

## **PROCUREMENT METHODS (GOODS AND SERVICES)**

1. Except as provided by this Act, all procurements of goods and works by all procuring entities shall be conducted by open competitive bidding.
  2. Any reference to open competitive bidding in this Act means the process by which a procuring entity based on previously defined criteria, effects public procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods and works needed.
  3. The winning bid shall be that which is the lowest evaluated responsive bid, which has been responsive to the bid with regards to work specification and standard.
- 
1. Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under either system.
  2. Every invitation to an open competitive bid shall:
    - i. In the case of goods and works under International Competitive Bidding, 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, the invitation for bids shall be advertised on the notice board 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.
- 
1. Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau all procurements valued in excess of the sums prescribed by the Bureau shall require a bid security in an amount not more than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity.
  2. The Bureau shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.
  3. When the procuring entity requires supplies or contractors submitting tenders to provide a bid security the requirement shall apply to each supplier or contractor.
- 
1. All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in a sealed envelop.
  2. All submitted bids shall be deposited in as secured tamper-proof bid-box.
  3. All bids submitted shall be in English language.
  4. The procuring entity shall issue a receipt showing the date and time the bid was delivered.

5. Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or contractor which submitted it.
6. No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Act.

A procuring entity may:

- 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.
1. The period of validity for a bid shall be the period specified in the tender documents.
  2. A procuring entity may request suppliers or contractors to extend the period of validity for an additional specified period of time.
  3. A supplier or contractor may refuse the request for the extension of bid, in which case the effectiveness of its bid will terminate upon the expiration of the un-extended period of effectiveness.
  4. A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids.
  5. The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.

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

- a) Permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
- b) Cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public;
- c) Ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;
- 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 which is recorded by the Secretary of the tenders board; and
- e) Call-over to the hearing of all those 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.

All bids shall be first examined to determine if they:

- a) Meet the minimum eligibility requirements stipulated in the bidding documents of bids.
- b) Have been duly signed.

- c) Are substantially responsive to the bidding documents; and
  - d) Are generally in order.
2. A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.
  3. The following shall not be sought, offered or permitted:
    - a) Changes in prices;
    - b) Changes of substance in a bid; and
    - c) Changes to make an inresponsive bid responsive.
  4. Notwithstanding sub-section (3) of this section, the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders.
  5. The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.
  6. A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.
  7. The following shall be considered a major deviations:
    - a) With respect to clauses in an offer:
      - i. unacceptable sub-contracting,
      - ii. unacceptable time schedule if time is of essence,
      - iii. unacceptable alternative design, and
      - iv. unacceptable price adjustment.
    - b) With respect to the status of the bidder:
      - i. the fact that he is ineligible or not pre-qualified, and;
      - ii. the fact that he is uninvited;
      - iii. with respect to bid documents an unsigned bid;
    - c) With respect to time, date and location for submission.
      - i. any bid received after the date and time for submission stipulated in the solicitation document,
      - ii. Any bid submitted at the wrong location.
  8. In cases of major deviations, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder.
  9. In all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.
  10. Subject to any provision to the contrary, the following shall be considered as minor deviations:
    - a) the use of codes
    - b) the difference in standards;
    - c) the difference in materials
    - d) alternative design
    - e) alternative workmanship;
    - f) modified liquidated damages;

- g) omission in minor items;
  - h) discovery of arithmetical errors;
  - i) sub-contracting that is unclear and questionable;
  - j) different methods of construction;
  - k) difference in final delivery date;
  - l) difference in delivery schedule;
  - m) completion period where these are not of essence;
  - n) non-compliance with some technical local regulations;
  - o) payment terms; and
  - p) any other condition that has little impact on the bid.
11. In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply;
- 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.
12. In cases of minor deviations, written clarification maybe obtained from the supplier or contractor and, where applicable, an offer made for the correction of the minor deviation.
13. Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected.
14. At the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms.
15. For the rejection of a bid, a written notice shall be given promptly to the supplier.
1. 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.
2. 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.
3. In the course of its determination of the lowest evaluated responsive bid from the bidder that have responded to the bid solicitation the Tenders board shall, in particular, undertake the following process as applicable:
- Checking of deviations;
  - Checking of omissions with quantification of same;
  - Application of discounts, as applicable;
  - Clarification with bidders of questionable minor deviations;
  - Quantification in monetary terms of such questionable deviations;
  - Conversion to common currency;
  - Calculation and tabulation of bid amount with domestic preference where applicable;
  - Determination of the lowest calculated prices in order of rank;
  - Post-qualification of bidders, where applicable;
  - Listing of rejection of bids, where applicable;
  - Decision of rejection of all bids where justifiable;

Recommendation for award; and  
Writing up of the bid evaluation report.

All relevant factors, in addition to price, that will be considered for the purposes of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.

Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include;

For goods, among others, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and, spare parts, related training, safety, environmental benefits or losses by damages;

For works, in addition to factors stipulated in section 34(1) of this Act, and subject to Section 34(2) of this Act, if time is a critical factor, the value of early completion; and

The value of early completion under Section 35(2) of this Act shall not be taken into account unless, in conformity with criteria pre-set in the bidding documents, the conditions of contract provide for commensurate penalties in case of late delivery.

When bid prices are expressed in two or more currencies, the prices of all bids shall be converted to Nigerian currency, according to the rate and date of rate specified in the solicitation documents. If suppliers were pre-qualified, verification of the information provided in the submission for pre-qualification shall be confirmed at the time of award of contract and award may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.

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.

33. (1) The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive as to the bid solicitation.

(2) Notwithstanding subsection of this section, the selected bidder need not be the lowest cost bidder provided the procuring entity can show good grounds derived from the provisions of this to that effect.

(3) Notice of the acceptance of the bid shall immediately be given to the successful bidder.

34. (1) A procuring entity may grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad.

(2) Where a procuring entity intends to allow domestic preferences, the documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference.

(3) Margins of preference shall apply only to tenders under international competitive bidding.

(4) The Bureau shall be regulated from time to time set the limits and the formulae for the computation of margin of preference and determine the contents of goods manufactured locally

35. (1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 15% may be paid to a supplier or contractor supported by the following:

In the case of National Competitive Bidding – an unconditional bank guarantee or insurance bond issued by an institution acceptable to the procuring entity; and

In the case of International Competitive Bidding – an unconditional bank guarantee issued by a

banking institution acceptable to the procuring entity; and

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

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

(1) Payment for the procurement of goods, works and services shall be settled promptly and diligently.

Any payment due for more than sixty days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by the Ministry, Extra-Ministerial Office, government agency, parastatal or corporation shall be deemed a delayed payment.

All delayed payments shall attract interest at the rate specified in the contract document.

All contracts shall include terms, specifying the interest for late payment of more than sixty days.

38. (1) Every procuring entity shall maintain a record of the comprehensive procurement proceedings.

(2) The portion of the record referred to in this section shall, on request, be made available to:

Any person after a tender, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract; and

Suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for pre-qualification, after a tender, proposal, offer or quotation has been accepted or procurement proceeding have been terminated without resulting in a procurement contract.

A disclosure of procurement proceeding records prior to award of contract may be ordered by a court, provided that when ordered to do so by a court, the procurement entity shall not disclose such information, if its disclosure would

Be contrary to law;

Impeded law enforcement; or

Prejudice legitimate commercial interests of the parties.

The procuring entity shall not be liable to suppliers, contractors-or service providers for damages owing solely to failure to maintain a record of the procurement proceedings in accordance with this section.

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