



# **JIGAWA STATE GOVERNMENT**

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## **DUE PROCESS GUIDELINES 2019**

**FOR**

**THE IMPLEMENTATION OF THE JIGAWA STATE DUE  
PROCESS AND PROJECT MONITORING BUREAU LAW**

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## **Acronyms**

DPPMB	Due Process and Project Monitoring Bureau
DPRS	Department of Planning, Research and Statistics
EMD	Extra-Ministerial Departments
FGPC	Finance and General Purpose Committee
MDA	Ministries, Departments and Agencies
MTC	Ministerial Tenders Committee
RFQ	Request for Quotation
SEC	State Executive Council
SQA	Systemic Quality Analysis
SRFQ	Standard Request for Quotation
TEC	Tender Evaluation Committee

**PREAMBLE**

***IN THE EXERCISE OF ITS POWERS UNDER SECTION 8(1) OF  
THE DUE PROCESS AND PROJECT MONITORING BUREAU  
LAW, THE GOVERNING COUNCIL OF THE BUREAU  
HEREBY MAKE THE FOLLOWING GUIDELINES***

## **CHAPTER 1: INTRODUCTION**

### **1.1 Introduction**

The Government of Jigawa State enacted the current Public Procurement Law, entitled Due Process and Project Monitoring Bureau Law 2012, in the year 2012 and revised/consolidated it in the year 2015. The Law provides the general principles and rules governing public procurement in Jigawa State. These Guidelines contain step-by-step procedures to assist Procuring Entities to undertake public procurement in accordance with the Law.

### **1.2 Purpose of the Guidelines**

The purpose of these Guidelines is to act as a tool for the operationalization of the Due Process Law, which establishes the Due Process and Project Monitoring Bureau (Bureau) and provides for its function, and the basic principles and practices by which public procurement in Jigawa State shall be conducted.

Rules and regulations governing public procurements have been in existence in various public documents such as the Stores Regulations and Financial Instructions, etc. Enforcement of these rules has however not been as desired. This has led to all kinds of anomalies in the public procurement process and other attendant consequences, such as poor quality of contract execution, lack of value for money in project/procurement implementation, over-invoicing of contracts, delayed payments for executed contracts, etc.

The establishment of the Due Process and Project Monitoring Bureau and the enactment and review of the Due Process Law are part of an overall governance reform process aimed at providing effective and efficient public expenditure and financial management systems.

The success of the reform process however depends on the cooperation of all stakeholders both within and outside the public sector. The most critical success factor, however, is Government's commitment to the implementation of the annual budget and adherence to "Due Process". In this regard, it is hoped that the Fiscal Responsibility Law passed by the State Government will



complement the Due Process Law so that together they will provide the desired impact and ultimately lead to an enhanced socioeconomic wellbeing of the people of Jigawa State.

### 1.3 Exceptions to Guidelines

These Guidelines shall not apply to the procurement of special goods, works and services involving security unless the Governor's approval has first been sought and obtained that the provisions shall specifically apply.

1.3.1 Exceptions to the provisions of these Guideline may arise for a number of reasons including the following:

1. A special situation, which momentarily makes a departure from the Guidelines a necessity;
2. One-off requirements introduced as special provisions in a loan or credit facility which are not otherwise covered in these Guidelines and do not constitute a revision of the Guidelines,
3. The necessary use of non-standard tender documents for specialist procurements;
4. New legislation or government policy change which causes any part of these Guidelines to be inconsistent with the new provisions until an appropriate revision has been approved.

1.3.2 Exceptions shall normally be of a short-term and one-off nature and shall be with the approval of the Bureau. Where they are recurrent, or became repetitive, then the Bureau shall decide whether there is a need to introduce revisions to the Guidelines to reflect the necessary change, in accordance with provision under this guideline 1.3; or to issue a circular as an addendum to these Guidelines, which will then be regarded as part of the Guidelines.

1.3.3 Where an exception is considered essential, the accounting officer of the procurement entity may submit a formal request to the Bureau detailing the circumstance warranting the exception and include a full justification for the proposed exception. The Bureau may approve such requests by issue of a specific waiver or reject the request.

1.3.4 Exceptions and waivers granted shall be carefully reviewed in the monitoring activities of the Bureau and subject to audit.

1.3.5 The Bureau shall review all requests for exceptions to determine whether the relevant provisions of the Guidelines need to be amended.

#### 1.4 Revision to the Guidelines

##### 1.4.1 Necessity for Revision

A number of factors may necessitate the revision of these Guidelines, which include:

1. New legislation related to public procurement or allied matters;
2. Policy changes by government or a funding/donor organisation;
3. Introduction of new improved practices, policies or procedures;
4. Removal of out-dated practices, policies or procedures; and
5. Lessons gained from practical experience.

##### 1.4.2 Request for revision by a Procuring Entity

Where a revision to these Guidelines is deemed necessary, a formal request may be submitted to the Bureau in accordance with the following procedure:

1. The request shall be prepared by the relevant Tenders Committee, and authorized by the accounting officer of a procurement entity;
2. The request shall state the purpose of the revision and provide a comprehensive justification, together with the precise changes suggested to the relevant text of the Guideline; and
3. The Bureau will formally consider each request, seek legal and procurement practice advice and may agree to a general modification of the Guideline, a specific exemption to be granted to the requesting procurement entity or may reject the request with reasons.

Notwithstanding, the Bureau may on its volition initiate a revision of the Guidelines anytime it deems fit, subject to the approval of the Bureau's Governing Council (Council).

## 1.5 Use of standard procurement forms

1.5.1 To facilitate the application of standard practices and procedures in public sector procurement standard procurement forms (SPFs) shall be developed by the Bureau for use in the procurement system.

1.5.2 The purpose of these forms shall be to standardize the format of submissions to the approving authority, to act as a checklist of information to be provided to the Bureau, and to ensure that submissions are presented with the approval of an authorized responsible officer or body. Use of the forms eliminates the need for individual covering letters to be prepared on each application to the Bureau.

## 1.6 Procurement numbering system

### 1.6.1 Purpose

1.6.1.1 The purpose of the procurement numbering system is to ensure each requirement is given a unique identification to assist in the tracking, monitoring and audit of the procurement and in the tracing and maintenance of records and files. The procurement number is assigned at the requisition stage and will form the basis for document filing and management information systems.

1.6.1.2 Procurement numbers are initiated and allocated for procurement package and entered into a register maintained by the Procurement Unit. Numbers must not be re-used, even if the original procurement is cancelled.

### 1.6.2 Structure of the procurement number

1.6.2.1 The procurement number shall identify at a minimum:

1. the procurement entity;
2. The department or project;
3. The financial Year; and
4. A unique sequence number for each requirement.

1.6.2.2 The Bureau will issue further regulations on the derivation of procurement numbers to ensure compatibility with existing numbering system

for procurement planning, Medium Term Expenditure Framework (MTEF) and the pre-numbered activity and expenditure initiation standard form.

### 1.6.3 Use of procurement numbers

The procurement number must appear on all correspondence and documents related to the procurement.

## **CHAPTER 2: THE DUE PROCESS AND PROJECT MONITORING BUREAU**

### **2.1 The Due Process Policy in Jigawa State**

“Due Process” in Jigawa State is part of an overall governance reform process aimed at ensuring effective and efficient service delivery. The Due Process compendium consists of the basic guidelines governing budget implementation in its totality, from spending limits for the various spending units to procedures governing award of contracts for projects, services or procurements. Notwithstanding the existence of rules and regulations as contained in the Stores Regulations, Financial Instructions and other Government circulars, the Due Process Guidelines provide operational rules of the Due Process and Project Monitoring Bureau (the Government Agency established by Law to ensure strict observance and enforcement of the Due Process Guidelines). The Due Process Guidelines are intended to promote transparency, competitiveness and value-for-money in carrying out projects, procurement and service contracts by Government Agencies. The overall objective is to ensure that service delivery is both effective and efficient, that is, getting the right output and outcomes at the right cost.

Notwithstanding the establishment of the Due Process and Project Monitoring Bureau and the provision of various punitive measures against persons and agencies that flout the Due Process Guidelines as provided in the Law, Accounting Officers shall discharge their responsibilities diligently in accordance with the provisions of the Financial Instructions and other applicable circulars as they relate to spending limits, procurements, documentation, etc.

### **2.2 Why Establish the Bureau**

The Due Process and Project Monitoring Bureau (Bureau) was established by the Jigawa State Government to ensure strict compliance with the principles of prudence, transparency, accountability, competition and total quality management in the execution of projects, procurement and service contracts. This is also part of the efforts to improve public expenditure and financial management procedures. In addition, the establishment of the Bureau by an enabling law and the making of the Due Process Guidelines are to complement

the reform agenda of the Federal Government, aimed at entrenching discipline and good governance throughout Nigeria. The end value of it all is to facilitate the attainment of the ultimate objective of the Government – sustainable socioeconomic development of Jigawa State.

### **2.3 The Vision of the Bureau**

The Vision of the Due Process and Project Monitoring Bureau is:

“A disciplined and integrity-driven State public service, where the entire process of public contracting is governed by the principles of transparency, competition and value-for-money, thereby ensuring optimal utilization of public funds.”

### **2.4 The Mission of the Bureau**

The Mission of the Due Process and Project Monitoring Bureau is:

“To use the Due Process Mechanism to re-establish and sustain an open, transparent and competitive Procurement System that upholds budget discipline, ensures speedy implementation of projects and is integrity-driven, in order to achieve value-for-money outcomes without sacrificing quality and standards.”

## **2.5 The Objectives of the Bureau**

The objectives of the Bureau include the following:

1. To ensure the existence of harmonized and periodically updated policies and guidelines on public procurement in the State, in accordance with best practices.
2. To strictly enforce the Due Process principles of transparency, competition, efficiency and value-for-money in the execution of contracts for supplies, works and services in the State, as set out in the Due Process Guidelines and in accordance with its enabling Law.
3. To ensure that project packaging and implementation match the defined priorities and targets as set out in annual appropriation laws of the State.
4. To prevent extra budgetary spending by Ministries, Departments and Agencies (MDAs) in the State, by ensuring that only projects contained in the approved budget or supported by appropriate Financial Warrants are executed.
5. To ensure value-for-money in the implementation of projects, procurements of services, and to prevent contract inflation by ensuring cost reasonableness, accuracy and comparability of all public contracts with national, regional and global costs.

## **2.6 The functions of Bureau**

The Functions of the Bureau include the following:

1. To regulate and set standards to enforce harmonized bidding and tender documents for all the State contracts;
2. To ensure full compliance with the laid down Guidelines and procedures on procurement;
3. To develop, update and maintain system wide database for the State on various procurements at the Ministries, Department, Agencies and Local Government levels;
4. To uphold professional ethics and report erring procurement personnel, state and local government functionaries, department and private sector

- companies and their personnel to relevant authorities for appropriate sanctions;
5. To monitor prices of tendered items and provide price database advisory services to the procuring entity;
  6. To perform pre-procurement audits;
  7. To evaluate and monitor government projects from point of award until completion and issue certificate accordingly;
  8. To coordinate training to promote capacity building of procurement personnel of the State;
  9. To sensitize, promote and educate the citizens and other stakeholders in the state on public procurement issues;
  10. To provide relevant procurement and budget performance information to interested parties;
  11. To publish the details of major contracts awarded in the State periodically;
  12. To undertake procurement research and surveys;
  13. To set and update standard bidding and contract documents; and
  14. To perform all things and carry out such other activities as are necessary and expedient for the full discharge of its functions under or pursuant to the enabling law.



## **CHAPTER 3: INSTITUTIONAL STRUCTURES FOR PUBLIC PROCUREMENT, CATEGORIES OF CONTRACTS AND THE ROLE OF THE BUREAU**

### **3.1 Introduction**

The Bureau is to review and certify State Government contracts which are categorized into five according to the approval thresholds. This will ensure compliance with Due Process principles of transparency, competition and merit, among others, and ensure that the prices used in Government contracts for goods, works and services are reasonable and based on thorough analysis. The supervisory and certification role of the Bureau will ensure contract execution in accordance with the terms of the contracts from the award stage through to their successful execution and completion; avoiding delay and bottlenecks.

In pursuance of Government's determination to ensure accountability, efficiency, probity and transparency in the conduct of its business, approval to incur expenditures and award of contracts by Government Ministries and Parastatals shall be based on the appropriate category and the laid down procedures as contained in this Guidelines.

The relevant threshold category for a planned procurement shall be based on the anticipated value of the contract in the procurement plan.

### **3.2 The Governing Council (Council)**

2.1.1 The Governing Council on Public Procurement is a body established in accordance with **section 6 of the Law** to approve certain public procurement regulatory decisions.

3.2.2 The quorum for the meeting of the Board shall be two-third of all the members appointed according to section 7 of the Law. Co-opted members shall not have a right to vote in the Council.

3.2.3 The decisions of the Council shall be by consensus. Where consensus is unable to be reached, the Chairman may call for votes, and such decision may be made by a simple majority of the votes cast.

3.2.4 The secretary of the Council shall record the minutes of all the meetings of the Council, which shall include:

1. a register of attendance;
2. a list of all items on the agenda considered;
3. the decision made on each item, including any major issues discussed, the reasons for any approval or objection and any clarifications or minor amendments to which an approval is subject; and
4. any dissenting opinions among the members of the Council.

### **3.3 Jigawa State Due Process and Project Monitoring Bureau (the Bureau)**

3.3.1 The Bureau, a body established by **section 3 of the Law**, is the regulatory and coordinating authority on public procurement in Jigawa State. All Accounting Officers, Procuring Entities, Tenders Committees, Procurement Planning Committees and other structures involved in Jigawa State public procurement are required to abide by the guidelines and regulatory instructions issued by the Bureau.

3.3.2 The Bureau has responsibility for the overall co-ordination, direction and development of Government procurement practices and procedures in Jigawa State. It is entrusted with **14 defined functions** presented in paragraph 2.6 above, and **16 clauses of power** respectively, under **sections 4 and 5 of the Law**. Its powers which may be summarized as follows:

1. Formulation/Development of public procurement policy setting standards, rules, instructions and other regulatory instruments on public procurement;
2. Monitoring compliance with requirements established by legislation;
3. Obtaining and ensuring dissemination of information relating to public procurement;
4. Facilitating and supporting capacity building in public procurement;
5. Handling procurement audit, administrative review of complaints and appeals on public procurement;

6. Maintaining registers of Procuring Entities, members and secretaries of Tenders Committees, and of suppliers, contractors, consultants, and records of prices;
7. Investigating and debarring from public procurement suppliers, contractors and consultants who have contravened the provisions of the Law and Guidelines, and communicating a list of debarred firms to Procuring entities; and
8. Prior review of contracts within certain thresholds and issuance of “No objection” to proceed with award and payment for contracts where requirements are met.

### **3.4 Procuring Entity**

3.4.1 A Procuring Entity is an organization or person that has a legal or administrative mandate to undertake public procurement.

#### **3.4.2 The Accounting Officer of Procuring Entity**

The Accounting Officer is the person charged with supervision of the conduct of all procurement processes of a Procuring Entity. The Accounting Officer is responsible and accountable for actions taken and for any instructions with regard to the implementation of the Law and Guidelines. He is responsible to ensure that provisions of the Law and Guidelines are complied with. The concurrent approval by the Tenders Committee shall not absolve him from accountability for a contract that may be determined to have been procured in a manner that is inconsistent with the provisions of the Law and Guidelines.

### **3.5 Threshold for Contract Awards by Approving Authorities**

The Council shall provide threshold values within which the Accounting Officer and other approving authorities of a Procuring Entity may approve the award of contracts within the categories outlined under 3.5 below.

#### **3.5.1 Category One: The Accounting Officer (Chief Executives of Parastatals)**

The Accounting Officer (Chief Executive of a Parastatal), on following all the applicable Due Process procedures, may award contract for purchase of goods, construction work or engagement of service of an amount not exceeding Five

Hundred Thousand Naira (N500,000.00). Any contract whose value exceeds Five Hundred Thousand Naira (N500,000.00) shall be referred to the Board of the Parastatal/Corporation.

### **3.5.2 Category Two: Board of a Parastatal/Corporation**

The Board of a Parastatal or Government Corporation may award contract of an amount above Five Hundred Thousand Naira (N500, 000.00) but not exceeding One Million Naira (N1, 000,000.00). Any amount exceeding One Million Naira (N1,000,000.00) to the maximum of Five Million Naira (N5,000,000) shall be referred to the Commissioner of the Ministry supervising the Parastatal/Corporation. Any amount exceeding Five Million Naira (N5, 000,000.00) to the maximum of 100,000,000.00 shall be referred to the Governor. Any amount exceeding One Hundred Million Naira (N100, 000,000.00) shall be referred to the State Executive Council. In any case the applicable laid down rule must be complied with.

### **3.5.3 Category Three: Ministerial Expenditure**

#### **(a) CAPITAL EXPENDITURE:**

Any capital expenditure by a Ministry shall either be initiated by the Head of Department, Permanent Secretary or Commissioner, in accordance with its applicable budgetary provisions. Where envisaged expenditure is below Two Hundred Million Naira (~~₦~~ 200,000,000.00), the Permanent Secretary shall forward the proposed expenditure supported by all necessary documents to the Bureau for vetting. After vetting by the Bureau, it shall then be forwarded to the Ministerial Tenders' Committee for approval.

Where expenditure is above Two Hundred Million Naira (~~₦~~200,000,000.00), the Ministry shall constitute a committee for the purpose of open tender. The proposed tender method and the relevant documents shall be forwarded to the Bureau and then to the State Executive Council for approval. Where the planned contract is below Two Hundred Million Naira (~~₦~~200,000,000.00) but the Bureau considers that better value for money is likely to be obtained through open tendering than through any alternative method, it may make such suggestion to the State Executive Council.

(b) RECURRENT EXPENDITURE:

**(I) Monthly Running Cost:** The Ministry is entitled to spend its monthly recurrent expenditure without seeking any further approval, except where a single expenditure exceeds Five Million Naira (₦5,000,000.00).

Where the expenditure is above Five Million Naira (₦5,000,000.00) the proposed expenditure supported by all necessary documents shall be forwarded to the Bureau for vetting prior to any commitment being made. Upon the vetting by the Bureau, it shall then be forwarded to the Governor for approval.

**(II) Special Recurrent Expenditure:** Any special expenditure intended by a Ministry shall be forwarded with all supporting documents to the Governor for approval. Where the special recurrent expenditure is up to Five Million Naira (₦5,000,000.00) and above, it shall be forwarded to the Bureau for vetting prior to the Governor's approval.

**3.5.4 Category Four: SSG/HOS/Commissioner/Head of Extra Ministerial Departments**

The Secretary to the State Government, the Head of the State Civil Service, and Heads of Extra-Ministerial Departments<sup>1</sup> can award contract of an amount not exceeding Five Million Naira (₦5,000,000.00) after due consultation with the Governor. Where expenditure is above Five Million Naira (₦5,000,000.00) but below One Hundred Million Naira (₦100,000,000.00) it shall be forwarded to the Governor for approval.

**3.5.5 Category Five: State Executive Council (SEC)**

Any contract the value of which exceeds (One Hundred Million Naira (₦100,000,000.00) shall be referred to the State Executive Council (SEC) for Consideration and approval.

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<sup>1</sup> Extra-Ministerial Departments in this context refer to Civil Service Commission, Local Government Service Commission, State Independent Electoral Commission, Board of Internal Revenue, Office of the State Auditor General and Directorate of Local Government Audit, State Universal Basic Education Board, Dutse Capital Development Authority, and such others that may be designated as such by an applicable law or constituted authority.

Notwithstanding anything contained in these guidelines, whenever a recurrent expenditure other than special expenditure is above (Five Million Naira) N5,000,000.00, it must be approved by the Governor upon the vetting of the Bureau. In the case of special expenditure, no amount shall be spent without the Governor's approval, and the Executive Council's approval, where it exceeds One Hundred Million Naira (₦ 100,000,000.00).

### **3.6 Guidelines for the Award of Contracts**

Ministries, Extra-Ministerial Departments and Parastatals/Corporations of the State shall observe the following guidelines in the award of contracts.

### **3.7 Ministerial Tenders Committee (MTC)**

- (a) Where the need arises, the Ministry, Extra-Ministerial Department or Parastatal/Corporation shall establish a Ministerial Tenders Committee, whose chairman shall be the Permanent Secretary of the Ministry or the Chief Executive of the Extra Ministerial Department/Parastatal.
- (b) Other members of the Committee shall be the Directors/Heads of Departments in the Ministry or Establishment. Where there is a Department for Planning, Research and Statistics (DPRS), the Director in charge of the Department shall be the Secretary. Where there is no DPRS, the Director in charge of Administration and Finance shall be the Secretary.
- (c) There shall be a representative each from the Bureau, Budget & Economic Planning Directorate, Ministry of Justice and Ministry of Finance (Office of the Accountant General) and Council Affairs Directorate in the Committee. Such representation is not an institutional membership; as such any competent officer of these Agencies could be sent as a representative during any meeting of the committee.
- (d) The decisions of the Committee shall, as the case may be, be confirmed by the Bureau.

### **3.8 Bids Evaluation Committee**

Each Procuring Entity is required to appoint a Bid Evaluation Committee with the required expertise to evaluate bids and assist the Tenders Committee in its work.

### **3.9 Powers of Boards of Corporations/Parastatals over Tenders**

- (a) Although the Accounting Officer (Chief Executives of Parastatals) can award contracts, the value of which does not exceed Five Hundred Thousand Naira (~~₦~~500,000.00), without open competitive tender, at least three relevant written quotations shall be obtained from suitable contractors/suppliers. However, any expenditure incurred above One million Naira (~~₦~~1,000, 000.00) shall be documented and reported to the Chairman of the Board of the Corporation/Parastatal, on quarterly basis, for information.
- (b) Any contract above Five Hundred Thousand Naira (~~₦~~500,000.00) but not more than One million Naira (~~₦~~1, 000,000.00) shall be referred to the Board of the Corporation/Parastatal for consideration.
- (c) Any contract whose value exceeds One million Naira (~~₦~~1,000,000.00) but not more than Five Million Naira (~~₦~~5,000,000.00) shall be referred to the Commissioner of the Ministry supervising the Parastatal/Corporation for consideration.
- (d) Any contract whose value exceeds Five Million Naira (~~₦~~5,000,000.00) but not more than One Hundred Million Naira (~~₦~~100,000,000.00) shall be referred to the Governor for approval.

### **3.10 Types of Tendering**

- (i) **Open Competitive Tendering:** This type of tendering process demands wide advertisement to invite prospective contractors to show interest in executing the project under consideration. The procedure starts with advert and concludes with the determination of the 'winner'. Open competitive tendering can be high in associated costs, such as cost of advertising. The tendering process may take longer time to complete and require greater staff time than the other types of tendering. So, it is usually appropriate only for high value procurements. Where a contract is valued at more than Two

Hundred Million Naira (~~₦~~200, 000,000.00), open competitive tendering is mandatory. However, it may be used for lower value procurements where open tendering represents the best method for ensuring value for money. The contract is to be advertised in Government Gazette and in at least two national dailies;

- (ii) **Selective Competitive Tendering (Restricted tendering):** This type of tendering may apply to all procurements from Twenty Million Naira (~~₦~~ 20,000,000.00) to One Hundred Million Naira (~~₦~~100, 000,000.00). It entails that competition for the contract shall be restricted to the selected or pre-qualified contractors in the State, identified to possess the required technical and financial capacities and that are well experienced in the type of project under consideration. The procedure starts with an invitation to at least two, but not more than five, of such contractors to bid for the contract. It is important to ensure fairness in the selection of companies to be invited to tender, having regard to resources, experience and performance record. Where more than five contractors would be capable of performing the contract successfully, selection should be by rotation, to ensure equal opportunity to contractors on the pre-qualified list. Where there is inadequate capacity among contractors within the State, consideration should be given to inviting capable contractors from outside the State. The submissions made by the competing contractors shall be critically evaluated by the relevant Tenders Committee and vetted by the Bureau before taking decision on the next line of action (approval or recommendation to a higher authority, as the case may be).
- (iii) **Nominated Tendering Procedure (Single Sourcing/ Direct Procurement):** This applies to procurements below Twenty Million Naira (~~₦~~20,000,000.00). Here a single contractor is to be nominated by the appropriate awarding Procuring Entities, judging from the reliability, experience and competence of the contractor, to bid for the contract. Again, in line with the principles of checks and balances, the Bureau has to certify the nominated contractor and, therefore, can recommend the rejection of any nominated contractor whose reliability or competence is in doubt.



### **3.11 Transparency in the Award of Contracts**

The following practices shall be complied with in the award of contracts, to show transparency, competitiveness and equity.

- (i) In cases where Open Competitive Tendering Procedure is adopted, the opening of the tender must be done in public, at a designated date and time. Moreover, opening shall immediately follow the closing of the bidding period to minimize the risks of bid tampering and late bids should not be accepted. The bidders or their representatives shall be invited and members of civil society or the press shall not be excluded, if they wish to attend the tender opening.
- (ii) Bid evaluation criteria shall be clearly defined in the bidding documents. Award of all contracts shall be based on the criteria so defined.
- (iii) The award of all major contracts of Twenty Million Naira (~~₦~~20,000,000.00) and above shall be made public with description of the contract/project and its beneficiaries, name of winning contractor, and the contract price clearly Stated.

### **3.12 Vetting of Contracts Documents by the Bureau**

Project Designs (where applicable), Bills of Quantities, Quotations and other tendering documents in respect of any construction work, procurement or service contract whose value is Five Million Naira (~~₦~~5,000,000.00) and above shall be vetted by the Due Process and Project Monitoring Bureau (Bureau). Accordingly, all Ministries, Extra-Ministerial Departments and Parastatals/Corporations shall forward all documents in respect of contracts whose values exceed Five Million Naira (~~₦~~5, 000,000.00) to the Bureau for vetting to ensure compliance with laid down rules and regulations and for the issuance of a Due Process Certificate. This Certificate must be presented to the relevant approving authority before approval is given for the award of the contract. The Bureau reserves the right to reject any submission made to it which does not include all required/necessary documents.

The vetting process by the Bureau shall be done as far as possible within the following timeframe:

- (i) Contracts whose values are between Five Million Naira (~~₦~~5,000,000) to Ten Million Naira (~~₦~~10,000,000): a maximum of 5 working days.
- (ii) Contracts whose values are between Ten Million Naira (~~₦~~10,000,000) to Fifty Million Naira (~~₦~~50,000,000): a maximum of 2 weeks.
- (iii) Contracts whose values are between Fifty Million Naira (~~₦~~50,000,000) to One Hundred Million Naira (~~₦~~100,000,000): a maximum of 4 weeks.
- (iv) Contracts whose values are One Hundred Million Naira (~~₦~~100,000,000) or above: a maximum of 6 weeks.

Further procurement actions shall not be taken by the Procuring Entity until the Bureau has concluded its vetting, notwithstanding that it exceeds the maximum stipulated time. However, the Bureau shall notify the Procuring Entity of any delay and the reason for the delay in completing the vetting exercise.

Contracts must not be entered into until the Due Process Certificate has been received from the Bureau. The Bureau can use its permanent staff, staff on secondment from any public service or consultants for the vetting exercise, depending on the situation.

### **3.13 Principles of procurement**

3.13.1 All procurement shall only be made:

- (a) in accordance with approved plans supported by prior budgetary appropriations and no procurement proceedings shall be formalized until the entity has ensured that funds are available to meet the obligations and subject to the threshold under these Guidelines.
- (b) by open competitive, selective or nominative tendering as the case may be;
- (c) in a manner which is transparent, timely, equitable for ensuring accountability and conformity with the law and these Guidelines.
- (d) With the aim of achieving value for money and fitness for purpose; and
- (e) In a manner which promotes competition, economy and efficiency.

3.13.2 Every procuring entity shall maintain both file and electronic records of all procurement proceedings made within each financial year.

Such records shall be transmitted to the Bureau not later than six months after the end of the financial year.

3.13.3 All procurement records that are unclassified shall be open to inspection by the public at the cost of copying and certifying the documents as may be prescribed by the Bureau.

3.13.4 A contract may be awarded to the lowest evaluated responsive bidder, but the Bureau may refuse to certify a contract for award on the ground of excessive pricing.

### **3.14 Equality in Procurement Proceedings**

3.14.1 The procuring entity shall ensure that all public procurement shall be carried out by offering to every interested bidder equal information and opportunity to offer the goods, works and services needed, except where the Law and these Guidelines provide for the use of Selective Competitive and Nominated Tendering Procedure. In all cases every contractor shall be treated equally.

3.14.2 The Bureau shall stipulate methods and procedures of invitation, opening, examination and evaluation of bids to ensure that bidding is transparent and competitive.

### **3.15 Other Important Issues**

#### **3.15.1**

- (i) **Tender Splitting:** It shall be regarded as a serious offence for any officer or Procuring Entity to deliberately split contracts of works, procurement or engagement of services in order to circumvent the provisions of these Guidelines. Such breach of the rules shall be subject to disciplinary action as may be prescribed in the enabling Law or in the Civil Service Rules and Regulations.
- (ii) **Bid Security:** All contracts of One Hundred Million Naira (~~₦~~100,000,000.00) and above shall attract a Bid Security for an

amount not Less than 2% of bid price in the form of Bank Guarantee, issued by a reputable bank.

- (iii) **Performance Bank Guarantee:** Performance Bank Guarantee, for an amount that is not less than two (2) per cent and not more than five (5) per cent of the contract price for contracts for the supply of goods and related services and not less than five (5) per cent and not more than ten (10) per cent of the contract price for works contracts, shall be obtained for all contracts valued at One Hundred Million Naira (~~₦~~100, 000,000.00) and above and shall only be discharged after the full execution of the contract.
- (iv) **Procurement Plan:** Quarterly procurement plans shall be developed in a format to be prescribed by the Bureau and used, inter alia, to determine the requirement of funds for various Government Offices at different quarters during the fiscal year. Such plans shall spell out the timing for different procurement actions and show the funding requirements at different stages. Release of funds shall be on the basis of realistic, approved and updated procurement plans. Procurement Plans are to be prepared on the approval of the annual Appropriation Law and submitted to the Directorate of Budget and Economic Planning for approval in principle and to form the State Procurement Plan for the Year. This is also in accordance with the Fiscal Responsibility Law of the State.
- (v) **Mobilization Fee:** Mobilization fee, where necessary and appropriate, shall not exceed 30% of the contract sum (depending on the nature and scope of the contract). However, payment of such mobilization fee shall be effected upon written application and submission of an unconditional Bank Guarantee for equivalent amount valid until the goods are supplied or until the mobilization fee has been repaid in the case of works contracts. Only such unconditional Bank Guarantee issued by a reputable bank shall be accepted. The mobilization fee shall be paid into the contractor's account with the guaranteeing bank.

The mobilization fee should be offset against staged payments. The advance payment is to be repaid in pro rata instalments starting with

the month when 30% of the value of the contract has been certified and shall be completely reimbursed to the Procuring Entity by the time the certified completion is 70% of the Contract Price.

- (vi) **Registration of Contractors:** All eligible contractors must be duly registered with the Bureau and must produce their VAT Registration Certificate before any award of contract. A list of qualified contractors should be prepared for each category of supply and be reviewed regularly. New contractors shall be given opportunity to apply and be included in the list when a procurement opportunity is advertised or invited.
- (vii) **Audit Inspection:** As a condition for payment for contracts exceeding Five Million Naira (~~₦~~5,000,000.00), the Director-General of the Bureau or his representative, the Contractor or his representative and the representative of the Procuring Entity executing the project shall co-sign appropriate documents certifying the completion of the project or supplies for the release of any outstanding payment.

3.15.2 Beside this, certified true copies of all contract agreements shall be forwarded to the Office of the Auditor-General for the State or the Resident Auditors at the various Ministries/Extra-Ministerial Departments. In addition, minutes of Tenders Committee meetings and full records of all the tendering processes must be kept and made available for inspection by the Office of the Auditor-General for the State and Accountant-General of the State, on request. Such records shall be kept for a period of seven (7) years from the date of completion and takeover of the project.

## **CHAPTER 4: CATEGORIES OF CONTRACTS AND THE ROLE OF BUREAU ON LOCAL GOVERNMENT PROJECTS**

### **4.1 Introduction**

The Bureau is empowered to review and certify Local Governments Contracts which are categorized into six, according to the approval thresholds. This is to ensure compliance with the principles of transparency, competition and merit, and to ensure that the prices used in Government contracts for goods, works and services are reasonable and based on thorough analysis. The supervisory and certification role of the Bureau will ensure contract execution in accordance with the terms of the contracts from the award stage through to their successful execution and completion, avoiding cumbersomeness, delay and other bottlenecks in projects execution.

In pursuance of Government's determination to ensure accountability, efficiency, probity and transparency in the conduct of Government business, approval to incur expenditures and award of contracts by Local Governments shall be based on the appropriate category and the laid down guidelines, as described below.

### **4.2 Contract categories: Threshold for Contract Awards by Approving Authorities**

The relevant threshold category for a planned procurement shall be based on the anticipated value of the contract in the procurement plan.

#### **4.2.1 Category One: Head of Department**

A Head of Department, on following all the applicable due process procedures, can award contract for purchase of goods, construction work or engagement of service of an amount not exceeding ₦100,000.00 monthly. Any contract whose value exceeds ₦100,000.00 shall be referred to the Local Government Secretary.

#### **4.2.2 Category Two: Local Government Secretary**

The Secretary can approve the award of contract of an amount above ₦100,000.00 but not exceeding ₦500,000.00 monthly. Any amount exceeding

₦500,000.00 shall be referred to the Chairman of the Local Government. In any case the applicable laid down rule must be complied with.

#### **4.2.3 Category Three: Executive Chairman**

The Executive Chairman of a Local Government can approve the award of a contract of an amount not exceeding Five Million Naira (₦5,000,000.00) monthly. All expenditures authorized by the Chairman shall be reported to the Local Government Executive Council, at the next meeting, for information.

#### **4.2.4 Category Four: The Local Government Tenders Committee.**

The Local Government Tender Board can approve the award of contract for amount between ₦5,000,000.00 to ₦10,000,000.00 after fulfilment of Due Process requirements.

#### **4.2.5 Category Five: Local Government Executive Council.**

The Local Government Executive Council shall endorse the award of contract for any amount exceeding ₦10,000,000.00 but to the maximum of ₦20,000,000.00

#### **4.2.6 Category Six: The Executive Governor**

The Local Government Councils shall seek the consent of the Governor before awarding all contracts above ₦20,000,000.00 on presentation of Due Process Certificate.

### **4.3 Guidelines for the Award of Contracts**

All arms of the Local Government shall observe the following guidelines in the award of contracts:

#### **4.3.1 Local Government Tenders Committee (LGTC)**

- a) There shall be established in each Local Government a Tenders Committee; its Chairman shall be the Chief Executive of the Local Government or his representative.
- b) Other members of the Tenders Committee shall be the Directors/Heads of Departments of the Local Government, while the Director in charge of

Department of Planning, Research and Statistics (DPRS) shall serve as the Secretary.

- c) There shall be a representative each from Bureau and Ministry for Local Government in all LGTCs. Such representation is not an institutional membership, as such, any competent officer of these Agencies could be sent as a representative during any meeting of the LGTC.

#### **4.3.2 Local Government Executive Council**

Any contract the value of which exceeds ₦20,000,000.00 (Twenty Million Naira) shall be referred to the Local Government Executive Council (LGEC) for consideration and approval after being satisfied that all applicable Due process procedures were followed and having obtained the consent of the Governor.

#### **4.4 Tender Types and Procedures**

In order to give room for speedy and timely execution of government projects, three types of tendering and their procedures in the award of contracts are to be adopted, depending on the situation. They are as follows.

- a) Open Competitive Tendering: This type of tender demands wide advertisement to invite prospective contractors to show interest in executing the project under consideration. The procedure starts with advert and concludes with the determination of the “winner”. When a Local Government contract is valued at ₦20,000,000.00 and above, this tendering procedure shall be used. The contract is to be advertised in the Government Gazette and in at least two national dailies. The proposed tender method and the relevant documents shall be forwarded to the Bureau and then to the Executive Council for approval. Where the planned contract is below ₦20,000,000.00, but the Bureau considers that better value for money is likely to be obtained through open tendering than through the alternative methods, it may make such recommendation to the Executive Council.
- b) Selective Competitive Tendering (Restricted Tendering): This type of tender shall apply to procurements of Five Million Naira (₦5,000,000.00) to Twenty



Million Naira (~~₦~~20,000,000.00). It provides for competition, for the contract to be awarded, to be restricted to the registered or pre-qualified contractors in the State/Local Government, who have the required technical and financial capacities and that are well experienced in the type of project under consideration. The procedure starts with notification of the existence of the contract opportunity to at least two, but not more than five, such contractors selected to bid for the contract. It is important to ensure fairness in the selection of contractors, and to have regard to resources, experience and performance record. A list of qualified contractors should be prepared for each category of supply and be reviewed regularly, with new contractors being given opportunity to be included in the list when a procurement opportunity arises. Where more than five contractors would be capable of performing the contract successfully, selection should be by rotation, to ensure equal opportunity to contractors on the pre-qualified list. Where there is inadequate capacity among contractors within the State, consideration should be given to inviting capable contractors from outside the State. The submissions made by the competing contractors shall be critically evaluated by the relevant procurement approving authorities before taking decision on the next line of action (approval or recommendation to a higher authority, as the case may be).

- c) Nominated Tendering Procedure (Single Sourcing/ Direct Procurement): This type of tender shall apply to procurements below Five Million Naira (~~₦~~5,000,000.00). Here a single contractor is to be nominated by the appropriate Procuring Entity, judging from the reliability, experience and competence of the contractor, to bid for the contract. This type of tendering procedure shall be restricted to categories 1, 2 and 3 contracts. Again, in line with the principles of checks and balances, the Bureau has to certify the nominated contractor. Therefore, it can recommend the rejection of any nominated contractor whose reliability or competence is in doubt.

#### **4.5 Transparency in the Award of Contracts**

The following practices shall be complied with in the award of contracts, to show transparency, competitiveness and equity.

- a) In cases where Open Competitive Tendering Procedure is adopted, the opening of the tender must be done in public, at a designated date and time. Moreover, opening shall immediately follow the closing of the bidding period to minimize the risks of bid tampering. Late bids shall not be accepted. The bidders or their representatives shall be invited and members of civil society or the press shall not be excluded, if they wish to attend the tender opening.
- b) Bid evaluation criteria shall be clearly defined in the bidding documents. Award of all contracts shall be based on the criteria so defined.
- c) There shall be a Tender Evaluation Committee (TEC) made up of relevant professionals for the evaluation of bids. The Secretary of the Tenders Committee shall be the Secretary of the TEC. Members of the Evaluation Committee, Members of Tenders Committees and the approval authorities shall declare any conflict of interest and exclude themselves from bid evaluation and approval process.
- d) The Local Government Tenders Committee can award any contract whose value does not exceed ₦10,000,000.00 (Ten Million Naira) without open competitive tendering. However, market surveys shall be conducted to obtain at least three relevant written quotations from suitable contractors/suppliers or service providers.
- e) The award of all major contracts of ₦20,000,000.00 (Twenty Million Naira) and above shall be made public with description of the contract/project and its beneficiaries, name of winning contractor, and the contract price clearly stated;
- f) A contract variation or change order is a change to the price, completion date or statement of requirements of a contract, which is provided for in

the contract to facilitate adaptations to unanticipated events or changes in requirements. Careful planning and prior assessment of ground conditions should be made in order to reduce contract variations. Contract variations should not normally arise in contracts for the supply of goods or standard services, unless the service is for a period of two years or longer, during which there may be substantial changes in the cost of labour and related materials. Admeasurement contracts for construction works provide for quantities to vary from what was provided for in the drawings. Such variations of quantities are based on an assessment by quantity surveyors and agreement between the parties, following the detailed assessment of ground conditions. An addendum to a contract for additional quantities of the same items should use the same or lower unit prices as the original contract. Although the unit rates remain as was provided for in the contract, an increase in quantities may lead to a consequential price adjustment. Any additional funding required for a variation or change order should first be committed. A contract may be varied in accordance with a compensation event or the issue of a variation, change order or similar document, as provided in the contract. A variation or change order shall be in accordance with the terms and conditions of the contract and shall be authorised by the Bureau. The method for determining price variation during contract execution must be incorporated into the contract agreement.

#### **4.6 Vetting of Contracts Documents by the Bureau**

Project Designs (where applicable), Bills of Quantities, Quotations and other tendering documents in respect of any construction work, procurement or service contract whose value is Five Million Naira (₦5,000,000.00) and above shall be vetted by the Due Process and Project Monitoring Bureau (Bureau). Accordingly, the Local Government shall forward all documents in respect of contracts whose values exceed Five Million Naira (₦5,000,000.00) to the Bureau for vetting to ensure compliance with laid down rules and regulations and issuance of a Due Process Certificate. This Certificate must be presented to the relevant approving authority ( or LEC) before approval is given for the award of the contract. The

Bureau reserves the right to reject any submission made to it which does not include all required/necessary documents.

The vetting process by the Bureau shall be done as far as possible within the following timeframe:

- a) Contracts whose values are between ₦5,000,000.00 to ₦10,000,000.00: a maximum of 5 working days.
- b) Contracts whose values are between ₦10,000,000.00 to ₦50,000,000.00: a maximum of 2 weeks.
- c) Contracts whose values are between ₦50,000,000.00 to ₦100,000,000.00: a maximum of 4 weeks.
- d) Contracts whose values are ₦100,000,000.00 or above: a maximum of 6 weeks.

Further procurement actions shall not be taken by the Procuring Entity until the Bureau has concluded its vetting, notwithstanding that it exceeds the maximum stipulated time. However, the Bureau shall notify the Procuring Entity of any delay and the reason for the delay in completing the vetting exercise.

Contracts must not be entered into until the Due Process Certificate has been received from the Bureau. The Bureau can use its permanent staff, staff on secondment from any public service, or consultants for the vetting exercise, depending on the situation.

#### **4.7 Other important Issues**

- a) **Tender Splitting:** It shall be regarded as a serious offence for any officer of the contract awarding Local Government deliberately to split contracts of works, procurement or engagement of services in order to circumvent the provisions of these Guidelines. Such breach of the rules shall be subject to disciplinary action as may be prescribed in the enabling law or in the Civil Service Rules and Regulations;

- b) **Bid Security:** The contracts of ₦20,000,000.00 (Twenty Million Naira) and above shall attract a Bid Security covering not less than 2% of bid price in the form of Bank Guarantee, issued by a reputable bank;
- c) **Performance Bank Guarantee:** Performance Bank Guarantee, for an amount that is not less than two (2) percent and not more than five (5) percent of the contract price for contracts for the supply of goods and related services and not less than five (5) and not more than ten (10) percent of the contract price for works contracts, shall be obtained for all contracts of the sum of ₦20,000,000.00 (Twenty Million Naira) and above and shall only be discharged after the full execution of the contract;
- d) **Procurement Plan:** Quarterly procurement plan shall be developed in a format to be prescribed by the Bureau and used to determine, inter alia, the requirement of funds for various Local Government Offices at different quarters during the fiscal year. Such plans shall spell out the timing for different procurement actions and show the funding requirements at different stages.

**Mobilization Fee:** Mobilization fee, where necessary and appropriate, shall not exceed 30% of the contract sum (depending on the nature and scope of the contract). However, payment of such mobilization fee shall be effected upon written application and submission of an unconditional Bank Guarantee for equivalent amount valid until the goods are supplied or until the mobilization fee has been repaid in the case of works contracts. Only such unconditional Bank Guarantee issued by a reputable bank shall be accepted.

The mobilization fee should be offset against staged or final payments and no further payment should be made until the cost of work carried out exceeds the mobilization fee.

## **CHAPTER 5: PROCUREMENT IMPLEMENTATION**

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

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

### **5.2 Advertisement as a Requirement**

5.2.1 Equal access to information by all possible participants in the market of public contracts is fundamental to free and fair competition and to ensuring value for money through competitive offers. This is the major step in ensuring that any public procurement system derives the benefit of effectiveness, efficiency and value-for-money through a transparent and fair process. This explains why the Advertisement requirement is very important for passing the Due Process Compliance rule for openness and provision of level playing field for fair competition through an Open Competitive Tender.

5.2.2 The aim is to set out in general terms in the advert the nature of the contract to be made and the general conditions for qualification. The advert should provide sufficient information to enable potential suppliers to decide whether or not to buy the full bidding documents. The advert should also state where the bidding documents may be obtained, the address or venue where bids are to be submitted and the deadline for submitting bids.

5.2.3 A Procuring Entity shall be responsible for advertising directly all invitations for pre-qualification or invitations to tender for goods, works and services. There are two categories of Advertisement guidelines.

#### ***(i) Adverts for Contracts Between ₦5, 000, 000.00 and ₦ 200, 000, 000.00.***

Advertisements for contracts of this scope shall be placed on the Notice Board in a conspicuous place at the Ministry, Agency or Department or other public institutions (such as Government secretariat building, Local Government secretariat, etc) and the Due Process Journal (if available). However, if the

tendering is to be based on the Selective or Nominated procedure, subject to the observance of other Due Process procedures, there may not be the need for even the Notice Board advert. The selected or nominated contractors are just to be invited to make their bids.

***(ii) Advert for Contracts Above ₦200, 000, 000.00 Naira (for State Contracts) and ₦20, 000, 000.00 (for Local Government Contracts).***

These require that an Advertisement calling for pre-qualification of contractors or invitation to bid to be placed in at least two national newspapers. When available, Government gazette and the Due Process Journal could also be used. All the adverts for Pre-Qualification of contractors on any contract shall follow this standard format with the following basic information:

- (i) The name and address of the procuring entity;
- (ii) Introduction: a brief description of the object of the procurement, including desired time for delivery or completion;
- (iii) Scope of Work;
- (iv) A summary of the required qualification criteria;
- (v) The place and deadline for submission of the applications for pre-qualification; and
- (vi) The date of availability of the pre-qualification or tender documents.

The time allowed for applicants to prepare their pre-qualification applications or bids shall not be less than 14 days from the date of placement of the Advert.

### **5.3 Prequalification of Bidders**

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

5.3.2 Suppliers, contractors or service providers who have been pre-qualified **may** participate further in the procurement proceedings. The Procuring Entity shall upon request communicate to suppliers, contractors or service providers who

have not been pre-qualified, the grounds for disqualification but the Procuring Entity is not required to specify the evidence or give the reasons for its findings.

5.3.3 The procurement entity shall respond to any request by a supplier, contractor or service provider for clarification of the prequalification documents if the request is made at least 10 days before the deadline for the submission of applications to pre-qualify.

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

#### **5.4 Bidders must be qualified to perform the contract**

5.4.1 Contracts should only be awarded to bidders who have demonstrated that they are capable of performing the contract to an appropriate standard. For regular purchases, there will normally be a pre-qualified list of capable and reliable contractors who will be invited to tender. Where there is no existing pre-qualified list, potential contractors should be invited by advertisement to apply for pre-qualification.

5.4.2 Upon the collation of the submissions of all respondents to an advertisement for pre-qualification, the relevant Procuring Entity shall analyse all the submissions made by the respondents to the advert. The analysis shall be based on an objective set of technical and financial capacity criteria. These criteria shall be stated in the pre-qualification documents. The aim is to short-list/select competent respondents to the advert. It is also an opportunity to weed out those who do not qualify to participate in the commercial/financial bid. The criteria shall consist of the following:



***A - Necessary Conditions (Do not attract any Mark but failure to meet a necessary condition would lead to rejection of the tender):***

- (i) Evidence of incorporation or business name registration: 0%
- (ii) Registration with Jigawa State Works Registration Board: 0%
- (iii) Audited Accounts of the Business for at least the last financial year: 0%
- (iv) Evidence of Tax Clearance Certificate for three years (or for such lesser period as the contractor has been in business): 0%

***B – Scored Conditions totalling 100%***

- (i) Evidence of financial Capability and Banking support: 20%
- (ii) Experiences and technical qualifications of key personnel: 15%
- (iii) Similar projects executed and evidence of knowledge of the industry: 15%
- (iv) Equipment and technology capacity: 20%
- (v) Annual turnover: 5%
- (vi) VAT registration and evidence of past VAT remittances: 5%
- (vii) Indigenous contractors (Jigawa State): 20%

5.4.3 These scored conditions might be varied according to the nature of the requirement. The pre-qualification benchmark score which respondents can be considered to be competent is 70% and above.

5.4.4 The next stage is to draw up a **List of Pre-qualified Bidders (the competent bidders)** which shall include all respondents with at least 70% score each of whom is to be issued with an **invitation to tender or bid**.

## **5.5 Post Qualification of Bidders**

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

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

## **5.6 Invitations to Bid**

5.6.1 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.

5.6.2 Every invitation to an Open Competitive Bid shall:

1. In the case of goods and works under International Competitive Bidding, to be advertised in at least two national newspapers, the relevant internationally recognized newspapers, any official websites of the Procuring Entity and the Bureau, as well as the Tenders Journal not less than six weeks before the deadline for submission of the bids for the goods and works; and
2. In the case of goods and works valued under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the Procuring Entity, any official websites of the Procuring Entity, at least two national newspapers, and in the Tenders Journal within than six weeks before the deadline for submission of the bids for the goods and works.

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

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

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

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

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

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

5.6.9 A Procuring Entity may convene a pre-tender conference for the suppliers and contractors in order to clarify all matters pertaining to the tender documents. All requests for clarifications and the responses provided during the conference shall be recorded in the minutes of the meeting without identifying the source of the requests and the minutes shall be distributed to all prospective suppliers and contractors who had obtained the tender documents.

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

## **5.7 Submission of Bids**

5.7.1 All bids in response to an invitation to Open Competitive Bidding shall be submitted in writing and, or any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in two sealed envelopes marked 'Original' and 'Duplicate'.

1. All submitted bids shall be deposited in a secured tamper-proof bid-box.
2. All bids must be in English language.
3. The Procuring Entity shall issue a receipt showing the date and time the bid was delivered and record same in a Bids Submission Register.
4. Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or the contractor which submitted it.
5. All bids submitted shall be securely kept in a tamper-proof bid-box.
6. No communication shall take place between Procuring Entities and any supplier or contractor after the publication of a bid solicitation other than for the purpose of providing additional clarifications as permitted under the Law.

5.7.2 A Procuring Entity or the State Government may:

1. Reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders;
2. The rejection of all Bids requires prior consent of the Bureau or the State Executive Council; or
3. Cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

5.7.3 Tender documents usually carry provision for the rejection of all bids received. However, rejection of all bids shall be done only under exceptional circumstances and can be justified when there is lack of effective competition; or no substantially responsive bid received; inadequate competition; all bid prices were unreasonably high and substantially above the Procuring Entity's budget provision; Tender documents found to be defective; or the requirements of the Procuring Entity have changed.

5.7.4 However, if following competitive bidding only one bid has been received and the bid is of good quality, meets the requirements of the tender documents, is technically and financially responsive compared to market prices, and otherwise in order, the bid may be accepted and following evaluation, awarded to the sole bidder.

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

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

## **5.8 Bid Opening**

5.8.1 All bids shall be submitted before or by the deadline or time and date specified in the tender documents or any extension of the deadline for submission.

5.8.2 The Procuring Entity shall:

1. Invite two credible persons as observers, one person each representing a recognized (i) private sector professional organization whose expertise is relevant to the particular goods or service being procured and (ii) non-governmental organization working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have the right to submit their observation report to the Bureau and any other relevant agency including their own organizations or associations;
2. Permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;

3. Check for any withdrawals or modifications submitted, match these with the original Bid before proceeding, and withdrawn bids shall not be opened once the authenticity of the withdrawal notice has been confirmed;
4. Open the first Bid after confirming that all conditions regarding marking and sealing of the envelope have been met and the envelope has not been tampered with, then stamp/endorse at least the original copy of each bid and annotate with a sequential serial number as it is opened (e.g. "1 of 7" where the total number of bids is 7);
5. 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 on the same day;
6. ensure that the bid opening takes place immediately on the same time and date of the deadline stipulated for the submission of bids;
7. 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 must be recorded by the Secretary of the Tenders Committee or his representative; and
8. call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and ensure that these details are recorded by the Secretary of the Tenders Committee or his representative in the minutes of the bid opening;
9. ensure that relevant pages of financial bids are endorsed by all bidders in that lot present to avoid substitution of documents; and
10. ensure that a copy of each bid submitted as read or as recorded along with the Procuring Entities estimate are sent to the Bureau.

## **5.9 Examination of Bids**

5.9.1 All bids shall be first examined to determine if they:

1. Meet the minimum eligibility requirements stipulated in the tender documents;
2. Have been duly signed;
3. Are substantially responsive to the tender documents; and

4. Are generally in order.

5.9.2 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.

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

1. Changes in prices;
2. Changes of substance in a bid; and
3. Changes to make an unresponsive bid responsive.

5.9.4 Notwithstanding the above, the Procuring Entity may correct purely arithmetical errors that are discovered during the examination of tenders.

5.9.5 The bid price read out at bid opening shall be adjusted for any arithmetic errors, and adjustments shall be made for any quantifiable non-material deviations or reservations. Price adjustment provisions applying to the period of implementation of the contract shall not be considered in the evaluation.

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

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

1. With respect to clauses in an offer:

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

2. 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.

3. With respect to bid documents:

i An unsigned bid;

4. 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; and

ii. Any bid submitted at the wrong location.

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

5.9.9 The following shall be considered as minor deviations:

1. The use of codes;
2. The difference in standards;
3. The difference in materials;
4. Alternative design;
5. Alternative workmanship;
6. Modified liquidated damages;
7. Omission in minor items;
8. Discovery of arithmetical errors;
9. Sub-contracting that is unclear and questionable;
10. Different methods of construction;
11. Difference in final delivery date;
12. Difference in delivery schedule;
13. Completion period where these are not of the essence;
14. Non-compliance with some technical local regulation;
15. Payment terms; and
16. Any other condition that has little impact on the bid.



5.9.10 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:

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

5.9.11 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.

5.9.12 Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected. At the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms. For the rejection of a bid, a written notice shall be given promptly to the supplier/contractor.

## **5.10 Bid Security**

5.10.1 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 less than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the Procuring Entity.

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

5.10.3 When the Procuring Entity requires suppliers or contractors submitting bids to provide a bid security:

1. The requirement shall apply to each supplier or contractor;
2. The bid security shall be submitted in exactly the same format attached in the Standard Bidding Documents or otherwise be rejected by the Procuring Entity;

3. Notwithstanding paragraph (2), a bid security shall not be rejected by the Procuring Entity on the grounds that the bid security was not issued by an issuer in the country, if the bid security and the issuer otherwise conform to requirements and format prescribed in the Tender documents;
4. A supplier or contractor may request the Procuring Entity to confirm the acceptability of a proposed issuer or a proposed confirmer of a bid security before submitting a bid and the Procuring Entity shall respond promptly to the request; and
5. Confirmation of the acceptability of a proposed issuer or of a proposed confirmer does not preclude the Procuring Entity from rejecting the bid security on the ground that the issuer or confirmer has become insolvent or is otherwise not creditworthy.

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

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

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

1. The expiry of the bid security;
2. The entry into force of a procurement contract and the provision of guarantee for the performance of the contract, if the guarantee is required by the tender documents;
3. The termination of the procurement proceedings without the entry into force of a procurement contract; or

4. The withdrawal of the bid prior to the deadline for the submission of bids.

### **5.11 Bid Evaluation: Time Frame for Bid Evaluation & Extension of Bid Validity**

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

5.11.2 Where there is a delay in bid evaluation so that above requirement is unlikely to be achieved, the Procuring Entity with the concurrence of the respective Approval Authority shall request the bidders to extend the period of bid validity of their bids. However, when such a request is made in the case of fixed price bids, bidders have to choose between:

1. Refusing to grant extension of bid validity of their bids: and
2. Absorbing any cost increases that might occur during such extensions (bidders are not allowed to increase their bid prices as a condition of extending the validity of their bids).

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

### **5.12 Bid Evaluation Stages**

5.12.1 The main objective of bid evaluation is to determine the bid that will result in the lowest evaluated cost to be incurred by the Procuring Entity in accepting the bid, among the substantially responsive bids received from qualified bidders.

5.12.2 All criteria to be used in the bid evaluation and the method of their application must be specified in the bidding documents. The Tender document must contain a statement on the manner in which the Procuring Entity proposes to evaluate the bids received. This statement must include:

1. A listing of the factors other than the price which it proposes to consider; and
2. An explanation of the method to be used in applying the evaluation factors. (Both for those factors susceptible to monetary adjustment and those to which other criteria must be applied).

5.12.3 No information relating to bid evaluation shall be communicated, after the bid opening, to the bidders or any other person unless they are officially involved in the process until after the contract award recommendation is officially notified to the successful bidder. No information can be communicated to any bidder at any stage other than at a debriefing requested by a bidder, where only the reasons for not selecting the bidder as the successful bidder is discussed.

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

1. Preliminary examination of bids;
2. Detailed evaluation and comparison of bids;
3. Post qualification verification; and
4. Writing bid evaluation report.

### **5.13 Preliminary Bid Examination**

5.13.1 All the bids received before the scheduled closing time shall be considered for preliminary bid examination. The purpose of this examination is to eliminate any bid from further and more detailed consideration if it does not meet the minimum standards of acceptability as set out in the bidding documents and therefore not substantially responsive. However, the Procuring Entity shall exercise reasonable judgment in applying these tests and shall avoid rejecting bids on trivial procedural grounds. For e.g., if the Tender documents stipulated that each page of the bid shall be signed or initialled and a bidder failed to initial one or more pages of supporting information, this shall not be a ground for bid disqualification. These can be rectified through the clarification process without

giving any benefit to the bidder and without prejudice to the interest of other bidders. Such discrepancies shall be noted, however, and decisions about their acceptance or rejection shall be recorded in the bid evaluation report.

5.13.2 The preliminary examination of bids determines whether the bids meet the general procedural requirements of the bidding documents, in particular the compliance with the following requirements shall be examined using the bidding documents as the reference point.

5.13.3 **Stage 1:** To ascertain that:

1. The bidder is eligible –for example, bidder shall not be currently debarred or blacklisted;
2. In case of goods, works and consultancy contracts the domestic bidder shall have: certificate of incorporation/registration from the Corporate Affairs Commission (CAC); Tax Clearance Certificate, certificate of Pension Fund and Industrial Training Fund (ITF) contributions or any other requirements by the Bureau.
3. For foreign funded projects, if it is specified by the funding agency:
  - a. In the case of works contracts, the bidder shall be from one of the eligible or member countries of the funding agency, and
  - b. In the case of goods contracts, the goods shall be manufactured in one of the eligible or member countries of the funding agency;
4. Bid is signed properly by an authorized person, including the power of attorney if stipulated, and generally in order;
5. Bid securities submitted are in acceptable format, for required amount and duration;
6. Bid contains all required critical documents, including supporting evidence of bidder eligibility and qualifications; and
7. Bid is complete and quotes for all items in the lot or packages, if so stipulated in the Tender document.

5.13.4 **Stage 2:** To ascertain the deviations from the provisions of bidding documents and categorize such deviations into major or minor deviations. Also, to

identify deviations (debatable deviations) which may be categorized as either minor or major deviations depending upon the requirements of the specific provisions in the tender documents, the criticality of the deviation, the value of the contract in comparison to the value of the deviation and the judgment of the Technical Evaluation Committee. The purpose is to identify substantially responsive Bids with a view to subjecting such Bids for detailed bid evaluation.

1. Deviation from any provisions of the bidding documents (instruction to bidders, Bid Form, price schedules, Bills of Quantities, condition of contracts and technical specifications, etc.) is a common feature in many Bids. These deviations fall into two basic categories:

a. Major deviations by the bidder resulting in a finding of “non-responsiveness” and consequent rejection of the bid; and

b. Bids with minor deviations, on the other hand, considered as “substantially responsive” and are, therefore, evaluated and considered for contract award by determining any financial value of each deviation and adding to the bid price. The sum of the bid price and the total of adjustments made for deviations and other evaluation factors specified in the bidding documents is the “evaluated bid price”. The question is to determine which deviations are to be classified as “major” and which as “minor”. In the absence of clearly defined distinction between major and minor deviations there is room for different interpretations. To facilitate the categorization of deviations the following approach may be used.

2. A major deviation would be one which:

- (i) Has an effect on the validity of the bid; or
- (ii) Has been specified in the bidding documents as grounds for rejection of the bid; or
- (iii) Has an effect in substantial way to the scope, quality, functionality or performance of the contract; or
- (iv) Will limit in any substantial way the Procuring Entity’s rights or bidders’ obligations; or

(v) A deviation from the terms or the technical specifications in the Tender documents whose effect on the bid price is substantial but cannot be given a monetary value.

3. A minor deviation would be one which either:

- (i) Has no effect on the validity of the bid; or
- (ii) Has no effect in a substantial way to the scope, quality, functionality or performance of the contract; or
- (iii) Has no effect on the price, quality or delivery of the goods or services offered; or
- (iv) Will not limit in any substantial way the Procuring Entity's rights or bidders' obligations: or
- (v) has such effect but the difference from the commercial terms or technical specifications in the tender documents is such that it can be given a monetary value; or
- (vi) Has not been specified in the bidding documents as grounds for rejection of the bid, provided that the total amount of adjustments for such deviations does not exceed a previously determined percentage of the bid price.

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

5.14.1 The main objective of detailed bid evaluation is to determine the cost that Procuring Entity will incur if the contract is awarded to each of the bids, which was determined as a substantially responsive bid. Therefore, only the bids that have been determined to be substantially responsive to the tender documents, i.e. do not contain material deviation, shall be considered for detailed evaluation. Out of the three stages of bid evaluation described in this Guideline only during this stage are the bids compared with each other. The purpose of comparison is to determine the lowest evaluated cost that will be incurred by the Procuring Entity from the substantially responsive bids received. The lowest evaluated bid may or may not necessarily be the lowest quoted bid. In order to determine the lowest evaluated bid, the Procuring Entity shall only use the evaluation criteria disclosed in the tender document. No additional evaluation criteria other than those which were disclosed in the advertisement or tender documents shall be

used during the evaluation. A systematic and logical sequence as described in this Guideline shall be followed during the detailed evaluation and comparison of bids.

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

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

- 1- Exclude VAT, contingencies and provisional sum amounts;
- 2- Correction of arithmetical errors;
- 3- Application of applicable discount;
- 4- Adjustment to bid prices for omissions;
- 5- Adjustments for acceptable departures;
- 6- Adjustments for delivery period;
- 7- Adjustments for inland transportation;
- 8- Operational costs and life cycle costing;
- 9- Conversion to common currency;
- 10- Domestic preference;
- 11- Reassess ranking order;
- 12- Examine for unbalanced bidding;
- 13- After sales services;
- 14- Clarifications during evaluation; and
- 15- Alternate Bids.

#### 5.14.2.2

(a) Exclude VAT, contingencies and provisional sum amounts

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



(b) Correction of arithmetical errors

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

- (i) Where there is a discrepancy between the amounts in figures and in words, the amount in words will prevail;
- (ii) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Procuring Entity that there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected; and
- (iii) If the bid price changes by the above procedure, the amount stated in the Form of Bid shall be adjusted with the concurrence of the bidder and shall be considered as binding upon the bidder.

If the price of any bid is adjusted as above, the Evaluation Committee shall give a detailed report explaining where and how such adjustments were made, rather than merely stating the bid price was adjusted due to arithmetical error.

(c) Application of applicable discount

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

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

(d) Adjustment to bid prices for omissions

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

Generally, for works contracts, instructions to bidders will include clauses indicating that if a bidder fails to quote for any item in bills of quantities the bidder will not be paid by the Procuring Entity for such items when executed and shall be deemed covered by the rates of other items and prices in the bills of quantities. In that case no further adjustment is needed during the bid evaluation. If such provision is not included, in the case of omission of one or more items from the bid, rather than rejecting the bid entirely and if it is already considered as substantially responsive during the preliminary examination, the deemed/surrogate prices shall be added to the bid price for the comparison purposes. To that effect, surrogate prices for these items may be obtained from

printed price lists if available or the highest of the other bids for the corresponding items shall be used.

(e) Adjustments for acceptable departures

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

(f) Adjustments for delivery periods

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

(g) Adjustments for inland transportation

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

(h) Operational costs and life cycle costing

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

- (i) Initial purchase price;
- (ii) Adjustments for extras, options, delivery, variations, deviations;
- (iii) Estimated operational costs (fuel, labour etc.);
- (iv) Estimated cost of spare parts and other consumables;
- (v) Efficiency and productivity; and
- (vi) Depreciation cost.

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

(i) Conversion to common currency

In order to minimize the foreign exchange risk for bidders in certain procurement (especially in ICB procedures) the bidders are allowed to bid in foreign currencies. This results in bids being presented in a wide variety of currencies which must be converted to a single common currency, generally to Nigerian Naira. These conversions are made using the prevailing selling rates established for similar transactions by the Central Bank of Nigeria on the specified date. In works

contracts mostly used method is to specify that all the bidders shall price the bid in Naira and to specify the percentages in different currencies. In some works contracts and in supply contracts, it is customary that the bidders are allowed to quote proportions in different currencies for the same item.

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

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

**Goods:**

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

**Works:**

- (i) The application of the applicable preference shall be used only if it was disclosed in the bidding documents;
  - (ii) Satisfying the minimum domestic values as specified in the bidding documents;
  - (iii) The margin of price is added to the bid price of foreign bidders (for evaluation purposes), rather than subtracting from the domestic bids.
- (k) Comparison with engineer's estimate, in the case of works contracts.

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

- (i) Review engineers estimate to discover whether any unusual provisions are included which may have affected the prices;
- (ii) Analyse current market conditions to discover whether they would tend to increase or decrease the bid prices;
- (iii) If these reviews would account for the discrepancy three alternative conclusions may be reached:
  - a Bid is reasonable under given circumstances and shall be accepted;
  - b If the bid prices are marginally low the bidder shall be requested to prove to the satisfaction of the Procuring Entity, how the bidder intends to procure such items/perform the Works/provide the Services as per the quoted rates, for such purposes the bidder may be asked to provide a rate analysis. If the Procuring Entity is of the view that the justification/explanation provided by the bidder is unacceptable, and hence the bidder would fail in the performance of his obligations within the quoted rates, a higher performance security may be requested to mitigate such risks; If the bidder refuses to provide such additional performance security, his Bid shall be rejected.

- c Aspect of bidding documents are suspected to be the likely cause; all bids may be rejected and initiate re-bidding with modified bidding documents. Rejection of all bids requires the prior approval of the Bureau.

### **5.15 Extension of Bid Validity Period**

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

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

### **5.16 Bid Evaluation Report**

After the completion of the evaluation process the Procuring Entity shall prepare a bid evaluation report setting out the process of evaluation. The Procuring Entity shall use standard forms available for the purpose.

### **5.17 Confidentiality**

This Guideline stresses the confidential nature of the evaluation process. After suppliers, contractors and consultants have submitted their bids to the Procuring Entity by the required deadline, the bid evaluation process outlined above begins on the date indicated in the bidding documents for bid opening.

## **5.18 Acceptance of Bid**

5.18.1 The successful bid shall be that submitted by the lowest cost evaluated bidder from the bidders' response as to the bid solicitation; but need not necessarily be the lowest cost bidder, provided the Procuring Entity can show good grounds for its award decision.

5.18.2 Notice of the acceptance of the bid shall immediately be given to the successful bidder after due consideration and approval by the approving authority.

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

5.18.4 Where the procurement proceeding is with regard to a value threshold for which the Bureau/ the State Executive Council is the approving authority, then subject to the fulfilment by the successful bidder of any special conditions expressed in the bid solicitation documents and the execution of the procurement contract, the notice shall serve as notice of a procurement award.

## **5.19 Contract Performance Guarantee**

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.

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

5.20.1 Prior to contract award, the Procuring Entity shall ensure that budgetary provision is confirmed to meet the cost of the contract. Thereafter, the Letter of Acceptance shall be issued within the validity period of the bid, and no sooner the



final decision of contract award is completed. This Letter of Acceptance shall be free from any new conditions.

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

5.20.3 Once the Procuring Entity has evaluated the tenders and decided on the lowest evaluated responsive bid, and a decision has been made about the award, the Procuring Entity shall:

1. Request and obtain the Bureau's "No-objection" prior to awarding the contract, if applicable;
2. Not negotiate the award with the successful bidder without approval from relevant authorities;
3. Not require the selected bidder to provide performance Guarantee in excess of that specified in the bidding documents;
4. Send notification of the award, and a contract form to the successful bidder in a manner and within the time specified in the bidding documents;
5. Request the successful bidder to return the signed contract together with the required performance security within the time specified in the bidding documents; and
6. Notify unsuccessful Bidders as soon as possible after receiving the signed contract and the performance security from the successful bidder.

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

1. Require forfeiture of the bidder's bid security; and
2. Proceed to offer the contract to the second lowest evaluated responsive bidder, provided that he is capable of performing satisfactorily.

## **5.21 Execution of Contract Agreement**

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

## **5.22 Default on Bid Security**

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

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

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

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

5.23.3 When retention money is paid, relevant amount of VAT shall also be paid by the Procuring Entity.

## **5.24 Record of Procurement Proceedings**

5.24.1 Every Procuring Entity shall maintain a record of the procurement proceedings containing the information specified in the Law and submit to Bureau. Such information shall include overall data on numbers, types, values and dates of contracts awarded and names of awardees, and procuring organizations. A Procuring Entity shall also maintain for all contracts, a record which includes, inter alia:

1. Public notices of tendering opportunities;

2. Tender documents and addenda;
3. Bid opening information;
4. Tender evaluation reports;
5. Formal complaints/appeals by bidders and outcomes;
6. Signed contract documents and addenda and amendments;
7. Records of claims and dispute resolutions;
8. Record of time taken to complete key steps in the process;
9. Comprehensive disbursements data in relation to payments.

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

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

## **5.25 Mobilization Fees**

5.25.1 In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of no more than 30% (Local Contract) and 15% (Foreign Contract) to supplier or contractor may be paid subject to the approval of an Advance Payment Guarantee (APG) by the Bureau and supported by an unconditional bank guarantee issued by a banking institution acceptable to the Procuring Entity.

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

## **5.26 Retention Money**

5.26.1 Retention money on the other hand is a portion of the payments due under the contract which is retained to ensure performance by the supplier/contractor. When used as a guarantee, it shall not exceed 10% of the

contract value. Instead of the Procuring Entity retaining part of the due payments, the supplier/contractor may also provide a money retention security in form of a bank guarantee or irrevocable Letter of Credit.

5.26.2 If the contract provides for both a performance guarantee and retention fees, the total amount of both performance guarantee and retention fee shall not exceed 15% of the contract sum.

### **5.27 Publication of Contract Awards**

The award of all contracts shall be notified to the Bureau and shall be published in a national daily with description of the contract, name of contractor/supplier and the contract price clearly stated.

## **CHAPTER 6: PROCUREMENT OF WORKS AND GOODS**

### ***6.1 Definition of Works and Goods***

6.1.1 **'Works'** means work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, erection, assembly, installation of plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract.

6.1.2 **'Goods'** means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves.

### ***6.2 Procurement Methods***

6.2.1 The procurement methods that can be used for the procurement of Works and Goods are:

1. International Competitive Bidding (ICB)
2. National Competitive Bidding (NCB)
3. Two-Stage Tendering (National or International)
4. Selective/Restricted Tendering (National or International)
5. Nominated/Single Source/Direct Procurement
6. Request for Quotations (RFQ)

6.2.2 Competitive tendering using ICB or NCB is the preferred method for public procurement and the use of alternative methods is strictly limited to the provisions of the Law and the approval of the Bureau.

#### **6.2.1 International Competitive Tendering**

International Competitive Tendering is appropriate for high value or complex procurements, or where the works / goods by their nature or scope, are unlikely to attract adequate local competition. The Law requires the use of ICB for procurement of work / goods above the threshold provided by the Bureau.

## 6.2.2 National Competitive Tendering

National Competitive Tendering is appropriate for lower value procurements, where the works / goods by their nature or scope are unlikely to attract foreign competition, or where there are justifiable reasons for the Procuring Entity to restrict tendering to domestic contractors. The Law permits the use of NCB for procurement of works / and goods valued between the thresholds provided by the Bureau.

## 6.2.3 Selective/Restricted Tendering

6.2.3.1 Selective/Restricted Tendering is a tendering process by direct invitation to a shortlist of pre-registered or known contractors, and is subject to a specific approval being granted by the Bureau.

6.2.3.2 It is an appropriate method of procurement where:

1. the requirement is of a specialized nature or has requirements of public safety, or public security;
2. which make an open competitive bid inappropriate;
3. due to the urgent nature of the requirement, an open competitive bid is not practical;
4. the number of potential contractors is limited; or
5. an open competitive bid has failed to result an award of contract.

## 6.2.4 Two-Stage Tendering

6.2.4.1 Two-stage Tendering is an infrequently used procurement process in which a Procuring Entity invites bidders in the initial stage to contribute to the detailed specification of the works / goods. Following review and consultations, new detailed specifications for the works / goods are prepared and a restricted bid issued in the second stage to all participants who were not rejected in the first stage.

6.2.4.2 It is an appropriate method of procurement when it is not feasible for the Procuring Entity to formulate detailed specifications or plans for the works, to

identify their characteristics in a defined manner, or the works / goods is subject to rapid technological advances.

#### 6.2.5 Nominated/Direct Procurement

Nominated/Direct procurement from a supplier without competition (single source procurement) is subject to a specific approval using the Guidelines issued by Bureau. Direct procurement may be appropriate when:

1. the purchase is for urgently needed remedial works / goods, provided this is restricted to the minimum requirement to meet the urgent need until a procurement by other methods can be fulfilled; or
2. the works / goods can only be provided by one source for physical, technical or policy reasons. e.g. requiring the use of proprietary techniques that are obtainable only from one source; and
3. when state security (non-economical) considerations are paramount.

#### 6.2.6 Request for Quotations (RFQ)

6.2.6.1 This is also known as “shopping” and is based on comparing price quotations obtained from several suppliers, usually at least three, to ensure competitive prices.

6.2.6.2 Request for Quotations may be used when:

1. the estimated value is less than the threshold specified by the Bureau; and Standard RFQ documents are particularly suitable for procuring readily available off-the-shelf goods or standard specification items of low value.
2. the requirement is for widely available goods / works activities such as redecoration, repairs, and minor alterations which do not require detailed specification and may be readily estimated by a contractor from a simple site visit.
3. For higher value or more complex requirements, it is recommended that a more appropriate Standard Tender Documents and contract format shall be used to protect the Procuring Entity.

### **6.3 Specification of Requirements**

6.3.1 The requirement needs to be fully identified with detailed technical specifications, drawings, and plans as appropriate.

6.3.2 The technical department of the Procuring Entity shall prepare plans, drawings, detailed specifications and a bill of quantities or activity schedule for the required works. If the Procuring Entity does not have a recognized technical department for this purpose, the assistance of technical ministries - e.g. the Ministry of Works- shall be solicited for this task.

6.3.3 The Description of Goods to be procured shall contain or be accompanied by a complete, precise and unambiguous description of the goods required. The description may include drawings where appropriate.

6.3.4 Specifications shall include:

1. the purpose and objectives of the goods;
2. a full description of the requirement;
3. a functional description of the goods, including any environmental or safety features;
4. performance parameters, including outputs and any indicators or criteria by which satisfactory performance can be judged;
5. process and materials descriptions;
6. dimensions, symbols, terminology language, packaging, marking and labelling requirements;
7. inspection and testing requirements; and
8. any applicable national or international standards required.

6.3.5 Use of Brand Names

Descriptions of goods shall not include any reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item, unless there is no other sufficiently precise or intelligible way of describing the requirement, in which case the words “or equivalent” shall be included; and the description shall serve only as a benchmark



during the evaluation process. Notwithstanding the above, where a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item is essential for reasons of technical compatibility, servicing, maintenance or preservation of warranty conditions, such description may be used, subject to inclusion of the words “or equivalent”. The requirement needs to be fully identified with detailed technical specifications. If detailed specifications cannot be prepared by the originating department or unit, the advice of the Procurement Unit or the appointment of a specialist technical advisor may be relied upon for assistance.

#### **6.4 Pre -Qualification of Contractors**

6.4.1 Pre-qualification is required for works / goods contracts estimated at the threshold value provided by the Bureau. However, prequalification proceedings may be used on lower value contracts to identify bidders who are qualified prior to the submission of bids. Pre-qualification:

1. is appropriate for large or complex works / goods, or in other circumstances when the high costs of preparing detailed bids could discourage competition;
2. is often used for contracts to be let under turnkey, design and build, or management contracting;
3. is often used for custom-designed equipment and industrial plant under turnkey contracts;
4. ensures that invitations to bid are extended only to those contractors who have adequate capabilities and resources;
5. helps to ensure that only bids from competent contractors are considered and eliminates disputes that may arise from rejection of lowest bidders because the bidders are not considered qualified; and
6. may be required of development partner funded procurements.

#### **6.4.2 Pre-qualification Criteria**

Pre-qualification is based on the capability and resources of prospective bidders to perform the particular contract satisfactorily, considering their:

1. experience and past performance on similar contracts;

2. capabilities with respect to personnel, equipment, and construction facilities;
3. required licensing and professional registrations;
4. commercial and financial resources; and
5. other criteria as specified by the Bureau.

#### 6.4.3 Advertisement for pre-qualification

The invitation to pre-qualify for bidding on specific contracts or groups of similar contracts shall be advertised as in Competitive Tendering. The scope of the contract and a detailed statement of the requirements for qualification must be provided in the advertisement and shall contain:

1. name and address of the Procuring Entity;
2. nature and location of the works to be executed;
3. desired or required time for the completion of the works;
4. criteria and procedures to be used to evaluate the qualifications of contractors;
5. means to obtain the pre-qualification documents and the place from where they can be obtained; price charged by the Procuring Entity for the pre-qualification documents (which shall reflect only the cost of printing and provision to contractors);
6. currency and terms of payment for the pre-qualification documents;
7. language in which the pre-qualification documents are available; and
8. place and deadline for the submission of applications to prequalify and the time allowed for the preparation of pre-qualification applications (between 2 – 4 weeks).

#### 6.4.4 Pre-qualification evaluation

No formal opening of submissions is required but a formal evaluation of the capabilities of each supplier is required by the Technical Committee against the criteria as stated in the advertisement.

1. Where a large number of contractors pass the stated qualification criteria, it may not be realistic to invite more than eight to participate in the specific bid. If so, only the best qualified contractors shall be selected and invited to bid.
2. Inform all applicants of the results of pre-qualification.
3. Applicants who fail to meet the pre-qualification criteria shall be briefly advised of the reasons. No further correspondence will be entered into regarding applications.
4. When pre-qualification is completed, issue the bidding document to all qualified contractors, or to an appropriate shortlist of the qualified bidders.

#### 6.4.5 Pre-qualification document

A procurement entity shall supply a set of prequalification documents to each contractor that requests them. The pre-qualification documents shall include:

1. instructions to prepare and submit prequalification applications;
2. a summary of the main terms; qualifications and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
3. any documentary evidence or other information that must be submitted by contractors to demonstrate their qualifications;
4. 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 contractors to prepare and submit their applications, considering the reasonable needs of the Procuring Entity; and
5. any other requirement that may be established by the Procuring Entity in conformity with the Law and Regulations relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.

### **6.5 Tendering Procedures**

#### 6.5.1 Standard Bidding Documents

6.5.1.1 The Bureau shall develop the various Standard Bidding Documents. A Standard Bidding Document is the set of documents issued by a Procuring Entity,

which establishes the works / goods required (technical specifications, plans, bill of quantities or activity schedule), the procurement procedures to be followed, and specifies the proposed contract conditions. It shall contain all information necessary to allow the bidder to prepare a responsive bid or quotation.

6.5.1.2 The Standard Tender Documents must contain information to:

1. instruct bidders on the procedure for submission of bids;
2. describe the works to be procured;
3. inform bidders of the criteria for evaluation of bids; and
4. define the conditions of any resulting contract.

6.5.1.3 Use of a Standard Bidding Document (SBD) format, having been made available and approved by the Bureau, is mandatory for all procurement of works funded by Government, unless an alternative format has been specifically approved by the Bureau. Procurement of works using development partners funds may be subject to the required use of their standard formats if so specified in the loan or credit agreement.

6.5.1.4 The updated versions of each approved SBD, together with an individual User Guide to assist in preparation of the SBD, may be obtained on electronic media from the Bureau, or directly downloaded from the Bureau website.

6.5.2 Preparation of Tender Documents

6.5.2.1 The Accounting Officer of a Procuring Entity shall direct the Procurement Unit or engage any other person, including a consultant, to prepare bidding documents.

6.5.2.2 Upon receipt of requisition to procure and notification of availability of funds, the Accounting Officer shall direct the preparation of the document.

6.5.2.3 The Tender documents must be prepared by modifying the appropriate SBDs issued by the Bureau. The SBDs as listed in the Law, may be obtained directly from the Bureau or downloading it from the Bureau website.

6.5.2.4 The Instructions to Bidders and the General Conditions of Contracts shall not be changed. However, modifications can only be made through the Bids Data sheet and Special Condition of Contract respectively.

6.5.2.5 The key sections that need completion and modifications are:

1. The Invitation to Bid;
2. The Bid Data Sheet;
3. Technical Specification/Drawings;
4. The Bill of Quantities;
5. The Conditions of Particular Application;
6. Forms of Bid, Bid Security, Forms of Agreement; and
7. Performance Guarantee (to be completed by the Contractor).

6.5.2.6 The Head of Procurement Unit shall:

1. Select the appropriate standard bid documents, if available, depending on the type of procurement;
2. Complete the Invitation to bid section with the relevant information which is generally self-explanatory;
3. Consult with the end-user, regarding finalization of the description of requirements (Specification) for inclusion in the document;
4. Complete the Bid Data Sheet with details of the tendering process e.g. the bid closing date, the address for submission, the evaluation criteria to be applied, any qualification criteria to be applied etc.;
5. Complete the Special Conditions of Contract with the conditions which will apply to the contract e.g. payment terms, delivery/completion period, warranty, liquidated damages; and
6. Complete the Bill of Quantities section by describing the required unit quantities etc.

## ***6.6 Issue of Invitations for Restricted Tendering***

6.6.1 The bidding documents for a Restricted Tendering must be issued to all short-listed contractors simultaneously, either by registered post, or by hand in return for a written receipt.

6.6.2 The Procurement Unit shall:

1. Prepare the bid documents together with a personalized Letter of Invitation for each short-listed contractor;
2. Send the invitation by registered post to all short-listed contractors, or deliver by hand and obtain a written receipt;
3. If the Tender is subject to conformity with a sample or samples, obtain written acknowledgement from the bidder that the sample or samples have been inspected.

### ***6.7 Issue of Request for Quotations***

6.7.1 The procedure for issuance of Requests for Quotations to short-listed contractors follows the same principles as for Restricted Tendering above.

6.7.2 A Standard Request for Quotations (SRFQ), where provided by the Bureau, shall be used for simple requirements wherever practical. For more complex requirements when the normal SRFQ and Purchase Order documents are not appropriate nor provide an appropriate form of contract, the Procuring Entity may utilize appropriate formats from the any available Standard Bidding Documents.

### ***6.8 Opening of Standard Requests for Quotations***

6.8.1 There shall be public opening of the quotations submitted. All quotations must be opened on a predetermined date and time by the Procurement Unit to avoid the opportunity for any Contractor to become aware of the prices quoted by other contractors.

6.8.2 The recording of quotations and the evaluation procedures followed are similar to those for Tenders except for the following:

1. Quotations will normally be submitted using the appropriate Standard Request for Quotations document;
2. Sealed quotations will be received directly by the Procurement Unit rather than being placed in the bid box; and

3. The Procurement Unit will register the receipt of each quotation and keep the envelopes secure and unopened until the date of the opening; Contractors will not automatically be invited to attend the opening of quotations, but the basic procedures and formality of the Meeting must be maintained.

6.8.3 The Procurement Unit/Bid Opening Committee shall do the following.

1. Ensure that the name, organization represented and contact details of all attendees are recorded in an attendance register.
2. Ensure the security of documents at all times during the procedure to prevent any unauthorized interference with the documents.
3. Bring in the unopened quotations and any samples received and check that the writing on each envelope confirms that it is for the correct RFQ.
4. Open the first quotation after confirming that any conditions regarding marking and sealing of the envelope have been met and the envelope has not been tampered with. Note each quotation with a serial number in sequence as it is opened (e.g. "1 of 4" where the total number of RFQs is 4).
5. Examine the contents of the envelope and identify, stamp/endorse and number at least all originals, and if convenient copies, and any separate sections and attachments.
6. Read out the following details from each quotation:
  - a. the number allocated to the quotation by the Bid Opening Committee;
  - b. name of the Contractor;
  - c. the total price quoted; and
  - d. any other appropriate information at the discretion of the Chairman.
7. Any obvious failure to provide a responsive quotation shall be noted in the Minutes. These quotations shall normally be rejected.
8. The Chairperson and two Members of the Committee shall initial quotation and all attachments thereto. Any corrections to prices or obvious errors and omissions shall be circled in red ink and also initialled.
9. Record the details read out of each quotation in the register of RFQ Opening, ensuring that amounts are recorded in words as well as figures, and record all

corrections and errors or omissions which are noted in the minutes of the meeting.

10. Minutes of the RFQ Opening shall be prepared by the Procurement Unit.

### ***6.9 Evaluation of Contract for Requests for Quotations***

Evaluation of quotations shall be undertaken by an Evaluation Committee set up by the Accounting Officer, which shall:

1. Rank all quotations that are responsive to the Request for Quotations according to price and select the lowest evaluated priced RFQ for contract award;
2. Prepare a brief report of the evaluation for the procurement record;
3. Prepare a Purchase Order for signature by the Accounting Officer of Procuring Entity; and
4. Issue the Purchase Order to the selected Contractor.

### ***6.10 Resolution of Contractual Disputes***

6.10.1 Most minor disputes may be resolved by discussion and agreement between the Project Manager and the contractor/supplier to rectify the cause of complaint.

6.10.2 Any formal written complaints received from a Contractor shall be fully investigated and referred to the Accounting Officer to authorize correspondence or formal negotiations with the contractor/supplier.

6.10.3 Where an adjudicator is appointed under the contract, it shall be treated as a last resort, when all other possibilities for resolution are exhausted.

6.10.4 The Project Manager shall:

1. Examine the Contract carefully to be aware of all contract conditions relating to the Resolution of Disputes.
2. Determine if the Procuring Entity is at fault or partly at fault, and if so, take appropriate action to rectify the problem.



3. Invite the Contractor to a formal meeting, within 7 days of the complaint, to discuss the issues and try to agree a compromise acceptable to both parties. Ensure that accurate written Minutes are kept of any such meeting. If an agreement is reached which changes any of the conditions of the Contract, approval of the Tenders Committee or the Accounting Officer is required before the agreement can be implemented.
4. If no initial agreement is reached and negotiations conducted by the Accounting Officer also fail, consider the use of any adjudication or arbitration options as specified in the contract.
5. Prepare any necessary addendum to the Contract for signature.

### ***6.11 Termination of the Contract***

6.11.1 The parties to the contract normally have the right to terminate the contract. Notwithstanding, the Procuring Entity shall seek the advice of the Legal Department or Ministry of Justice on this. Contracts shall not be terminated without examining all possible alternatives, unless the termination is mutually agreed by all parties to the contract.

6.11.2 The Procuring Entity shall

1. Examine the Contract carefully to be aware of all contract conditions and penalties relating to the Termination of Contract.
2. Follow the advice of the Legal Officer/ Ministry of Justice in the preparation of any correspondence and settlement of any contractual penalties.

### ***6.12 Contract Amendment***

6.12.1 Contract amendment may become necessary as a result of the application of price fluctuation specified in the contract, re-measurement, day works, variation orders, compensation events, the resolution of disputes, additional or reduced requirements by the Procuring Entity, agreements to extend the time schedule, or from accepted increases or decreases in prices. The contract may allow the Procuring Entity to modify contract values by a pre-determined

percentage when this is in the public interest and essential for the work of the Procuring Entity.

6.12.2 All other amendments to costs, quantities, time-periods and other terms and conditions of the contract must be approved by the Tenders Committee and confirmed in a formal contract amendment or addendum.

6.12.3 The Procuring Entity shall:

1. identify and agree with the Contractor the specific clauses in the contract which need to be changed, and the new values or terms and conditions which are to apply;
2. prepare a draft contract amendment document for approval by the Tenders Committee together with a report justifying the reasons for the amendment;
3. following approval by the Tenders Committee:
  - a. record any change in contract value in the Commitment Register and in the Contract Register,
  - a record any other contractual changes in the Contract Register,
  - b obtain from the Contractor any necessary addition to the Performance Guarantee,
  - c arrange for signing of the contract amendment in four copies,
  - d distribute copies in the same way as the original contract.

## **CHAPTER 7: THE SELECTION AND EMPLOYMENT OF CONSULTANTS**

### ***7.1 Definition of Consultancy Service***

7.1.1 Procurement of Consultant Service is the request for services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills to study, design and organize specific projects, advice clients, conduct training or transfer knowledge.

7.1.2 The types of services include the following:

1. Feasibility Studies.
2. Preparation of Bids documents.
3. Construction Supervision.
4. Project Management.
5. Procurement Assistance.
6. Reorganization/Privatization.
7. Institutional Capacity Building.
8. Training and Knowledge Transfer.
9. Management Advice.
10. Cleaning Services.

7.1.3 Where a Procuring Entity wishes to procure services for its needs which are precise and ascertainable, it shall solicit for expressions of interest (EOI) or applications to pre-qualify to provide the services by publishing a notice to that effect in at least two national newspapers and the Procurement Journal

7.1.4 However, where the value of the services to be procured is small, or with the approval of the Bureau, of such a low value that only national consultants would be interested, the Procuring Entity may without placing a notice as indicated above, request at least three and not more than 10 consultants or service providers to make proposals for the provision of the services in a format stipulating:

1. A statement of qualifications of the consultant to provide the service;
2. A statement of understanding of the Procuring Entity's needs;

3. The methodology for providing the service;
4. The timeframe for providing the service; and
5. The cost or fee for the service.

## **7.2 Special Features of Consultancy Service**

7.2.1 The procurement of consultancy services is a specialized form of procurement requiring procedures and documents which are very different from those for goods and works.

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

### **7.2.3 Merit-Point Systems**

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

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

### **7.2.4 Two-envelope Bidding**

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

## **7.3 Method of Selecting Consultants**

The methods of selecting consultants are as follows:

1. Quality and Cost Based selection (QCBS).
2. Quality Based Selection (QBS).
3. Least Cost Selection (LCS).
4. Selection under Fixed Budget (SFB).
5. Selection Based on Consultant's Qualification (SBCQ).
6. Single Source Selection (SSS).

### **7.3.1 Quality and Cost Based Selection (QCBS)**

7.3.1.1 Quality and Cost-Based Selection (QCBS) is the standard method of selection for most consultancy services, and uses a merit-point score system.

7.3.1.2 The technical capabilities and experience of the Consultants and Personnel, and the quality of the proposal submitted in response to the Terms of Reference, will receive the major percentage of the total points to be awarded. Only firms/consultant whose technical proposals achieved a minimum technical score will have their financial proposal considered. The general practice is that, the best compromise between technical quality and cost of the services is often achieved by allocating 80% of the total points to the technical features of the proposal and 20% to the financial score.

### **7.3.2 Quality-Based Selection (QBS)**

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

7.3.2.2 QBS is suitable for the following types of assignments:

1. complex or highly specialized assignments where it is difficult to define precise Terms of Reference (TOR) and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, sector studies,

multi-sector feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);

2. assignments that have a long-term impact and in which the objective is to have the best experts available (for example, feasibility and structural engineering design of such major infrastructure, such as large dams; policy studies of national significance; management studies of large government agencies); and
3. assignments that can be carried out in very different ways, and therefore proposals may not be directly comparable (for example, management advice, or policy studies in which the value of the services depends on the quality of the analysis).

7.3.2.3 The Request for Proposals (RFP) shall not indicate the estimated budget, but may provide the estimated number of key staff and time, specifying that this information is given as an indication only, and that consultants are free to propose their own staff compositions and estimates.

7.3.2.4 The RFP may require submission of a technical proposal only (without a financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). Only the financial envelope of the highest ranked technical proposal is opened. The rest are returned unopened to the bidders, after the negotiations are successfully concluded.

7.3.2.5 If technical proposals only are invited, after evaluating the technical proposals, the Consultant with the highest ranked technical proposal will be invited to submit a detailed financial proposal. The Procuring Entity and the Consultant shall then negotiate the financial proposal and the contract.

7.3.2.6 Other aspects of the selection process are identical to those of QCBS.

### **7.3.3 Selection under a Fixed Budget**

7.3.3.1 Fixed Budget Selection (FBS) may be used when the assignment is simple, can be clearly defined, and there is only a strictly limited budget available for the services. Consultants are invited to submit their best technical proposal within the

fixed budget price and award of contract is made to the highest scoring technical proposal.

7.3.3.2 This method entails the following:

1. The RFP will indicate the available budget and request the consultants to provide their best technical and financial proposals in separate sealed envelopes, within the stated budget.
2. The TOR must be carefully prepared to ensure that the budget is sufficient for the consultants to perform all of the expected tasks.
3. Technical proposals will be evaluated and bidders who pass the minimum technical score will be invited to a public opening of their financial envelopes.
4. Bidders whose technical proposals fail to meet the minimum technical score will have their financial envelopes returned unopened.
5. Any financial proposal that exceed the indicated budget shall be rejected.
6. The Consultant who has submitted the highest ranked technical proposal within the budget will be selected for award of contract.

#### **7.3.4 Least-Cost Selection**

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

7.3.4.2 This method entails the following:

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

### **7.3.5 Selection Based on Consultants' Qualifications**

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

7.3.5.2 This method entails the following:

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

### **7.3.6 Single-Source Selection**

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

7.3.6.2 Single-source selection is appropriate:

1. If there is a clear advantage over competitive selection for instance:
  - (a) for tasks that are a natural continuation of previous work carried out by the Consultant;
  - (b) where rapid selection is essential (for example, in an emergency situation);
2. For very low value assignments;
3. When only one consultant/firm is qualified or has the necessary experience for the assignment; or
4. Single source selection would be based on the Bureau's guideline which is available on the Bureau website.



## **7.4 Use of Individual Consultants**

7.4.1 Individual consultants are normally employed on assignments in the following circumstances:

1. Teams of personnel are not required;
2. Additional outside (home office) professional support is not required;
3. The experience and qualifications of the individual are the major requirement;
4. Selection may be on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the Procuring Entity;
5. Individuals must meet all relevant qualifications and be fully capable of carrying out the assignment; and
6. Capability is judged on academic and professional background, experience, knowledge of local conditions and culture, administrative systems, and government organization, and language skills as appropriate.

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

## **7.5 The Steps of the Procurement Process**

7.5.1 The procedures and guidelines below are based on the standard QCBS process of selection although other selection methods are available for use in appropriate circumstances. The procurement of consultancy services will normally include the following steps:

1. Preparation of the Terms of Reference (TOR).
2. Preparation of a cost estimate and confirmation of available budgeted funds.
3. Advertising for expressions of interest (if appropriate) or preparation of the shortlist of consultants.
4. Preparation and issue of the Request for Proposals (RFP), including: a- Letter of Invitation (LOI); b- Information to Consultants (ITC); c- Draft contract.

5. Receipt of proposals in two envelopes.
6. Opening and Evaluation of technical proposals.
7. Opening and Evaluation of financial proposals.
8. Consolidated evaluation according to the criteria stated in the RFP.
9. Negotiations and Award of the contract to the selected firm.

## 7.5.2 The Terms of Reference

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

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

7.5.2.3 The TOR must be complete, precise, and clear to minimize request for clarifications from consultants. It must be prepared by staff with the requisite expertise. The Terms of Reference will normally contain the following headings:

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

### **1. Background:**

This shall be limited to the necessary general background and introduction to the assignment including overall details of the programme or project.

## **2. Objectives:**

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

## **3. Scope of the Services:**

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

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

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

## **5. Deliverables:**

The Deliverables detail the specific outputs expected from the Consultant.

These will include reports, achievements and other measurable progress indicators. For Lump Sum contracts key deliverables are often defined for use with a schedule of interim part payments.

## **6. Assignment Reports and Schedule of Reports:**

The assignment and schedule of reports specify the reporting requirements and frequency of reports, and where appropriate the structure of Reports required.

Entities shall avoid specifying unnecessary routine reports, since these reports can easily distract the Consultant from more productive work for the Client. It shall be noted that reports are no substitute for effective personal management of an assignment.

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

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

stationery, Guarantee, etc.) that will be provided, and any other resources or support that the Client (or the Government) will make available.

#### **8. Assignment Period:**

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

#### **9. Management & Administration of the Assignment:**

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

### 7.5.3 Estimating Cost and Budget

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

7.5.3.2 Cost estimate includes expenses relating to:

1. consultant staff remuneration;
2. travel and transport;
3. mobilization;
4. staff allowances;
5. communications;
6. office rent, supplies, equipment, shipping; and insurance;
7. surveys and training programs;
8. report translation and printing;
9. taxes and duties; and
10. contingencies.

7.5.3.3 The Head of Procurement Unit shall:

Prepare a cost estimate of the envisaged assignment by adding the remuneration of consultant staff and the direct expenses to be incurred by consultants during the execution of their duties. Those figures are based on an estimate of the staff

time (per unit of time, hour, month) required to carry out the services and an estimate of each of the related cost components. Since the estimate of the needed staff time is derived from the TOR, the more exhaustive and detailed the TOR, the more precise the estimate.

#### 7.5.4 Expression of Interest (EOI)

A request for Expressions of Interest is required by the Law for consultancy services estimated to cost above the threshold stated by the Bureau, but may be used on lower value contracts to identify consultants who are qualified prior to the issue of an RFP.

#### 7.5.5 EOI Criteria

Pre-qualification is based upon the capability and resources of prospective consultants to perform the assignment satisfactorily, considering their:

1. experience and past performance on similar assignments;
2. capabilities with respect to personnel and facilities;
3. required licensing and professional registrations;
4. Commercial and financial resources; and
5. Other criteria as specified by the Bureau

#### 7.5.6 Advertisement for Expressions of Interest

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

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

1. name and address of the Procuring Entity;
2. background for the assignment;
3. the scope of the services required;

4. the location and required timescale for the completion of the services;
5. criteria and procedures to be used to evaluate the qualifications of consultants; and
6. Place and deadline for the submission of EOI (which shall not be less than four weeks following the first advertisement).

#### 7.5.7 Evaluation of EOI and Short listing

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

7.5.7.2 The following details of each firm shall be assessed in the selection of a short-list of between three and eight consultants:

1. general background of the consultant;
2. eligibility in terms of country of origin, turnover requirements and any other conditions stated in the advertisement;
3. previous experience of similar assignments;
4. competence and sector related experience of the firm;
5. proficiency in English language;
6. relevant experience; and
7. quality of performance under previous contracts.

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

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

7.5.7.5 On completion of the process and approval of the shortlist by the Tenders Committee, the RFP will be issued to the qualified consultants.

### 7.5.8 Preparation and Issue of Request for Proposal (RFP)

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

### 7.5.9 Technical Evaluation Criteria

The criteria specified in the RFP shall include:

1. the firm's relevant experience for the assignment;
2. the quality of the methodology proposed;
3. the qualifications and experience of the key staff proposed; and
4. the extent of participation by nationals among key staff in the performance of the assignment.

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

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

Table 1 Indicative Weighting of Evaluation Criteria (Consultant Services)

Specific relevant experience:	[10-20] points
Response to the TOR and Methodology Proposed:	[20 – 30] points
Key personnel:	[20 – 30] points
Transfer of knowledge:	[0-10] points
Participation by nationals:	[0-10] points
Total:	100 points

The criteria may be divided into sub-criteria to assist the objectivity of the evaluation. For example, sub-criteria under methodology might be *innovation* and *level of detail*. It is usual to use sub-criteria for key staff to evaluate their qualifications, technical experience and language capabilities. The number of sub-

criteria shall be kept to the essential minimum and must be fully detailed within the RFP.

#### 7.5.10 Minimum Technical Score

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

#### 7.5.11 Financial Evaluation Criteria

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

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

#### 7.5.12 Weighting of Technical and Financial Scores

The relative weightings for technical and financial scores must be stated in the RFP. This is usually set at 80% for the technical score and 20% for the financial score. In this case, the technical score will be multiplied by 80% and the financial score by 20% to give the total score for each proposal

### ***7.6 Contract Agreement for Employment of Consultants***

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

#### 7.6.1 Lump Sum (Fixed Price) Contracts

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



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

## 7.6.2 Time-Based Contract

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

1. it is difficult to define the full scope of services, or the input of the consultants required to attain the objectives of the assignment;
2. the length of services can be precisely defined and deliverables are only incidental to the main purpose of the assignment;
3. the services are related to activities which completion periods may vary;
4. Payments are based on:
  - a) Remuneration: Agreed hourly, daily, weekly, or monthly rates for staff;
  - b) Reimbursable: Reimbursable items using actual expenses and/or agreed unit prices.
5. The rates for staff remuneration include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances.

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

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

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

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

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

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

7.6.4 Percentage Contract

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

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

7.6.5 Definite Delivery Contract (Price Agreement)

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

1. These are commonly used to retain “advisers” for implementation of complex project, adjudicating in dispute resolution, institutional reforms,

procurement advice, technical troubleshooting, etc. normally for a period of a year or more.

2. The Procuring Entity and the firm agree on the unit rates to be paid, and payments are made on the basis of the time and resources actually used.

### ***7.7 Bid Security and Performance Guarantee***

7.7.1 Bid Security and performance guarantee for consultants' services are not recommended for the following reasons:

1. Bids securities are not an accepted standard for consultancy services bids and are likely to discourage participation by international consulting firms;
2. enforcement of bids securities may be subject to dispute, for example when final negotiations fail to reach a satisfactory conclusion;
3. performance securities can be easily abused by the client as personality clashes or other factors beyond the direct control of the Consultant may affect achievement under the contract;
4. there is often a strong element of subjectivity rather than objectivity in determining the success or failure of an assignment;
5. Securities increase the costs to the consulting industry without evident benefits, and the costs are inevitably passed on to the Client through higher prices.

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

### ***7.8 Receipt and Opening of Technical Proposals***

7.8.1 Bid Opening shall commence immediately after the deadline for submission of proposals (as stated in the RFP).

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

7.8.3 The Bid Opening Committee shall comprise of at least three persons, including a member of the Tenders Committee. They shall ensure that minutes of the opening proceedings are duly written.

7.8.4 The Chairperson of the Bid Opening Committee will control and direct the proceedings and not allow consultant's representatives to interfere with the work of the Committee. Any objections by a Consultant to the procedures or decisions of the opening shall be made in writing to the Accounting Officer. For purposes of transparency, it is not permitted for the opening to be halted or postponed once the process begins.

7.8.5 The Bid Opening Committee shall carry out the following functions.

1. Ensure that consultants' representatives are seated separately from the Bid Opening Committee and officials of the Procuring Entity, and that the name, organization represented and contact details of all attendees are recorded in an attendance register.
2. Open the meeting and outline the procedures to be used for the opening of Technical Proposals.
3. Ensure the security of documents at all times during the opening procedure to prevent any unauthorized interference with the documents and process.
4. Open the bid box, check that the inscription on each envelope confirms that it matches the correct proposal and complies with the wording and sealing required in the RFP. Stack all envelopes in clear view ready for opening.
5. Check for any withdrawals or modifications submitted, and match these with the original Proposal before proceeding. Withdrawn proposals shall not be opened once the authenticity of the withdrawal notice has been confirmed.
6. Open the first proposal after confirming that all conditions regarding marking and sealing of the envelope have been met and the envelope has not been tampered with.

7. Examine the Technical and Financial Proposal envelopes inside to confirm that all conditions regarding marking and sealing of both envelopes have been met and the envelopes have not been tampered with.
8. Sign as received and place the Financial Proposal envelope unopened in a separate pile and secure the proposals back into the bid box. This shall open only after the completion of the Technical Evaluation. Examine the contents of the envelope and identify, stamp and number all originals and copies, and any separate sections and attachments.
9. Read out the following details of each Technical Proposal from the Original copy: a-any Proposal modifications or withdrawals; b-the number allocated to the Proposal by the Bid Opening Committee; c-the name and country of the Consultant; and d-any other appropriate information at the discretion of the Chairman.
10. Any envelopes containing substitutions, or modifications, must be subject to the same level of scrutiny, including the reading out of critical details.
11. Any obvious failure to provide a responsive Proposal shall be reported to the Meeting and recorded in the Minutes. The Chairperson and two Members of the Committee shall initial the original of each Technical Proposal and all attachments thereto. Any corrections or obvious errors and omissions noted shall be circled in red ink and also initialed.
12. Record the details read out of each Proposal in the Register of Opening, and record any corrections and errors or omissions that were noted during the opening and captured in the Minutes of the Opening.

7.8.6 Minutes of the Opening shall be prepared by the Procurement Unit, signed by the Chairperson of the Bid Opening Committee and made available to any consultant submitting a Proposal who requests a copy in writing. The Technical Proposals shall be handed over to the Bid Evaluation Committee for evaluation.

### ***7.9 Evaluation of Technical Proposals***

7.9.1 The Bid Evaluation Committee shall meet shortly before the deadline for submission of the proposals to confirm that there is a common understanding of the evaluation method, the evaluation criteria and sub criteria specified in the

data sheet, and the selection procedure. They shall also familiarize themselves with the RFP (in particular the TOR). It is important not to wait until after the technical proposals are opened to define the rating system, since these definitions could be biased by the knowledge of the contents of the proposals.

7.9.2 The Evaluation Committee shall confirm that its members:

1. have no conflict of interest;
2. understand the rating and scoring system;
3. have been provided with evaluation worksheets; and
4. agree on how to evaluate the proposals.

7.9.3 A meeting of the Bid Evaluation Committee shall be held to examine the Technical Proposals to confirm substantial responsiveness to the conditions specified and that there are no important omissions or deviations from the stated objectives, TOR, or other key requirements of the RFP. The Bids Evaluation Committee may request clarifications from consultants concerning ambiguities or inconsistencies in the Proposal. Such requests shall be in writing, and no change in the scope of the originally offered services may be sought or accepted. The responses from consultants shall also be in writing.

7.9.4 Each evaluator shall conduct his or her detailed technical evaluation independently, and record scores using the format provided in the standard evaluation format provided by the Bureau. Evaluators shall also separately note particular strengths and weaknesses of each proposal to assist them in justifying the scores they have awarded.

7.9.5 Following completion of individual evaluations, the Evaluation Committee shall meet again to combine the scoring and to discuss the reasons for any wide variations in the scores awarded by individuals.

7.9.6 The Evaluation Committee will then prepare the Technical Evaluation Report using the standard format for approval by the Tenders Committee.

### **7.10 Opening of Financial Proposals**

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

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

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

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

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

7.10.5 The Bid Opening Committee shall:

1. Open the meeting and outline the procedures to be used for the opening of Financial Proposals;
2. Ensure that consultants' representatives are seated separately from the Bid Opening Committee and officials of the Procuring Entity, and that the name, organization represented and contact details of all attendees are recorded in an attendance register;
3. Ensure the security of documents and proposals at all times during the opening procedure to prevent any unauthorized interference with the documents and process;
4. Bring in the unopened Financial Proposals and place in clear view of all participants;

5. Read out the Technical Scores awarded to each consultant during the technical evaluation;
6. Open the first Financial Proposal after confirming with the Consultant that his or her envelope has not been opened or tampered with in any way;
7. Examine the contents of the envelope and identify, stamp and number all originals and copies, and any separate sections and attachments;
8. Read out the following details of each Financial Proposal from the Original copy: a- the number allocated to the Proposal by the Bid Opening Committee; b- the name and country of the Consultant; the currency of the Proposal; c- the total Proposal price; d- any discounts offered; and e- any other appropriate information at the discretion of the Chairperson; and
9. Record the details read out of each Proposal in the Register of Opening, and record any corrections and errors or omissions that were noted during the opening and capture in the Minutes of the Opening.

7.10.6 Any obvious failure to provide a responsive proposal shall be reported to the Meeting and recorded in the Minutes.

7.10.7 The Chairperson and two Members of the Committee shall initial the original of each Financial Proposal and all attachments thereto. Any corrections or obvious errors and omissions noted shall be circled in red ink and also initialled.

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

7.10.9 The Financial Proposals shall be handed over to the Bid Evaluation Committee for evaluation whilst a copy is kept under lock and key.

### ***7.11 Evaluation of Financial Proposals***

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



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

7.11.3 The Bid Evaluation Committee shall do as follows.

1. Correct any purely arithmetical errors in bids in accordance with the procedure stated in the RFP. If there is any discrepancy between numbers and written figures, the written figures shall prevail. If both the number and the total price are indicated in the Proposal, arithmetic shall be checked and if there is a discrepancy, the unit price shall govern. All errors in extension (multiplying the unit price by the number) and totaling shall be corrected and the Consultant notified. A Consultant cannot be permitted to retain an arithmetical error in extension or totaling and correct the unit price. Notify Consultants of any such arithmetic corrections, and request written agreement of the Consultant to the correction. If a Consultant does not accept the correction of an arithmetical error, his Proposal must be rejected.
2. Any communications between the Procuring Entity and a Consultant during the examination of Proposals shall be made in writing.
3. Calculate the financial score of each proposal applying the formula specified in the RFP.
4. Combine the technical and financial scores for each proposal using the methodology stated in the RFP, rank proposals in the order of their total scores and recommend the Consultant with the highest score for contract negotiations.
5. Complete the Evaluation Report using the standard format with recommendations for approval by the Tenders Committee.

### **7.12 Negotiation of Contract**

1. Following approval of the Evaluation Report and recommendations by the Tenders Committee, the Procuring Entity shall invite the recommended

Consultant for contract negotiations, in accordance with the procedure stated in the RFP.

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

### ***7.13 Award of Contract***

7.13.1 Following approval from the relevant approving authorities, the contract will be awarded. Before issuing the contract, a formal commitment of the required funds against the budget of the Procuring Entity must be approved.

7.13.2 The Head of Procurement Unit shall:

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

### 7.13.3 Award Notification

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

7.13.3.2 The Consultant shall be invited to attend for contract signature, or where this is not practicable, provided with the copies of the Contract for signing and return of the original and two signed copies of the Contract to the Procuring Entity.

7.13.3.3 Failure of the Consultant to confirm acceptance of the award, or to sign the contract will constitute grounds for the annulment of the award. In that event, the Procuring Entity may cancel the proceedings and invite the Consultant who submitted the next ranked Proposal for negotiations.

7.13.3.4 Procuring entities are required to submit notice of contract awards to the Bureau not later than 14 days after contract signing, for publication on the Bureau

website and/or in the Procurement Journal. The information on contracts awarded/signed shall include the:

1. Name of entity;
2. Name of the Consultant;
3. Description of the services;
4. Contract Sum;
5. Start and finished dates of the contract;
6. Method of procurement used; and
7. Source of funding.

#### 7.13.4 Notification to Unsuccessful Bidders

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

### **7.14 Contract Management**

Effective management of contracts is essential to ensure that the objectives of the procurement process are achieved and that all contractual obligations and activities are completed efficiently by both parties to the contract. The Procurement Unit or the technical department concerned must ensure that routine monitoring of all current contracts is maintained so that swift remedial measures can be taken when problems arise, or preventive action taken when problems are foreseen.

#### 7.14.1 Contract Supervision and Administration

7.14.1.1 Contract supervision and administration shall be undertaken by the Head of the Procurement Unit in consultation with the relevant technical department, which entails the following:

1. Ensure that any contractual obligations of the procurement entity are provided in a timely and efficient manner Maintain routine supervision of the Consultant's performance and progress to ensure that potential problems are identified as early as possible, and notify the Consultant in

writing requesting rectification of any deficiencies in required performance standards;

2. Receive regular progress reports from the Consultant and ensure that targets for submission of key deliverables required are met;
3. Conduct detailed checks on the Consultants claims for payment to ensure that contractual requirements are met and process invoices for payment; and
4. Confirm the provision of all contract deliverables before closing the contract file.

#### 7.14.2 Payment for Consultant Services

For release of any Advance Payment or subsequent invoices approved by the Accounting Officer, the Head of the Procurement Unit will complete a payment advice and forward to the Accounts Department, ensuring the deduction of any advance payments already made, and any contractual penalties incurred by the Consultant. Attach the original invoice from the Consultant; and copies of relevant information from the contract document, records of approval and financial authorizations.

#### 7.14.3 Resolution of Contractual Disputes

7.14.3.1 Most minor disputes may be resolved by discussion and agreement between the Head of Procurement Unit and the Consultant to rectify the cause of complaint.

7.14.3.2 Any formal written complaints received from a Consultant shall be fully investigated and referred to the Accounting Officer to authorize correspondence or formal negotiations with the Consultant.

7.14.3.3 The Head of the Procurement Unit shall:

1. Examine the contract carefully to be aware of all contract conditions relating to the resolution of disputes. Determine if the Procuring Entity is at fault or partly at fault, and if so, take appropriate action to rectify the problem.

2. Invite the Consultant to a formal meeting, within seven days of the complaint, to discuss the issues and try to agree to a compromise acceptable to both parties. Ensure that accurate written minutes are kept of any such meeting. If an agreement is reached which changes any of the conditions of the contract, approval of the Tenders Committee or the Accounting Officer is required before the agreement can be implemented.
3. If no initial agreement is reached and negotiations conducted by the Accounting Officer also fail, consider the use of any adjudication or arbitration services as specified in the contract.
4. Prepare any necessary addendum to the contract for signing.

#### 7.14.4 Termination of the Contract

7.14.4.1 The parties to the contract normally have the right to terminate the contract, but to protect the Procuring Entity, advice of the Legal Department shall be sought. Contracts shall not be terminated without examining all possible alternatives, unless the termination is mutually agreed by all parties to the contract.

#### 7.14.4.2 The Procuring Entity shall:

1. Examine the Contract carefully to be aware of all contract conditions and penalties relating to the Termination of Contract.
2. Follow the advice of the Legal Officer in the preparation of any correspondence.

#### 7.14.5 Contract Amendment

7.14.5.1 Contract amendment may become necessary as a result of the resolution of disputes, additional or reduced requirements by the Procuring Entity, agreements to extend the time schedule, or from accepted increases or decreases in prices. The contract may also allow the Procuring Entity to modify contract values by a pre-determined contingency percentage when this is in the public interest and essential for the work of the Procuring Entity.

7.14.5.2 All other amendments to costs, services, time-periods and other terms and conditions of the contract must be approved by the Tenders Committee and confirmed in a formal contract amendment or addendum, and the Bureau shall be notified.

7.14.5.3 The Procuring Entity shall:

1. identify and agree with the Consultant on any specific clauses in the contract which need to be changed, and the new values or terms and conditions which are to apply;
2. prepare a draft contract amendment document for approval by the Bureau, together with a report justifying the reasons for the amendment; and
3. Following approval by the Tenders Committee:
  - a) record any change in contract value in the Commitment Register and in the Contract Register,
  - b) record any other contractual changes in the Contract Register,
  - c) arrange for signature of the contract amendment in four copies, and
  - d) distribute copies of the contract amendment in the same way as the original contract.

## **CHAPTER 8: REQUEST FOR DUE PROCESS REVIEW AND CERTIFICATION**

### **8.1 Introduction**

Having followed all the Due Process, Government agencies are required to document all the details of the contract award process and the conclusions and recommendations thereof. Depending on the expenditure threshold, the agency or Local Government is then required to submit detailed documents to the Bureau for a Due Process compliance review and the issuance of a Due Process Compliance Certificate which will accompany the documents to the authority for the award of the contract.

### **8.2 Documents Required for Bureau Review and Certification**

The following documents must be forwarded by a Procuring Entity to the Bureau along with the Letter of Request (LOR) for Due Process Compliance Review and Certification for Award of Contract or Payment on on-going contract as the case may be:

- (i) Project policy file;
- (ii) The background documents that include technical and financial preparation of the project by the spending units and which include but not limited to Bills of Quantities (if any), Contract Drawings and Engineering Designs, Other Related Technical Documents, Final Summary and Statements;
- (iii) Internal cost estimates;
- (iv) Evidence of advertisement, as appropriate;
- (v) Pre-qualification Exercise, the objective criteria for short listing the pre-qualified bidders;
- (vi) Pre-qualification evaluation report;
- (vii) Evidence of Invitation to tender sent to all pre-qualified bidders;
- (viii) Tender returns;
- (ix) The Tender evaluation report and analysis of the financial bids submitted by all the pre-qualified bidders;
- (x) Tender Evaluation reports showing Due Process compliance;
- (xi) Variation in scope request and variation orders (for payment);
- (xii) Project Reports (for payment);



- (xiii) Interim valuation and payment certificates (for payment);
- (xiv) Consultant Work Progress Report (for payment).

### **8.3 The Review Process and Issuance of Certificates**

The review process begins immediately a request for Due Process Compliance Review is received by the Bureau from a Procuring Entity. The first step is to assign the task to the designated Team or the appropriate Technical Desk Officer in the Bureau. The Team may compose of staff of the Bureau only, or staff on secondment to assist with the review, commissioned consultants or any combination of these. It is basically a review of the contract process and submissions made by procuring entities at the conclusion of the contracting procedure.

The Compliance Review Process is a three-pronged transparent exercise. This involves the Bureau Team or Officer(s) establishing from the submissions of the Procuring Entity that from the way the Procuring Entity carried out the Due Process procedures in contract award:

- ✓ **The Process was right**
- ✓ **The Winner was right**
- ✓ **The cost of award was right.**

### **8.4 The Right Contract Award Process**

The Right Contract Process is that which ensures that the rules governing pre-procurement planning, advertisement, pre-qualification, technical and financial evaluations are open, free and fair, transparent, and competitive. This shall be evident in the detailed documentation of the full range of the contracting procedure followed by the Spending Agencies submitted to the Bureau for Due Process Compliance Review and other necessary action.

### **8.5 The Right Winner**

The Right Winner is the lowest priced offer from among bidders who were assessed to be qualified for the work and whose offer was technically compliant. The Right Winner is thus the most competent of the bidders having the least cost. A right winner is therefore that pre-qualified and technically

evaluated bidder that comes out of the financial competition of procurement, offering the lowest evaluated cost.

## **8.6 The Right Contract Cost**

Before award of contract, the price offered by the best evaluated bidder should be compared with the estimated contract price in the procurement plan to determine whether it is reasonable, having regard to cost factors that may have arisen since the plan was prepared, and to the degree of competition in the tender process. If competition is found to be sufficient (e.g. by attracting at least 3 responsive offers) and there is no evidence of collusion among bidders, it should be assumed that the lowest tendered price is the market price.

## CHAPTER 9: THE REVIEW PROCESS IN THE BUREAU

### 9.1 Introduction

The Compliance, Review and Certification process is to be rigorously and professionally performed by Technical Personnel of the Bureau following a work flow system that places premium on team consensus. The merit of the team consensus approach is a guaranteed Systemic Quality Assurance (SQA) method that removes sole responsibility and discretion from the review, findings, conclusions and final recommendations of the Bureau. This means that no single member of the team can guarantee an outcome of the Review Process.

The Bureau Technical Personnel either as individuals or as a Review Team shall be specialist(s) who possess wide range of knowledge and competencies, skills, professionalism and integrity requisite for the discharge of the Bureau's mandate. The areas of expertise required for the review exercise range from Engineering to Environmental Sciences, Information Technology & Communication, Education, Medical and Biological Sciences, Estate & Property Development, etc. The Bureau shall also have access to global Price Database as well as technical linkages with relevant professional bodies both in Nigeria and abroad. Hence, the Bureau can investigate the true prices of goods, works and services under review.

### 9.2 Draft Due Process Review Report (DDPRP)

The Compliance Review Process for every contract above ₦200, 000, 000.00 threshold results into a Draft Due Process Review Report (DDPRP). If the review report does not support the issuance of a Due Process Certificate, the attention of the Procuring Entity is immediately drawn to the findings and recommendations contained in the Draft Due Process Review Report. Such reports shall never be unilaterally concluded by the Bureau into a final Due Process Review Report without offering the Procuring Entity the opportunity for a **Right of Reply Meeting**.

### **9.3 Right of Reply Meeting**

Where a Due Process Certificate is denied in accordance with the findings and conclusions drawn from a Compliance Review of a contract, a Right of Reply Meeting shall be convened. This meeting provides an opportunity to formally discuss and get clarifications possibly leading to a resolution of any contentious issue between the Bureau and the relevant Procuring Entity. The meeting shall involve all officers from the Ministry, Agency or Department and all members of the Compliance Review Team, sitting at an open forum to discuss the content of the report of the review process.

The Right of Reply represents the transparent and democratic institutional feed-back platform for the Bureau. It ensures accountability and open check on the work of the Bureau by the Procuring Entities.

### **9.4 Due Process Review Report**

During the Right of Reply Meetings, if additional information is provided, supported with superior arguments and documentations that can make the Bureau change its position on earlier conclusion, then the Bureau would withdraw its previous reservations and will then issue a Due Process Certificate for the award of the contract for the consideration of the contract awarding authority.

### **9.5 The Due Process Review Report**

The content of every project's Due Process Review Report shall include the following:

- (i) Introduction;
- (ii) Background of the project;
- (iii) Project Description;
- (iv) Budgetary Provision;
- (v) Project Benefits;
- (vi) Inclusion of project in procurement plan;
- (vii) Basis of decision on procurement method;
- (viii) Tender Advertisement;
- (ix) Tender Returns;
- (x) Evaluation of technical and financial bids;

- (xi) Decision on contract award;
- (xii) Due Process Compliance Test;
- (xiii) Conclusions.

The Bureau considers each Due Process Review Report as a public document that can be made available to any interested member of the public or bidders.

## **CHAPTER 10: RESULTS OF COMPLIANCE REVIEW**

### **10.1 Outcomes of Compliance Review**

There are three possible outcomes at the end of a Compliance Review exercise by the Bureau. These three possible outcomes are categorized as **A**, **B** and **C**.

### **10.2 Category A Outcome (Positive)**

Category A Outcome leads to the granting of a Due Process Certificate. If at the end of the Compliance Review exercise, the findings show that all the defined rules of public contracting were duly complied with by the Procuring Entity in the procurement exercise, the Due Process Review Report would recommend issuance of a Due Process Certificate for Award of Contract.

**For a Due Process Certificate to be issued by Bureau the Compliance Review must validate that the Contract Award Process followed by the Procuring Entity was Right, the Winner being recommended is Right and the Cost is Right.**

### **10.3 Category B Outcome (Negative)**

Category B Outcome leads to the denial of a Due Process Certificate. If the contract process does not conform to the standard defined as a right contract award process, the Bureau is to withhold Due Process Certification. The Bureau shall only advise the Spending Procuring Entity to re-procure. This is because “the Process is fundamental in public procurement in determining the right cost and the right winner”.

### **10.4 Category C Outcome (Conditional Approval)**

Category C Outcome leads to the granting of a Conditional Approval – subject to the fulfilment of certain requirements. This could arise where the price proposed by the best evaluated bidder through properly conducted tender procedures is higher than the fair market price, perhaps on account of there being limited competition for the contract. The issuance of a Due Process Certificate for Award of the contract is made in principle but delayed until the satisfaction of the cost accuracy and conformity with parameters established by the Review. In such an instance, a meeting of all stakeholders could be convened by the procuring entity at the advice of the Bureau where the winner

would be advised to reduce the cost to conform with the Compliance Review Estimated Cost. The Bureau will apply its expertise and information technology tools to ascertain the true or right cost of the required goods, services and works. The Bureau will also consider the strength of competition for the contract and whether there is any evidence of collusion among bidders when determining whether the best evaluated bidder's price corresponds to the market price.

If the Bureau consider that the best evaluated bidder's price is excessive having regard to all relevant factors and the available budget and the bidder is unwilling to review the price, the Bureau may advise the Procuring Entity to cancel the procurement process and to re-advertise, perhaps with new terms and conditions that should be more attractive to bidders.

### **10.5 Meeting during the Review Process**

In the course of a Due Process review, the Bureau and the spending Procuring Entities shall meet as often as necessary to resolve contentious issues that will help in making the best decision and securing the best outcome for public expenditure and financial management. Prompt response to Bureau invitation for such a meeting or request for additional documentation whenever it arises is quite important in avoiding delays in the review process and in the project execution. Efficient supply of all relevant information would enable the Bureau to complete the Compliance Review process within the specified timeframe. The Bureau is to check the appropriate boxes on the Due Process Checklist and return to the spending Procuring Entity to guide them in packaging the missing documents necessary for the Compliance Review.

## **CHAPTER 11: DUE PROCESS CERTIFICATION**

### **11.1 Introduction**

Due Process Certification means issuance of a Due Process Certificate to the Procuring Entity for complying with the Due Process procedures. This is done after a careful review of the process that produced the winner and cost of the contract. A certificate is issued after the process, the winner and the cost have been found to be open and transparent by the Bureau during the review.

**No Ministry, Department or Agency (MDA) shall pay for any capital project without a Due Process Certificate.**

The Accountant-General of the State shall not make any payments in respect of any capital project except if the request for such payment is accompanied by Due Process Certificate among other required documentations.

The Certificates are important instruments of incentive or sanction, as the case may be, for Procuring Entities in their compliance or non-compliance with the clearly defined procedures of the contract process. The certification process would be particularly effective as an instrument for public sector behaviour modification and change orientation to achieve compliance with rules. It is hoped that with strict application, compliance would be obtained from the Procuring Entities.

### **11.2 Types of Due Process Certification**

- (a) Due Process Certificate of No Objection
- (b) Due Process Certificate for Payment

#### **11.2.1 Due Process Certificate of No Objection**

The Due Process Certificate of No Objection is issued when the Review of the submissions made by a Spending Procuring Entity to the Due Process Office, is verified that the contract in question passed the Three Tests of Due Process Review as follows:

- **The Process is right**
- **The Winner is right**



- **The Cost is right**

### **11.3 Due Process Certificate as a Pre-Requisite for Award of Certain Contracts**

The Due Process and Project Monitoring Bureau (Bureau) Certificate shall be a pre-requisite for the State Executive Council's (SEC) grant of final approval for award of all contracts that are above ₦100 million.

### **11.4 Category of Due Process Review Certificates**

The Bureau is to work with a check-list of documents that are required for the proper conduct of compliance review before certification, especially in respect of contracts valued above ₦200, 000,000. The Certification would take three different dimensions, classified as A, B and C below.

#### **11.4.1 A: Certificate of Project Readiness for Implementation**

**A1. ALIGNMENT OF PROJECT WITH JIGAWA STATE'S STRATEGIC AND SECTORAL PRIORITIES:** Indicate any relevant laws, regulations and guidelines and State whether the proposed project is in compliance. Indicate geographical spread and position in ministerial priorities. The presence of a project in the Appropriation Law is evidence of compliance with this criterion.

**A2. TECHNICAL & ECONOMIC APPRAISAL OF THE PROJECT:** Indicate whether a feasibility study has been undertaken or whether one is planned. Include the final report and or Terms of Reference for the planned work. Indicate whether a financial/economic analysis has or will be conducted. Include the final report and or Terms of Reference for the work. If any of these studies is considered not necessary, provide an explanation.

**A3. PROJECT & CONSULTANT / ENGINEERS ESTIMATES:** Indicate whether cost is in line with the consultant's/ engineer's estimate – provide documentation.

**A4. PROJECT DESIGNS:** Include project designs and drawings. Consultant's preliminary and tender drawings shall be provided where necessary. This is especially important for building and engineering projects.

**A5. FINANCING PROCUREMENT AND IMPLEMENTATION PLANS:** State the financing option considered, including the procurement and implementation plans. A project procurement timetable shall be included.

**A6. ENVIRONMENTAL IMPACT ASSESSMENT REPORT:** Describe in quantitative terms the expected positive or negative environmental impacts of the project. For negative impacts, make preliminary proposals for mitigating measures. Provide information on any guidelines. Indicate whether an environmental and social assessment has or will be undertaken. Include final report and/or Terms or Reference for the work. If such a study is considered not necessary, provide an explanation.

**A7. OPERATIONS AND MAINTENANCE MANUAL:** Operations and maintenance manual shall be provided where required, particularly for plants and machinery procurement.

#### **11.4.2 B: Certificate of Procurement**

**B1. EVIDENCE OF ADVERTISEMENT FOR PRE-QUALIFICATION:** Indicate whether there was advertisement for contractors' pre-qualification and provide evidence.

**B2. PRE-QUALIFICATION DOCUMENTS:** Indicate whether pre-qualification was conducted, and if not whether post-qualification was provided for in the bidding documents. Include copies of pre-qualification documents.

**B3. LETTER OF INVITATION TO BID:** Provide copies of letters of invitation to bid for pre-qualified contractors.

**B4. BID DOCUMENTS:** Provide evidence that tender documents have been prepared in line with the Jigawa State Government guidelines/standards. Also provide copy of public advertisement. Provide evidence that adequate time was allowed for bidders to prepare bids.

Provide evidence that a public bid opening was conducted, if so, how long after the deadline for bid submissions and who was invited? Indicate whether bid opening procedures followed those specified in the Jigawa State Government's procurement guidelines. What information was read out at the opening

ceremony? Provide copies of the Minutes. Provide accurate records of all communications with bidders, before and after the deadline for submissions.

**B5. PROJECT DESIGNS AND DRAWINGS:** Indicate whether project designs and drawings have been prepared. If so, provide copies – this is especially important for building and engineering projects.

**B6. BIDS RETURN SHEET:** Provide copies of bids returns sheet duly signed by the representative of Bureau, the Executing Procuring Entity and all bidders present.

**B7. BID EVALUATION REPORT:** Provide details of members of Bid Evaluation Committee, indicating the designation and experience. Provide the basis of criteria for evaluation of bids and indicate how the evaluation criteria were applied, and how successful bidders' qualifications were verified. Provide copies of evaluation criteria and evaluation report. Provide evidence that a market survey was conducted to update knowledge of prevailing prices that are relevant to the project. Indicate whether contract process is comparable with international experience and with experience in the private sector - provide documentation.

**B8. EVIDENCE OF APPROVAL OF SELECTION BY MANAGEMENT:** Indicate whether selection was approved by management and what changes were made by management and why? Provide copies of letter of award of contract.

**B9. BID BOND:** Indicate whether bids bonds were submitted with bids - provide documentation.

**B10. ENGINEER'S, CONSULTANT'S OR IN-HOUSE ESTIMATES:** Provide engineers, consultant or in-house project estimates. Indicate whether these were done before bidding and whether they are comparable to international prices on similar projects in similar State or countries.

**B11. APPROPRIATION / FUNDING:** Indicate whether there is provision for the project in the relevant Appropriation Law or indicate what efforts are being made to prioritize the project towards securing appropriation for the project up to completion.

### **11.4.3 C: Certificate of Implementation**

- C1. POLICY FILE:** Provide the policy file for the project.
- C2. SEC APPROVAL:** Provide evidence of all the relevant State Executive Council memos and approval for the project.
- C3. APPROPRIATION / FUNDS:** Indicate whether there was appropriation for the project in the main or supplementary appropriation laws and also indicate whether or not funds have already been released to the executing Procuring Entity's account.
- C4. CONTRACT AGREEMENT:** Provide copies of the original contract agreement and all other addendums to the contract such as Bills of Quantities, etc.
- C5. PERFORMANCE SECURITY AND BOND:** Provide copies of performance securities and Bonds.
- C6. EVIDENCE OF UTILISATION OF EARLIER RELEASED FUNDS:** Provide documentation and evidence of funds released. Provide evidence of payment from these funds.

## **CHAPTER 12: DISPOSAL OF PUBLIC PROPERTY**

### **12.1 Introduction**

It is important that disposal of surplus, obsolete or unwanted assets should be carried out on a regular basis. Working and storage space is valuable and should not become congested with items for which the Procuring Entity is unlikely to have any continuing use. The aim is to realize the economic value of items that are no longer required, by disposing of them either as functioning equipment or as scrap. Items that are left in store or on site may deteriorate and become obsolete and their value may decline.

Disposal requirements should be identified through a disposal plan, which is related to the procurement plan. Some disposals relate to events in the procurement plan, for example the planned acquisition of new equipment provides a suitable occasion to dispose of existing equipment. In some cases the procurement and disposal processes will form part of the same contract, for example under a trade-in arrangement where a contractor removes the old equipment when installing the new.

To reduce administration and transaction costs, items to be disposed should be grouped together, for disposal in contracts or lots, with as many items as possible being disposed of together, particularly when the disposal method is by a public auction.

### **12.2 Definition of Disposal Terms**

The definitions of unserviceable, obsolete or surplus stores, plant and equipment shall be:

1. **Obsolete:** any item of stores plant and equipment which is rendered incapable of further effective use by developments in technology, incompatibility with associated items, or where the annual maintenance and breakdown costs can be certified to exceed thirty percent (30%) of the estimated cost of a new replacement item.
2. **Unserviceable:** any item of stores, plant and equipment which cannot be used for the intended purpose in its present condition due to major defects or damage, and is beyond economic repair. Classification as

beyond economic repair for this purpose shall be determined on the basis that repair costs are certified to cost more than fifty percent (50%) of the current market price of a new replacement item.

3. Surplus: any stores item which has not moved for a period in excess of two years, or any item of plant or equipment which has remained unused for a period in excess of one year, and where no potential use for the item can be envisaged within the Entity.

### **12.3 Authority to Dispose**

12.3.1 The Heads of the Procurement Unit shall arrange for periodical survey at quarterly interval of all stocks and equipment held by the Unit, to ascertain whether any item have become obsolete, unserviceable or surplus to requirement.

12.3.2 The survey shall be undertaken by a team of at least three persons, comprising the following:

1. A representative from the Procuring Entity's Administration/Finance Department;
2. The Storekeeper or Stockholder; and
3. A senior officer from any public or private institution with special knowledge of the items to be surveyed shall be invited to act as a Technical Person to the committee.

12.3.3 The reason for any item becoming surplus, obsolete and unserviceable shall be explained and recommendations submitted on the mode of disposal.

12.3.4 The report of the survey shall be submitted to the Head of Procuring Entity. Upon receipt of the report of the survey, the Accounting Officer shall instruct the Stores Department to dispose of or supervise the disposal of the equipment or supplies in accordance with the recommendation of the survey team, after obtaining approval from the Bureau.

12.3.5 The Board of Survey's recommendations shall be approved by the Accounting Officer of Procuring Entity and the items shall be disposed of as approved, after obtaining "NO OBJECTION" from the Bureau.

## **12.4 Disposal of Public Property**

12.4.1 Open competitive bidding shall be a method of receiving offers for the purchase of any public property offered for sale. Generally, it shall be used by the State Government for disposing property above Twenty Million Naira (₦ 20, 000, 000. 00), and Ten Million Naira (₦ 10, 000, 000. 00) in the case of Local Government.

12.4.2 The Bureau shall with the approval of the Governing Council:

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

## **12.5 Disposal Methods**

The choice of the most appropriate disposal option will normally be influenced by the nature of stocks to be disposed, their location and market value. The Items shall be disposed of in any of the following manner.

12.5.1 Transfer / sales to government department or other public entity.

12.5.1.1 Transfer/Sales to other government departments or other public entities with or without financial adjustment are applicable where an asset can be usefully deployed by another Procuring Entity.

12.5.1.2 The Storekeeper shall liaise with the recipient entity for a formal transfer of ownership and removal of the items from the premises.

### **12.5.2 Sales by Public Bids**

12.5.2.1 Items shall be disposed by Public Bids, unless the item is more than the number of years stipulated for disposal by public bids.

12.5.2.2 Sale by Public Bids shall also be conducted where the estimated value of the asset, or group of assets packaged together, are of sufficient value to justify the cost of conducting a public Bids. It shall be used by the State Government for disposing property above Twenty Million Naira (₦ 20, 000, 000. 00), and Ten Million Naira (₦ 10, 000, 000. 00) in the case of Local Government

12.5.2.3 The Store keeper shall request the Procurement Unit to initiate a formal bid process which will include:

1. Preparation of bid document;
2. Placement of advertisement;
3. Receipt, opening and evaluation of bids; and
4. The items offered to the highest bidder, subject to a reserved price.

12.5.3 Sale by Public Auction

12.5.3.1 Disposal by public auction shall be conducted for items when sufficient items can be assembled for disposal to justify the costs of conducting the auction process, after obtaining a “No Objection” from the Bureau.

12.5.3.2 The Storekeeper shall:

1. Request the Procurement Unit to invite an auctioneer to facilitate the auction of the items;
2. Instructions relating to the sale shall include timeframe for sale, target revenue, condition and location of assets, reserve price, and end-user restrictions; and
3. The instruction will constitute the authority for the auctioneer to undertake the sale.

12.5.3.3 In procuring an auctioneer, the Procuring Entity should take into account -

- (a) the commission rate of the auctioneer;
- (b) the location of the auctioneer and cost of transporting the asset to be disposed of;
- (c) the facilities of the auctioneer;



- (d) the ability of the auctioneer to achieve optimum returns;
- (e) the performance record and integrity of the auctioneer; and
- (f) the viability of the business of the auctioneer.

12.5.3.4 It is important for staff of the Procuring Entity to monitor the auctioning event for signs of malpractice, such as collusion among bidders, especially when an item of substantial value is among the assets to be auctioned, and to ensure that the proceeds of the auction are handed over promptly to the Procuring Entity. The appointed auctioneer should be required to provide a performance security.

#### 12.5.4 Destruction, Dumping or Burying

12.5.4.1 Disposal by destruction, dumping or burying shall be used where the asset has no residual value and cannot be converted into any other form which subsequently gives it value. To ensure that the destruction, dumping or burying is properly executed, it is recommended that a committee of at least three persons supervise the process, including a representative of the Bureau.

#### 12.5.4.2 The Committee shall:

1. Obtain approval from the relevant environmental/health agency to destroy, dump or bury the items.
2. Supervise the destruction, dumping or burial, at an appropriate place.

#### 12.5.5 Negotiated Sale

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

#### 12.5.6 Set Price

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

## 12.5.7 Trade-in

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

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

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

## 12.5.8 Donation

A public property that still has value could be disposed by donating it to a recognised charity organisation.

## 12.6 Determination of Market Value of Assets

1. Valuation can play an important part in the effective and efficient disposal of goods as it provides an important reference point to help Procuring Entities select the most appropriate disposal option.
2. The most accurate determination of value is always what the competitive market is prepared to pay. In addition to this, there are a number of agents who could provide Procuring Entities with expert valuations to ensure that the seller's expectations from sales are realistic. It is suggested, however, that entities only engage the services of an agent if the goods are of sufficient value.
3. It is important to be aware that in some cases, valuers may apportion a value on a good that is based on their replacement cost (for insurance purposes). It shall be recognized that this value will often be considerably more than what will eventually be realized at sale. Alternatively, valuers can claim that goods have nil book value after depreciation when in fact they could realize a considerable sum at sale.

It is therefore recommended that entities identify an appropriate type of valuation and instruct the valuer accordingly.

4. The basis for evaluation shall always be market value considering that assets shall be sold 'as is, where is' without warranties.

### ***12.7 Revenue from Sales***

Proceeds from sales shall be paid into the Consolidated Revenue Fund or as may be directed by the Accountant General.