bidders in the bidding documents. After the deadline for submitting bids, a bidder who submitted a bid cannot change it and any attempt or offer to change the substance of the bid may be considered as a cause for debarment. Reciprocally, it is strictly forbidden for the Procuring Entity or any officer to attempt to have the substance of a bid changed.

Where changes are necessary in the bidding documents, the Procuring Entity has to issue an addendum to the bidding documents to all persons who have received or purchased the Bidding Documents and should consider extending the deadline for submission to allow sufficient time for the bidders to consider the amendment. Such an amendment should not be such that the quantity, financial volume or other specifications and requirements would normally have required a different procurement method to be applied according to the Procurement Thresholds prescribed by the PPA. The addendum would be deemed to be part of the bidding documents. It is the responsibility of the procurement unit to verify that the amendments do not change the requirement in such a manner that it would have required a different procurement method.

(7.3.18) Clarifications and Information to Bidders

The Procuring Entity may organize:

- i. A pre-bid conference in order to brief potential bidders or to offer the opportunity for them to seek clarifications; and/or
- ii. A site visit, to enable bidders to gain access to the site for delivery of any proposed works, goods or services.

Details of pre-bid conferences and site visits, including the date, time and location, must be included in the bidding document and, where possible, in the invitation to bid. The date of any pre-bid conference or site visit should be sufficiently early in the

bidding period, to enable bidders to take the information into account in preparing their bids.

The Procuring Entity has to prepare minutes of any pre-bid conference and promptly send them to all bidders to whom the bidding documents have been issued. The minutes must include:

- i. All information provided as part of any briefing;
- ii. Details of any clarifications requested, but without identifying the source of the inquiry; and
- iii. The details of responses provided as clarifications.

Following any pre-bid conference or site visit, the Procuring Entity has to ensure that clarifications or amendments to the bidding documents are issued to all candidates within a reasonable time.

In addition to the pre-bid conference, the bidding documents must state that a Bidder may seek clarification of the bidding document and the final date after which such clarification may not be sought. Such date has to allow adequate time for potential bidders, including foreign bidders, to receive and apply the clarifications

Where a request for clarification is received, the Procuring Entity must promptly provide a clarification in writing, copied to all bidders and including a description of the inquiry, but without identifying the source.

At any time prior to the deadline for submission of bids, the Procuring Entity may, either at its own initiative or in response to a request for clarification from a Bidder, amend the bidding document by issuing an addendum.

As for clarifications, any addendum shall be issued in writing and the same information shall be provided to all bidders at the same time. All addenda must be numbered sequentially and bear the procurement package number. All clarifications and addenda to the bidding documents are binding to bidders and to the Procuring Entity.

(7.3.19) Receipt and Opening of Bids

Section 37 (3) of the Public Procurement Law 2015 prescribed that all submitted bids shall be deposited and kept in a secured tamper-proof Bid Box. The Procuring Entity, therefore, has to make arrangements for the receipt and safe-keeping of bids up until the deadline for submission of bids. These include:

- i. The provision and security of a bid box, in which bidders are responsible for depositing their bids directly and for which the Procuring Entity shall remain responsible to ensure it is locked until the time for bid opening; or
- ii. The receipt of bids by staff of the Procuring Entity, who are responsible for issuing signed receipts, showing the precise date and time of receipt and keeping bids in a secure location until the time for bid opening where they are bulky and cannot be placed in the bid box.
- iii. Where a bid is too large to be inserted in the tender box or that samples were required to be submitted separately, the Procuring Entity has to acknowledge receipt of each of the bids or samples. Samples may require specific preservation that the Procuring Entity shall be responsible for.
- iv. No communication shall take place between procuring entities and any bidder after the issuance of the bidding documents other than for the purpose of providing additional clarifications

The Procuring Entity is responsible for ensuring that bids can be received at all times, issuing receipts and for maintaining an adequate record that may be audited. Records have to indicate the name of each bidder, the date and time of receipt and the name of

the person responsible for receipt. This means ensuring accessibility to the office and tender box and staff availability at the times stated in the bidding documents.

The Procuring Entity is responsible for the safe keeping of all bids from the moment it has discharged the mail, the courier or the bids deposited directly to the Procuring Entity's office. It cannot however be made liable for the loss or delay in delivery of any bid delivered by mail or courier.

It is not permitted to disclose the number or identity of bids received, prior to the bid opening, other than to public officials who may require the information as part of their official duties: in such circumstances, the names and reasons for obtaining the information should be recorded.

The bidding process has to be closed precisely at the date and time of the deadline for submission as stated in the bidding document. Where a bid box is used for the receipt of bids, the Procuring Entity should seal the bid box at the date and time of the deadline and ensure that no further bids are placed in the bid box. The Procuring Entity shall assign suitable, experienced staff to manage the bid closing.

Any bid received after the deadline for submission of bids cannot be accepted for the evaluation, but will be declared late and rejected. Late bids, therefore, must also be recorded and labelled, stating the date and time of receipt and must be returned unopened to the bidder. Any late bid which is not labelled with the bidder's name has to be recorded and left unopened. It is the responsibility of the Procuring Entity to keep sufficient evidence that a bid was late. Any bidder who brings a late bid at the time of opening shall be asked to go back with it.

When a late bid is rejected, the outer envelope should be opened for the purpose of identifying the name and address of the bidder. The inner envelope must not be opened, but has to be returned unopened to the bidder. It shall be placed in an outer envelope addressed to the bidder.

With respect to Bid opening, Section 41 of the Law provides that:

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

- (a) permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
- (b) 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;
- (c) ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension;
- (d) ensure that attendance is taken of all those present at the bid opening with their names and addresses and the organization they represent to be recorded by the Secretary of the Agency; and
- (e) call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, and shall ensure that these details are recorded by the Secretary of the Agency or his delegate in the minutes of the bid opening.

The Accounting Officer of the Procuring Entity is therefore expected to appoint a Bid Opening Committee specifically for the procurement requirement. Immediately after the deadline for submitting bids, the bid opening committee should open all bids

received. Bidders, or their representatives, shall be permitted to attend the opening. This has to be specified in the invitation to bid and bidding document. The Bid Opening Committee has to number each bid for reference. Envelopes marked “withdrawal” have to be opened first. The following shall be read out loud and recorded in a document to be called the bid opening register:

- i. The name of the bidder submitting the bid;
- ii. If only one envelope system is used, the total price of the bid including any modifications or discounts received before the deadline for submitting bids; and
- iii. Where applicable, mention what has been given as bid security.
- iv. If two envelope system is used, the presence of a technical proposal and financial proposal in separate envelopes and in adequate copies as required by the bidding documents. Those attending the bid opening should be encouraged to take their own notes of the bid opening proceedings using their own materials.

The Procuring Entity must, on request, provide a copy of the bid opening register to a person submitting a bid. It is recommended that each member of the Bid Opening Committee shall:

- i. Sign each bid on the page of Letter of Bid and any other pages as determined by the Bid Opening committee; and
- ii. Initial, in each bid, against the quotation of the price and any modifications or discounts.

With the exception of late bids, no bids shall be accepted, rejected or evaluated in any way at the bid opening. Any discrepancies or missing documents should be recorded in the minutes. The minutes should contain:

- i. A record of the procedure followed in opening the bids; and
- ii. The particulars of those persons submitting bids, or their representatives, who attended the opening of the bids;
- iii. The names of all bidders whose bids were opened;
- iv. The presence or absence of a bid security, if one was required;
- v. The total price of the bid, including the currency and amount and any discount offered, except where the double envelope procedure is followed;
- vi. Each member of the bid opening committee shall sign the minutes of bid opening.

All Bidders’ representatives attending the bid opening should be requested to sign the record, but the absence of any signature shall not invalidate the record.

All the bid opening documents plus the minutes shall be passed on to the evaluation committee through the head of the procuring unit.

(7.3.20) Examination of Bids

It is important to start with the caution that bids are required to be valid for a specific period just 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. Bids shall therefore 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 Bid

Evaluation Committee should complete the evaluation report generally within 50 % of the bid validity period.

Where there is a delay in bid evaluation such 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 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 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).

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

It is also important to emphasize that the bid examination and evaluation procedures require utmost confidentiality, hence no information relating to the examination, clarification and evaluation of bids and recommendations concerning awards shall be communicated to any person not officially concerned with these procedures until the award of a contract to the successful Bidder is announced

Pursuant to Section 42 of the Law:

- (1) Every bid shall be first examined to determine if it:
 - (a) meets the minimum of eligibility requirements stipulated in the bidding documents;
 - (b) has been duly signed;
 - (c) is substantially responsive to the bidding documents; and
 - (d) is generally in order.
- (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.
- (3) The following shall not be sought, offered or permitted:
 - (a) changes in prices;
 - (b) changes of substance in a bid; and
 - (c) changes to make an unresponsive bid responsive.
- (4) Notwithstanding the provisions of sub-clause (3) of this clause, the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders.
- (5) The procuring entity, shall give prompt notice of the correction to the supplier or contractor that submitted the tender.
- (6) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.
- (7) The following shall be considered as major deviations:
 - (a) with respect to clauses in an offer:

- (i) unacceptable sub-contracting;
- (ii) unacceptable time schedule if time is of the essence;
- (iii) unacceptable alternative design, and
- (iv) unacceptable price adjustment.
- (b) with respect to the status of the bidder:
 - (i) the fact that he is ineligible or not prequalified.
- (c) with respect to bid documents an unsigned bid; and
- (d) with respect to time, date and location for submission:
 - (i) any bid received after the date and location for submission stipulated in the solicitation document; and
 - (ii) any bid submitted at the wrong location.
- (8) In cases of major deviations, bid shall not be considered any further and where unopened, shall be returned as such to the bidder.
- (9) In 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.
- (10) Subject to any provision to the contrary, the following shall be considered as minor deviations:
 - (a) the use of codes;
 - (b) alternative design;
 - (c) alternative workmanship;
 - (d) omission in minor items;
 - (e) arithmetical errors;
 - (f) completion period where these are not of essence; and
 - (g) any other condition that has little impact on the bid.

It is here clarified that the responsiveness of a bid is determined by the content of the bid itself with respect to the specifications in the bidding documents. Clarifications received or requested for are also considered. A substantially responsive bid is one which conforms to all the instructions, requirements, terms and conditions of the bidding documents, without material deviation, reservation or omission.

The Evaluation Committee therefore has to conduct a preliminary examination of bids to determine whether they are complete and are responsive to the instructions and requirements of the bidding document. This preliminary examination shall determine whether:

- i.** The bid has been submitted in the correct format;
- ii.** Any required bid security has been submitted, in the correct form and amount and valid for at least the period required;
- iii.** The bid has been submitted without material reservations or deviations from the terms and conditions of the bidding document;
- iv.** The bid has been correctly signed and authorized;
- v.** The correct number of copies of the bid has been submitted;
- vi.** The bid is valid for at least the period required;
- vii.** All key documents and information have been submitted;
- viii.** Any required samples have been submitted; and
- ix.** The bid meets any other key requirements of the bidding document.

A material deviation, reservation or omission shall result in rejection of the bid at this stage: this means that the bid shall not be subject to any further evaluation. Non material deviations, reservations or omissions shall not result in rejection of the bid.

(7.3.21) Material deviations, reservations or omissions mean:

- i.** A deviation that affects in any substantial way the scope, the quality or the performance of the works, services or supplies specified in the bidding documents.
- ii.** A reservation that would limit in any substantial way, inconsistent with the bidding documents, the Procuring Entity's rights or the bidder's obligations under any resulting Contract; or
- iii.** An omission that when corrected would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.

Any bid which contains a material deviation, reservation or omission is automatically declared rejected and may not subsequently be made responsive by the bidder or the Procuring Entity.

The classification of a deviation, reservation or omission as material or non-material must be determined in the light of the objectives of the procurement requirement and in comparison to the specified requirements as stated in the bidding document. It has to take into account the impact on key factors, cost or risk.

Consistency in examination has to be ensured. In case of a deviation, it needs to be quantified to the extent possible in order to be qualified as minor or as a source of non-responsiveness and it should be taken into account in the evaluation and comparison of bids. Pursuant to section 38 of the Law, where examination for responsiveness determines that none of the submitted bids is responsive, the Procuring Entity shall notify each person who submitted a bid that the bidding was not responsive.

Responsiveness should not be solely regarded as an administrative verification but also a technical one. Further, it should be clearly understood that non responsiveness may lead to appeal and reviews. Therefore the reason for non-responsive declaration must be clearly stated and factual.

Where none of the bids is responsive and financial bids have been submitted in a separate envelope, all the financial bids shall be returned to the bidders unopened.

Where only one or two bids are determined responsive the procuring entity shall have the option of proceeding with the evaluation or declaring that the bidding exercise has failed due for lack of adequate competition. This option must however be provided in the bidding documents.

(7.3.22) Principles of Detailed Bid Evaluation and Comparison of Bids

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 bids which were determined to be substantially responsive. 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,

1. 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 deviations;
- 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

(1.1) 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.

(1.2) 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 misplacement 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 Evaluation Committee shall give a detailed report explaining where and how such adjustments were made.

(1.3) 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.

(1.4) 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.

(1.5) Adjustments for acceptable deviations:

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.

(1.6) 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.

(1.7) 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 bidders were not requested to include such inland transportation costs within the bid price.

(1.8) 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.

(1.9) Conversion to common currency:

In order to minimize the foreign exchange risk for bidders in certain procurement (especially in ICB procedures) the bidders may be 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 (CBN) 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.

(1.10) Domestic preference (applicable under the ICB 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.

(1.11) 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 PPA.

(7.3.23) Domestic Preference

In case of ICB, pursuant to section 62 of the Law, when comparing bids from foreign contractors or suppliers with national Bidders, Procuring Entities may grant a margin of preference to domestic contractors, and suppliers of goods substantially manufactured in Nigeria. Where foreign bidders offer to bid in case of NCB the policy of domestic preference also applies. The Agency 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.

(7.3.24) Post-qualification of Bidders

Post-qualification of bidders may be conducted regardless of whether there has been a prequalification exercise or not. Where it is provided for in the bidding documents, the Procuring Entity shall conduct a post-qualification of the bidder who submitted the lowest evaluated responsive bid, to determine whether the bidder is qualified to perform the contract effectively. The criteria for qualification have to be as set out in the bidding documents.

Verification of the information provided in the submission for prequalification shall also be confirmed at the time of award of contract, and award may be denied to a bidder that is judged to no longer have the capability or resources to successfully perform the contract.

Where a bidder is determined not to be qualified after a post-qualification, its bid must be rejected and a post-qualification conducted on the bidder who submitted the next lowest evaluated responsive bid.

(7.3.25) Evaluation Committee

The Accounting Officer must appoint an Evaluation Committee for each procurement requirement above the procurement threshold of the tender committee. The members of the evaluation committee shall be proposed and recommended by the procurement unit in consultation with the respective user department. Evaluation Committee is responsible for the evaluation of bids and preparation of an evaluation report with recommendations for contracts awards or rejection.

The Evaluation Committee must be composed of members who possess the requisite skills, knowledge and experience relevant to the procurement requirement such as:

- i. Technical skills relevant to the procurement requirement;
- ii. End user Department representation;
- iii. Procurement and contracting skills;
- iv. Financial management or financial analysis skills; or
- v. Legal expertise.

The most important consideration is that the evaluation committee should be able to discharge its duty diligently.

For purposes of transparency and to ensure segregation of duties, as much as possible, members of the Procurement Planning Committee may not be appointed as members of the Evaluation Committee.

(7.3.26) Bid Evaluation Report (BER)

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 the 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;

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.

After the evaluation exercise the evaluation committee should prepare an evaluation report for submission to the Procurement Planning Committee. The BER must include at least:

- i. A summary of the bids received and opened;
- ii. The results of the preliminary examination for assessing bid responsiveness to the instructions to bidders;
- iii. Reasons why bids were declared non responsive;
- iv. Details of any non-material deviations, which were accepted and the way in which they were quantified and taken into account in the financial evaluation;
- v. The evaluated price of each bid, showing any corrections or adjustments to the bid price and any conversion to a common currency;
- vi. The ranking of the bids, according to their total evaluated price;
- vii. A statement of the lowest evaluated substantially responsive bid, for each lot where applicable;
- viii. Any preference scheme applied;
- ix. A summary of the application of any conditional discounts and the lowest evaluated combination of bids, where applicable;
- x. The results of the technical evaluation;
- xi. The results of any post-qualification; and

- xii. A recommendation to award the contract or contracts to the lowest evaluated responsive bid or combination of bids, or other appropriate recommendation, such as the rejection of all bids.

The evaluation report must be signed by all the members of the evaluation committee and dated.

(7.3.27) Acceptance of Bids

Pursuant to Section 46 of the Public Procurement Law

- (1) The successful bid shall be that submitted by the lowest cost evaluated bidder from the responsive bidders to the bid solicitation.
- (2) Notwithstanding the provision of sub-clause (1) of this clause and for the avoidance of doubt, the selected bidder need not be the lowest cost evaluated bidder provided the procuring entity can show good grounds derived from the provisions of the Law to that effect.
- (3) Notice of the success of its bid shall immediately be communicated to the successful bidder

(7.3.28) Negotiations

A Procuring Entity shall not negotiation on price with the lowest evaluated responsive bidder, with respect to a bid submitted. If the lowest evaluated bid exceeds the budget for the contract by a substantial margin, the procuring entity shall investigate the causes for the excessive cost and may:

- consider requesting new bids: or
- subject to approval by the relevant Tenders' Board and guidelines issued by the Public Procurement Agency, negotiate a contract with the lowest evaluated bidder to try and obtain a satisfactory contract.

In no circumstances shall negotiations be conducted with two bidders simultaneously.

(7.3.29) Performance Guarantee – Sections 29 and 64 of the Law

Procuring entities should obtain and confirm the validity of any Performance Guarantee as a precondition for the signing of any procurement contract upon which any mobilization fee is to be paid. The amount of the security will not be less than 5% or more than 10% of the contract value. However, the bid and contract documents shall require that if through change orders or for other reasons the value of the contract price exceeds the amount of the original contract price by a certain percentage (determined by the Agency), the security will be increased by a proportional amount (also determined by the Agency).

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

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

In contracts for Goods, guarantees to protect the Procuring Entity against non-performance of the contract and up to the end of the warranty period.

The performance security shall be discharged after completion of the contract and expiration of the warranty period, if there is no default.

Performance Guarantees/Securities are required as a condition of contract validity. They guarantee the contractor's obligations under the contract and should always be required where the contract value is large. However, the amount of the security should not exceed 10% of the contract price. Where a performance security is required in addition to retention money, the amount should be reduced to less than 10%. The contract should define clearly the kind of defaults that would lead to the surrender of the performance security e.g. the contract may provide that the performance security be payable only once default has been established by an arbitral award. Where there is no default, the performance security must be discharged after completion of the contract and expiration of the warranty period.

(7.3.30) Notification of Award and Signing of the Contract

Where the contract is within the approving authority of the Procuring Entity, the Tenders Board shall promptly notify the successful Bidder that it has been awarded the contract and invite it to execute the contract agreement, within the time period of the validity of the bids.

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.

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.

Once the Procuring Entity has evaluated the bids 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 PPA's "Certificate of Compliance" 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 bidding documents; and
- Notify unsuccessful Bidders as soon as possible after receiving the signed contract and the performance security from the successful bidder.

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.

(7.3.31) Public Procurement Agency's Certification of Contract Award.

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

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

(7.3.32) Execution of Contract Agreement

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.

(7.3.33) Record of Procurement Proceedings – Section 66 of the Law

Every procuring entity shall maintain a record of the procurement proceedings containing the information specified and in a format as may be prescribed by the PPA from time to time. 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

(7.3.34) Advance Payments – Section 63 of the Law

- (1). Advance payment of 20% may be paid to a supplier or contractor, provided that advance payment above 20% may be paid where the supplier or contractor submits a written request justifying the need for such payment. Advance payment above 20% shall be guided by regulations prescribed by the Agency with the approval of the Governor.
- (2). Another form of security is the Advance Payment Guarantee (APG)/Security which guarantees advance payment made by the procuring entity against the contractor's default. They are in the form of a bank guarantee or irrevocable letter of credit for an amount equal to the advance payment and are normally callable on demand. Securities must be denominated in the currency of the bid or another freely convertible currency
Advance payment shall be subject to the following:
 - (i) in the case of National Competitive Bidding, an unconditional bank guarantee or insurance bond issued by a reputable bank, institution acceptable to the Board;
 - (ii) in the case of International Competitive Bidding, an unconditional bank guarantee issued by a reputable bank, institution acceptable to the Board.
- (3). After advance payment has been made to a supplier or contractor, no further payment shall be made to such supplier or contractor without an interim performance certificate issued in accordance with the contract agreement.

(7.3.35) Retention Money Security

Retention money 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 money, the total amount of both performance security and retention money should not exceed 15% of the contract sum.

(7.3.36) Confidentiality – Section 45 of the Law

This Procurement Manual stresses the confidential nature of the evaluation process, as entrenched in section 45 of the Public Procurement Law as follow:

- (1) Without prejudice to the provisions of the Law relating to advertisement of award of contract and to information to bidders, procurement entities shall not disclose information forwarded to them by bidders labelled as confidential, such information includes technical aspects, trade secrets and confidential information of bidders.
- (2) Confidential information contained in any bid concerning commercial, financial or technical information or trade secrets or know-how of a bidder shall not be disclosed to any person not officially concerned with the procurement process under any circumstances.
- (3) After the public opening of bids, no information relating to the examination, clarification and evaluation of bids and the deliberations of the contracting authority or the procurement Agency shall be disclosed to any bidder or any third party until the award decision is notified to the successful bidder.

7.4 TWO-STAGE BIDDING

Open Competitive Bidding, using ICB method can follow either a one-stage and two-stage bidding process. In the conventional one-stage process, the procuring entity will prepare a bidding document which will include, among other things, detailed functional and technical requirements. In response, bidders submit, at the same time, both technical and financial bids either in a single envelope or in two separate envelopes, to be opened in one single public opening. The Procuring Entity then evaluates each of the bids then awards the contract to the lowest evaluated responsive bidder, according to the method and criteria specified in the tendering documents.

In a two-stage process, the procuring entity prepares a first stage bidding 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;

After the first stage evaluation, the procuring entity prepares a memorandum of changes for each bidder and may prepare an addendum to the bidding documents, including revisions to the technical requirements made in the light of the first stage technical evaluation, and initiates the second stage bidding process. During the second stage bidding process, bidders offer final bids 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.

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.

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 Bidding

The procuring entity shall call upon services providers to submit, in the first stage of two-stage bidding process, initial bids which contain their proposals without a 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.

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

In the second stage the procuring entity, shall invite service providers whose tenders have not been rejected to submit final bids with prices on a single set of specifications. The procuring entity may, in the invitation to submit final bids, communicate to the service providers, any deletion, modification or addition; and may permit a service provider who does not wish to submit a final bid to withdraw from the bidding process.

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

The use of the two-stage bidding procedure is subject to the prior 'Certificate of Compliance' of the Agency

7.5 RESTRICTED PROCUREMENT – Public Procurement Law (Section 59)

Restricted Tendering otherwise known as limited bidding procedures are followed when the invitation to bid is directly addressed to a pre-selected service providers either national or international. Procuring Entities must ensure that bids are solicited from a list of potential bidders broad enough to ensure adequate competition.

Subject to the approval by the PPA, 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 service providers.
- (v) The procedure is used as an exception rather than the norm.

The Restricted Tender procedure is to be published only in the procurement journal and on the Procuring Entity's website. In all other aspects, the procedures applicable to National Competitive Bidding except the requirement for advertising shall apply also to Restricted Tendering, including the submission to Agency of the draft bidding documents for Certificate of Compliance, when subject to prior review

7.6 REQUEST FOR QUOTATION (SHOPPING)

7.6.1 Request for Quotation is also known as "shopping" and is based on comparing price quotations obtained from several suppliers, usually at least three, to ensure competitive prices. The Shopping procurement method can either be International (International Shopping) or National (National Shopping)

Request for Quotations may be used for:

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

7.6.2 Under the Shopping method, the Procuring Entity may:

- (a) publish a notice for inviting applications from service providers; 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 service providers who are able to provide the services required.
- (b) Remove any service provider 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 reputable vendors is 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 Open Competitive Bidding

principles wherever applicable but the terms of the accepted offer shall be incorporated in a purchase order.

7.6.3 Applicable Procedures for 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.

7.6.4 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.

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

7.7 DIRECT CONTRACTING

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

- (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.

7.7.2 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.

7.8 FORCE ACCOUNT (DIRECT LABOUR)

The combination of (a) and (b) above shall in every case assure that the procurement is executed expeditiously, efficiently, and at reasonable costs.

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

1. when the size, nature and location of the works are such that qualified contractors are unlikely to bid;
2. when the quantities of work cannot be defined in advance;
3. when ongoing works are interrupted due to breach of contract or contractor failure and need to be continued to avoid serious damage;
4. when the procurement would be carried out by the engineering services or

5. when there are emergencies requiring immediate attention.

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

- (a) personnel deployed to execute such civil works possess the requisite technical certification, professional experience, and managerial ability;
- (b) the equipment and resources to be deployed towards the execution of the procurement are such as are technically appropriate, numerically sufficient to assure that the execution of the procurement;

7.9 EMERGENCY PROCUREMENT-*Public Procurement Law– Section 60*

Following occurrence of natural disasters such as droughts, floods, pandemics, civil disturbances, insurrections, war or such times that government declares that an emergency situation has arisen, Procuring Entities may for causes *directly related* to the alleviation or remediation of the aforementioned circumstances carry out direct contracting of goods, works and related services in accordance with the emergency procurement guidelines.

Aside from response to a threat, disaster or any Act of God as explained above, emergency procurement can also be applied where:

- i. the condition or quality of a public property may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
- ii. a public project may be seriously delayed for want of an item of a minor value or usefulness.

In such circumstance, every Procuring Entity shall apply the principles of sound procurement, economy, efficiency, transparency and accountability.

Subject to the Approval of the Board, in an emergency situation, a Procuring Entity may initiate Direct Contracting of goods, works and services.

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

Chapter 8

SELECTION AND EMPLOYMENT OF CONSULTANTS

Chapter 8 SELECTION AND EMPLOYMENT OF CONSULTANTS

Topics

- 8.1 Definition of Consultancy Service
- 8.2 Special Features of Consultancy Services
- 8.3 Methods of selecting Consultants
 - 8.3.1 Quality and Cost Based Selection (QCBS)
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 - 8.3.4 Fixed Budget Selection (FBS)
 - 8.3.5 Consultant's Qualification Selection (CQS)
 - 8.3.6 Single Source Selection (SSS)
 - 8.3.7 Use of Individual Consultants (IC)
- 8.4 Steps in the Selection Process
- 8.5 Contract Types for Employment of Consultants
- 8.6 Performance Security

8.1 DEFINITION OF CONSULTANCY SERVICE

“Consulting services” refers to services of intellectual and advisory nature provided by experts (firms or individuals) using their professional skills to study, design, organize, and manage projects; advise clients; and, when required, build their capacity. Consultants offer clients the possibility of a more effective and efficient allocation of their resources by providing specialized services for limited amounts of time without any obligation of permanent employment.

Classifications and Types of Consultancy Services:

Pre Investment	Preparatory Services	Implementation Services	Advisory Services
Sector Studies	Detailed Studies	Procurement Assistance	Policy and Strategy Reorganization/Privatization
Feasibility Studies	Design and Specifications	Construction Supervision	Management Advices
	Preparation of Bidding Documents	Project Management	Institutional Building, Training & Knowledge Transfer

8.2 SPECIAL FEATURES OF CONSULTANCY SERVICE

The use of merit-point evaluation systems and two-envelope tendering procedures are routine features in the procurement and selection of consultants. Selecting consultants for long or complex assignments on the basis of cost alone is unlikely to achieve the required quality of services.

8.2.1 Merit-Point Systems

A merit point system uses a point-scoring basis to determine the winning Consultant. Points are awarded for technical capability and usually for the financial cost, according to criteria specified in the Request for Proposals. The Consultant scoring the highest number of points is usually recommended for the award of contract.

Merit point systems can also be used to evaluate whether proposals pass a minimum technical score to proceed to a final financial evaluation. The financial proposals of all Consultants whose proposals pass the minimum technical score are then opened, and the proposal with the lowest price recommended for award of contract.

8.2.2 Two-Envelope Tendering

To avoid any chance of the Consultant’s price influencing the technical evaluation under a merit point system, financial proposals are submitted in a separate sealed envelope. The financial envelope must only be opened after the technical evaluation is completed and approved by the Entity TendersBoard.

8.2.3 Request for Expressions of Interest – Section 47 of Public Procurement Law

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, the procurement journal and the agency's notice board;

- However, where the value of the services to be procured is less than one million naira (N1,000,000.00), or with the approval of the Agency, 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.

8.3 METHOD OF SELECTING CONSULTANTS

The methods of selection are as follows:

- ❖ Quality and Cost Based Selection (QCBS).
- ❖ Quality Based Selection (QBS).
- ❖ Least Cost Selection (LCS).
- ❖ Fixed Budget Selection (FBS).
- ❖ Consultant's Qualification Selection (CQS).
- ❖ Single Source Selection (SSS).

- Use of Individual Consultants

□

8.3.1 Quality and Cost Based Selection (QCBS)

Quality and Cost-Based Selection (QCBS) is the standard method of selection for most consultant services, and uses a merit-point score system. The technical capabilities and experience of the Consultants and Personnel, and the quality of the proposal submitted in response to the Terms of Reference, will receive the major percentage of the total points to be awarded. Only firms/consultant whose technical proposals achieved a minimum technical score will have their financial proposal considered.

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 follow the Standard Steps narrated in 8.4 below:

8.3.2 Quality-Based Selection (QBS)

Quality-Based Selection (QBS) may be suitable for complex, difficult to define, or highly specialized assignments, where the best expertise available is required without consideration of the price. In this case, only technical proposals are evaluated, with the winning consultant being invited for detailed negotiations to agree the price of the services and the contract.

- ❖ QBS is suitable for the following types of assignments:
 - complex or highly specialized assignments where it is difficult to define precise Terms of Reference (TOR) and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, sector studies, multi-sector feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);
 - assignments that have a long term impact and in which the objective is to have the best experts available (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and
 - assignments that can be carried out in very different ways, and therefore proposals may not be directly comparable (for example, management advice, or policy studies in which the value of the services depends on the quality of the analysis).
- The Request for Proposals (RFP) should not indicate the estimated budget, but may provide the estimated number of key staff and time, specifying that this information is given as an indication only, and that consultants are free to propose their own staff compositions and estimates.
- The RFP may require submission of a technical proposal only (without a financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). Only the financial envelope of the highest ranked technical proposal is opened. The rest are returned unopened to the tenderers, after the negotiations are successfully concluded.

- If technical proposals only are invited, after evaluating the technical proposals, the Consultant with the highest ranked technical proposal will be invited to submit a detailed financial proposal.
- The Procurement Entity and the Consultant should then negotiate the financial proposal and the contract.
- Other aspects of the selection process are identical to those of QCBS.

8.3.3 Fixed Budget Selection (FBS)

Fixed Budget Selection may be used when the assignment is simple, can be clearly defined, and there is only a strictly limited budget available for the services. Consultants are invited to submit their best technical proposal within the fixed budget price and award of contract is made to the highest scoring technical proposal

- ❖ This method is only appropriate when:
 - the assignment is simple and can be precisely defined; and when the budget is fixed.
- ❖ The RFP will indicate the available budget and request the consultants to provide their best technical and financial proposals in separate sealed envelopes, within the stated budget.
- ❖ The TOR must be carefully prepared to ensure that the budget is sufficient for the consultants to perform all of the expected tasks.
- Technical proposals will be evaluated and consultants who pass the minimum technical score will be invited to a public opening of their financial envelopes.
- Consultant's whose technical proposals fail to meet the minimum technical score will have their financial envelopes returned unopened.
- Any financial proposals that exceed the indicated budget should be rejected.
- The Consultant who has submitted the highest ranked technical proposal within the budget will be invited for negotiation and award of contract.

8.3.4 Least Cost Selection (LCS)

This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, etc.) where well-established practices and professional standards exist, and when the contract value is small.

- A minimum qualifying score for the required quality is established and stated in the RFP.
- Technical and Financial Proposals are required to be submitted in separate envelopes by the short-listed tenderers.
- Technical envelopes are opened first and evaluated. Those tenders scoring less than the minimum qualifying score are rejected. The financial envelopes of the remaining tenderers are opened in public.
- The firm with the lowest price is selected for contract award.

8.3.5 Consultant's Qualifications Selection (CQS)

This method may be appropriate for very small assignments where the need for submission and evaluation of detailed competitive proposals is not justified.

- Information on the consultants' experience and competence relevant to the assignment are requested.
- The firm/consultant with the most appropriate qualifications and references is selected.
- The selected firm is invited to submit a combined technical and financial proposal, and then invited to negotiate the proposal and the contract.

8.3.6 Single-Source Selection (SSS)

Single-source selection of consultants lacks the benefit of competition in regard to quality and cost, the selection is not transparent, and may encourage unacceptable practices. Therefore, Single-source selection should only be used in exceptional circumstances. The justification for Single-source selection must be examined carefully to ensure economy and efficiency.

- Single-source selection is appropriate if there is a clear advantage over competitive selection for instance:
 - o for tasks that are a natural continuation of previous work carried out by the Consultant;
 - o where rapid selection is essential (for example, in an emergency situation);
 - o for very low value assignments;
 - o when only one firm is qualified or has the necessary experience for the assignment.

Single source selection would be based on the PPA's guideline published from time to time.

8.3.7 Use of Individual Consultants (IC)

Individual consultants are normally employed on assignments when:

- teams of personnel are not required;
- additional outside (home office) professional support is not required;
- the experience and qualifications of the individual are the major requirement.

If co-ordination, administration, or collective responsibility may become difficult because of the number of individuals required, it may be advisable to employ a firm.

Individual consultants are selected on their qualifications for the assignment.

- Selection may be on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the Procurement Entity.
- Individuals must meet all relevant qualifications and be fully capable of carrying out the assignment.

- Capability is judged on academic and professional background, experience, knowledge of local conditions and culture, administrative systems, and government organization, and language skills as appropriate.

8.4 STEPS IN THE SELECTION PROCESS

The Steps and guidelines below are based on the standard QCBS process of selection although other selection methods are available for use in appropriate circumstances.

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

- Preparation of the Terms of Reference (TOR), including the choice of Selection Method.
- Preparation of a cost estimate and confirmation of available budgeted funds.
- Advertising for expressions of interest (if appropriate)
- Preparation of the shortlist of consultants.
- Preparation and issue of the Request for Proposals (RFP), including:
 - Letter of Invitation (LOI);
 - Information to Consultants (ITC);
 - Draft contract.
- Receipt of proposals.
- Opening and Evaluation of Technical Proposals.
- Opening and Evaluation of Financial proposals.
- Combined Technical and Financial Evaluation according to the criteria stated in the RFP.
- Negotiations and Award of the contract to the selected firm.

8.4.1 The Terms of Reference (TOR)

The Terms of reference (TOR) is the key document in the process of selection and employment of Consultants. It ensures that both the Client and the Consultant are fully aware of the objectives and outputs of the services. Consultant services are expensive, and lack of careful thought, research and preparation of the Terms of Reference by the Client, may result in considerable waste of resources.

The Terms of Reference (TOR) should provide sufficient information to enable consultants to fully understand the services required by the Client, and to prepare proposals that are realistic and competitive.

The TOR must be complete, precise, and clear to minimize request for clarifications from consultants. It must be prepared by staff with the requisite expertise.

The Terms of Reference will normally contain the following headings:

1. Background;
2. Objectives;
3. Scope of the Services;

4. Transfer of Knowledge/Training (when appropriate);
5. Deliverables;
6. Assignment Reports and Schedule of Reports;
7. Facilities, services and resources to be provided by the Client;
8. Assignment Period;
9. Assignment Management & Administration

1. Background:

This should be limited to the necessary general background and introduction to the assignment including overall details of the Programme or Project.

2. Objectives:

The objectives of the assignment should be specified in clear and unambiguous terms.

3. Scope of the Services:

The scope of service defines in detail the specific services/duties/activities that the Consultant is expected to perform during the assignment.

4. Transfer of Knowledge/Training (when appropriate):

The transfer of knowledge includes the level of training or transfer of knowledge activities required by the Consultant. This may include on-the-job training of counterpart staff, training seminars and workshops, or the provision of overseas training facilities.

5. Deliverables:

The Deliverables detail the specific outputs expected from the Consultant. These will include reports, achievements and other measurable progress indicators. Not be over-detailed or inflexible, so that competing consultants may propose their own methodology and staffing. For Lump-Sum contracts key deliverables are often defined for use with a schedule of interim part payments.

6. Assignment Reports and Schedule of Reports:

The assignment and schedule reports specify the reporting requirements and frequency of reports, and where appropriate the structure of Reports required. Entities should avoid specifying unnecessary routine reports, since these reports can easily distract the Consultant from more productive work for the Client. It should be noted that reports are no substitute for effective personal management of an assignment.

7. Facilities, services, and resources to be provided by the Client:

The facilities, service and resources detail the nature and extent of facilities that will be made available to the Consultants (office accommodation, equipment, support or counterpart staff, etc.), any services (communication, photocopying, stationery, security, etc.) that will be provided, and any other resources or support that the Client (or the Government) will make available.

8. Assignment Period:

The assignment period indicate the anticipated period of time that the Assignment will take to complete.

9. Management & Administration of the Assignment:

The Management and Administration of the assignment details the management arrangements that will apply to the Consultants during the Assignment (who they will report to, frequency of meetings, etc.).

8.4.2 Preparation of Cost Estimates and Budget

Preparation of a well thought-through cost estimate is essential for earmarking a realistic budgetary resource for the envisaged service. The cost estimate should be based on the procurement unit's assessment of the resources needed to carry out the assignment. 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.

Cost estimate includes expenses relating to:

- Consultant's key and support staff remuneration; and
- Consultant's Reimbursable Expenses, including but not limited to:
 - Mobilization;
 - communications;
 - office rent, supplies, equipment, shipping; and insurance;
 - surveys and training programs;
 - report translation and printing;
 - taxes and duties; and
 - contingencies.

Actions:

The Head of Procurement Unit should:

- Prepare a cost estimate of the envisaged assignment by adding the remuneration of consultant staff and the direct expenses to be incurred by consultants during the execution of their duties. Those figures are based on an estimate of the staff time (per unit of time, hour, month) required to carry out the services and an estimate of each of the related cost components. Since the estimate of the needed staff time is derived from the TOR, the more exhaustive and detailed the TOR, the more precise the estimate.

8.4.3 Advertisement for Expressions of Interest

The request for Expressions of Interest shall be advertised in the same way as for Open Competitive Bidding and shall contain:

- name and address of the Procurement Entity;
- background for the assignment;
- the scope of the services required;
- the location and required timescale for the completion of the services;
- criteria and procedures to be used to evaluate the qualifications of consultants;
- place and deadline for the submission of EOI (which shall not be less than two weeks following the first advertisement).

8.4.4 Evaluation of EOI and Short listing

No formal opening of EOIs is required but a formal evaluation of the capabilities of each consultant is required against the criteria as stated in the advertisement.

The following details of each firm should be assessed in the selection of a shortlist of between three and six consultants:

- general background of the consultant;
- eligibility in terms of country of origin, turnover requirements and any other conditions stated in the advertisement;
- previous experience of similar assignments;
- competence and sector related experience of the firm;
- language proficiency in English;
- relevant experience in Nigeria, and other West African Countries; and
- quality of performance under previous contracts.

Where a large number of consultants pass the stated qualification criteria, it may not be realistic to invite more than six to participate in the specific RFP. If so, only the best qualified consultants should be selected and invited to respond to the RFP.

Inform all applicants of the results of the evaluation. Applicants who fail to meet the pre-qualification criteria or reach the shortlist should be briefly advised of the reasons. No further correspondence will be entered into regarding applications.

On completion of the process and approval of the shortlist by the Tenders' Board, the RFP will be issued to the qualified consultants

8.4.5 Preparation and Issuance of Request for Proposal (RFP)

The Request for Proposals (RFP) provides all the information necessary for the short-listed consultants to prepare their proposals. It identifies the evaluation criteria, selection method, and procedures that will be used to evaluate the proposals.

Pursuant to Section 50 of the Public Procurement Law, a procuring entity wishing to procure services for unascertained needs may do so by requesting for proposals when 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.

Procuring entities shall procure the services of consultants by soliciting for expressions of interest by publishing a notice to that effect in two (2) national newspapers, the procurement journal, and in the Agency's notice board.

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

- The services are only available from not more than three (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 defense and security or similar reason of confidentiality.

8.4.6 Contents of the Request for Proposals

Pursuant to Section 51 of the Public Procurement Law, Request for Proposals shall include:

- the name and address of the procurement entity;
- a requirement that the proposals are to be prepared in English language;
- the manner, place and deadline for the submission of proposals;
- a statement to the effect that the procuring entity reserves the right to reject proposals;
- the criteria and procedures for the evaluation of the qualifications of the consultants;
- the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications;
- the nature and required characteristics of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;
- whether the procuring entity is seeking proposals on various possible ways of meeting its needs;
- a requirement that the proposal price is to be expressed in Nigerian currency;
- the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
- whether the procedure to ascertain the successful proposal shall be based on the lowest cost or quality and cost or a combination of the lowest cost, quality and criteria other than cost but stipulated in the request for proposals; and
- a short list to be made of only national consultants for consulting assignment, contract within a set benchmark in the procurement regulation provided that national consultant possess such requisite skills.

Note: The procuring entity shall provide the same information to every consultant requested to submit proposals.

8.4.7 Standard Request for Proposals (SRFP)

The Standard Request for Proposal (SRFP) which can be adapted for any of the selection methods includes the following sections:

Section 1: Letter of Invitation (LOI);

Section 2: Information to Consultants (ITC) (including the Data Sheet)

Section 3: Technical Proposal —Standard Forms;

Section 4: Financial Proposal—Standard Forms;

Section 5: Terms of Reference; and

Section 6: Standard Form of Contract.

The SRFP has been designed in such a way that some of its parts, such as the ITC, cannot be modified by the Procuring Entity. Other parts, such as the Data Sheet and TOR, are assignment specific and can be used to reflect the assignment conditions.

1. Letter of Invitation (LOI)

The Letter of Invitation states the intention of the entity to enter into a contract for a given assignment and informs the short listed consultants that they are invited to submit a proposal for the assignment. It provides basic information regarding

- the name of the entity and the sources of funds to finance the consulting services;
- the names of the short listed consultants;
- a brief description of the objectives and scope of the assignment;
- the method of selection; and
- the date, time, and address for submission of proposals.

The LOI also requests consultants to indicate whether they intend to submit their proposal alone or in association with other short listed consultants. This information is necessary to allow the entity to invite other consultants in case one or more short listed consultants decline the invitation or decide to associate, thus reducing competition. In these cases, the deadline for submission of proposals may have to be extended.

2. Information to Consultants

The ITC section contains all information consultants need to prepare responsive proposals. It also informs consultants about the evaluation criteria and sub criteria, their respective weights and the minimum qualifying mark, in order to provide for a fair and transparent selection process. The ITC should not be modified other than through the Data Sheet.

The Data Sheet is the part of the ITC that contains specific information relating to the entity and the assignment.

3. Technical Proposal Standard Forms

This section contains the standard forms which are to be completed by the Consultant as part of the technical proposal. The Consultant is required to complete and submit these forms pursuant to ITC Clause 3.4 and other requirements of the Request for Proposals:

Form TECH-1	Technical Proposal Submission Form
Form TECH-2	Consultant's Organization and Experience
Form TECH-3	Comments and suggestions on the Terms of Reference and on Counterpart Staff and facilities to be provided by the Procuring Entity
Form TECH-4	Description of the Approach, Methodology and work plan for performing the assignment
Form TECH-5	Team Composition and Task Assignments
Form TECH-6	Curriculum vitae (CV) for Proposed Professional Staff
Form TECH-7	Staffing Schedule
Form TECH-8	Work Schedule

4. Financial Proposal –Standard Forms

This section contains the standard forms which are to be completed by the Consultant in submitting the financial proposal. The Consultant is required to complete and submit the following forms pursuant to ITC Clause 3.6 and in accordance with other requirements included in the Request for Proposals:

Form FIN-1	Financial Proposal Submission Form
Form FIN-2	Summary of Costs
Form FIN-3	Breakdown of Cost by Activity
Form FIN-4A	Breakdown of Remuneration (Time –Based)
Form FIN-4B	Breakdown of Remuneration (Lump –Sum)
Form FIN-5A	Breakdown of Reimbursable (Time –Based)
Form FIN-5B	Breakdown of Reimbursable (Lump –Sum)

5. Standard Forms of Contract

The following are various forms of Contract that a Procuring Entity can use depending on the nature of the assignment:

- Consultant Services - Complex Time-Based Assignments
- Consultant Services - Lump-Sum Assignments
- Small Time-Based Assignments
- Small Lump-Sum Assignments

8.4.8 Clarification and Modification of Requests for Proposals.

Pursuant to Section 52 (1-3) of the Public Procurement Law, consultants may request clarifications in writing (facsimile or electronic mail) 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 in not less than 10 days before the deadline for submissions, respond by similar method to such requests within Seven (7) days and simultaneously copy the clarification to all other shortlisted consultants without stating the source of the request.

Procuring Entities shall refrain from communicating with prospective candidates after publication of the RFP other than as provided for in the Manual under this paragraph or in the event of pre-proposal meetings.

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.

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.

8.4.9 Pre-Proposal Meeting

In complex consulting contracts, pursuant to Section 52 (4) &(5) of the Public Procurement Law, a pre-proposal meeting may be arranged whereby potential candidate consultants meet with the representatives of the Procuring Entity to seek clarifications. Minutes of the meeting shall be provided to all prospective candidates (including those who did not attend) and be duly recorded in the records of the Procuring Entity. Any additional information, clarification, correction of errors or modifications of the RFP shall be sent to each shortlisted candidate in sufficient time

before the proposal submission deadline to enable candidates to take appropriate action. If necessary, the Procuring Entity shall extend the submission deadline.

8.4.10 Submission of Proposals

In accordance with Section 53 of the Public Procurement Law, the procuring entity shall allow sufficient time for the preparation and submission of the requested proposals but shall in no case give less than **10 days** between the issue of the notice or request and the deadline for submission.

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.

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.

8.4.11 Receipt and Opening of Technical proposals

Proposal opening shall commence immediately after the deadline for submission of proposals (as stated in the RFP)

The Procurement Unit will co-ordinate the opening, ensure smooth operation of the proceedings, take a register of attendance, prepare Minutes of the opening, and advise the Chairperson of the opening session on procedural issues if requested.

The Proposal Opening Panel shall comprise at least 3 persons, including a member of the Procurement Planning committee. They shall ensure that minutes of the opening proceedings are duly written.

The Chairperson of the Proposal Opening Committee will control and direct the proceedings and not allow consultant's representatives to interfere with the work of the Panel. Any objections by a Consultant to the procedures or decisions of the opening should be made in writing to the Accounting Officer of the Procurement Entity.

For purposes of transparency, it is not permitted for the opening to be halted or postponed once the process begins.

Actions:

The Chairperson should:

- Ensure that consultants' representatives are seated separately from the Proposal Opening Committee and officials of the Procurement Entity, and that the name, organization represented and contact details of all attendees are recorded in an attendance register.

- Shall open the meeting and outline the procedures to be used for the opening of Technical Proposals.
- Ensure the security of documents at all times during the opening procedure to prevent any unauthorized interference with the documents and process.
- Open the bid box, check that the inscription on each envelope confirms that it matches the correct proposal and complies with the wording and sealing required in the RFP. Stack all envelopes in clear view ready for opening.
- Check for any withdrawals or modifications submitted, and match these with the original Proposal before proceeding. Withdrawn proposals shall not be opened once the authenticity of the withdrawal notice has been confirmed.
- Open the first proposal after confirming that all conditions regarding marking and sealing of the envelope have been met and the envelope has not been tampered with.
- Examine the Technical and Financial Proposal envelopes inside to confirm that all conditions regarding marking and sealing of both envelopes have been met and the envelopes have not been tampered with.
- Sign as received and place the Financial Proposal envelope unopened in a separate pile and secure the proposals back into the bid box. This should open only after the completion of the Technical Evaluation.
- Examine the contents of the envelope and identify, stamp and number all originals and copies, and any separate sections and attachments.
- Read out the following details of each Technical Proposal from the Original copy:
 - any Proposal modifications or withdrawals;
 - the number allocated to the Proposal by the Proposal Opening Panel;
 - the name and country of the Consultant; and
 - any other appropriate information at the discretion of the Chairman.
- Any envelopes containing substitutions, or modifications, must be subject to the same level of scrutiny, including the reading out of critical details.
- Any obvious failure to provide a responsive Proposal shall be reported to the Meeting and recorded in the Minutes.
- The Chairperson and two Members of the Committee shall initial the original of each Technical Proposal and all attachments thereto. Any corrections or obvious errors and omissions noted shall be circled in red ink and also initialled.
- Record the details read out of each Proposal in the Register of Opening, and record any corrections and errors or omissions that were noted during the opening and captured in the Minutes of the Opening.

Minutes of the Opening shall be prepared by the Procurement Unit, signed by the Chairperson of the Proposal Opening Committee and made available to any consultant submitting a Proposal who requests a copy in writing.

The Technical Proposals should be handed over to the Evaluation Committee.

8.4.12 Appointment of Evaluation Committee(s)

Not later than two weeks before the proposal submission date, the Procuring Entity shall constitute an evaluation committee of at least 3 experts in the subject of the assignment, headed by a chair person, to carry out the technical and financial proposal evaluation. The Procuring Entity shall ensure that the members of the evaluation committee possess the necessary technical and financial competence to evaluate the proposals, and include the person who drafted the TOR and the selection criteria for the RFP. The technical and evaluation committees may consist of the same members or be supplemented by professionals specialized in each field of evaluation. At least a week before the evaluation starts, the team members shall meet to familiarize themselves with the background documentation and the evaluation procedures. If the Procuring Entity does not possess the qualified evaluation staff it should consider appointing independent experts from other Procuring Entities or hire individual consultants. For the purpose of evaluation, the Procuring Entity shall use the Agency's Standard Consultants Proposal Evaluation Report.

8.4.13 Evaluation of Technical Proposals

The Evaluation Committee should meet shortly before the deadline for submission of the proposals to confirm that there is a common understanding of the evaluation method, the evaluation criteria and sub criteria specified in the data sheet, and the selection procedure. They should also familiarize themselves with the RFP (in particular the TOR). It is important not to wait until after the technical proposals are opened to define the rating system, since these definitions could be biased by the knowledge of the contents of the proposals.

The Evaluation Panel should confirm that its members

- have no conflict of interest;
 - understand the rating and scoring system;
 - have been provided with evaluation worksheets; and
 - agree on how to evaluate the proposals.
- A meeting of the Evaluation Committee should be held to examine the Technical Proposals to confirm substantial responsiveness to the conditions specified and that there are no important omissions or deviations from the stated objectives, TOR, or other key requirements of the RFP.
 - The Evaluation Committee may request clarifications from consultants concerning ambiguities or inconsistencies in the Proposal. Such requests shall be in writing, and no change in the scope of the originally offered services may be sought or accepted. The responses from consultants shall also be in writing.
 - Each evaluator should conduct his or her detailed technical evaluation independently, and record scores using the format provided in the standard evaluation format provided by the PPA. Evaluators should also separately note particular strengths and weaknesses of each proposal to assist them in justifying the scores they have awarded.

- Following completion of individual evaluations, the Evaluation Committee shall meet again to combine the scoring and to discuss the reasons for any wide variations in the scores awarded by individuals.
- The Evaluation Panel will then prepare the Technical Evaluation Report using the standard format for approval by the TendersBoard.

8.4.14 Technical Evaluation Criteria

The criteria specified in the RFP should include:

- the firm’s relevant experience for the assignment;
- the quality of the methodology proposed;
- the qualifications and experience of the key staff proposed;

In special circumstances, considerations can also be given to the following criteria:

- 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.

The marks for each criterion are aggregated to give the total technical score.

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

Figure 1 - Indicative Weighting of Evaluation Criteria (Consultant Services)

Specific relevant experience ¹ :	5 to 10 points
Response to the TOR and Methodology Proposed:	20 to 50 points
Key personnel:	30 to 60 points
Training: ²	0 to 10 points
Participation by nationals:	0 to 10 points
Total:	100 points

¹ The points given to experience are relatively low as this criterion has already been taken into account when short-listing the consultants. Consequently, no consultant is, at this stage, expected to be scored less than 20% of the points allocated to this criterion, unless it could be otherwise proven.

² Transfer of knowledge may be the main objective of some assignments; in such cases, it should be given a higher weight to reflect its importance.

The criteria may be divided into sub-criteria to assist 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.

Consultant's Specific Experience

The points given to experience can be relatively low if this criterion has already been taken into account when short-listing the consultant firms.

Methodology

A large number of points should be given to the response and proposed methodology for more complex assignments (for example, multi-disciplinary 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 proposed assignment is complex.

- ❖ 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 culture, administrative systems, government organizations, etc.
- ❖ 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. In all cases, the procuring entity shall ensure that the criteria are clearly defined, unambiguous and are measurable.

8.4.15 Minimum Technical Score

The minimum qualifying technical score to be achieved for a proposal to proceed to the Financial Evaluation must be specified in the RFP.

8.4.16 Opening of Financial Proposals

Following approval of the Technical Evaluation Report, the Procurement Entity shall notify any firms that failed to reach the required minimum technical score, and invite those firms that passed the minimum score to the opening of Financial Proposals.

The opening of Financial Proposals shall commence immediately after the deadline notified to all consultants invited to attend.

The Procurement Unit will co-ordinate the opening, ensure smooth operation of the proceedings, take a register of attendance, prepare Minutes of the opening, and advise the Chairperson of the opening session on procedural issues if requested.

The Chairperson of the Proposal Opening Committee will control and direct the proceedings and not allow consultant's representatives to interfere with the

work of the Committee. Any objections by a Consultant to the procedures or decisions of the opening should be made in writing to the Accounting Officer of the Procurement Entity.

For purposes of transparency it is not permitted for the opening to be halted or postponed once the process begins.

Action:

The Chairperson of the Opening Committee should:

- Open the meeting and outline the procedures to be used for the opening of Financial Proposals.
- Ensure that consultants' representatives are seated separately from the Proposal Opening Committee and officials of the Procurement Entity, and that the name, organization represented and contact details of all attendees are recorded in an attendance register.
- Ensure the security of documents and proposals at all times during the opening procedure to prevent any unauthorized interference with the documents and process.
- Bring in the unopened Financial Proposals and place in clear view of all participants.
- Read out the Technical Scores awarded to each consultant during the technical evaluation.
- Open the first Financial Proposal after confirming with the Consultant that his or her envelope has not been opened or tampered with in any way.
- Examine the contents of the envelope and identify, stamp and number all originals and copies, and any separate sections and attachments.
- Read out the following details of each Financial Proposal from the Original copy:
 - the number allocated to the Proposal by the Proposal Opening Committee;
 - the name and country of the Consultant; the currency of the Proposal; or the total Proposal price;
 - any discounts offered; and
 - any other appropriate information at the discretion of the Chairperson.
 - Any obvious failure to provide a responsive proposal shall be reported to the Meeting and recorded in the Minutes.
- The Chairperson and two Members of the Committee shall initial the original of each Financial Proposal and all attachments thereto. Any corrections or obvious errors and omissions noted shall be circled in red ink and also initialled.
- Record the details read out of each Proposal in the Register of Opening, and record any corrections and errors or omissions that were noted during the opening and capture in the Minutes of the Opening.

Minutes of the Opening shall be prepared by the Procurement Unit, signed by the Chairman of the Proposal Opening Committee and made available to any consultant submitting a Proposal who requests a copy in writing.

The Financial Proposals should be handed over to the Evaluation Committee.

8.4.17 Evaluation of Financial Proposals

The Evaluation Committee should examine the Financial Proposals to confirm substantial responsiveness to the conditions specified and that there are no important omissions or deviations from key requirements of the RFP.

The Committee may request clarifications from consultants concerning ambiguities or inconsistencies in the Financial Proposal. Such requests shall be in writing, and no change in the price or scope of the originally offered services may be sought or accepted, except for the correction of arithmetic errors. The responses from consultants shall also be in writing.

Action:

The Evaluation Committee shall:

- Correct any purely arithmetical errors in tenders in accordance with the procedure stated in the RFP. Note that if there is any discrepancy between numbers and written figures, the written figures shall prevail. If both the number and the total price are indicated in the Proposal, arithmetic should be checked and if there is a discrepancy, the unit price shall govern. All errors in extension (multiplying the unit price by the number) and totalling should be corrected and the Consultant notified. A Consultant cannot be permitted to retain an arithmetical error in extension or totalling and correct the unit price. Notify Consultants of any such arithmetic corrections, and request written, agreement of the Consultant to the correction. If a Consultant does not accept the correction of an arithmetical error, his Proposal must be rejected.

Any communications between the Procurement Entity and a Consultant during the examination of Proposals shall be made in writing

- Calculate the financial score of each proposal applying the formula specified in the RFP.
- Combine the technical and financial scores for each proposal using the methodology stated in the RFP, rank proposals in the order of their total scores and recommend the Consultant with the highest score for contract negotiations.
- Complete the Evaluation Report using the standard format with recommendations for approval by the TendersBoard.

8.4.18 Financial Evaluation Criteria

Only proposals that have achieved the pass mark for technical proposals shall be subjected to financial evaluation. In addition to specifying the weighting for technical and financial scores, the RFP must specify the formula for award of points to each proposal price. Normally the lowest priced proposal receives 100 points and the other proposals receive points based on dividing their prices by the lowest priced proposal and multiplying by 100.

The standard procedures for correcting arithmetic and other errors in tender prices will apply to adjust the proposal price before the points are awarded to each proposal.

8.4.19 Margin of Preference for Domestic Consultants

This is not encouraged. However, in a very special circumstance, which must be approved by the Agency, a Procuring Entity may apply a margin of preference to the financial proposal of a domestic consultant in accordance with Section 54 (2) of the Public Procurement Law, provided the allowance for such margin of preference was indicated in the RFP.

8.4.20 Weighting of Technical and Financial Scores

The relative weightings for technical and financial scores must be stated in the RFP. This is usually set at 80% for the technical score and 20% for the financial score. In this case the technical score will be multiplied by 80% and the financial score by 20% to give the total score for each proposal. For assignments of standard or routine nature the weights could be 70 and 30 points, respectively, or conversely 90 and 10 points respectively, for assignments where technical quality is of critical importance.

Please find a sample Financial Evaluation and Combined Technical and Financial Evaluation calculations in figure 2 and 3 below.

Figure 2: Sample Form IVB. Adjustments—Currency Conversion—Evaluated Prices[Financial Evaluation]

Consultants' names	Technical Evaluation			Financial Evaluation		Combined Evaluation	
	Technical scores ^a S(t)	Weighted scores S(t) × T ^b	Technical rank	Financial scores ^c S(f)	Weighted scores S(f) × F ^d	Scores S(t) T + S(f) F	Rank
A	82.39	65.912	2 nd	85.46	17.092	83.00	2 nd
B	80.30	64.240	3 rd	100	20	84.24	1 st
C	88.08	70.464	1 st	55.14	11.028	81.49	3 rd
Award recommendation	To highest combined technical/financial score. Consultant's name: Consultant B						

- a. See Form IIB.
- b. T = As per RFP.
- c. See Form IVB.
- d. F = as per RFP.

Figure 3: Sample Form IVC. QCBS—Combined Technical/Financial Evaluation—Award Recommendation

Consultants' Names	Proposals' prices ^a		Adjustments ^b	Evaluated price(s)	Conversion to currency of evaluation ^c		Financial scores ^d
	Currency	Amounts (1)	(2)	(3) = (1) + (2)	Exchange rate(s) ^e (4)	Proposals' prices (5) = (3)(4)	(6)
A	Naira	217,685,708.00	-28,393,788.00 ¹	189,291,920.00	NA	189,291,920.00	85.46
B	Naira	165,116,575.00	- 2,091,325.00 ² -1,260,000.00 ³ = -3,351,325.00	161,765,250.00	NA	161,765,250.00	100
C	Naira	165,315,395.39	-7,872,161.69 ⁴ -2,767,545.00 ⁵ = -10,639,706.69	154,675,688.70	NA	154,675,688.70 +138,676,669.26 =293,352,357.96	55.14
	ZAR	9,991,114.50		9,991,114.50	ZAR 1 = N13.88 ⁶		

Notes:

1. Total value of taxes (VAT 5% + WHT 10%) added to the Proposal Price
2. Value of Indirect taxes added to the Proposal Price
3. Consultant 'B's FORM FIN-4 for Breakdown of Reimbursable Expenses for Construction Supervision there was an arithmetical error on 'vehicle rental for supervision duties. Quantity was 630, and the rate was N10,000.00. The amount should be N6,300,000.00 and not N7,560,000.00 quoted. Scanned page attached as Appendix
4. Total Estimated Indirect Local Tax added to the Proposal Price
5. Consultant 'C's FIN-3 for Breakdown of Remuneration (Combined for the Lump Sum and the Time Based Contract). There was an obvious error of duplicating the posting of the figure for the remuneration of a key expert (Mark Marais). While the Expert whose payment currency should be in ZAR, the figures were also posted under the Naira column. The error was however only corrected for the time-based component, in line with the evaluation guidelines. Scanned page attached.
6. The exchange rate of ZAR 1 = N13.88 was adopted. The Project requested our banker (Access Bank PLC) to provide the CBN exchange rate of ZAR to Naira for 15th December 2015. The response indicated ZAR 1 = N13.88. The correspondences between the Project and the Access Bank PLC is attached.

8.4.21 Negotiation of Contract

Following approval of the Evaluation Report and recommendations by the TendersBoard, the Procurement Entity shall, pursuant to section 56 (7) or 57(1) & (2), invite the recommended Consultant for contract negotiations in accordance with the procedure stated in the RFP.

- Negotiation is expected to ensure agreement on all points and to result in an agreed draft contract. Negotiation may include discussions on the technical proposals; the proposed methodology (Work Plan), staffing and any suggestions that may be made have been made by the consultant to improve the TOR. The Procurement Entity and the Consultant shall then establish the final TOR, staffing, scheduling of services and clarify any general financial issues such as taxes payable and mode of payment.
- The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. Any substitution of key staff by the Consultant will require the offering of an equivalent or better candidate.
- Where the selection process specifies a time based form of contract, the Consultant is requested to provide justification of the unit rates quoted for individual staff. Negotiation of staff rates and reimbursable expenses may be discussed in this instance. Financial adjustments to any lump-sum price proposals may only be made through minor modifications to the scope of the proposed services.

- A detailed record of negotiations shall be maintained and signed by the Procurement Entity and the Consultant.
- The final TOR, agreed methodology and any financial adjustments shall be incorporated in the draft contract for approval of contract award by the Tenders Board.

8.4.22 Unsuccessful Negotiation

Pursuant to section 57 (3), the Procuring Entity shall, if negotiation with the consultant with the best ratings fails, invite the consultant that obtained the second best rating, and if the negotiations with the consultant do not result in a procurement contract, the procuring entity shall invite other qualified consultant on the basis of their ratings until it arrives at a contract or rejects the remaining proposals.

8.4.23 Rejection of All Proposals

Procuring entities may reject all proposals submitted by consultants on the grounds of being non-responsive if:

1. None of the proposals meet the objectives of the TOR. In this case, the Procuring Entity shall improve the clarity of the TOR and issue new requests for proposals to the same firms or to a newly drawn-up short list.
2. All proposals are below the minimum qualifying mark for technical quality. In this case, the EoI shall be re-advertised and a new shortlist of consultants other than had earlier responded shall be compiled.
3. All financial proposals substantially exceed the budget estimate. In such cases, the Procuring Entities increase the budget if it is determined that the costs estimates were too low, or scale down the scope of the services requested, or cancel the assignment altogether if it is not uneconomical to continue.

In all cases where all proposals are subject to rejection, the Procuring Entity shall first obtain approval of the PPA and thereafter inform the competing consultants accordingly.

8.4.24 Only one Proposal Received

If only one short-listed firm has responded or remains as the only responsive firm among the proposals received, it may still be considered that a competitive procedure has taken place. The Procuring Entity may evaluate the sole consultant's proposals, and, if satisfactory, invite it for contract negotiations, or continue with the one remaining candidate to negotiations and contract award.

8.4.25 Insufficient Competition

If no responses are received within the proposal submission period stipulated in the RFP, the Procuring Entity shall review the possible causes, and reformulate the RFP, including the estimated staff-time, or draw up a new short list, or both, and recommence the procedure. If the procedure is subject to prior review, the Procuring Entity shall do so after certification by the PPA. If, after a second call, there is still no response, the Procuring Entity may seek PPA's approval to direct contracting of a qualified firm, based on the original RFP and submission of satisfactory technical and financial proposals.

8.4.26 Award of Contract

Following approval from the relevant review body, the contract will be awarded.

Before issue of the contract, a formal commitment of the required funds against the budget of the Procurement Entity must be approved.

Action:

The Head of Procurement Unit should:

- Obtain approval of the commitment of funds against the budget of the Procurement Entity.
- Prepare four copies (minimum) of the contract ready for signature by each party to the contract, and include all specific details relating to the Consultant, the Conditions of Contract, and the Consultant's offer. A clear statement on when the contract becomes effective is also essential since certain contract clauses such as mobilization, and advance payment issues could be connected with this date
- Obtain the signature of the Accounting Officer on all copies of the contract.
- Note that the four copies (minimum) of the Contract will be distributed after signature as follows:
 - Original – Procurement Unit;
 - 1st Duplicate – Consultant;
 - 2nd Duplicate – The Technical Department Concerned; and
 - 3rd Duplicate – Legal Department
- Ensure that the contract is duly recorded in the Contracts Register maintained by the Procurement Unit.

8.4.27 Award Notification

A formal notice of award shall be issued to the successful Consultant, who will be required to confirm in writing acceptance of the contract award.

- The Consultant shall be invited to attend for contract signature, or where this is not practical, provided with the copies of the Contract for signature and return of the original and two signed copies of the Contract to the Procurement Entity.
- Failure of the Consultant to confirm acceptance of the award, or to sign the contract will constitute grounds for the annulment of the award. In that event, the Procurement Entity may cancel the proceedings and invite the Consultant who submitted the next ranked Proposal for negotiations.
- Procurement Entities are required to submit notice of contract awards to the Public Procurement Agency not later than **30 days** after contract signature, for publication on the PPA website and/or in the Procurement Journal. The information on contracts awarded/signed shall include the:
 - Name of entity;
 - Name of the Consultant;
 - Description of the services;
 - Contract Sum;
 - Start and finished dates of the contract;

- Method of Selection used; and
- Source of funding.

8.4.28 Notification to Unsuccessful Consultants

All unsuccessful Consultants should be notified immediately once the contract has been awarded.

8.5 CONTRACT TYPES FOR EMPLOYMENT OF CONSULTANTS

The type of contract must be selected when preparing the Request for Proposals and included as a draft with all relevant contract terms and conditions in the RFP.

8.5.1 Lump Sum (Fixed Price) Contracts

Lump sum contracts are used mainly for assignments in which both the content and the duration of the services; and the required output of the consultants are clearly defined:

- Lump sum contracts are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, etc.
- Payments are linked to defined outputs (deliverables), such as reports, drawings, bills of quantities, tender documents, and software programs.
- Lump sum contracts are simple to administer because payments are due on attainment of clearly specified outputs.

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8.5.2 Time-Based Contract.

This type of contract is widely used for complex studies, supervision of construction, technical advisory services, and training assignments. It may also be appropriate when:

- it is difficult to define the full scope of services, or the input of the consultants required to attain the objectives of the assignment;
- the length of services can be precisely defined and deliverables are only incidental to the main purpose of the assignment;
- the services are related to activities by others for which the completion period may vary.

Payments are based on:

- Remuneration: Agreed hourly, daily, weekly, or monthly rates for staff;
- Reimbursable: Reimbursable items using actual expenses and/or agreed unit prices.
- The rates for staff remuneration include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances.

This type of contract must include a maximum amount of total payments (the contract ceiling) to be made to the consultants.

The contract ceiling usually includes a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate.

Time-based contracts need to be closely monitored and administered by the Procurement Entity to ensure that the assignment is progressing satisfactorily, and payments claimed by the consultants are appropriate.

8.5.3 Retainer and/or Contingency (Success) Fee Contract.

Retainer and contingency fee contracts are frequently used when consultants (banks or financial firms) are undertaking specialist financial activities such as preparing companies for sale, in mergers of firms, or in privatization operations.

- The remuneration of the Consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.

8.5.4 Percentage Contract.

These contracts are commonly used for architectural services but may be also used in similar circumstances such as for procurement and inspection agents.

- Percentage contracts directly relate the fees paid to the Consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected.
- Contracts are negotiated on the basis of market standards for the services and/or estimated staff-month costs for the services.
- In the case of architectural or engineering services, percentage contracts lack any incentive for economic design or performance. The use of a percentage contract format for architectural services is only recommended if based on a fixed target cost and covers precisely defined services.

8.5.5 Definite Delivery Contract (Price Agreement).

These contracts are used when there is a need for “on call” specialized services to provide advice or services, the extent and timing of which cannot be defined in advance.

- These are commonly used to retain “advisers” for implementation of complex projects expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, etc. normally for a period of a year or more.
- The Procurement Entity and the firm agree on the unit rates to be paid, and payments are made on the basis of the time and resources actually used.

8.6 PERFORMANCE SECURITY

Performance securities for consultants’ services are not recommended for the following reasons:

- Performance securities are not an accepted standard for consultancy services and are likely to discourage participation by international consultancy firms;
- enforcement of performance securities may be subject to dispute for example when final negotiations fail to reach a satisfactory conclusion;

- performance securities can be easily abused by the Client as personality clashes or other factors beyond the direct control of the Consultant may affect achievement under the contract;
- there is often a strong element of subjectivity rather than objectivity in determining the success or failure of an assignment;
- securities increase the costs to the consulting industry without evident benefits, and the costs are inevitably passed on to the Client through higher prices.

However, the procurement entity may resort to the use of professional indemnity policy.

Chapter 9

MANAGEMENT/ ADMINISTRATION OF PROCUREMENT CONTRACTS

Chapter 9 - MANAGEMENT/ ADMINISTRATION OF PROCUREMENT CONTRACTS

Topics

- 9.1 Meaning and Significance of Contract Management/Administration
- 9.2 The Procurement file
- 9.3 The Contract file
- 9.4 Contract Management Responsibilities
- 9.5 Procurement Contract Management Plan
- 9.6 Risk Management and Maintenance of Risks Register
- 9.7 Measurement and Control of Performance
- 9.8 Contract Review Reports
- 9.9 Payments to Contractor
- 9.10 Contract Close-out Review

9.1 MEANING AND SIGNIFICANCE OF CONTRACT MANAGEMENT/ADMINISTRATION

Contract administration pertains to the preparation of procurement documentation, the processing and approval of such documentation, monitoring contract implementation, approving and administering contract variations and modifications, and possibly cancelling or terminating contracts.

Effective contract management requires systematic and efficient planning, execution, monitoring and evaluation to optimize performance while managing risks to ensure that both parties fulfill their contractual obligations with the ultimate goal to achieve Value for Money and results on the ground.

In a procuring contract the contractor has the responsibility of performing the contract as per the terms and conditions of the contract while the procuring entity has the responsibility of meeting its obligation of paying the contractor as per terms and conditions of the contract. These are the basic responsibilities of the parties. For the purpose of ensuring that both parties perform and meet their obligations procurement contracts must therefore be managed.

For the purpose of this manual, Contract Management and Contract Administration can be used interchangeably.

The significance of effective Contract Administration is demonstrated below:

- Inadequate contract administration procedure encourages corrupt practices.
- Failure to ensure that Contractors and/or Consultants provide the goods, works or services as specified in the contract can lead to substantial losses.
- Careless approval of contract variations can lead to significant deviations from original agreed costs. This undermines effective competition since for example an increased volume of delivery addressed at the time of tender could have led to significantly lower per unit prices from the competing bidders.
- Poor documentation and records management, along with weak coordination between the Government's representative, the procuring unit and the accounting unit undermine payment controls and lead to payments in excess of contract ceilings, especially in multi-year contracts. It is imperative that the Accounting Unit maintain accurate and up to date ledgers that properly track all contract payments and record contract totals and approved contract variations to serve as payment ceilings.
- Reports of procurement reviews around the world have identified weak contract administration as a major source of loss and a significant area of abuse and corruption.

9.2 THE PROCUREMENT FILE

Section 66 of the Public procurement Law stipulates that every procuring entity shall keep a detailed record of all procurement activities and processes in a format as may be prescribed in the Regulations made by the Agency.

The Procurement file is important in the management of a procurement contract. The file is opened for the purpose of processing the procurement before the contract is awarded. It contains the following.

- a. Procurement initiation requisition.
- b. All correspondence on the procurement.

- c. Bidding documents or RFP Documents.
 - d. Bids/Proposals received.
 - e. Evaluation and award of the contract.
 - f. Information on the award of the contract and particulars of the contract.
- This file contains very important information and must be handled carefully.

9.3 THE CONTRACT FILE

A contract file shall be opened after the procurement contract is signed and it shall be opened by the contract manager. The file shall be used for recording the actual performance of the requirements indicated in the contract.

The file should contain the following:

- a. Signed original procurement contract.
- b. Any signed modifications to the contract.
- c. Contract correspondence between the parties.
- d. Information on the performance.
- e. Correspondence on the contract.
- f. Management progress reports
- g. Minutes of meetings of project team
- h. Payment records and close-out documents.
- i. Copy of performance security (where required)
- j. Any other relevant information.

9.4 CONTRACT MANAGEMENT RESPONSIBILITIES

For each contract entered into, the Procuring Entity must designate a member of staff, or a team of staff, as the Contract Manager. Where the management of a contract requires specialized skills that may not be available within the Procuring Entity or the public service, a Consulting firm or an Individual Consultant with the requisite skills can be engaged for that purpose. The Procuring Entity must name the designated Contract Manager in the Contract document which must be included in the procurement file.

It is the responsibility of the Contract Manager to perform the obligations and duties of the Procuring Entity specified in the contract; and to ensure that the contractor performs the contract in accordance with all the terms and conditions of the contract. In particular it is important that the Contract Manager ensures that the contractor supplies the quality and quantities specified in the contract. It should be noted that this may require rather specialized methods for measuring quantities. Such measurements must be independent and not rely solely on the contractor's submitted measurements of quantity.

The Contract Manager is responsible for:

- i. Monitoring the performance of the contractor/consultant, to ensure that all delivery or performance obligations are met or appropriate action taken by the Procuring Entity in the event of obligations not being met;
- ii. Ensuring that the contractor/consultant submits all required documentation as specified in the bidding documents/Terms of Reference, the contract and as required by law;
- iii. Ensuring that the Procuring Entity meets all its payment and other obligations on time and in accordance with the contract.
- iv. Ensuring that there is adequate cost, quality and time control, where required;

- v. Preparing any required contract variations/addendum or change orders and obtaining all required approvals before their issue. Such variations/addendum or change orders must be clearly justified in writing backed by supporting evidence;
- vi. Managing any handover or acceptance procedures;
- vii. Making recommendations for contract termination, where appropriate, obtaining all required approvals and managing the termination process;
- viii. Ensuring that the contract is complete, prior to closing the contract file including all handover procedures, transfers of title if need be and that the final retention payment has been made;
- ix. Ensuring that all contract administration records are complete, up to date, filed and archived as required; and
- x. Ensuring that the contractor and the Procuring Entity act in accordance with the Provisions of the Contract.
- xi. Discharge of performance guarantee where required

(a) Administration of Sub-Contracts

The prime contractor shall be responsible for administering any subcontracts and the Procuring Entity shall monitor only the prime contractor's management of its subcontracts.

The Procuring Entity shall not directly administer any subcontracts, except where:

- i. There is a risk of the Procuring Entity incurring undue cost or delay;
- ii. Successful completion of the prime contract is threatened; or
- iii. Special surveillance of high risk or critical subsystems is required.

(b) Technical Inspection of Goods and Works

The Procuring Entity shall inspect goods or works at any reasonable time or place, including: During manufacture or construction; prior to shipment; on delivery or completion; or prior to final acceptance the Procuring Entity's may also inspect subcontractors.

The Procuring Entity may observe tests conducted by the contractor, or any subcontractors, under their own quality control procedures, conduct its own inspection; or employ an independent third party to undertake technical inspection.

(c) Inspection and Acceptance of Goods, Works and Services

The Procuring Entity shall ensure that all goods, works and services are subject to inspection and verification by Inspection and Acceptance Committee, prior to their acceptance.

The inspection and verification shall ensure that:

- i. The correct quantity has been received;
- ii. The goods, works or services meet the technical standards defined in the contract;
- iii. The goods, works or services have been delivered or completed on time, or that any delay has been noted and appropriate actions as indicated in the contract have been taken;
- iv. All required deliverables have been submitted; and
- v. All required manuals or documentation have been received.

The Inspection and Acceptance Committee responsible for inspecting the goods, works or services shall issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

9.5 PROCUREMENT CONTRACT MANAGEMENT PLAN.

A Contract Management Plan shall be developed during contract creation and completed at the time the contract is signed.

The contract manager shall prepare a management plan which shall give a background of the contract and capture key focus area of the contract.

9.5.1 For simple and low value contracts, the Contract Management Plan shall at least include:

- a) key roles and responsibilities;
- b) key contractual dates and delivery milestones;
- c) budget and payment milestones; and
- d) record keeping requirements.

9.5.2 For high value, high risk or complex contracts, identified in the Procurement Plan, the Contract Management Plans shall typically contain a summary of contract details such as:

- a) identified potential risks (such as delays in the contractor's right of access to site, payment delays and other defaults in the Procuring Entity's contractual obligations that could potentially lead to contractual disputes) and its mitigation;
- b) key contacts, roles and responsibilities of the parties:
 - i. the names and contact details of the key contacts for each party shall be clearly identified in the contract; and
 - ii. ensuring that each party has established the necessary authorizations and delegations for its personnel at the beginning of the contract is an important prerequisite to ensuring that all contracting decisions are valid and enforceable;
- c) communication and reporting procedures;
- d) key contractual terms and conditions;
- e) contractual milestones including critical path (identified to ensure early detection and mitigation of issues) and payment procedures consistent with contractual provisions;
- f) key contract deliverables;
 - i. contract deliverables shall be identified and properly described so they can be easily monitored; and
 - ii. key contract deliverables shall be updated to account for change orders during the execution of the contract
- g) key Performance Indicators (KPIs) and measurement process;
- h) contract variation/change control mechanisms; and
- i) record keeping requirements

9.6 RISK MANAGEMENT AND MAINTENANCE OF RISKS REGISTER.

Risk is the single word that determines every contract. Adequate steps for risk mitigation must be taken in all public procurement contracts. Where the bidding document so requires, an unconditional performance security must be provided by the successful bidder issued by a reputable bank or a PPA approved insurance company.

Failure of the successful bidder to provide the required performance security shall constitute a breach of contract and sufficient grounds for the annulment of the award and forfeiture of the bid security and any other remedy under the contract. In the circumstance the procuring entity may award the contract to the next ranked bidder. The greatest risks which must be mitigated in the management of procurement contracts are:

- a) The supplier delivering late or not delivering at all.
- b) The quality of the required goods, works or services being of inferior quality.
- c) Being charged a higher cost than what the contract provided for.
- d) The risk of paying for work not done

A risks register should be maintained in which identified risks should be recorded and monitored. The common contract risks that should be watched are:

- i. Incomplete or incorrect specifications.
- ii. Poor communication.
- iii. Supplier lacking sufficient resources.
- iv. Production problems.
- v. Quality problems including technology.
- vi. Shipment details.
- vii. Underestimation of costs by supplier.
- viii. Inflation trends.
- ix. Unexpected events.

Any risks identified shall be isolated and addressed before it is too late.

9.7 MEASUREMENT AND CONTROL OF PERFORMANCE

9.7.1 The requirements of the contract must be closely watched to ensure that there are no deviations or risks and those identified are dealt with in time

The Procurement Unit 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.

9.7.2 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.

9.7.3 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.

9.7.4 Where the PPA has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the State Treasury 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 Compliance’ to the award of Contract” duly issued by the PPA.

9.8 CONTRACT REVIEW REPORTS

In large procurement contracts the contract management plan should provide for review meetings. Review meetings are held periodically as found necessary for the purpose of face to face communications of contract performance and discussing the way forward and preparing status reports.

After a review meeting a status report should be prepared to be shared by the parties which should include:

- (a) Executive summary.
- (b) Report on performance of activities and budget.
- (c) Other issues relevant to the contract such as environmental and general observation including the performance rating.

It is important for the contract manager to report to the procuring entity’s administration the outcome of such contract review meetings.

9.9 PAYMENTS TO CONTRACTOR

It is very important for the contractor to perform the contract satisfactorily. Similarly it is important for the procuring entity to make payments to the contractor timely and according to the contract requirements. Payments should not be made unless the

invoice or the fee note is accurate and also submitted in accordance with the provisions of the contract.

Failure to pay the contractors in time by procuring entities in the past has led to pending bills accumulating to unacceptable amounts and thus giving public procurement a bad name. It has been said that this is one of the reasons why bidders in public procurement quote high prices to mitigate the risk of delayed payments which they will always anticipate.

Section 65 of the Public Procurement Law stipulates that:

- (1) Payment for the procurement of goods, works, and services shall be settled promptly and diligently.
- (2) Any payment due for more than sixty (60) days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by the Ministry, Extra-Ministerial Office, Government Agencies, parastatals or corporations shall be deemed a delayed payment.
- (3) All delayed payments shall attract interest at the rate specified in the contract document.
- (4) All contracts shall include terms, specifying the penalty for late payment of more than sixty (60) days.

The procuring entities are therefore required to plan their procurement and cash/fund flows to ensure that contractors are paid in a timely manner.

9.10 CONTRACT CLOSE-OUT REVIEW

In large procurement contracts it is good practice after the contract is completed to conduct a contract close-out review. This should be done by the contract management team. The review should consider the following:

- (a) The timeliness of contract performance.
- (b) Cost and quality performance.
- (c) Risks analysis.
- (d) Organizational and operational effectiveness.
- (e) Appropriateness of the procedures.
- (f) Contractor's/Consultant's performance.

After the review a report should be prepared and distributed as necessary. The report shall provide good lessons for management of future contracts. Where there is need for action resulting from the report the management of the procuring entity shall decide.

Chapter 10

DISPOSAL OF PUBLIC PROPERTY

Chapter 10- DISPOSAL OF PUBLIC PROPERTY

Topics

- 10.1 Introduction
- 10.2 Planning for Disposal
- 10.3 Disposal Methods
 - 10.3.1 Trade-in
 - 10.3.2 Transfer to other Government Agency
 - 10.3.3 Public Auction
 - 10.3.4 Sale by Public Tender
 - 10.3.5 Negotiated Sale
 - 10.3.6 Set Price or Public Offer at Authorized variation
 - 10.3.7 Other Methods: Lease/Hire Purchase, Rental, Licenses & Tenancies
 - 10.3.8 Destruction, Dumping, or Burying
- 10.4 Documentation of Disposal Procedure
- 10.5 Approval of property Disposal

10.1 INTRODUCTION

Disposal is a critical element of assets management of a Procuring Entity. When any equipment is obsolete, its keeping, through maintenance costs, storage, parking, insurance, etc., may well exceed the returns that can be derived from that piece of equipment and the investment of additional monies. Disposal is therefore one of the element of managing procurement and supply and distribution. It focuses on safe-guarding assets and on sending information for decision making.

Disposing is thus a function that is necessary to guarantee that public monies are not applied to useless or obsolete equipment and assets and that when stores are disposed of, they are sold at the best achievable value in the market.

Disposal may be considered as the third life of any items acquired by a Procuring Entity;

- i. First, it is procured and accepted (the procurement cycle);
- ii. Second it is utilised by the Procuring Entity in the discharge of its duties (the usage life cycle, often referred to as life cycle);
- iii. Third and finally, it has then to be disposed off (the disposal cycle).
Because disposal involves residual values that may be received and can contribute to the cost of renewal, it involves deciding when to dispose of a certain item and may involve health and safety standards issues. It has to be regulated and managed as provided for by the Public Procurement Law and other relevant Regulations.

This chapter gives further clarifications and instructions on disposal of Public Properties.

Section 70 of the Public Procurement Law stipulates that every Procuring Entity shall also be a Disposing Entity.

Open competitive bidding shall be the primary source of receiving offers for the purchase of any public property offered for sale. The Public Procurement Board shall with approval of the State Governor:

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

10.2 Planning for Disposal

The Accounting Officer of a Public Entity shall be primarily responsible for ensuring that the Procuring Entity fulfills its obligations under the Law, the Regulations and this Manual.

The user department shall have the responsibility of identification of items to be disposed of. The disposal committee shall recommend the disposal including the disposal method.

The accounting officer has the final authority of accepting or rejecting the recommendations of the disposal committee. Where items become unserviceable for reasons other than normal wear and tear such as through accidents or expiry the set procedure for handling losses shall be followed before the disposal process.

Obsolescence should be avoided by procuring entities by disposal of items as surplus before they become obsolete. The causes of having excess surplus items in the stores shall also require to be investigated and justified.

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.

10.3 Disposal Methods

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

10.3.1 Trade-in

(a) Use of this Method

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.

(b) Justification for Trade-in

All trade-ins should be justified by the Disposal Committee when preparing the Disposal recommendations to the accounting officer or the head of the procuring entity. The justification should emanate from the combination of the need of the Procuring Entity to dispose of the property and the immediate need for replacement.

The disposal of the property shall be a means for a Procuring Entity to obtain a discount as part of a disposal requirement. Specific economic and financial analysis may be required to demonstrate the advantage of the transfer compared to public tender disposal.

(c) Linkage to Procurement

A disposal requirement executed using the trade-in method should always link directly to a procurement requirement. The intention of the Procuring Entity to dispose of the stores, assets and equipment as trade-in as part of a procurement requirement should be clearly stipulated in the procurement requirement announcements and bidding documentation.

The trade-in method disposal cycle is hence de facto intrinsically linked to a procurement cycle. A trade-in may be initiated and negotiated with the selected bidder of a procurement requirement as direct procurement subject to justification and approval by the tender committee. It may also be opened to all bidders participating in the procurement in which case the bidders shall quote the value of the item to be traded-in. Where direct procurement is used, the value of the item to be traded in shall be negotiated by the parties.

(d) Financial Evaluation and Comparison – Trade-In Method

The disposal Committee should conduct a financial evaluation and comparison to determine if the trade-in method is the most economical method and if it secures value for money and efficient use of public funds. An evaluation of the costs and benefits of the trade-in should be performed to assess:

- i. Costs of trade-in if different from procurement requirement transactions costs;
- ii. Transactions costs without trade-in, such as sales or destruction, for the Procuring Entity;
- iii. Comparison of the estimated sale value of the stores, assets or equipment with the estimated discount as part of the procurement requirement; or
- iv. Any other considerations that may inform the decision of the Disposal Committee to ensure value for money and efficiency in the use of public funds.

(e) Evaluation Reports and Recommendations

The disposal committee should prepare an evaluation report for submission to the accounting officer or head of the procuring entity and any other required award authority. The evaluation report should include:

- i. A summary of the economic and financial evaluations and comparisons and their parameters;
- ii. The results of the evaluation;
- iii. A recommendation on the trade-in or other disposal method to be used to; and
- iv. The financial conditions, including reserve price to be applied as part of the procurement process.

(f) Reserve Price

A Procuring Entity may establish a reserve price in the case of trade-in below which the property will not be disposed of. The reserve price, if applicable, shall be disclosed to the bidder or bidders. If the discount obtainable as part of the procurement requirement in which the property were traded-in does not meet the reserve price, the Procuring Entity may choose to award the procurement contract at the full price quoted, and retain the trade-in item.

The Procuring Entity may also choose to proceed to direct negotiations with the selected bidders of the procurement requirement. Negotiations as part of the

procurement procedures shall be on the value of the trade-in item subject to approval by the tenders' board.

(g) Negotiations

The Procuring Entity may negotiate with the selected bidder of the procurement proceedings where the reserve price is not accepted. If the negotiations do not result in an agreement, the Procuring Entity should cancel all disposal proceedings, without cancelling the procurement proceedings subject to approval by the tenders' board.

(h) Procedure for Negotiations

Negotiations should not be conducted until after the Financial Evaluation Report of the procurement requirement has been approved by the relevant authority.

The Procuring Entity should prepare a plan for the negotiations, which should specify the issues to be negotiated and objectives to be achieved and should, to the extent possible, quantify the objectives and set maximum and minimum negotiation parameters. The negotiations should be conducted by a minimum of two staff of the Procuring Entity, who should not commit the Procuring Entity to any proposed arrangements or agreements, but should seek the approval of the relevant authority, prior to confirming any agreement reached.

Staff conducting the negotiations should prepare minutes of the negotiations, which should form part of the record of the disposal and should obtain the other party written agreement that they are a true and accurate record of the negotiations held.

(i) Documents required for the Trade-In Disposal Cycle

All Procuring Entities should prepare a Disposal Plan in accordance with the Public Procurement Law and Regulations. Procuring Entities should document the initiation of the disposal requirement with an Initiation memo. Procuring Entities Disposal Committee Minutes should be prepared:

Any instructions issued by the PPA on trade-in shall be followed.

10.3.2 Transfer to other Governmental Agencies

(a) Use of this Method

Procuring Entities should ensure that they have complied with all relevant requirements and approval of disposal method is approved by the accounting officer or the head of the procuring entity

Transfer to another public entity method of disposal shall apply only when a Procuring Entity may dispose of the Property to another Procuring Entity, hereafter named the receiving Procuring Entity or the other party, which should always be a public entity as defined by the Law. The transfer may be as a result of a request by the receiving entity or the proposal by a procuring entity.

(b) Justification for the Transfer to another Public Entity

The transfer should be justified by the Disposal Committee when preparing the disposal recommendations to the accounting officer or the head of the procuring entity. The justification should emanate from the need of the Procuring Entity to dispose of the property.

The receiving entity may pay an agreed amount of money for the items or may be issued with the items free of charge. Any instructions that may be issued by the PPA must be followed.

(c) Authority for Disposal

Where disposal is through transfer to another public entity free of charge, the approval of the accounting officer or the head of a procuring entity shall be adequate and the approval of the tender committee shall not be required.

Where the transfer is subject to payment of any money the transfer shall be effected only after the money has been paid by the receiving entity and subject to approval by the tenders' board.

10.3.3 Public Auction

(a) Public Auction Sale Procedures

Procuring Entities should ensure that they have complied with all relevant requirements prior to initiating disposal procedures in accordance with this part. A Procuring Entity that conducts disposal using the Public Auction Sale Method should ensure that the procedure has been approved by the Accounting Officer. The auctioneer shall also be appointed through the public procurement process.

(b) Inviting Bids under the Public Auction Sale Method

Bids should be invited through the publication of an announcement of auction sale. No pre-qualification may be conducted for disposing of property under this method.

(c) Contents of Announcement of Public Auction Sale Proceedings

Where the Procuring Entity publishes an announcement of auction sale, this should be published in the form of an auction notice, inviting all potential bidders to participate in the sale. Invitation notices should include:

- i. The name, address and contact details of the Procuring Entity;
- ii. The nature of the disposal requirement, including the quantity and / or detailed description/specification of the property(ies) and the location(s) and timetable for disposing of the Property(ies) to the selected bidder;
- iii. A statement of any key eligibility requirements to participate to the auction sale, such as official identification paper for individuals, company registration, cash or bank draft, evidence of qualification to dispose of the stores, assets or equipment in the context of public health and safety and environmental protection; and
- iv. Instructions on any pre-bid conference, site visits, access to stores, assets and equipment for potential bidders to assess the conditions, specifications and value of those; and
- v. Instructions on the location and time of the auction.

(d) Publication of Announcement in Public Auction Sale Proceedings

The invitation to the auction sale notice should be:

- i. Published in the printed media, in at least one daily newspaper, which must be of wide enough circulation to reach sufficient bidders to ensure effective competition;
- ii. Broadcast over the radio or television, on the stations and Programmes, and at a time most likely to target potential bidders if found necessary;
- iii. To the extent feasible, published on the internet, including any website established by the PPA.

(e) Contents of Auction List for the Public Auction Sale Method

Procuring entities should prepare an auction list containing all the items to be auctioned. The auction list should provide bidders with all the information that they require in order to participate with sufficient information in the auction sale. In particular, the auction list should include:

- i. A clear description of the property(ies) to be disposed of;
- ii. An indication of the reserve price where the Procuring Entity decides to use it.
- iii. Instructions on the auction sale rules such as official documentation required, proof of solvability, bid security, form of payment authorized, increment thresholds during the auction sale, time lapse eluded to declare winner and any other instructions that the PPA may prescribe by Circular;
- iv. Instructions on participation to pre-bid conferences, site visits and on access to the stores, assets or equipment such as dates, time and conditions;
- v. Any qualification criteria and the procedure for post-qualification or verification of qualification information;
- vi. The type of contract to be awarded;
- vii. The terms and conditions of the proposed contract and
- viii. Information on the Bidder's right to appeal under the administrative review process and on the Government's policy on fraud and corruption, including the debarment of bidders.

(f) Eligibility Criteria for the Public Auction Sale Method

The Procuring Entity should ensure that these eligibility criteria do not discriminate any person or entity.

The eligibility criteria may require evidence of the qualification or certification or registration of the potential bidders to prove their capability to dispose of stores and property that may present a public health and safety threat, an environmental risk or any other cause that may require such evidence.

The eligibility criteria should include an invitation to participate to the auction sale, based on proof of solvency in order to deter any frivolous bid and collusion. The eligibility criteria should be detailed in the bidding documents and instructions to bidders that should be approved by the Disposal Committee.

(g) Minimum Notice Period for the Public Auction Sale Method

The notice period should start on the date of the first publication of the announcement and should end on the date of the auction sale. In determining the appropriate notice period for each requirement, the Procuring Entity should take into account, in addition to the minimum bidding period:

- i. The time required for all potential bidders to access the stores and property; and
- ii. Any restrictions relating to the time the stores and property can be evaluated directly by the potential bidders.

(h) Public Auction Sale, Administration and awards

The auction shall be conducted by a registered auctioneer who shall be contracted by the procuring entity. The auction may also be conducted by the staff of the procuring entity or staff of another public entity.

The auction shall be conducted professionally with all the participating bidders being given chances to bid up to the time the highest bidder is determined.

Bidders who shall have provided auction deposits shall be given auction bidding numbers which they shall be stating when announcing their bids. The participating bidders shall also have acquired copies of the auction list. The deposit shall be placed for each item or lot of the auction. The auction deposit shall not exceed 1% of the total cost of the estimated cost of the auction item or lot. The auctioneer shall have staff who shall keep the record of the winning bidders per item or lot. The procuring entity shall also have its own staff who shall also keep the same record of the winning bidders.

At the end of the auction the two lists of winners shall be tallied and signed by the representatives of the auctioneer and the procuring entity. Where the auction is conducted by the staff of the procuring entity, the records shall be recorded by two different persons for the purpose of tallying at the end of the auction and it shall also be signed by both parties.

(i) Payment for and Collection of Items

The bidders who win items in the auction shall be given a period of 14 days from the date of the auction to pay for the items and take possession of them and remove them from the procuring entities premises. Failure to do this, the bidders shall forfeit the bid deposits and the items offered to the second highest bidders.

10.3.4 Sales by Public Tender

Procuring Entities should ensure that the disposal method is properly approved by the Accounting Officer. A Procuring Entity that conducts disposal using Sale by Public Tender shall conduct the process as in the case of Procurement by Open Competitive Bid.

(a) Inviting Bids

Bids should be invited through the publication of an announcement of bidding process. No pre-qualification should be conducted for disposing of property. Pre-qualification may only be resulted to with the prior approval of the PPA.

(b) Contents of Announcement of Public Tender Sale Proceedings

Where the Procuring Entity publishes an announcement of bidding process, this should be published in the form of an invitation to bid, requesting potential bidders to submit bids. Invitation to bid should include:

- i. The name, address and contact details of the Procuring Entity;
- ii. The nature of the disposal requirement, including the quantity and/ or detailed description/specification of the property(ies) and the location(s) and timetable for disposing of the Property(ies) to the selected bidder;
- iii. A statement of any key technical requirements, qualification requirements and evaluation criteria, such as evidence of qualification to dispose of the stores, assets or equipment in the context of public health and safety and environmental protection or the application of a margin of preference;
- iv. Instructions on obtaining the bidding documents, including any price payable and the language of the documents; and
- v. Instructions on any pre-bid conference, site visits, access to stores and property (ies) for potential bidders to assess the conditions, specifications and value of those;
- vi. Instructions on the location and deadline for submission of bids.

(C) Publication of Announcement in Public Tender Sale Proceedings

The invitation to tender notice should be:

Published at least once in a daily newspaper, which must be of nation-wide circulation to reach sufficient bidders to ensure effective competition; and may in addition be:

- i. Broadcast over the radio or television, on the stations and programmes and at a time most likely to target potential bidders;
- ii. To the extent feasible, published on the internet, including any website established by the PPA.
- iii. Published on the notice board of the procuring entity.
Where tendering is international, the notice should also be published in media of wide international circulation or on widely read internet sites, in the English language. In addition, where the Procuring Entity believes it is necessary to ensure wide competition, it may send the notice directly to potential bidders. The Procuring Entity should keep a record of any bidders to whom the notice is sent directly, which should form part of the disposal record.

(d) Contents of Bidding Documents for the Public Tender Sale Method

Procuring Entities should use the appropriate standard disposal bidding document issued by the PPA in preparing bidding documents.

The bidding documents should provide bidders with all the information that they require in order to submit bids that are responsive to the needs of the Procuring Entity. In particular, the bidding documents should include:

- i. A clear description of the stores, assets or equipment;
- ii. An indication of the reserve price where the Procuring Entity decides to use it;
- iii. Instructions on the preparation of bids, including any standard forms to be submitted and the documentary evidence and information required from bidders;
- iv. Instructions on the sealing, labelling and submission of bids, including the location and deadline for submission and procedures for the withdrawal, modification or replacement of bids;
- v. Instructions on participation to pre-bid conferences, site visits and on access to the stores, assets or equipment such a dates, time and conditions;
- vi. Information on the methodology for the evaluation of bids, any evaluation criteria to be applied and the manner in which the criteria should be applied;;
- vii. Information on the procedure for contract award, including the requirement for publication of a notice of proposed award and the bidders' right to appeal;
- viii. The type of contract to be awarded;
- ix. The terms and conditions of the proposed contract; and
- x. Information on the Bidder's right to appeal under the administrative review process and on the Government's policy on fraud and corruption, including the debarment of bidders.

(e) Eligibility Criteria for the Public Tender Sale Method

The Procuring Entity should ensure that the compliance criteria does not discriminate any person or entity.

The eligibility criteria may require evidence of the qualification or certification or registration of the potential bidders to prove their capability to dispose of stores, assets and equipment that may present a public health and safety threat, an environmental risk or any other cause that may require such evidence.

The eligibility criteria should be detailed in the bidding documents and instructions to bidders.

(f) Evaluation Methodology and Criteria for the Public Tender Sale Method

The methodology for the evaluation of bids should consist of:

- i. Eligibility of the bidder.
- ii. Compliance with the conditions of sale;
- iii. The bid price quoted

Where appropriate, the Procuring Entity may include additional evaluation criteria in the bidding document, which should be taken into account in determining the evaluated price of each bid. The contracts shall be awarded to the highest evaluated bid price for each item or lot subject to the reserved price.

(g) Minimum Bidding Periods for the Public Tender Sale Method

The bidding period should start on the date of the publication of the announcement and should end on the date of the bid submission deadline. In determining the appropriate bidding period for each requirement, the Procuring Entity should take into account, in addition to the minimum bidding period which shall be 28 days for national tenders and 42 days for international tenders:

- i. The time required for preparation of bids, taking into account the level of detail required and the complexity of bids;
- ii. Any need for bidders to submit authenticated legal documents or similar documents as part of their bids and the time required to obtain such documents;
- iii. The location of shortlisted or potential bidders and the time required to obtain the bidding document and for the delivery and submission of bids to the Procuring Entity;

(h) Issue and Sale of Bidding Documents for the Public Tender Sale Method

Bidding documents should be issued, as appropriate to all bidders responding to the invitation to tender notice. The Procuring Entity should maintain a record of all bidders to whom the documents are issued.

The Procuring Entity may charge a fee for the bidding documents, but the price should be calculated to cover the costs related to printing, copying and distribution of the bidding documents only and should not include any element of profit. Where bidding documents are sold, the Procuring Entity should:

- i. issue signed receipts for the documents and bidders may be required to submit a copy of the receipt with their bid.
- ii. allow potential bidders to inspect the documents, prior to purchasing the document.

(i) Deposits for items on sale by open Tender

A Procuring Entity may require deposits to deter irresponsible bids and encourage bidders to fulfill the conditions of their bids. The bidding documents should state any requirement for a bid security.

The value of any required bid deposit should be expressed as a fixed amount and not as a percentage. The amount should not be more than two percent of the estimated value of the stores, assets or property. In determining the amount of bid deposit required, the Procuring Entity should take into account the cost to bidders of obtaining a bid deposit, the estimated value of the stores, assets or property and the risk of bidders failing to fulfill the conditions of their bids. The amount should be high enough to deter irresponsible bids, but not so high as to discourage competition. The bidding documents should state that bid deposits must be:

- i. in accordance with the format and wording provided in the bidding document;
- ii. In a form acceptable to the Procuring Entity, which may be:
- iii. cash;
- iv. a bank guarantee;
- v. an equivalent instrument, such as a stand-by letter of credit;
- vi. an insurance company security; or
- vii. any alternative form acceptable to the Procuring Entity, including any forms permitted under schemes issued by the PPA to facilitate access to securities by small enterprises; and
- viii. From an institution acceptable to the Procuring Entity in the case of instruments issued by financial institutions;

The conditions for forfeiture of a bid deposit should be specified in the bidding document. The Procuring Entity should release bid deposits promptly to unsuccessful bidders upon expiry of the term of the deposit or it may form part of the winning bidders purchase price.

(j) Clarification and Amendment of Bidding Documents for the Public Tender Sale Method

The bidding document should state that a Bidder may seek clarification of the bidding document and should state the final date after which such clarification may not be sought. Such date should allow adequate time for potential bidders, including foreign bidders, to receive and study the bidding document.

Where a request for clarification is received, the Procuring Entity should promptly provide a clarification in writing. The clarification should be published and copied to all bidders and should include a description of the inquiry, but without identifying the source.

At any time prior to the deadline for submission of bids, the Procuring Entity may, either at its own initiative or in response to a request for clarification from a Bidder, amend the bidding document by issuing an addendum. Any addendum should be issued in writing and the same information should be provided to all Bidders at the same time. All addenda should be numbered sequentially. All clarifications and addenda to the bidding document should be binding on bidders.

(k) Extension of Bidding Period for the Public Tender Sale Method

To give Bidders reasonable time in which to take a clarification or addendum to the bidding documents into account in preparing their bids, the Procuring Entity, may, at its discretion, extend the deadline for the submission of bids, through the issue of an addendum

(l) Withdrawal, Substitution or Modification of Bids for the Public Tender Sale Method

The bidding documents should state that bidders may withdraw, substitute or modify their bids at any time prior to the deadline for submission of bids, without forfeiting any bid security. The bidding documents should state the procedures to be followed for withdrawal, substitution or modification.

(m) Pre-bid Conferences and Site Visits for the Public Tender Sale Method

The Procuring Entity may organise:

- i. A pre-bid conference in order to brief potential bidders or to offer the opportunity for them to seek clarifications; and/or

- ii. A site visit, to enable bidders to gain access to the stores, access or equipment to make their own evaluation of the price.

Details of pre-bid conferences and site visits, including the date, time and location, should be included in the bidding document and, where possible, in the invitation to bid notice. The date of any pre-bid conference or site visit should be sufficiently early in the bidding period, to enable bidders to take the information into account in preparing their bids, but should not be so early as to make attendance difficult for any potential bidders.

The Procuring Entity should prepare minutes of any pre-bid conference and should promptly send them to all bidders to whom the bidding documents have been issued. The minutes should include:

- i. All information provided as part of any briefing;
- ii. Details of any clarifications requested, but without identifying the source of the inquiry; and
- iii. The details of responses provided to clarifications.

Following any pre-bid conference or site visit, the Procuring Entity should, where required, issue clarifications or amend the bidding document

(n) Receipt of Bids for the Public Tender Sale Method

The Procuring Entity should make arrangements for the receipt and safe-keeping of bids up until the deadline for submission of bids, which may include:

- i. The use of a bid box, in which bidders are responsible for depositing their bids directly and which should remain locked until the time for bid opening; or
- ii. The receipt of bids by staff of the Procuring Entity, who should be responsible for issuing signed receipts, showing the precise date and time of receipt and keeping bids in a secure location until the time for bid opening.

Where any bid is too large for the bid box, the Procuring Entity should receive and keep the bid, or samples. Where the Procuring Entity is receiving bids and issuing receipts, it should maintain a record of all bids received, indicating the name of each bidder, the date and time of receipt and the name of the person responsible for receipt. Bids should only be received electronically, or by other means which do not permit sealed bids, where authorized by the PPA.

The Procuring Entity should not be held liable for the loss or delay in delivery of any bid delivered by mail or courier.

The Procuring Entity should ensure that appropriate staffs are available at the location for submission of bids, or that bidders have access to the bid box, at all period of time indicated in the bid documents. The Procuring Entity should not disclose the number or identity of bids received, prior to the bid opening, other than to public officials who require the information as part of their official duties.

(o) Bid Closing for the Public Tender Sale Method

Bids shall be opened not later than two hours after the tender date and time of the deadline for submission of bids stated in the bidding document. Where a tender box is used for the receipt of bids, the Procuring Entity should seal the tender box at the precise date and time of the deadline and ensure that no further bids are placed in the tender box.

The Procuring Entity should assign suitable, experienced staff to manage the bid closing. Any bid received after the date and time of the deadline for submission of bids should not be accepted, but should be declared late and rejected.

Late bids should be labelled as late, stating the date and time of receipt and should be returned unopened to the bidder. A bidder submitting a late bid should be asked to go back with it.

Where a bid is submitted using a two envelope system, the Procuring Entity may open the outer envelope only, for the purpose of identifying the name and address of the bidder on the inner envelopes. The inner envelopes should not be opened, but should be returned unopened to the bidder or left unopened and destroyed. Immediately after the bid closing, the bid box or bids received should be taken to the location for bid opening.

(p) Public Opening of Bids for the Public Tender Sale Method

The Procuring Entity should open in public all bids received on time at the date, time and location indicated in the bidding document. The time for bid opening should be the same as, or immediately after, the time of the deadline for submission of bids and in any case not later than two hours of the closing time.

The opening of bids shall be managed by the Disposal Committee.

Bidders, or their representatives, should be permitted to attend the opening and details of the bid opening should be included in the bidding document.

The Procuring Entity should first open any envelopes marked “withdrawal” and the corresponding bids should be located and returned unopened to the bidder.

Opening shall be by a bid opening committee appointed by the disposal committee from among its members. The committee shall have not less than three members.

All the envelopes, including substitutions and modifications and alternative bids should be opened and the details indicated in the bidding document read out. All bids opened should be stamped on key pages and signed or initialled by all the members of the opening committee

With the exception of late bids, no bids should be accepted, rejected or evaluated in any way at the bid opening. Any discrepancies or missing documents should be noted in the record of bid opening.

The Procuring Entity should make a record of the bid opening, which should be kept as part of the disposal record. The record should include at least:

- i. The name of all bidders whose bids were opened;
- ii. The presence or absence of a bid deposit, if one was required;
- iii. The total price of the bid, including the currency, except where the opening is of technical bids only;
- iv. The names of all staff and bidders’ representatives attending the opening.

All Bidders’ representatives attending the bid opening should be requested to sign the record, but the absence of any signature should not invalidate the record. The opened bids should immediately be taken to a secure location, where they should be kept until the evaluation begins.

(q) Evaluation Committees – Public Tender Sale Method

The Accounting Officer shall appoint an evaluation committee to evaluate the bids. The evaluation committee shall have not less than three members. Members of the opening committee may be appointed as members of the evaluation committee. A member of the procurement planning committee may be appointed as a member of the disposal committee but not a member of the evaluation committee. The Evaluation Committee should be responsible for the evaluation of bids and the preparation of evaluation report and recommendations for contract awards by the procurement

planning committee. The number and level of members of the Evaluation Committee should depend on the value and complexity of the disposal requirement, but should in all cases be a minimum of three members. The Evaluation Committee should include skills, knowledge and experience relevant to the disposal requirement, which may include:

- i. Technical skills relevant to the disposal requirement;
- ii. End user representation;
- iii. Procurement and contracting skills;
- iv. Financial management or analysis skills; or
- v. Legal expertise.

(r) Assessing Responsiveness of Bids – Public Tender Sale Method

The Procuring Entity's determination of a bid's responsiveness should be based on the contents of the bid itself, subject to any clarifications received.

A substantially responsive bid is one which conforms to all the instructions, requirements, terms and conditions of the bidding documents, without material deviation, reservation or omission.

A material deviation, reservation, or omission is one that:

- i. Affects in any substantial way the disposal of the stores, assets or equipment specified in the bidding documents; or
- ii. Would limit in any substantial way, inconsistent with the bidding documents, the Procuring Entity's rights or the bidder's obligations under any resulting Contract; or
- iii. If corrected would unfairly affect the competitive position of other bidders presenting substantially responsive and compliant bids.

Any bid which contains a material deviation, reservation or omission, and is therefore not substantially responsive, should be rejected and may not subsequently be made responsive by the bidder or the Procuring Entity. The classification of a deviation, reservation or omission as material or nonmaterial should be determined by the objectives and requirements of the individual disposal requirement, as stated in the bidding document, and should take into account the impact on key factors, such as cost, risk, time and quality. Material deviations, reservations or omissions may typically include:

- i. Unacceptable time schedules, where it is stated in the bidding document that time is of the essence;
- ii. Unacceptable alternative technical details for disposing of stores, assets or equipment; or
- iii. Unacceptable counter-proposals with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damage contracting or warranty.

The classification of deviations, reservations and omissions as material or nonmaterial should be consistently applied to all bids.

(s) Correction of Non-Conformities, Errors and Omissions

Where a bid is substantially responsive, the Procuring Entity may waive, clarify or correct any non-conformity, error or omission, which does not constitute a material deviation. The non-conformity, error or omission should be quantified in monetary terms to the extent possible and taken into account in the financial evaluation and comparison of bids. Bidders should be notified of any financial adjustments made and

requested, in writing, to agree to the correction. Any Bidder who does not accept the adjustment shall be disqualified but shall not forfeit the bid deposit.

(t) Clarification of Bids – Public Tender Sale Method

The Procuring Entity may seek clarification from a bidder of its bid. The request and the clarification should only be in writing. The request for clarification should not seek and the bidder should not be permitted to:

- i. Amend its bid price, except to accept the financial adjustment;
- ii. Change the substance of the bid; or
- iii. Substantially alter anything which is a deciding factor in the evaluation.

Any clarification received, which is not in response to a request from the Procuring Entity, should not be taken into account. The failure of a bidder to reply to a request for clarification may result in the rejection of its bid.

(u) Preliminary Examination – Public Tender Sale Method

The Evaluation Committee should conduct a preliminary examination to determine whether bids are complete and are responsive to the basic instructions and requirements of the bidding document. The preliminary examination should determine whether:

- i. The bid has been submitted in the correct format;
- ii. Any required bid security has been submitted, in the correct form and amount and valid for at least the period required;
- iii. The bid has been submitted without material reservations or deviations from the terms and conditions of the bidding document;
- iv. The bid has been correctly signed and authorized;
- v. The correct number of copies of the bid have been submitted;
- vi. The bid is valid for at least the period required;
- vii. All key documents and information have been submitted; and
- viii. The bid meets any other key requirements of the bidding document.

Any deviations, which are considered to be material deviations, should result in rejection of the bid and such bids should not be subject to technical evaluation. Deviations which are considered to be non-material should not result in rejection of the bid. The preliminary examination should also determine whether Bidders are eligible, where this has not been determined prior to inviting bids.

(v) Technical Evaluation – Public Tender Sale Method

The Evaluation Committee should conduct a technical evaluation by comparing each bid to the technical requirements of the disposal in the bidding document where applying, to determine whether the bids are substantially responsive.

The technical evaluation may determine whether bids are, or are not, substantially responsive to the technical standard defined in the bidding document and should not be used to assess the relative quality of bids or to award points in any way. The factors taken into account should be those indicated in the bidding document only and may include:

- i. Conformity to specifications, standards, without material deviation or reservation;
- ii. Satisfactory understanding of a disposal requirement, as demonstrated by any methodology or design; or

- iii. Suitable staffing or arrangements for supervision or management of the disposal.

The evaluation should not take into account any requirements which were not included in the Bidding Document. Any material deviations should result in rejection of the bid and such bids should not be subject to financial evaluation and comparison. Non-material deviations may be corrected. Where technical evaluation is not necessary it shall be skipped.

(w) Alternative Bids – Public Tender Sale Method

Alternative bids should not be permitted, except where specifically indicated in the bidding document. This has the meaning that a bidder shall only be allowed to quote only on price for each item or lot.

(x) Financial Evaluation and Comparison – Public Tender Sale Method

The Evaluation Committee should conduct a financial evaluation and comparison to determine the evaluated price of each bid and determine the highest evaluated bid, which is substantially responsive to the requirements of the bidding document. The evaluated price for each bid should be determined by:

- i. Taking the bid price, as read out at the bid opening;
- ii. Making adjustments for any non-material non-conformity, error or omission;
- iii. Applying any additional evaluation criteria, through an increase or decrease to the bid price;
- iv. Converting all bids to a single currency, using the currency and the source and date of exchange rate indicated in the bidding document; and
- v. Bids should be compared by ranking them according to their evaluated price and determining the bid with the highest evaluated price.

(y) Post-qualification – Public Tender Sale Method

Where so indicated in the bidding documents, the Procuring Entity may conduct a post-qualification of the bidder who submitted the highest evaluated responsive bid, to determine whether the bidder is qualified to perform the contract effectively. The criteria for qualification should be as set out in the bidding document.

Where a bidder is determined not to be qualified, the bid should be rejected and a post-qualification conducted on the bidder who submitted the next highest evaluated responsive bid. Where a pre-qualification has been conducted, the Procuring Entity may verify the information submitted by the bidder who submitted the highest evaluated responsive bid. Where the bidder no longer meets the qualification criteria, the bidder should be rejected and the qualifications of the next bidder verified.

(z) Evaluation Reports and Recommendations

The Evaluation Committee should prepare an evaluation report for submission to the Tenders' Board. The evaluation report should include:

- i. A summary of the bids received and opened;
- ii. The results of the preliminary examination;
- iii. The results of the technical evaluation;
- iv. Reasons why bids were declared non responsive;

- v. Details of any non-material deviations, which were accepted and the way in which they were quantified and taken into account in the financial evaluation;
- vi. The evaluated price of each bid, showing any adjustments to the bid price and any conversion to a common currency;
- vii. The ranking of the bids, according to their total evaluated price;
- viii. A statement of the highest evaluated substantially responsive bid, for each lot where applicable;
- ix. A summary of the application of any conditional bonus and the highest evaluated combination of bids, where applicable;
- x. The results of any post-qualification; and
- xi. A recommendation to award the contract or contracts to the highest evaluated responsive bid or combination of bids, or other appropriate recommendation, such as the cancellation of the disposal process.

The evaluation report and recommendations shall be dated and signed by all the members of the evaluation committee. The evaluation shall be completed within 30 days from the date of bid opening.

(aa) Contract Award

The tenders' board shall award the contracts taking into consideration the evaluation report and the agenda prepared by the secretary of the tender committee. Notification of contract award shall be made to the winning bidders and at the same time the other bidders shall be informed that their bids were not successful. The bidders shall be given a period of fourteen days from the date of notification of award within which to pay and collect the items failure to which the contract award shall lapse.

In case of failure to pay for and collect the items awarded, the bidder shall forfeit the deposit and the items shall be offered to the next highest evaluated bidder. Proper records for all transactions shall be kept. The items sold shall be written off the records.

10.3.5 Negotiated Sale

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

10.3.6 Set Price or Public Offer at Authorized Variation

If other sales 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.

10.3.7 Other Methods:

Apart from outright sale, other methods of disposal applicable to public properties are:

- Lease and hire purchase
- Rental
- Licenses and Tenancies

10.3.8 Destruction, Dumping or Burying

(a) Use of this Method

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 Accounting Officer

A Procuring Entity that conducts disposal using the Destruction, Dumping or Burying Method should be cautious of the fact that there are other laws regarding safety and health to be observed in the disposal.

Destruction, Dumping or Burying method of disposal should be subject to the laws pertaining to public health and safety, environmental protection and instructions issued by the PPA on this method of disposal.

(b) Justification for the Destruction, Dumping or Burying

All destruction, dumping or burying should be justified by the disposal committee. When preparing the Disposal recommendations to the accounting officer or the head of the procuring entity. The justification should emanate from the need of the Procuring Entity to dispose of the stores, assets or equipment.

(c) Evaluation – Destruction, Dumping or Burying Method

The Disposal Committee should conduct an evaluation to determine if the Procuring Entity is capable of disposing of the stores, assets or equipment itself or if it should seek the assistance of an agent or contract a qualified entity.

The Disposal Committee should determine if the destruction, dumping or burying method presents a risk of noncompliance to public health and safety and environmental protection laws and standards.

(d) Financial Evaluation and Comparison – Destruction, Dumping or Burying Method

The Disposal Committee should conduct a financial evaluation and comparison to determine if the destruction, dumping or burying method is most economical method and efficient use of public funds. An evaluation of the costs and benefits should be performed to assess:

- i. Transactions costs;
- ii. costs of destruction, dumping or burying, including costs of contracting out the supervision, management and / or execution;
- iii. benefits to the receiving Procuring Entity;
- iv. potential disruption of public service;
- v. other costs such as health and environmental costs; and
- vi. any other considerations that may inform the decision on Disposal

(e) Recourse to a Third Party

The Procuring Entity may chose, upon approval of the Disposal Committee, to contract out studies, supervision, management or execution of the disposal.

In any case of contracting out, the Public Procurement Law 2015 and relevant Regulations of the PPA should be adhered to.

(f) Evaluation Reports and Recommendations

The Disposal Committee should prepare an evaluation report for submission to the accounting officer or head of procuring entity. The evaluation report should include:

- i. a summary of the economic and financial evaluations and comparisons and their parameters;

- ii. the results of the evaluation;
- iii. a recommendation on the destruction, dumping or burying or other disposal method to be used; and
- iv. the financial estimation, including estimated costs of contracting out.

The evaluation report and recommendations should be approved by the appropriate award authority, prior to proceeding with disposal,

(g) Documents required for the Destruction, Dumping, and Burying Disposal Cycle

As a matter of principle, all Procuring Entities should prepare a Disposal Plan in accordance with the Public Procurement Law and Regulations of the PPA. Procuring Entities should document the initiation of the disposal requirement with an Initiation memo. Procuring Entities Disposal Committee Minutes should be prepared.

After the execution of the disposal, a disposal/destruction certificate shall be issued and signed by those conducting the disposal.

10.4 Documentation of Disposal Procedures

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.

All Procuring Entities should document the Disposal Cycle.

For each Disposal Method, the Procuring Entities should document:

- i. The initiation of a disposal requirement clearly establishing the need for disposing of the stores, assets or equipment, the justification of the disposal method and the reference to the Disposal Plan;
- ii. The Selection process to account transparently on the compliance to the disposal procedures set forth in the Regulations, notably but not limited to the choice and the enforcement of the appropriate disposal method for selecting the winning candidate securing the best value for money;
- iii. The Contract Award to establish without ambiguity the commitments taken by the Contractor/Buyer and the Procuring Entity to secure efficient and effective disposal;
- iv. The Certification of Completion of the Disposal to ensure the contractor has discharged of its obligations;
- v. The Receipt of Monies as provided in the disposal documents.

10.5 Approval of Property Disposal

Public funded acquisitions often carry stipulations regarding disposal. These stipulations should be reviewed prior to disposing of equipment that was originally purchased with public funds.

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