



**USAID**  
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**State2State**

# PUBLIC PROCUREMENT CAPACITY BUILDING MANUAL

This document was produced for the United States Agency for International Development. It was prepared by **Centre for Social Justice Limited by Guarantee**, under subcontract to DAI for the State Accountability, Transparency, and Effectiveness Activity, Contract Number 72062020C00004.

## DISCLAIMER

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First Published in September 2021

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## ABBREVIATIONS

BPP	Bureau of Public Procurement
CAC	Corporate Affairs Commission
CBN	Central Bank of Nigeria
CPI	Corruption Perception Index
CSOs	Civil Society Organizations
DG	Director General
EITI	Extractive Industries Transparency Initiative
EOI	Expression of Interest
ESC	Economic, Social and Cultural
FOIA	Freedom of Information Act
FRA	Fiscal Responsibility Act 2007
ICB	International Competitive Bidding
MDAs	Ministries, Departments and Agencies of Government
NAP	National Action Plan
NCB	National Competitive Bidding
NEITI	Nigeria Extractive Industries Transparency Initiative
NGOs	Non-governmental Organizations
NOCOPO	Nigerian Open Contracting Portal
NRC	Natural Resource Charter
OBI	Open Budget Initiative
OCB	Open Competitive Bidding
OCDS	Open Contracting Data Standards
OGP	Open Government Partnership
PE	Procuring Entity
PFM	Public Finance Management
PP	Public Procurement
PPA	Public Procurement Act
RfP	Request for Proposal
RfQ	Request for Quotation
TCC	Tax Clearance Certificate
TOR	Terms of Reference
VAT	Value Added Tax
VFM	Value for Money Achieved



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# **PART ONE**

## **INTRODUCTION**

### **1.1 Definitions**

Public procurement can be viewed as a process through which a government contracts with contractors, suppliers, consultants, etc., to obtain goods, services and construction required to fulfill its objectives in the most timely and cost effective manner. It imports the supply chain management concept as a process whereby the government meets its needs for goods, construction and services in a way that achieves value for money on a whole-life cycle basis in terms of generating benefits not only to the government department involved but also to the society and economy as a whole whilst minimizing damage to the environment.

Wikipedia, the free encyclopedia defines procurement as the acquisition of goods and or services at the best possible total cost of ownership, in the right quality and quantity, at the right time, in the right place and from the right source for the direct benefit or use of corporations, individuals, or even governments, generally via a contract.

### **1.2 An Integral Part of the Budgeting Process**

It is an integral part of the budgeting process for the realization of governmental policies and objectives. Governments all over the world use public procurement policy and implementation mechanisms to address a number of issues including budget implementation, service delivery, social, economic, environmental, human rights and developmental concerns. It can be stated as a basic aphorism that the level of economic growth and development in any society is directly related and proportional to the maturity of its procurement policy and how the policy responds to the challenges facing the society.

### **1.3 Mischief that Leads to Procurement Reforms**

- On the output and outcome level, we had lack of value for money - economy, efficiency and effectiveness of public procurements were poor.
- Inputs were essentially more than outputs
- Lack of fitness of purpose in procurement

- Competition was lacking and a lot of discretion without accountability was bestowed on officials
- Oversight, policy reviews, popular participation and transparency mechanisms were lacking.
- Procurement was an all comers' affair as technical and financial qualifications were hardly applied.
- Corruption was the order of the day.
- Laws and financial regulations were routinely violated.
- Government was not realizing policy targets.
- Budgets were hardly properly implemented
- Our social indicators were/are among the worst in the whole world including sub-Saharan Africa.
- No correlation between wealth, hard work, innovation and contribution to society.
- Government was seen as the easiest source of wealth through inordinate contracting.
- Poverty was reinforced through poor budget implementation and grand corruption.
- Government was not accountable to Nigerians and bad governance was mainstreamed as the order of the day.

#### **1.4 Why We Must Start and Continue Procurement Reforms**

- To uphold the supremacy of the constitution - s.14 (2) (b) to wit; that the security and welfare of the people is the primary purpose of government.
- Enhancing democracy and development which are two sides of the same coin - improving our social indicators and paving the way for the realization of human rights and fundamental freedoms particularly economic, social and cultural (ESC) rights.
- To fight corruption to a standstill - the procurement system provides the greatest source of grand corruption and the new system is geared to stop this trend.

- Promote issue based politics-politicians would simply not be in politics for the sake of contracts but to promote issues for the good of the common will.
- To prevent the subversion of the legal system- financial laws and regulations will be respected in a reformed procurement environment. And as daylight follows darkness, it ensures that punishment follows a procurement crime.
- Affirm societal ethics that links the cardinal virtues of honesty, patience and hard work coupled with innovation and real contributions to society as the basis of financial success.
- Promote competition which brings out the best in the human spirit including bidders and contractors.
- Ensuring openness, accountability and transparency – the observation aspects by professionals and civil society.
- Promote a rule-based system with checks and balances - policy framework formulation by National Council on Public Procurement and overseeing implementation by the Bureau of Public Procurement.

### **Box 1: Part One Exercise**

1. What is the full title to your State's Public Procurement Law and when was it enacted?
2. What are the benefits and positive results expected from the implementation of Public Procurement Law in your State?
3. What is the relationship between transparency and accountability in public procurement?

## **PART TWO**

### **POLICY AND REGULATORY AGENCIES AND SCOPE OF APPLICATION**

#### **2.1 The National Council on Public Procurement Under the PPA**

The Council is the policy arm of public procurement. Membership is as follows:

- Minister of Finance - Chairman
- Attorney-General of the Federation - Member
- Secretary to the Government of the Federation - Member
- Head of the Civil Service of the Federation - Member
- Economic Adviser to the President - Member
- Part-Time Members:
  - Chartered Institute of Purchasing and Supply Management of Nigeria.
  - Nigerian Bar Association.
  - Nigerian Association of Chambers of Commerce, Industry, Mines & Agriculture.
  - Nigerian Society of Engineers
  - Civil Society
  - The Media
- The Director-General of the Bureau of Public Procurement (BPP) who shall also serve as the Secretary to the Council.

#### **2.2 Functions of Council**

- Consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Act by procuring entities.
- Consider and approve policies on public procurement.
- Approve the appointment of Directors of the Bureau.
- Receive and consider for approval the audited accounts of the BPP.

- Approve changes in the procurement processes to adapt to improvements in modern technology.
- Give such other directives and perform such other functions as may be necessary to achieve the objectives of the Act.

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

The BPP is the regulatory and technical arm of public procurement. Objectives of the BPP: Regulatory functions are:

- Harmonization of existing government policies and practices on PP and ensuring probity, accountability and transparency in the procurement process.
- The establishment of pricing standards and benchmarks.
- Ensuring the application of fair, competitive, transparent, value for money standards and practices for the procurement and disposal of public assets and services.
- The attainment of transparency, competitiveness, cost effectiveness and professionalism in public sector procurement.

### **2.4 Functions of the BPP**

Functions of the BPP include:

- The formulation of the general policies and guidelines relating to Public Sector procurement for the approval of the Council.
- Publicize and explain the provisions of the Act.
- Subject to thresholds as may be set by the Council, certify procurement prior to the award of contract.
- Supervise the implementation of established procurement policies.
- Monitor the prices of tendered items and keep a national database of standard prices.
- Publish the details of major contracts in the Procurement Journal.
- Publish paper and electronic editions of the Procurement Journal and maintain an archival system for the Procurement Journal.
- Maintain a national database of the particulars and classification and categorization of Federal Contractors and Service Providers.

- Collate and maintain an archival system of all Federal Procurement Plans and Information.
- Undertake procurement research and surveys.
- Organize training and development programs for procurement professionals.
- Periodically review the socio-economic effects of the policies on procurement and advise the Council accordingly.
- Prepare and update standard bidding and contract documents.
- Prevent fraudulent and unfair procurement and where necessary, apply administrative sanctions.
- Review the procurement and award of contract procedure of every entity to which this act Applies
- Perform procurement audits and submit such reports to the National Assembly.
- Introduce, develop, update and maintain related database and technology.
- Establish a single internet portal - primary and definitive source of all government procurement information containing and displaying all public sector procurement information at all times to facilitate transparency.
- Coordinate relevant training programs to build institutional capacity.

## **2.5 Powers of the BPP**

Powers of the BPP include:

- To enforce the monetary and prior review thresholds approved by Council for the application of the provisions of the law.
- Issue certificate of no objection subject to the prior review thresholds and guidelines
- Stipulate to all procuring entities (PE) the procedures and documentation for a certificate no objection within the approved threshold.

- Inspect and review a procurement process to ensure compliance (where a reason exists)
- Determine whether there has been contravention of the Act.
- Debar suppliers or service providers who contravene the Act.
- Maintain data base of contractors and to the exclusion of PE, prescribe categorization and classification for the companies in the register.
- Maintain a list of firms and persons that have been debarred from participating in public procurement and publish the list in the Procurement Journal.
- Call for information, documents, records and reports in respect of any PP where there is an allegation or proof of wrongdoing or violation of the law.
- Recommend to the Council:
  - ✓ The suspension of officers concerned with procurement or disposal proceedings in issue;
  - ✓ The discipline of Accounting officer of any procuring entity;
  - ✓ Temporary transfer of procuring and disposal functions of a PE to another entity or consultant;
  - ✓ Any other sanction that the Bureau may consider appropriate.
- Maintain list of debarred companies
- Call for information, reports or documents, books of account, plans, examine persons and parties in respect of any procurement proceedings whether or not wrong doing, breach, default, mismanagement and or collusion has been alleged, reported, or proved against a procuring entity or service provider
- Act upon and decide appeals over accounting officer's decision of complaints – S. 54
- Nullify the whole or any part of any procurement proceeding or contract award in contravention with this Act



- Ratify anything done or make a declaration consistent with provisions of the Act - S.53

Essentially, the BPP is the regulator while the Council formulates policy and prior review thresholds on the recommendation of the Bureau. BPP ensures policy implementation, participates in dispute resolution, issues certificates of no objection to contract award and generally ensure due process in government commerce.

## **2.6 Scope of Application of the PPA**

- The provisions of the PPA shall apply to all procurement of goods, works, and services carried out by the Federal government and all procurement entities.
- All entities that derive at least 35% of any sum to be used for procurement from the Federal budget; all federal MDAs, corporations, enterprises, commissions, councils, authorities - provided they utilize public funds. It also applies to the Central Bank of Nigeria and all FGN owned financial institutions, all federal tertiary and non-tertiary education and health institutions, national defense and national security agencies.
- The provisions of this Act shall not apply to the procurement of special goods, works and services involving national security unless the President's express approval has been first sought and obtained.
- But it is imperative to distinguish between pure security transactions and other routine procurements by institutions involved in national security.

### **Box 2: Part Two Exercises**

1. Summarize the functions and powers of the Bureau of Public Procurement in not more than seven lines.
2. Would you describe the Guidelines, Rules and Policies made by the Bureau of Public Procurement without a Council being in place as valid?

## PART THREE

### FUNDAMENTAL PRINCIPLES OF PUBLIC PROCUREMENT

#### 3.1 Key Procurement Principles

- Subject to the prior review thresholds as may from time to time be set by the BPP
- Procurement planning, availability of funds
- Open competitive bidding
- Transparency, timeliness and equitable
- Value for money and fitness of purpose
- Procedural compliance

#### 3.2 Value for Money and Open Competitive Bidding

##### 3.2.1 What is value for money?

*Economy:* The practice by MDAs of thrift and good Housekeeping, acquiring resources in appropriate quantity and quality at the lowest cost. A lack of economy would occur where there is overstaffing, or the acquisition and use of overpriced facilities. Essentially, it is about getting things done cheaply.

*Efficiency:* This ensures that maximum useful output is gained from the resources devoted to each activity of MDAs, or alternatively that only the minimum level of resources is devoted to achieving a given level of output. An operation could be said to have increased in efficiency if either lower costs were used to produce a given amount of output, or a given level of cost resulted in increased output. Inefficiency will be revealed by identifying the procurement of work with no useful purpose, or the accumulation of surplus materials that are not needed to support operations. It is about getting things done well.

*Effectiveness:* This ensures that the output from any given activity (or the impact that services have on the community) is achieving the desired results. To evaluate effectiveness, we need to establish that the desired goals (for instance, of the SDGs and the right to an adequate standard of living) have been achieved. A goal for an operating objective should be

defined as a concrete expression of a policy objective. It is about doing the right things.

3.2.2 Open Competitive Bidding (OCB): OCB is defined in the interpretative section of the Act to mean the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services. It is also further defined in section 24 (2) of the Act as follows:

*Any reference to open competitive bidding in this Act means the process by which a procuring entity based on previously defined criteria, effects public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods and works needed.*

Two provisions of the Independent Corrupt Practices and Other Related Offences Act should be considered as a guide to action: They are S.22 (3) and (4):

*(3) Any public officer who in the course of his official duties, inflates the price of any goods or services above the prevailing market price or professional standards shall be guilty of an offence under this Act and on conviction be liable to seven (7) years imprisonment and a fine of one million naira.*

*(4) Any public officer who in the discharge of his official duties awards or signs any contract, without budget provision, approval and cash backing, shall be guilty of an offence under this Act and on conviction be liable to three (3) years imprisonment and a fine of one hundred thousand naira”.*

These provisions should be read in conjunction with the Federal Financial Regulations and extant Treasury Circulars which are not in conflict with the Law.

- There shall be no disbursement of funds falling under set thresholds except accompanied by a Certificate of No Objection to award of contract
- BPP to prescribe regulations for the award of the certificate of no objection
- Procurements concluded without following the procedural no objection requirements are null and void.
- Criteria for evaluation of bids - as it was in the beginning, so shall it be to the end.

### **3.3 Qualifications of Bidders**

- A bidder may be a natural or artificial person
- Acting jointly implying joint and several liability
- Must possess: professional and technical qualification to carry out the particular procurement; financial capacity; equipment and relevant infrastructure; adequate personnel; legal capacity to enter into the contract; not be in receivership, insolvency or subject of winding up proceedings.
- Must also fulfill tax obligations, pensions and social security contributions; not have a director convicted of any offence related to fraud, financial impropriety, criminal misrepresentation or falsification of facts
- Verifying affidavit- all information are true and correct and no interest from staff of the PE, BPP, etc.

### **3.4 Grounds for Disqualification of a Bidder**

- Grounds for disqualification of a bidder include inducement to influence the course of procurement proceedings; failure of due care in performance of any PP within the last three years; insolvency of the company or its controllers; arrears of payment of taxes, pensions and social security obligations unless deferment has been obtained; sentencing for a crime in respect of procurement proceedings or to gain financial profit - bidder, its management or ownership.
- Failure to reveal dominating or subsidiary relationship with other parties to the proceedings.
- The PE to exclude the bids of such a person falling under the above criteria.

### **3.5 Communications and Records**

- Communications to be in writing and in English language.
- Maintenance of file and electronic copies of PRs for a period of ten years from date of award by PEs.

- Transmission of PRs to the BPP not later than 3 months after end of financial year showing relevant information on award - PE, contractors, date, value of award, details of proceedings
- Public access to PR at the cost of copying and certification plus an administrative charge

### **3.6 Lowest Evaluated Responsive Bid**

- Contract to be awarded to the lowest evaluated responsive bid from the bidders responsive to bid the solicitation.
- Lowest evaluated responsive bid' is defined in the interpretative section of the Act as the lowest price bid amongst the bids that meets all the technical requirements and standards as contained in the tender document.

### **3.7 Excessive Price and Overall Duty of Accounting Officer**

- The BPP may refuse to issue a certificate on the ground of excessive price. It can order a cancellation and re-tender.
- Excessive price” has been defined by the Act to mean a monetary value proposed by a bidder for any procurement which is in the estimation of the Bureau unreasonable and injudicious after consideration of the actual value of the item in question plus all reasonable imputations of cost and profit.
- Overall duty of accounting officer to ensure respect for the law - not removing the responsibility of any officer to whom power has been delegated.

### **3.8 General**

- Conflict of interests - persons engaged in preparation of proceedings not to bid or collaborate with bidders in preparing bids.
- Non imposition of subcontractor as a condition for participating in PP.
- Arbitration as the primary form of dispute resolution in procurement contracts.
- Procurement prices to be in naira or where stated in a foreign currency to be converted into naira at the CBN rate on the day of bid opening.

### 3.9 Warranties

- All procurement contracts to contain appropriate warranties - durability of goods, exercise of requisite skill in service provision and use of genuine materials and inputs in execution. A warranty is defined as an assurance by one party to the agreement (in this context, the contractor or service provider) of the existence of facts upon which the other party may rely. It is intended precisely to relieve the promisee (procuring entity) of any duty to ascertain facts for itself and amounts to a promise by the contractor to indemnify the promisee (procuring entity) for any loss if the fact warranted proves untrue.
- In law, warranties can be express or implied and takes care of the challenge of the fitness of the procured goods and services for the purpose it was meant. It can also be full or limited. In a full warranty, the warrantor must remedy the defect within a reasonable time and without charge to the procuring entity after a notice of defect or malfunction.

#### **Box 3: Part 3 Exercises**

1. List the preliminary documents that a limited liability company must produce to be qualified to engage in procurement proceedings.
2. List the conditions that would lead to the disqualification of a bidder.
3. List three fundamental principles of public procurement.
4. Provide a detailed description of lowest evaluated responsive bid.
5. Describe a procurement in the Ministry of Health that meets the test of value for money.

## **PART FOUR**

### **ORGANISATION OF PROCUREMENT**

#### **4.1 Approving Authority**

The approving authority in a ministry or extra ministerial entity is the Ministerial Tenders Board while in an extra ministerial department including the National Assembly, it is the Parastatal Tenders Board. For the Judiciary, it is the Judicial Bodies Tenders Board or Courts Tenders Board. In the case of procurements exceeding the Ministerial Tender's Board level, the approving authority is the Federal Executive Council for the executive, National Assembly's Tenders Board for the legislature and National Judicial Council Tender's Board for the judiciary.

The Tenders Board generally consists of the permanent secretary or DG as chairperson, other heads of department within the ministry or parastatal. The procuring officer of the PE is usually the non-member secretary or if there is no PO, a senior officer not below the rank of assistant director may serve as secretary.

#### **4.2 Procurement Planning Committee**

To be established by each MDA is a Procurement Planning Committee to comprise: Accounting Officer or his representative as chair; Representatives of Procurement Unit of MDA; Unit directly in requirement of procurement; Financial Unit of procurement entity; Planning, Research & Statistics Unit of the PE; Technical personnel with expertise in the subject matter and the Legal Unit.

#### **4.3 Role of Accounting Officer**

Note the pre-eminence of the Accounting Officer in public procurement. He is deemed to be in full control of the human, material and financial resources of the ministry or extra ministerial department. His duties include:

*a) ensuring that proper budgetary and accounting systems are established and maintained to enhance internal control, accountability and transparency.*

*b) ensuring that the essential management control tools are put in place to minimize waste and fraud.*

c) *rendering monthly and other financial accounting returns and transcripts to the Accountant General of the Federation as required by the Financial Regulations.*

d) *ensuring the safety and proper maintenance of all government assets under his care.*

f) *ensuring accurate collection and accounting for all public moneys received and expended.*

g) *ensuring prudence in the expenditure of public funds.*

#### **4.4 Gamut of Procurement Planning and Implementation**

Procurement Planning includes needs assessment, identification of goods, works and services required, cost implications of procurement based on market and statistical surveys, aggregating within and between PEs whenever possible to obtain economy of scale, integrating procurement expenditure in the budget.

Prescription of procurement methodology and activating the procurement planning committee

PE in implementing PP shall advertise and solicit for bids; invite observers, receive, evaluate and select winning bids, obtain approvals before award, debrief losers on request, resolve complaints and disputes if any, obtain and confirm validity of performance guarantees, obtain a certificate of No Objection to Contract Award, execute all contract agreement, etc.

#### **Box 4: Part Four Exercises**

1. Describe the key steps and processes in procurement planning
2. Who is the accounting officer and what is his role in public procurement?
3. Who are the members of the Procurement Planning Committee?



## **PART FIVE**

### **PROCUREMENT METHOD FOR GOODS AND SERVICES**

#### **5.1 Open Competitive Bidding**

Open competitive bidding as already defined should be the norm except otherwise provided in the law.

Every invitation to an open competitive bid shall:

- (i) in the case of goods and works under International Competitive Bidding (ICB), the invitation for bids shall be advertised in at least two national newspapers and one relevant internationally recognized publication, any official websites of the procuring entity and the Bureau as well as the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works.
- (ii) in the case of goods and works valued under National Competitive Bidding (NCB), the invitation for bids shall be advertised on the notice board of the procuring entity, any official websites of the procuring entity, at least two national newspapers, and in the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works.

At the procurement planning stage, a decision would have been made whether to proceed by NCB or ICB based on the relevant thresholds and the nature of the funding for the procurement because some international agencies insist on ICB for procurements in projects they fund. A decision on whether pre-qualification proceedings would be embarked upon would also be made at the planning stage.

#### **5.2 Prequalification Proceedings**

Pre-qualification proceedings are usually undertaken with a view to identifying qualified contractors and service providers prior to the submission of tenders, instead of wasting time going through a maze of technical documents from unqualified vendors. Pre-qualification is generally not for basic common goods, it is a procedure adopted for procuring complex civil works and turnkey projects. Pre-qualification is project specific and should not be done to qualify contractors and vendors for procurement to be done over a period of time.

Pre-qualification over a period of time has been stated to be unfair and negating the basic principles of competition since the moment a list is drawn up and approved by the procuring entity, it effectively excludes other members of the public from bidding for such jobs. At the federal level, only projects in excess of N300 million for works and N100 million for goods qualify for prequalification.

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

(2) Procuring entities shall supply a set of prequalification documents to each supplier, contractor or consultant that request them, and the price that a procuring entity may charge for the prequalification documents shall reflect only the cost of printing and provision to suppliers or contractors and consultants.

The prequalification document shall include;

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

If there is a time lag between the period of pre-qualification and the actual award of contract, the PE can request the bidder who has been pre-qualified to demonstrate its qualifications again. And the bidder will be under obligation to do so failing which it shall be disqualified.

### **5.3 Contents of Solicitation Documents in OCB**

In invitation for open competitive bid, the solicitation documents must state:

- The name and address of the PE; the nature, quantity, category and place of delivery of goods to be procured or the nature, category and location of the works to be procured; a statement of the language of bid submission; the deadline for delivery or performing the procurement; information about requirements to be met by suppliers and contractors;
- a statement on the application of domestic preferences if any; the instructions for obtaining the documents containing the specifications of the essential provisions of the procurement and the price if any, for these documents; the place and deadline for the submission of bids; the place and date for the opening of bids; form and amount of bid security; etc.

### **5.4 Clarifications**

Requests for clarification can be entertained at the prequalification or at the bidding stage. It must be made within a reasonable time stipulated in the rules and the response would be sent (without identifying the requester) to all bidders who collected the tender documents. The PE may modify the tender documents before the deadline for submission of bids or have a pre-tender conference to clarify all issues raised by bidders and the PE shall extend the deadline for submission of bids by such length of time as would reasonably allow bidders to consider clarifications and addendums in preparing their bid. And the addendums, response to clarifications, pre-bid conference and extension of time notice shall be communicated to every bidder who obtained the tender documents.

### **5.5 Bid Security**

Where bid security is required (usually 2% of the bid price by way of a bank guarantee), it shall be stated in the solicitation documents. Bid security is defined in the interpretative section to mean a form of security assuring that the bidder shall not withdraw a bid within the period specified for acceptance

and shall execute a written contract within the period specified in the bid. It is required to demonstrate the seriousness of a bidder and to guarantee that the bidder shall not withdraw from the tender after the deadline for submission of bids.

## **5.6 Submission, Opening of Bids and Observers**

Bids are to be submitted and deposited in a tamper proof box and the PE shall issue a receipt showing the date and time of submission and bids received after the deadline for submission shall be rejected. Bids are to be opened immediately after the deadline for submission or soon thereafter. Observers are to be invited-representatives of CSOs working in budget transparency and anti-corruption and professionals with sector expertise in the particular procurement.

The PE is to ensure that a register is taken of the names and addresses of all those present at the bid opening and the organizations they represent which is recorded by the Secretary of the Tenders Board; and

Call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that these details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening.

## **5.7 Examination of Bids**

The next stage after bid opening is the examination of bids. The examination has the following objectives to wit; to determine that bids:

- meet the minimum eligibility requirement stipulated in the bidding documents;
- have been duly signed;
- are substantially responsive to the bidding documents; and
- are generally in order.

It is noteworthy that the PE can:

- (a) reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders; and
- (b) cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

However, the discretion to reject all bids or cancel the procurement proceeding must not be exercised capriciously, whimsically or maliciously. It is a serious decision that calls for the highest level of responsibility in the public interest. I dare say, it must be exercised judicially and judiciously.

This discretion to reject all bids should be exercised only in exceptional circumstances where there is lack of effective competition, or no substantially responsive bid is received; inadequate competition; all bids received had unreasonably high prices beyond the budget; bidding documents were found to be defective or the requirements of the procuring entity has changed.

During examination, the following shall not be sought, offered or permitted.

This is applicable to the bidder and the PE:

- changes in prices;
- changes of substance in a bid; and
- changes to make an unresponsive bid responsive.
- But the PE may correct purely arithmetical errors that are discovered during the examination of tenders.

The correction of arithmetical errors should be done as follows:

- *Where there is a discrepancy between the amounts in figures and the amount in words, the amount in words will prevail;*
- *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, there is an obviously gross mis-placement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected;*
- *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 on the bidder.*
- Value Added Tax (VAT), contingencies and provisional sum amounts are usually excluded from the bid price.

In examining bids, two types of deviations are noticeable - minor and major deviations.

A minor deviation is one that has no effect on the validity of the bid; has no effect in a substantial way to the scope, quality, functionality, performance of the procurement; has no effect on the price, quality or delivery of the goods or services offered; will not in any substantial manner affect the procuring entity's rights or bidder's obligations;

Has such effect that the difference between the commercial terms or technical specifications in the bidding documents is such that it can be given a monetary value; or has not been specified in the bidding documents as a ground for rejection of bids, provided that the total amount of adjustments for such deviations does not exceed a previously determined percentage of the bid price.

Instances of minor deviations:

- the use of codes;
- the difference in standards;
- the difference in materials;
- alternative design;
- alternative workmanship;
- modified liquidated damages;
- omission in minor items;
- discovery of arithmetical errors;
- (i) sub-contracting that is unclear and questionable;
- different methods of construction:
- difference in final delivery date;
- difference in delivery schedule;
- completion period where these are not of essence;
- non-compliance with some technical local regulation;
- payment terms; and
- any other condition that has little impact on the bid.

A major deviation will include one which:

- has effect on the validity of the bid; has been specified in the bidding documents as a ground for the rejection of a bid; has effect in a substantial way on the scope, quality, functionality and performance of the procurement; limits in a substantial way the procuring entity's rights or bidders obligations; is a deviation from the terms or the technical specifications in the bidding documents whose effect on the bid price is substantial but cannot be given a monetary value.

Instances of major deviations:

- with respect to clauses in an offer;
- unacceptable sub-contracting.
- unacceptable time schedule if time is of essence,
- unacceptable alternative design, and
- unacceptable price adjustment. (b) with respect to the status of the bidder:
  - the fact that he is ineligible or not pre-qualified, and
  - the fact that he is uninvited;
- with respect to bid documents an unsigned bid:
- with respect to time, date and location for submission:
  - any bid received after the date and time for submission stipulated in the solicitation document,
  - any bid submitted at the wrong location.
- with respect to the status of the bidder:
  - the fact that he is ineligible or not pre-qualified, and

In cases of major deviations, bids shall not be considered but rejected.

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

Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected.

In cases where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply:

- (a) where the impact on the costs is major, it shall be regarded as a major deviation; and
- (b) where the impact on the costs is minor, it shall be regarded as a minor deviation

## **5.8 Evaluation of Bids**

For the evaluation and comparison of bids that have been adjudged as valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.

The objective of bid evaluation shall be to determine and select the lowest evaluated responsive bid from bidders that have responded to the bid solicitation.

In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation, the Tenders Board shall, in particular, undertake the following processes as applicable;

- (a) checking of deviations;
- (b) checking of omissions with quantification of same;
- (c) application of discounts, as applicable;
- (d) clarification with bidders of questionable minor deviations;
- (e) quantification in monetary terms of such questionable deviations;
- (f) conversion to common currency;
- (g) calculation and tabulation of bid amount with domestic preference where applicable;
- (h) determination of the lowest calculated prices in order of rank;
- (i) post-qualification of bidders, where applicable;
- (j) listing of rejection of bids, where applicable;
- (k) decision of rejection of all bids where justifiable;
- (l) recommendation for award; and
- (m) writing up of the bid evaluation report.



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

### **5.9 Payments to Contractors**

Mobilization Fees is not compulsory. Maximum of 30% of Contract Sum (for local contractors) allowed on provision of unconditional Bank Guarantee or Insurance Bond issues by an institution acceptable to the PE until the mobilization is fully amortized or recovered. 10% Performance Bond to be provided by successful bidders for the award of contract or the equivalent of mobilization fees whichever is higher.

Delay in payment after 60 days of submission of invoice, valuation certification or confirmation or authentication by the Ministry should attract interest at a rate, usually at CBN rate.

#### **Box 5: Part Five Exercises**

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"><li>1. What is Open Competitive Bidding and list the key steps in OCB?</li><li>2. Name the contents of solicitation documents in OCB?</li><li>3. What is the rationale for prequalification proceedings?</li><li>4. What is bid security?</li><li>5. Who is a Procurement Observer and what role is he expected to play at the bid opening event?</li><li>6. Describe minor and major deviations in examination of bids</li></ol> |
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## PART SIX

### SPECIAL AND RESTRICTED METHODS OF PROCUREMENT

These are used as exceptions to the general rule of open competitive bidding (OCB) and that is the reason informing their being special and restricted. They include two stage tendering, restricted tendering, request for quotations, emergency procurement and direct procurement. Thus, any attempt to use these special methods in instances where OCB should have been used will be a violation of extant laws and regulations.

#### 6.1 Two Stage Tendering

Two stage tendering can be used:

(a) where it is not feasible for the procuring entity to formulate detailed specifications for the goods or works or in the case of services, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs.

(b) where the character of the goods or works are subject to rapid technological advances; where the procuring entity seeks to enter into a contract for research, experiment, study or development, except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research and development costs, where the procuring entity applies this Act to procurement concerned with national security and determines that the selected method is the most appropriate method of procurement; or

(c) where the tender proceedings have been utilized but were not successful or the tenders were rejected by the procuring entity under an open competitive bid procedure and the procuring entity considers that engaging in new tendering proceedings will not result in a procurement contract.

(d) The provisions of the law as regards the process for open competitive bidding shall apply to two-stage tendering proceedings except to the extent that those provisions vary from specific legal provisions in the Law.

*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.*

The invitation documents:

- (a) shall call upon suppliers or contractors to submit, in the first stage of two-stage tendering proceedings, initial tenders which contain their proposals without a tender price; and
- (b) may solicit proposals that relate to technical, quality or other characteristics of the goods, works, or services as well as contractual terms and conditions of supply and may stipulate 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 tender has not been rejected under an open competitive bidding procedure with respect to any aspect of its tender.

In the second stage of the two tender proceedings, the procuring entity:

- (a) shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications;
- (b) may, in formulating the specifications, delete or modify any aspect of the technical or quality characteristics of the goods, works or services to be procured together with any criterion originally set out in these documents, evaluate and compare tenders and ascertain the successful tender;
- (c) may add new characteristics or criteria that conform with this Act;
- (d) shall communicate to suppliers or contractors in the invitation to submit firm tenders, any deletion, modification or addition; and

(e) may permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering proceedings.

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

## **6.2 Restricted Tendering**

For reasons of economy and efficiency, a PE may engage in procurement by means of restricted tendering if:

(1)

(a) the goods, works or services are available only from a limited number of suppliers or contractors;

(b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured; or

(c) the procedure is used as an exception rather than norm.

(2) where a procuring entity engages in restricted tendering on the basis that:

(a) the goods, works and services are available only from a limited number of suppliers or contractors, it shall invite tenders from all the suppliers and contractors who can provide the goods, works or services; and

(b) the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services, it shall select in a non-discriminatory manner of the number of suppliers or contractors to ensure effective competition;

The provision of the Law regarding open competitive bidding procedure shall apply to the restricted tendering proceedings, except to the extent that those provisions are varied by the Law. Restricted tendering needs the express approval of the regulatory agency - the BPP.

## **6.3 Request for Quotation (RfQ)**

The regulatory agency sets the threshold for the value of goods and works that can use requests for quotations which is otherwise referred to as “shopping”. Request for quotations are generally used for small value, readily available off the shelf goods. Price and ability to meet required delivery requirements are usually the main selection consideration for shopping.

The PE may:

- *Publish a notice inviting applications for registration of suppliers; and after evaluating the past experience and other qualifications such as capacity of the applicant, by a committee consisting of not less than three members appointed by the Accounting Officer of the procuring entity, prepare a list comprising names of suppliers who are able to supply particular categories of goods and services such as stationery, electrical items, motor vehicle repairs, periodicals and publications.*
- *Publish a notice inviting applications for registration of suppliers; and after evaluating the past experience and other qualifications such as capacity of the applicant, by a committee consisting of not less than three members appointed by the Accounting Officer of the procuring entity, prepare a list comprising names of suppliers who are able to supply particular categories of goods and services such as stationery, electrical items, motor vehicle repairs, periodicals and publications.*
- *Remove any contractor or supplier who has not responded twice to an invitation to submit a quotation or performed unsatisfactorily under any contract previously awarded.*
- *The selection shall be based on comparison of price quotations obtained from several invited bidders appearing on the registry.*
- *When the appropriate authority is satisfied; in the case of supplies of goods, that sufficient number of reputed vendors are registered, quotations may be invited from those list.*
- *Requests for quotations shall be addressed to firms borne in a register of suppliers and shall indicate:*
  - *(i) The description and quantity of the goods; (ii) Time and place of delivery; and (iii) Warranties.*

Generally, quotations shall be obtained from at least 3 unrelated contractors or suppliers.

Each contractor or supplier from whom a quotation is requested shall:

- (a) be informed whether any factor 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; and
- (b) give only one quotation and shall not be allowed to change or vary the quotation.

No negotiation shall take place between a procuring entity and a contractor or supplier with respect to a quotation.

The procurement shall be awarded to the qualified contractor or supplier that gives the lowest priced responsive quotation.

RfQ does not need prior BPP approval.

#### **6.4 Direct Procurement**

APE may engage in Direct Procurement where:

(a) goods, works or 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 exist; or

(b) There is an urgent need for the goods, works or services and engaging in tender proceedings or any other method of procurement is impractical due to unforeseeable circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the procuring entity;

(c) owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods;

(d) a procuring entity which has procured goods, equipment, technology or services from a supplier or contractor, determines that;

(i) additional supplies need to be procured from that supplier or contractor because of standardization,

(ii) there is a 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 procurement entity;

(iii) the limited size of the proposed procurement in relation to the original procurement provides justification,

(iv) the reasonableness of the price and the unsuitability of alternatives to the goods or services in question merits the decision.

(e) the procuring entity seeks to enter into a contract with the supplier or contractor for research, experiment, study or development, except where the contract includes the production of goods in quantities to establish commercial viability or recover research and development costs; or

(f) the procuring entity applies this procurement method to concerns of national security, and determines that single-source procurement is the most appropriate method of procurement.

Essentially, it is a single source procurement that needs to be employed as an exception to the general rule when any of these conditions listed above are fulfilled. The record of procurement proceedings should justify the use of this particular procurement method. However, this procurement method should not be used to discourage competition. In procuring goods, works and services under open competitive bidding, care should be taken so as not to lay a foundation for future single source procurement.

When goods, equipment and technology are to be chosen, care must be taken to ensure that the ones chosen (if it meets other stipulated criteria) will be compatible and can be standardized with products from other companies and manufacturers. Once a product is chosen and other associated supplies can only work at optimum capacity with products of the same company, then the foundation for single source procurement is laid.

## **6.5 Emergency Procurement**

Emergency procurement could be carried out when:

- (a) the country is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or Act of God;
- (b) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
- (c) a public project may be seriously delayed for want of an item of a minor value.

In an emergency situation, a procuring entity may engage in direct contracting of goods, works and services.

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

Immediately after the cessation of the situation warranting any emergency procurement, the procuring entity shall file a detailed report thereof with the regulatory agency.

An emergency is defined by the Blacks' Law Dictionary, Centennial Edition at pages 522-523 as a sudden unexpected happening; an unforeseen occurrence or condition; perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; exigency, pressing necessity; it is an unforeseen combination of circumstances calling for immediate action without time for full deliberation. Emergency situations are very well known and can be identified by a reasonable person. Minor value is a monetary value which is not in excess of the monetary thresholds set for any approving authority by the regulatory agency.

### **Box 6: Part Six Exercises**

1. The President has just announced Nigeria's intention to be the first country to visit Jupiter (which has been unexplored by any country in the world). As a Special adviser to the Minister of Science and Technology who has been charged by the president to ensure the success of the trip, please present a detailed procurement methodology to the Honorable Minister so that he can advise the President.
2. The rain fell with heavy windstorm yesterday and blew off a good part of the roof of the Ministry of Water Resources. As a Procurement Specialist in the Ministry, please advise the Permanent Secretary on the procurement steps to be taken to fix the roof?
3. The Corona Virus Pandemic has just hit your state and over 5000 persons are hospitalized and 10 persons have so far died. The meeting of the State Executive Council resolved and mandated the Commissioner for Health to procure vaccines, consumable and equipment needed to tackle the pandemic. Please prescribe the procurement process for vaccines, face masks, medical masks, equipment and consumables.



## **PART SEVEN**

### **PROCUREMENT OF CONSULTANT (SERVICES)**

It differs a little from procurement of goods and construction but the basic principles of open competitive bidding runs through its various manifestations. They are mainly done through Expression of Interest (EOI) and Request for Proposal (RfP) to provide services for ascertained needs, and to provide service for unascertained needs. "Services" is defined as the rendering by a contractor or supplier of his time and effort and includes any object of procurement other than goods, works or construction.

#### **7.1 EOI for Ascertained Needs**

This is done through advertisement in 2 national dailies for EOI or applications to pre-qualify but if the value is low, the PE may dispense with adverts and proceed straight to request 3 consultants or not more than 10 consultants to make proposals for the provision of the service in a form 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 time frame for providing the service; and
- (v) the cost or fee for the service.

The procurement of consultancy services usually includes the following;

- preparation of terms of reference and cost estimate,
- determination of choice of selection method,
- advertisement for expression of interest,
- preparation of a shortlist of consultants on the basis of expressions of interest received,
- issue of request for proposals,
- evaluation of the technical proposals,
- public opening of the financial proposals,

- evaluation of the financial proposals,
- selection of best ranking proposal, negotiations and
- award of contract to selected firms.

## **7.2 RfP to Provide Services for Unascertained Needs**

A procuring entity wishing to procure services for its 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.

The procuring entity shall procure the services of consultants by soliciting for expressions of interest by publishing a notice to that effect in 2 national newspapers and the procurement journal.

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

- (a) the services are only available from no more than 3 consultants;
- (b) 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
- (c) it is in the interest of national defence and security or similar reason of confidentiality.

The contents of the RfP shall include:

- (a) the name and address of the procuring entity;
- (b) a requirement that the proposals are to be prepared in the English language;
- (c) the manner, place and deadline for the submission of proposals;
- (d) a statement to the effect that the procuring entity reserves the right to reject proposals;
- (e) the criteria and procedures for the evaluation of the qualifications of the consultants;

- (f) the requirements on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualifications;
- (g) 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;
- (h) whether the procuring entity is seeking proposals on various possible ways of meeting its needs;
- (i) a requirement that the proposal price is to be expressed in Nigerian currency;
- (j) 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;
- (k) 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;

All the procedures relating to clarifications, meeting of consultants, addendums and extra time as obtains in OCB applies to this method of procurement. In submission of proposals, technical proposals are opened first for evaluation while financial proposals shall remain sealed and kept in secure tamper proof bid box until they are opened publicly after evaluation of technical proposals.

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

The solicitation documents shall establish the criteria for evaluation and the relative weight to be accorded to each criterion and the manner in which they are to be applied in evaluation. Generally, they may include:

- (a) the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;
- (b) the effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the procuring entity;
- (c) the proposal price, including any ancillary or related cost;

(d) 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

(e) national defense and security considerations.

#### **7.4 General Selection Procedure**

Two available methods:

(a) the lowest evaluated price, or

(b) the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.

The PE may resort to an impartial panel of experts to make the selection. An indicative weighting of evaluation criteria for consultant services is as shown in below - **Indicative weighting of evaluation criteria for consultant services**

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

#### **7.5 Selection Procedure where Price is a Factor**

Where the PE elects to choose the successful proposal based on technical and price factors, it shall establish a weight with respect to quality and technical price factors of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals; and then;

The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold;

The procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of 14 working days after the decision has been taken by the procurement entity;

The name of the qualifying consultants, the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened;

The procuring entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.

The successful proposals shall be:

- (a) the proposals with the best combined evaluation in terms of the criteria established under earlier pages of this slides apart from price in the case of quality and cost-based selection;
- (b) the proposals with the lowest price in the case of least-cost selection; or
- (c) the highest ranked technical proposal within the budget.

The consultants with the winning proposal shall be invited for negotiations, which shall focus mainly on the technical proposals.

- *Using this method, quality and price factors are combined and weighted in varying proportions depending on the importance of 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, 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 mark set in the RfP will proceed to the financial evaluation. The required methodology shall be explained in the RfP.*

## **7.6 Selection Procedure where Price is not a Factor**

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

- (i) establish a weight with respect to quality and price of the proposals;
- (ii) invite for negotiation on the price of its proposal, the consultant that has attained the best rating in accordance with the above;
- (iii) inform the consultant that attained ratings above the weight that may be considered for negotiations if the negotiation with the consultant with the best rating do not result in a procurement contract; and
- (iv) inform the consultant with the best rating, that it is terminating the negotiation if it becomes apparent to the procuring entity that the negotiation with that consultant with the best rating will not result in a procurement contract.

The procuring entity shall, if negotiations with the consultant with the best rating fail, invite the consultant that obtained the second best rating, and if the negotiations with that consultant do not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals. The procuring entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.

### **Box 7: Part Seven Exercise**

Your Network of CSOs seeks to hire a reputable firm or individual to train our members of public procurement advocacy. The Network decided to use the principles of the PPA in the selection of the consultant. Please describe the steps to be taken to recruit the consultant.

## **PART EIGHT**

### **CODE OF CONDUCT AND OFFENCES**

#### **8.1 Code of Conduct**

- The conduct of all persons involved with public procurement, whether as official of the Bureau, a procuring entity, supplier, contractor or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness and equity.
- All officers of the Bureau, members of Tenders Boards and other persons that may come to act regarding the conduct of public procurements shall subscribe to an oath as approved by Council.
- All persons in whose hands public funds may be entrusted for whatever purpose should bear in mind that its utilization should be judicious.
- Where a transaction involves the disposal of assets, principles of honesty, accountability, transparency, fairness and equity shall continue to apply to the same extent as where it involves procurement.

These principles shall apply at all times, particularly when:

- (a) making requisition for or planning of procurements;
- (b) preparing solicitation documents ;
- (c) receiving offers in response to any form of solicitation towards a procurement or disposal;
- (d) evaluating and comparing offers confidentially and in complete neutrality ;
- (e) protecting the interest of all parties without fear or favor ; and
- (f) obviating all situations likely to render an officer vulnerable to embarrassment or undue influence.

All public officers shall handle public procurement and disposal of assets by:

(a) ensuring adequate time for preparing offers ;

(b) complying with this Act and all derivative regulations ; and

(c) receiving strict confidentiality until completion of a contract.

- All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationships with persons real or corporate who seek government commerce whether as a bidder, supplier, contractor or service provider by developing transparent, honest and professional relationships with such persons.

- Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall:

(a) divest himself of any interest or relationships which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this Act; and

(b) not engage or participate in any commercial transaction involving the federal government, its ministries, extra-ministerial departments, corporations where his capacity as public officer is likely to confer any unfair advantage - pecuniary or otherwise on him or any person directly related to him.

- Any person engaged in the public procurement and disposal of assets who has assumed or is about to assume, a financial or other business outside business relationship that might involve a conflict of interest, must immediately declare to the authorities any actual or potential interest.

- Such a declaration shall be given such consideration at the relevant level as is necessary so that, where it is seen that remedial action is taken, a conflict of interest is present.



A conflict of interest exists where a person:

- (a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to the affairs of government.
- (b) possesses a direct or indirect interest in or relationship with a bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or constructed to be, or make possible personal gain due to the person's ability to influence dealings;
- (c) entertains relationships which are unethical, rendering his attitude partial towards the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgements;
- (d) places by acts or omissions the government entity he represents or the Government in an equivocal; embarrassing or ethically questionable position;
- (e) entertains relations compromising the reputation and integrity of the government.
- (f) receives benefits by taking personal advantage of an opportunity that properly belongs to the ministry, department or agency of government he represents;
- (g) creates a source of personal revenue or advantage by using public property which comes into his hands either in the course of his work or otherwise; and
- (h) discloses confidential information being either the property of his MDA to a contractor, supplier, service provider or to unauthorized persons.

## **8.2 Offences and Punishment**

**58.—**(1) Any natural person not being a public officer who contravenes any provision of this Act commits an offence and is liable on conviction to a term of imprisonment not less than 5 calendar years but not exceeding 10 calendar years without an option of fine.

(2) Any offence in contravention of this Act shall be tried by the Federal High Court.

(3) Prosecution of offences under this Act shall be instituted in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such other officer of the Federal Ministry of Justice as he may authorize so to do, and in addition, without prejudice to the Constitution of the Federal Republic of Nigeria 1999, he may:

(a) after consultation with the Attorney-General of any state of the federation, authorize the Attorney-General or any other officer of the Ministry of Justice of that state; or

(b) if the relevant authority so requests, authorize any legal practitioner in Nigeria to undertake such prosecution directly or assist therein.

(4) The following shall also constitute offences under this Act:

(a) entering or attempting to enter into a collusive agreement, whether enforceable or not, with a supplier, contractor or consultant where the prices quoted in their respective tenders, proposals or quotations are or would be higher than would have been the case had there not been collusion between the persons concerned;

(b) conducting or attempting to conduct procurement fraud by means of fraudulent and corrupt acts, unlawful influence, undue interest, favor, agreement, bribery or corruption;

(c) directly, indirectly or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;

(d) splitting of tenders to enable the evasion of monetary thresholds set;

(e) bid-rigging;

(f) altering any procurement document with intent to influence the outcome of a tender proceeding;

(g) uttering or using fake documents or encouraging their use; and

(h) willful refusal to allow the Bureau or its officers to have access to any procurement records.

(5) Any person who while carrying out his duties as an officer of the Bureau, or any procuring entity who contravenes any provision of this Act commits an offence and is liable on conviction to a cumulative punishment of:

(a) a term of imprisonment of not less than 5 calendar years without any option of fine; and

(b) summary dismissal from government services.

(6) Any legal person that contravenes any provision of this Act commits an offence and is liable on conviction to a cumulative penalty of:

(a) debarment from all public procurements for a period not less than 5 calendar years; and

(b) a fine equivalent to 25% of the value of the procurement in issue.

(7) Where any legal person shall be convicted pursuant to subsection (4) of this Section, every director of the company as listed on its records at the Corporate Affairs Commission shall be guilty of an offence and is liable on conviction to a term of imprisonment not less than 3 calendar years but not exceeding 5 calendar years without an option of fine.

(8) An alternation pursuant to subsection 4(f) shall include:

(a) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening; and

(b) request for clarification in a manner not permitted under this Act.

(9) 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 Act.

(10) Bid-rigging pursuant to subsection 4(e) means an agreement between persons whereby:

(a) offers submitted have been pre-arranged between them; or

(b) their conduct has had the effect of directly or indirectly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs or loss of value to the national treasury.

(11) For the purposes of the presumption under Section 51 (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 total or partial.

(12) For the purposes of Section 59 (5) of this Section, it shall be sufficient to prove that a reasonable business person should have known that his action would result in his company or firm having an undue advantage over other bidders to the detriment of the national treasury

### **Box 8: Part Eight Exercise**

The Managing Director (MD) of ABC Works Ltd is a blood relative of the Permanent Secretary (PS) in the Ministry of Education and ABC is bidding for the construction of new basic education buildings in the State. The PS gave the MD the details and requirements of the procurement proceedings five weeks before it was advertised and encouraged him to start preparing early. The MD promised to complete the public water project in the village of the PS if the contract is eventually awarded to ABC. ABC is a reputable company and has been involved in so many works in the state. However, it forgot to present some legal and important documents in the submission of its bid. When this was discovered, the MD pleaded with the PS who assisted him to put the documents in the file after the closure period. ABC was part of a conglomerate and was controlled by ZCC incorporated which also put up a bid for the procurement but the fact of the controlling relationship between the two companies was not disclosed. ABC eventually won the contract and after execution, the MD appreciated the brotherly gesture of the PS with a new Lexus SUV and helped to complete the public water project in the MD's village. What are the issues emerging in this scenario?

## PART NINE

### PROCUREMENT MONITORING AND AUDIT DOCUMENTS

#### PUBLIC PROCUREMENT ACT 2007- OBSERVATION CHECKLIST

##### 1. Introduction

- a) Observer's Name:
- b) Observer's Organization:
- c) Observer's Address (include Telephone, Email and Fax):
- d) Ministry, Department or Agency Observed:
- e) Description of Procurement:
- f) Value of Procurement:
- g) Sources of Procurement Funding and their Respective Percentages:
- h) Name of Accounting Officer:

##### 2. Procurement Plan

- a) Was the procurement plan made available to you? Yes [ ] No [ ]
- b) Did the Procurement Plan:
  - i) contain a Needs Assessment and Evaluation? Yes [ ] No [ ]
  - ii) identify the goods, works or services required? Yes [ ] No [ ]
  - iii) contain cost implications arising from the result of market and statistical surveys? Yes [ ] No [ ]
  - iv) aggregate requirements where possible both within the procuring entity and between procuring entities Yes [ ] No [ ]
- c) Was the procurement contained in the annual budget? Yes [ ] No [ ]
- d) Who prepared the Procurement Plan? List the persons and their designations

### 3. Procurement Methodology

- a) Which procurement methodology was chosen?
- b) Reasons for choosing the methodology:
- c) Did the methodology comply with the prior review thresholds set by the Bureau? Yes [ ] No [ ]
- d) Is there evidence that tenders have been split to avoid thresholds set by the Bureau? Yes [ ] No [ ]

If the answer is in the affirmative, provide details

### 4. Advertisement

- a) Did the procuring entity advertise for bids or proposals? Yes [ ] No [ ] If the answer is in the affirmative, where was the advertisement placed?
  - i) Notice Board
  - ii) National Newspapers - Specify
  - iii) Procurement Journal
  - iv) Official websites
  - v) Relevant internationally recognized publication
  - vi) Others-specify
- b) How many weeks before the deadline for submission of bids was the bid advertised?
- c) Did the advert contain all necessary information for collection and submission of bids? Yes [ ] No [ ]
- d) Was there any complaint from bidders of non-provision of equal and simultaneous opportunity? Yes [ ] No [ ]  
If the answer is in the affirmative, please give details

## 5. Prequalification

- a) In prequalification proceedings, what documentation did the procuring entity issue to bidders?
- b) Was this document made available to you? Yes [ ] No [ ]
- c) Were there requests for clarifications/complaints? Yes [ ] No [ ]
- d) Did the procuring entity respond to the requests for clarification? Yes [ ] No [ ]
- e) Did the procuring entity communicate other bidders of its response to the request for clarification? Yes [ ] No [ ]

## 6. Bidding

- a) Nature of bidders - natural person or a company?
- b) If a company is bidding, does it have:
  - i) Corporate Affairs Commission's registration? Yes [ ] No [ ]
  - ii) financial capacity to execute the procurement? Yes [ ] No [ ]
  - iii) equipment and infrastructure to execute the procurement? Yes [ ] No [ ]
  - iv). the personnel required to executive the contract? Yes [ ] No [ ]
- c) Is the company in receivership, the subject of any form of insolvency or bankruptcy proceedings or the subject of winding up petition? Yes [ ] No [ ]  
If the answer is in the affirmative, please give details.
- d) Has the company or individual fulfilled its obligation to pay taxes, pensions and social security contributions? Yes [ ] No [ ]  
If the answer is in the negative, please give details
- e) Has the company any director or senior manager who has 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? Yes [ ] No [ ]  
If the answer is in the affirmative, please give details

- f) If a private company, is it controlled by persons who are subject to any bankruptcy proceedings, who have been declared bankrupt or made compromises with their creditors within the last two calendar years prior to the initiation of procurement proceedings? Yes  No   
If the answer is in the affirmative, please give details
- g) Has the bidder been sentenced for a crime committed in connection with a procurement proceeding or any other crime committed to gain financial profit? Yes  No   
If the answer is in the affirmative, please give details
- h) Did the bidder fail to submit a statement regarding dominating or subsidiary relationships with other parties to the procurement proceedings or persons acting for the procuring entity? Yes  No   
If the answer is in the affirmative, please give details
- i) What was the language of the procurement proceedings?
- j) Was every bid accompanied with an affidavit disclosing lack of pecuniary interest and confirming the contents of the bid as true and correct? Yes  No
- k) Were any bids excluded and what were the reasons for the exclusion?  
Yes  No
- l) Did you observe any conflict of interest, bribery, treating, or inappropriate conduct in the bidding? Yes  No   
If the answer is in the affirmative, provide details

## **7. Requests for Quotations**

- a) How many suppliers were asked to present quotations?
- b) Were there negotiations between the procuring entity and the contractor before the award of the contract?



## 8. Submission of Bids and Bid Security

- a) If bid security was required, did all bidders provide one?  
Yes  No
- b) Were the submitted bids placed in a secured tamper proof bid box?  
Yes  No
- c) Did the procuring entity issue receipts showing the date and time of submission of bid? Yes  No
- d) Were bids accepted after the closing date for bid submission?  
Yes  No

## 9. Bid Opening

Did the Bid Opening Formalities:

- a) Permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with? Yes  No
- b) Cause all the bids to be opened in public, in the presence of the bidders and their representatives and any interested member of the public? Yes  No
- c) Ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof? Yes  No
- d) Ensure that a register is taken of the names and addresses of all those present at the bid opening and the organizations they represent? Yes  No
- e) Call over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and ensure that these are recorded in the minutes of the bid opening?  
Yes  No

## 10. Examination of Bids

- a) Did all bids meet the minimum eligibility requirements stipulated in the bidding documents? Yes  No   
Give details if the answer is no

- b) Were bids
- i) duly signed Yes  No
  - ii) generally in order? Yes  No   
(If no, how many were not)
  - iii) substantially Responsive to the Bidding Documents?  
Yes  No
  - iv) if bids were rejected during examination, what were the reasons? Give details
- c) How were the following treated during bid examination?
- i) change in prices
  - ii) changes of substance in a bid
  - iii) changes to make an unresponsive bid responsive
  - iv) bids received after the date and time for the submission of bids stipulated in the solicitation documents
  - v) bids submitted at the wrong location
- d) Did any invalid bid move from the examination to the evaluation stage? Yes  No   
(Provide details where necessary)

## 11. Evaluation of Bids

- a) In evaluation of bids, did the procuring entity use any other criteria apart from the ones stipulated in the bid solicitation documents?  
Yes  No
- b) Did the evaluation
- i) check out omissions and quantify same? Yes  No  Not Applicable
  - ii) apply discounts, as applicable?  
Yes  No  Not Applicable

iii) clarify with bidders of questionable minor deviations?

Yes  No  Not Applicable

iv) quantify in monetary terms such questionable deviations?

Yes  No  Not Applicable

v) convert to common currency? Yes  No  Not Applicable

vi) calculate and tabulate bid amount with domestic preference where applicable? Yes  No  Not Applicable

vii) determine the lowest calculated prices in order of rank?

Yes  No  Not Applicable

viii) post qualification of bidders where applicable?

Yes  No  Not Applicable

## 12. Acceptance of Bids

a) For goods and works, was the successful bid the lowest cost bid from the bids responsive as to the bid solicitation? Yes  No

b) Were there grounds supported by the PPA to award the contract to another bidder who is not the lowest cost responsive bidder?

Yes  No

Provide explanations

c) For proposals, what were the criteria for their acceptance as the winner?

i) The responsive bid or the proposal with the best combined evaluation in terms of general criteria set with respect to technical and price factors in the case of quality and cost based selection.

Yes  No

ii) The responsive bid or proposal with the lowest price in the case of least cost selection Yes  No

iii) The responsive bid with the highest technical ranking within the budget. Yes  No

Provide explanations if any

### **13. Tenders Board**

List the names and designations of the members of the Tenders Board or technical evaluation committee of the Tenders Board that worked on the procurement

### **14. Certificate of “No Objection” to Contract Award**

Did the procuring entity obtain a certificate of “No Objection” to award of contract before awarding the contract? Yes [] No []

### **15. Margins of Preference**

- a) Was a margin of preference applied? Yes [] No [
  - i) if applied, is the procurement under international competitive bidding? Yes [] No []
- b) Did the solicitation documents indicate that domestic preferences will be applied and the information required to establish eligibility? Yes [] No []

### **16. Mobilization Fees**

If mobilization fees have been paid:

- a) At what percentage of contract value?
- b) Did the contractor provide an unconditional bank guarantee?

### **17. Administrative Review**

Timely response by the Accounting officer and Bureau to complaints by bidders?

- a) How many working days did it take the Accounting Officer to make a decision?
- b) How many working days did it take the Bureau to make a decision?  
(If applicable)

### **18. Conflict of Interest**

In your opinion, (give reasons for your opinion) did the public officers involved

(a) Possess an interest outside his official duties that materially influenced the outcome of the tender? Yes  No

(b) Possess a direct or indirect interest in or relationship with a bidder, supplier, contractor, or service provider that is inherently unethical or that may be implied or constructed to be, or make possible personal gain due to the person's ability to influence dealings?  
Yes  No

(c) Entertain relationships which are unethical, rendering his attitude partial towards the outsider for personal reasons or otherwise inhibits the impartiality of the person's judgments? Yes  No

(d) Place by acts or omissions the procuring entity he represents or the Government in an equivocal, embarrassing or ethically questionable position? Yes  No

(e) Entertain relationships compromising the reputation or integrity of the procuring entity he represents or the Government? Yes  No

(f) Receive benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or the Government? Yes  No

(g) Create a source of personal revenue or advantage by using public property which comes into his hands either in course of his work or otherwise? Yes  No

(h) Disclose confidential information being either the property of his procuring entity, the Government, a supplier, contractor or service provider to unauthorized persons in bid to influence bidding outcomes?  
Yes  No

## **19. Concluding Comments**

a) In your opinion was the public procurement

i) transparent?

ii) timely?

b) Did the public procurement promote

i) competition?

ii) value for money?

iii) fitness for purpose?

iv) generally in accordance with the provisions of the PPA?

## **20. Further Information**

Use extra sheets of paper for further comments and issues not covered by this Checklist but which you consider relevant to the achievements of the objectives of the PPA

**Signature Date**



**BUREAU OF PUBLIC PROCUREMENT**  
**PROCUREMENT AUDIT TEMPLATE**

**Ministry/Department/Agency:**

**Name of Reviewer (Firm/Individual):**

**Date:**

S/N	TITLE/HEADINGS	DESCRIPTION	REMARKS
<b>A</b>	<b>PROJECT PARTICULARS</b>		
1	Name of Contractor		
2	Project Title		
3	Project Number		
4	Project Location		
5	Contract Sum		
6	Project Appropriation (Year of Award)  (Other Years)		
7	(i) Date of Contract Award		
	(ii) Date of Execution of Contract (Signing of Agreement)		
8	Contract Period : (i) Original		
	(ii) Extension		
9	Actual Commencement Date		

S/N	TITLE/HEADINGS	DESCRIPTION	REMARKS
<b>B</b>	<b>PROCUREMENT PROCESS</b>		
<b>1</b>	<b>Procurement Planning</b>		
	(i) Does the Membership of Procurement Planning Committee have the correct composition as listed below?		
	(a) Accounting Officer/his representative as Chairman (Yes/No)		
	(b) representative of the following:		
	• the procurement unit of the procuring entity who shall be the Secretary (Yes/No)		
	• the unit directly in requirement of the procurement (Yes/No)		
	• the financial unit of the procuring entity (Yes/No)		
	• the planning, research and statistics unit of the procuring entity (Yes/No)		
	• technical personnel of the procuring entity with expertise in the subject matter for each particular procurement, and (Yes/No)		
	• the legal unit of the procuring entity (Yes/No)		
	(ii) Evidence of Procurement Plan submitted to BPP? (Yes/No)		
	(iii) Was Procurement Plan prepared with the BPP Procurement Plan software? (Yes/No)		
	(iv) Is the implementation of the procurement process in line with the Procurement Plan? (Yes/No)		
	(v) Evidence of Final Design and Drawings (Yes/No)		
	(vi) Evidence of BOQ/BEME prepared by Consultant/ In-House with detailed specifications (Yes/No)		



	(vii) Use of BPP Standard Bidding Document? (Yes/No)		
	(viii) Method of Procurement <ul style="list-style-type: none"> <li>• Open Competitive</li> <li>• Selective</li> <li>• Direct (as specified in the PPA, 2007)</li> <li>• Repeat Procurement</li> <li>• Emergency</li> </ul>		
	(ix) If Special and Restricted Tendering procedure was adopted: (a) Was BPP “No Objection” obtained? (Yes/No)  (b) Are the Contractors unrelated? (Yes/No)		
<b>2</b>	<b>Pre-Qualification/Expression of Interest Exercise</b>		
	(i) Was Prequalification/Expression of Interest carried out in line with the applicable threshold? *Goods (N100 million and above) *Works (N300 million and above) *Non-Consultancy Services (N100 million and above)		
	(ii) Evidence of Advertisement in at least two (2) national newspapers and Federal Tenders Journal? (Yes/No) List them		
	(iii) Explicit Instructions for Submission. Was specific date and time given for deadline for submission and the venue? (Yes/No)		
	(iv) Number of submissions received as verified from Evaluation Report and the Bid Return Register		
	(v) Number of Prequalified Contractors/ Suppliers or Shortlisted Consultants		
	(vi) Adequacy of period given for submission in line with the Act & Regulations? (Yes/No)		
	(vii) Was the Evaluation Criteria Subjective, i.e. against the guidelines given in the Standard Bidding Document? (Yes/No)		

	(viii) Were all the following Responsive Criteria included in the Evaluation Criteria amongst others?		
	• Tax Clearance Certificate (TCC) (Yes/No)		
	• Certificate of Registration with Corporate Affairs Corporation (CAC) (Yes/No)		
	• Letter of Compliance with Pensions Act from the National Pensions Commission (Yes/No)		
	• Evidence of Social Security Contributions (Yes/No)		
	(ix) Were the responsive criteria scored e.g. TCC, Pensions, Registration with CAC, etc.? (Yes/No)		
	(x) Was Registration with the Procuring Entity in contravention with the PPA, 2007 a condition for prequalification? (Yes/No)		
	(xi) Is the Prequalification Evaluation Report in line with the preset criteria		
	(xii) Are there companies prequalified that ought not to have been prequalified? (Yes/No). List them		
	(xiii) Are there companies that ought to have been prequalified that were not prequalified? (Yes/No). List them		
	(xiv) <b>Straight Financial Tender for:</b>  *Goods (Less than N100 million) *Works (Less than N300 million) *Non-Consultancy Services (Less than N100 million)		
	(xv) Was 3 Envelope System adopted (Yes/No)		
	(xvi) Was Technical and Financial Bids opened simultaneously? (Yes/No)		
<b>3</b>	<b>Bidding Exercise</b> (i) Project Tendering Period for:		

	(a) Goods and Works (less than six (6) weeks or more than six (6) weeks) Yes/No		
	(b) Consultancy Services (less than thirty (30) days or more than thirty (30) days) (Yes/No)		
	(ii) Was Bid Opening done immediately following the deadline as stipulated in Section 30(c) of PPA, 2007? (Yes/No)		
	(iii) Was the Bid Opening Return Sheet Properly filled and signed? (Yes/No)		
	(iv) Were the Bids of each firm counter-signed by other competing firms to prevent substitution and/or alteration of Bids after Bid Opening in line with BPP Regulations? (Yes/No)		
	(v) Were observers (Professional Associations and Civil Society Organizations) present? (Yes/No)	<b>List of Professional Associations in attendance</b>	<b>List of Civil Society Organizations in attendance</b>
	(vi) Number of Contractors that Bided as verified from Evaluation Report		
	(vii) Number of Bids returned as verified from Evaluation Report and the Bid Return Register		
	(viii) Financial Bid as Opened and Read recorded? (Yes/No) and as Corrected		
<b>S/No</b>	<b>CONTRACTOR</b>	<b>TENDER AS READ (N)</b>	<b>TENDER AS CORRECTED (N)</b>
1			
2			
3			

	(ix) Was Discount Offered? (Yes/No)		
	(x) Is the winning bid the lowest? (Yes/No). If No, give reasons		
	(xi) In-House Estimate		
	(xii) Bid Security in line with the RFP? (Yes/No)		
<b>4</b>	<b>Evaluation of Tenders</b>		
	(i) Straight Tender Exercise		
	(a) Was Evaluation properly carried out? (Yes/No)		
	(b) Is the winning bid the lowest? (Yes/No). If No, give reasons		
	(c) Award to the Least Responsive Evaluated Bidder? (Yes/No)		
	(ii) Prequalification + Financial Tender Exercise		
	(a) Was Evaluation properly carried out?		
	(b) Is the winning bid the lowest? (Yes/No). If No, give reasons		
	(c) Award to the Least Responsive Evaluated Bidder? (Yes/No)		
	(iii) Consultancy Services		
	(a) Was combined Evaluation properly carried out? (Yes/No)		
	(b) Was Award to the Least Responsive Evaluated Bidder? (Yes/No)		
	Method of Evaluation (e.g. Least Cost, QCBS, QC, etc.)		
	(iv) If Special and Restricted Tendering procedure was adopted:		
	(a) Is the recommended Cost reasonable? (Yes/No)		
	(b) If No, did MDA negotiate excessive Cost? (Yes/No)		
	(c) Any Evidence of minutes of Negotiation? (Yes/No)		
	(d) Is the negotiated Cost reasonable? (Yes/No)		
	(e) If No, provide further details		
	(ii) Reasonableness of Rates of Major Items		Remarks

	Item Description	Quantity	Rate	Amount
<b>5</b>	<b>Award Process</b>			
	(i) Award of Contract			
	(ii) Existence of appropriate Tender Board (Yes/No). If Yes, list the names of members			
	(iii) Evidence of Approval by relevant Tenders Board (Yes/No) - Minutes of Meeting and Conclusions			
	(iv) Any appeal and/or Petition by Contractors? (Yes/No)			
	(v) If (iv) is Yes, was it concluded? (Yes/No)			
	(vi) Evidence of Procedure adopted to Clarify and Debrief Contractors			
	(vii) Were losing Consultants/Contractors debriefed as stipulated in Sections 19(e), 23 (7&9), 51(3) and 52(2) iv of PPA, 2007? (Yes/No)			
	(viii) Was Publication of Awards done? (Yes/No)			
	(ix) Are provisions made in Works Contract for Consultancy Services? (Yes/No)			
<b>6</b>	<b>Procurement Documentation</b>			
	(i) Complete or			
	(ii) Incomplete			

<b>C FINANCIAL PROGRESS</b>							
1	Appropriations	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
2	Date(s) of Submission of Invoice/Interim Statement by the Contractor/Consultant (Certificates of Valuation)						
3	Date(s) of Approval of Interim Valuation Certificate/Invoice						
4	Date(s) of Payment						
5	Cumulative Payment to Date						
6	Delays in Payment (Specify Days)						
7	Approval Process with Evidence of approval						
8	Copies of Payment Vouchers to show Evidence of VAT and WHT deductions						
9	Documentations for Mobilization (if any)						
10	Was the Mobilization Fee more than 15%? (Yes/No)						
11	Performance Bond - Is it less than 10% of Contract value? (Yes/No)						
12	Advance Payment Guarantee/ Insurance Bond acceptable to MDA						
13	Is the Advance Payment Guaranty unconditional and valid till full recovery of the Advance? (Yes/No)						
14	How much Advance Payment has been recovered?						
15	How much Advance Payment is outstanding?						
16	Contract Sum at time of Award						
17	Any revision to Contract Sum? (Yes/No)						
18	If 17 above is Yes, is there "No Objection" from BPP? (Yes/No)						

S/N	TITLE/HEADINGS	DESCRIPTION					REMARKS
<b>D</b>	<b>PHYSICAL PROGRESS</b>						
1	Is there a Program of Work? (Yes/No)						
2	Progress as it relates to Program of Work						
		<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	
3	Status/Quantum/Stage of Work done						
4	Are Payments Commensurate to work done/working progress (Yes/No)						
5	Delays (Yes/No)						
6	Reasons for Delays						
7	Value for Money Achieved (VFM) (Yes/No)						
8	Contract implementation as per the Terms of Contract						
9	Quality Assurance (Evidence of functional Inspection/Monitoring & Evaluation Committees)						
10	Final Accounts for the Contract (Yes/No)						
11	Evidence of Joint Final Inspection Report/Store Receipt Voucher (Yes/No)						
12	Completion Certificate (Yes/No)						
13	Countersigning by Resident Auditor for final payment						

E	GENERAL COMMENTS		
1	Findings <ul style="list-style-type: none"> <li>• Evidence of Collusion, etc.</li> </ul>		
2	Recommendation(s)		

**MDA's TEAM**

**Procurement Officers:**

Name:.....

Name:.....

Department:.....

Department:.....

Rank:.....

Rank:.....

Date:.....

Date:.....

Signature:.....

Signature:.....

**Accounting Officer:**

Name:.....

Signature:.....

Date:.....

**AUDIT TEAM FROM BPP**

Name:.....

Name:.....

Designation: .....

Designation:.....



Department:.....

Department:.....

Rank:.....

Rank:.....

Date:.....

Date:.....

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# PART TEN

## OPEN CONTRACTING

### Introduction to Open Contracting

#### 10.1 Definition and the Parties

Open contracting is a collaboration involving three principal stakeholders, namely the government through the Ministries, Departments and Agencies (MDAs), the civil society including non-governmental organizations (NGOs), professionals, the media and the wider public, and the private sector who participate in government commerce<sup>1</sup>.



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<sup>1</sup> *Methodology for Open Contracting Scoping Studies* (October 2016) by Open Contracting Partnership, Development Gateway, Hivos GIZ and the World Bank

The rationale for the participation of the tripod is that government manages public resources and uses public procurement to deliver public services; the private sector is mainly involved as contractors and bidders who deliver the services that government requires to fulfil its functions. On the other hand, the people represented by their civil society are the beneficiaries of the services of both government and the private sector<sup>2</sup>.

## 10.2 Purpose

Open contracting is done for overriding purposes and these include:

- ❖ Improvement of accountability, transparency<sup>3</sup> and popular participation;
- ❖ Reduction of corruption and promoting integrity in the public procurement process<sup>4</sup>;
- ❖ Promotion of fairness, competition and professionalism<sup>5</sup>;
- ❖ Improvement of service delivery over the short, medium and long-term;
- ❖ Improving the business environment; and
- ❖ Using the feedback and lessons learnt to improve the procurement system over time<sup>6</sup>.



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<sup>2</sup> Information technology and data experts, although not parties to open contracting will find opportunities for jobs and service delivery.

<sup>3</sup> One of the objectives of the Bureau of Public Procurement in the Nigerian 2007 Public Procurement Act (S.4) is to ensure probity, accountability and transparency.

<sup>4</sup> Section 15 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), under the Fundamental Objectives and Directive Principles of State Policy mandates the government to abolish all corrupt practices and abuse of power.

<sup>5</sup> See section 4 of the Public Procurement Act 2007.

<sup>6</sup> See the *Economic Reform and Growth Program* which seeks inter alia to improve the business environment and critical infrastructure. This will not be possible undue an opaque procurement system.

Open contracting provides access to contracting information as a basis for participation, feedbacks and making informed contributions to the learning and improvement process. Being a learning process, it builds the capacity of the participating stakeholders through the provision of actionable empirical data.

Open contracting is not another box ticking technocratic exercise to satisfy the demands of external donors or a new fancy standard. Rather, it is an iterative learning process that is expected to result in quantifiable improvements in savings for the government, improved service delivery outcomes in health, education, WASH, housing, power, etc., and builds greater trust and confidence between the government, citizens, and private sector service providers. It is not about starting another initiative or programme but it seeks to improve the already existing contracting system detailed in the Public Procurement Act 2007 (PPA). It builds on initiatives such as the Extractive Industries Transparency Initiative (EITI), Natural Resource Charter (NRC)<sup>7</sup>, Open Budget Initiative and the Global Initiative for Fiscal Transparency<sup>8</sup>, Corruption Perception Index<sup>9</sup>, etc. Furthermore, a functional open contracting system facilitates the work of the National Bureau of Statistics in data gathering to improve governance especially in public financial management<sup>10</sup>.

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<sup>7</sup> EITI and the NRC resonate in the Nigerian Extractive Industries Transparency Initiative (NEITI). Under the Nigerian Natural Resource Charter, there is a benchmarking exercise which takes cognizance of open contracting issues under the budget and project execution component in its Chapter 9. See the 2017 report.

<sup>8</sup> Open Budget Initiative (OBI) and GIFT find resonance in the Fiscal Responsibility Act of 2007. Nigeria has consistently performed poorly on the OBI. In terms of budget transparency in 2017, Nigeria was ranked 89<sup>th</sup> out of 114 countries. On a scale of 100, our score was 17 Source: <https://www.internationalbudget.org/open-budget-survey/open-budget-index-rankings/>.

<sup>9</sup> Transparency International's Corruption Perception Index 2017 ranked Nigeria 148 out of 180 nations assessed in the world. In 2016, we occupied the 136<sup>th</sup> position. This means we suffered a 12-position decline between 2016 and 2017. Again, in Africa, Nigeria came 32<sup>nd</sup> out of 52 countries assessed. In 2017, Nigeria scored 27 over 100 marks available compared to 28 over 100 marks scored in 2016. Since 2012, Nigeria has stagnated on the Index with the worst result of 25 marks in 2013 and the best being 28 marks in 2016.

<sup>10</sup> See the Statistics Act of 2007; the mission of the National Bureau of Statistics is to generate, on a continuous and sustainable basis, socio-economic statistics on all facets of development in Nigeria.

### 10.3 Rationale

Public procurement is part of the larger Public Finance Management (PFM) system. In Nigeria, about 27.2% of the federal budget is dedicated to capital expenditure which is delivered through contracting<sup>11</sup>.



Public contracting is the biggest source of public corruption considering that no one directly dips a hand into the treasury and takes away money without a reason. Contracting provides the perfect opportunity, excuse and avenue to mismanage resources in a way and manner that will not raise red flags, if outsiders have no access to information. Procurement and its implementation processes are initiated and to a great extent supervised by the executive. Without access to timely, relevant and sometimes proactive information, even the legislature, oversight and anti-corruption agencies will not be in a position to optimally perform their duties. Thus, open contracting facilitates the prevention of corruption, strengthens observance of laws and policies and in the process, improves PFM outcomes.

Nigeria has a Freedom of Information Act (FOIA) which guarantees access to public records and documents while protecting privacy and security information in appropriate cases.

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<sup>11</sup> For 2016, capital expenditure as a percentage of overall budget proposal was 26.20%; 2017 was 29.27%; 2018 was 31.51%; 2019 was 23.02%; 2020 was 23% while 2021 is 30.3%. This averages 27.29% over the six years.



The FOIA demands the proactive publication of information including the following which are procurement related; information relating to the receipt or expenditure of public or other funds of the institution; materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization<sup>12</sup>. Access to actionable information is the currency for the demand for accountability.

Specifically, the PPA provides in section 5 (r) as part of the functions of the Bureau of Public Procurement:

*“Establish a single internet portal that shall, subject to Section 16 (21) of this Act serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times”.*

Earlier in section 4 of the PPA, the objectives of the BPP were stated to include:

- ❖ *Harmonization of existing government policies and practices on public procurement and ensuring probity, accountability, transparency in the procurement process;*
- ❖ *Ensuring the application of fair, competitive, transparent, value for money standards and practices for the procurement and disposal of public assets and services; and*
- ❖ *The attainment of transparency, competitiveness, cost effectiveness and professionalism in the public sector procurement system.*

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<sup>12</sup> See sections 2 and 12 of the FOIA.

Open contracting, through the establishment of a relevant portal comes under the purview of section 5 (r) of the PPA. This will facilitate the realization of the objectives listed in section 4 of the PPA.<sup>13</sup>

Like stated above, procurement is part of PFM. Section 48 of the Fiscal Responsibility Act 2007 (FRA) states that:

*“The Federal Government shall ensure that its fiscal and financial affairs are conducted in a transparent manner and accordingly ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditure and their implication for its finances”.*

It is posited that contracting comes under the purview of all transactions and decisions involving public revenues and expenditures which should be subject to full and timely disclosure and wide publication through open contracting.



Open contracting simplifies data in a way that ordinary citizens can make informed judgement from datasets by collecting data with the end users in mind. It builds pressure from different actors with different interests for the modification and reform of the system towards an ultimate goal. It creates a publicly available red flag mechanism that allows proactive and reactive engagement of the contracting system. The ultimate goal of open contracting is clean contracting<sup>14</sup> where all the identifiable red flag issues are eliminated.

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<sup>13</sup> The National Council on Public Procurement established in S.1 of the PPA has a duty (S.2 (e) of the PPA) to approve changes in the procurement process to adapt to improvements in modern technology.

<sup>14</sup> *Making the Case for Open Contracting in Health Care Procurement* at page 18 by Transparency International's Pharmaceutical and Healthcare Program.

Accountability and transparency will be coupled with capacity and participation of stakeholders to deliver greater competition, value for money, service delivery and realization of overall national goals through sectoral policy objectives, etc.

#### 10.4 Coverage and Context

Open contracting involves team building and breaking up the silos that constrain the free flow of information and data. Therefore, information will not only come from the core procurement agency, it will include data from the Budget Office on budgetary provisions; Treasury/Ministry of Finance on budget releases to fund contracted projects and services (financial progress); the monitoring and evaluation team to determine the progress made to date (physical progress) and the value for money team to determine whether contracts are delivering on government's policy priorities. The data gives multi-year and complete history of a project to enable reasonable inferences to be drawn. Essentially, it is beyond the procurement agency which hosts the portal.

Feedbacks that will be taken on board in the learning process would come from business operatives, civil society and even government agencies who may intervene on the usefulness of the open contracting process on their mandate. As such, the parties may demand more focused data that will improve their work.



Experts have posited that open contracting involves<sup>15</sup>:

*“Disclosure of open data, documents and information about the planning, procurement and management of public contracts;*

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<sup>15</sup>*Methodologies for Open Contracting Scoping Studies*, supra at page 2.



*participation and use of contracting data by state and non-state actors and accountability and redress by government agencies or contractors acting on the feedback that they receive from civil society or companies”.*

Thus, any analysis of the open contracting system will include the legal and policy contexts, institutional arrangements, stakeholder identification, user engagement, technical assessments and broad PFM environmental analysis<sup>16</sup>. Procurement itself will include the planning, tender, award, contract and implementation stages.



The quality of the data, its accuracy, timeliness and completeness are key issues in open contracting<sup>17</sup>. This is more detailed in Box 9 below.

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<sup>16</sup> *Methodologies for Open Contracting Scoping Studies, supra.*

<sup>17</sup> *Supra* at pages 2-4.

## Box 9: Data Issues in Open Contracting

- ❖ The formats in which data is being collected, stored, and published, in particular, whether or not contracting data is being published online in an open and structured machine-readable format. How much is available as structured data (i.e. individual fields, as opposed to free-text).



- ❖ The extent to which public and internal data sets are timely, complete and accurate. Timeliness refers to whether or not data users (within the government, in private companies, or among the general public) are able to access the data within a timeframe that enables them to influence the process (by conducting monitoring activities, responding to the request for proposals, or however they choose to engage). Completeness refers to whether or not the government is collecting all useful information about the procurement process, whether or not all essential information is being provided to the public, and whether the information is limited in critical ways (e.g. data only from recent years or related to specific contracting methods are available). Accuracy refers to the existence of errors in the data set.



- ❖ Use of externally meaningful identifiers and classifications and whether or not they use government-specified classifications (e.g. item classifications, agency IDs). Are procurement IDs linked to IFMIS or other government public financial management (PFM) systems?



- ❖ Comparison of data (both published and non-public) with OCDS to determine the presence of key data elements.



*Source: Methodologies for Open Contracting Scoping Studies*

Though open contracting can start as a pilot project, it needs to encompass all MDAs for comprehensiveness. This will include contracts funded by donor aid, loans and other sources. It should in the long term include contracts for public private partnerships<sup>18</sup>, mining leases<sup>19</sup>, leases of land for agriculture and other purposes, etc.

Ideally, to achieve effectiveness, open contracting should be supported by reforms in other associated areas such as open access to company registers, public access to assets declaration of public officers, company beneficial ownership reforms as well as whistle blowers' protection. For instance, a red flag as to the identity of companies that constantly win bids can only be solved by knowing their beneficial owners. Access to the declared assets of public officials will also reveal their interests in companies and bidders<sup>20</sup>. A process of localized triangulated indicators may be created to facilitate arriving at the right conclusions from available data<sup>21</sup>.

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<sup>18</sup> In Nigeria, this may be championed by the Infrastructure Concession Regulatory Agency.

<sup>19</sup> In Nigeria, this may be championed by the agency in charge of Extractive Industries.

<sup>20</sup> *Diversity, Bottom-Up Energy, Real Impact - the State of Open Contracting* by Open Contracting Partnership, Hivos, CoST- the Infrastructure Transparency Initiative, Article 19 and the B Team.

<sup>21</sup> *Triangulation isn't just for Squares in "Red flags for Integrity: Giving the Green Light to Open Data Solutions"* by Open Contracting Partnership and Development Gateway.

Three key steps are found in open contracting. They are:

- ❖ Disclosure;
- ❖ Engagement; and
- ❖ Redress.



The three key steps need to be contextualized to reinforce each other; and should not be decoupled. Otherwise, there could be disclosure without engagement and action for redress. Thus, it is also imperative that while government and civil society pursue higher goals of accountability, transparency and value for money, a clear pro-business case is made to guarantee the buy-in of the private sector<sup>22</sup>. In the beginning, there may be need for capacity building for government and civil society operatives to guarantee population of relevant fields by agencies and strategic engagement by civil society. Some level of awareness creation and sensitization is needed to introduce the process.

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<sup>22</sup> See Assumptions and Risks in the *2015/2018 Strategy of the Open Contracting Partnership*.



Learning is an intrinsic part of open contracting which leads to redress and corrective action for reform. Thus, learning strategies including multi stakeholder reflections, appropriate communication and organizational culture change should be an inbuilt part of the open contracting process<sup>23</sup>.

Where contracts contain information, which are prohibited from being released to the public under the FOIA or similar laws<sup>24</sup>, it may be redacted to make it publishable by removing trade secrets and confidential matter in a way and manner that will still give data users a good sense of the terms of the contract.



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<sup>23</sup> *Learning with and for Partners* by Open Contracting Partnership.

<sup>24</sup> See sections 12 and 14 of the FOIA.

## **10.5 Nigeria's Commitment to Open Contracting**

### **10.5.1 The Commitment**

Nigeria voluntarily joined the Open Government Partnership (OGP) in 2016 and in the National Action Plan (2017-2019), commitments made under Fiscal Transparency include the full implementation of Open Contracting and adoption of Open Contracting Data Standards in the public sector. A second National Action Plan (NAP) 2019-2021 is in place now and the details of the commitments include the following.



The commitment is the full operationalization of open contracting and effective deployment and use of Open Contracting Data Standards (OCDS) to meet diverse stakeholders needs.

### **10.5.2 Brief Description of Commitment**

The BPP in line with the government commitment at the 2016 London Anti-corruption Summit deployed the first Nigerian Open Contracting Portal (NOCOPO). The Open Contracting Portal seeks to address issues around opacity, corruption, resource wastage and improve the quality of services delivered to Nigerians through wider stakeholder participation in the procurement spectrum. This will ultimately improve transparency and accountability of fiscal governance, better infrastructure and service delivery and public trust in governance.

The second phase of the NAP will prioritize timely data publication and availability, quality and use of published data by different categories of stakeholders for optimal results. This commitment will ensure inclusion of relevant actors, such as Women and Youth groups, Private Sector Stakeholders and State-Based Organizations to access, use and report on the impacts of published data.

### **10.5.3 General Problem/Challenge Addressed by the Commitment**

Despite the deployment of NOCOPO, stakeholders are still faced with the challenge of accessing public finance data of value to them. In 2018, the Secretary to the Government of the Federation issued a circular (**Ref. No PROC/BPP/045/I/89** dated 10th July 2018) to over 500 MDAs to publish their contractual information on NOCOPO. However, there are still high levels of non-compliance to the directive and unavailability of data across stages in the procurement cycle.

More so, open contracting discourse in Nigeria is yet to include key actors relevant in its sustainability and achievement of greater impacts. For example, private sector audiences are relevant in ensuring continuous data availability, in making better and informed business decisions, while data on health-related projects are of greater interest to Women groups.

### **10.5.4 Specific OGP Issue(s) in Focus**

Effective implementation of Open Contracting to improve public service integrity and increasing the transparency of the procurement processes; inclusion of actors relevant in the discourse and use of published information for improved governance and service delivery.

### **10.5.5 The Rationale for Commitment**

Open Contracting can offer the following values through the use of innovative technology to increase access to procurement information:

- ❖ **Transparency:** The enhanced disclosure of procurement data and information across the entire procurement cycle and up to implementation stage, including beneficial owners of companies will make the procurement process more transparent and reveal how public resources are expended.



- ❖ **Accountability:** The enhanced disclosure of procurement data and information will ensure that citizens understand the basis of decisions made along the procurement cycle. This will make the decision-makers take actions that reflect better use of public resources, knowing that their actions can be challenged through existing recourse mechanisms.

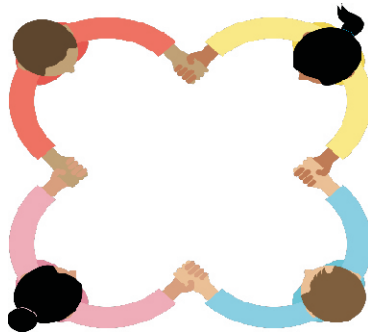


- ❖ **Service Delivery:** The use of open contracting helps the government to achieve value for money by providing a watchdog system that allows wider stakeholders to critique and monitor implementation of contracts. This ultimately checkmates unethical conduct and sharp corrupt practices in the processes of contract delivery.





- ❖ **Inclusion:** Technology provides wider stakeholder participation in open contracting, thus limits human interface. This will allow stakeholders from all walks of life including the marginalized/vulnerable to interact, access, assess and give informed feedback on how government programs impact their lives.



- ❖ **Citizen engagement:** Availability of procurement data across the entire procurement cycle and up to implementation will ensure that all stakeholders can monitor the procurement activities and provide feedback. This will ensure that public contracts are delivered with value for money achieved, thereby leading to increased service delivery and improved well-being of citizens.



### 10.5.6 Main Objective of Nigeria's Commitment

To improve accountability and transparency of public procurement processes, promote wider stakeholder participation and better service delivery through the implementation of OCDS.

### 10.5.7 Anticipated Impact of Nigeria's Commitment

The efficient procurement system is evident in better contracting outcomes and improved position in global rankings on public procurement.

### 10.5.8 Expected Outcomes and Milestones



#### Box 10: Outcomes and Milestones of Nigeria's Commitment to Open Contracting

Outcome	Milestones (Performance Indicators)
<b>1:</b> Achievement of better value for money in public contract delivery and reduction of corruption and fraud in public procurement processes.	Levels of efficiency, effectiveness, economy and equity in public procurement processes. Levels of efficiency, effectiveness, economy and equity in Public contract delivery.
<b>2:</b> Increased access to procurement data and information in both human and machine-readable formats by stakeholders including women, the private sector and State-based organizations.	Level of access to procurement data and information.
<b>3:</b> Upgrade of the NOCOPO in line with user feedback to include features for better user navigation, analytics by stakeholders, etc.	Level of satisfaction of NOCOPO users with the navigation and analytics features.

<p><b>4:</b> Increase in public interest to use NOCOPO data for contract monitoring and business decision making.</p>	<p>Level of use of NOCOPO data for contract monitoring. Level of use of NOCOPO data for business decision making.</p>
<p><b>5:</b> Investigation of fraudulent activities by anti-graft agencies through reporting from the use of NOCOPO data.</p>	<p>Level of use of NOCOPO by anti-graft agencies in the investigation of fraudulent activities.</p>
<p><b>6:</b> Improvement in citizen participation in the entire procurement cycle resulting from wider sensitization outreaches.</p>	<p>Number of citizens involved in budget engagement processes. Quality of participation of citizens in the procurement process.</p>
<p><b>7:</b> Migration of all MDAs to NOCOPO completed.</p>	<p>Number of MDAs enrolled into the NOCOPO platform.</p>

*Source:* OGP Second National Action Plan (NAP) 2019-2021

PUBLIC PROCUREMENT CAPACITY BUILDING MANUAL



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