



FEDERAL REPUBLIC OF NIGERIA

PROCUREMENT PROCEDURES MANUAL

For

PUBLIC PROCUREMENT

In

NIGERIA

BUREAU OF PUBLIC PROCUREMENT (BPP)

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USE OF THE PROCUREMENT PROCEDURES MANUAL

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

The Public Procurement Act 2007— Section 15

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

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

ABBREVIATIONS AND ACRONYMS

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

Background

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

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

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

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

2.1 The principal hallmarks of proficient public procurement are:

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

2.1.1 ***Economy***: Procurement is a purchasing activity whose purpose is to give the purchaser the best value for money. For complex purchases, the value may imply more than just price, for example, since quality issues also need to be addressed. Moreover, the lowest initial price may not equate to the lowest cost over the operating life of the item procured. But the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money.

2.1.2 Fitness for Purpose: The goods or services purchased must be capable of meeting the need for which they are acquired. The works must address the need for which it is procured. Economy as it relates to lowest cost would provide limited value if the item acquired is not capable of meeting the need for which it is acquired or is not capable of providing optimum solution to the need. Value for money is best served if and when both economy and fitness for purpose are simultaneously achieved.

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

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

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

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

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

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

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

Why Is Sound Public Procurement So Important?

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

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

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

3.3 Five basic concerns govern procurement policies:

- To ensure that goods and services needed are procured with due attention to fitness for purpose, economy and efficiency;

- To ensure that public fund is used to buy only those goods and services needed for national development;
- To give all qualified bidders an equal opportunity to compete for contracts;
- To encourage the development of local contractors and manufacturers; and
- To ensure that the procurement process is transparent and accountable.

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

SECTION I — PROCUREMENT POLICY AND INSTITUTIONAL TOPICS

Why Is Sound Public Procurement So Important?

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

GENERAL PROCUREMENT POLICIES

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

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

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

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

The implications of these policies are as follows:

- i) contractual arrangements shall be fair and reasonable
- ii) contractual arrangements shall provide 'value for money' to the Procuring Entity
- iii) contractual arrangements shall be designed to fairly reward the contractor for services rendered, whilst safeguarding the long-term commercial relationships between the Procuring Entity and its contractors.
- iv) contractual arrangements with third parties shall be executed in strict conformity with BPP Procurement Policies and Procedures Manual' (this manual).

- v) bids shall be invited only from qualified/approved contractors/suppliers competent to do the work or provide the services to the nominated standards.
- vi) contracts shall be awarded to the lowest evaluated responsive bidder meeting all technical requirements and standards based on competitive tendering unless overriding technical grounds exist to justify any other course of action.
- vii) Contracts may be reserved for vulnerable groups and domestic preference may be given to Nigerian Contractors or Suppliers within the boundaries outlined in the Public Procurement Act 2007, the BPP issued implementing regulations, the Standard Bidding Documents and in this Procurement Procedures Manual

BPP's Statement of Business Principles

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

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

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

These underlying values determine our principles. These principles apply to all transactions, large or small, and describe the behaviour expected of every public officer in the conduct of public procurement. In turn, the application of these principles is underpinned by procedures that are designed to make sure that public officers fully understand the principles and that they act in accordance with them.

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

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

establishments are aware of these principles and behave in accordance with the spirit as well as the letter of this statement."

Section 15 of the Public Procurement Act 2007 as amended by the Finance Act 2020

Section 15. (1) The provisions of this Act shall apply to all procurement of goods, works and services carried out by:

- (a) the Federal Government of Nigeria and all procuring and disposal entities under the three arms of the Federal Government;
- (b) all entities outside the foregoing description in (a) which derive at least 35% of the funds appropriated or proposed to be appropriated for any type of procurement described in this Act from the Federation share of Consolidated Revenue Fund; ... (d) without limiting paragraphs (b) and (c) to—
 - (i) Federal Government, Ministries; Departments and Agencies,
 - (ii) Federal Government Institutions,
 - (iii) Federal Government owned Enterprises, Corporations, Councils, Authorities and Commissions provided that they utilize public funds,
 - (iv) Federal Tertiary and Non-Tertiary Educational Institutions,
 - (v) Federal Hospitals and other Health Institutions,
 - (vi) the Central Bank of Nigeria and other Federal Government owned Financial Institutions,
 - (vii) the National Defence and National Security Agencies,
 - (viii) the National Assembly, and
 - (ix) the Judiciary.

Section 16 Public Procurement Act 2007 as amended (PPA 2007 as amended)

4.2 All public procurement shall be conducted:

- (a) Subject to the prior review thresholds that may from time to time be set by the Bureau of Public Procurement;
- (b) Based only on procurement plans supported by prior budgetary appropriations, and no procurement proceedings shall be formalized until the Procuring Entity has ensured that funds are available to meet the obligations and has obtained a "Certificate of No Objection" to "Contract Award" from the Bureau (subject to approval threshold vide SGF's circular ref. No.....;

- (c) By open competitive bidding, except as otherwise exempted;
- (d) In a manner that is transparent, timely, and equitable for ensuring accountability and conformity with the Public Procurement Act and regulations deriving therefrom;
- (e) To achieve value for money and fitness for purpose;
- (f) In a manner that promotes competition, economy, and efficiency; and
- (g) In accordance with the laid down procedures and timelines.

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

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

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

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

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

4.8 Four considerations guide these policies:

- (a) Ensuring economy and efficiency in project implementation including the procurement of goods, works, and services;

- (b) Giving bidders a fair opportunity to compete in procurement;
- (c) Encouraging the development of domestic industries and consulting services;
and
- (d) Providing transparency in the procurement process.

Eligibility

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

- 5.1.1 If there is verifiable evidence that any supplier, contractor, or service provider has given or promised a gift of money or any tangible item, or has promised, offered, or given employment or any other benefit, any item or a service that can be quantified in monetary terms to a current or former employee of a Procuring Entity or the Bureau, in an attempt to influence any action, decision making or the further course of any procurement activity;
- 5.1.2 Being a supplier, contractor, or service provider during the last three years prior to the commencement of the procurement proceeding in issue, failed to perform or to provide due care in the performance of any public procurement;
- 5.1.3 If the bidder is in receivership or is the subject of any type of insolvency proceedings or if being a private company under the Companies and Allied Matters Act, is controlled by a person or persons who are subject to any bankruptcy proceedings or who have been declared bankrupt and or have made any compromises with their creditors within two calendar years prior to the initiation of the procurement proceeding;
- 5.1.4 If the bidder is in arrears regarding payment of due taxes, charges, pensions, or social insurance contributions unless such bidders have obtained a lawful permit for allowance, the deference of such outstanding payments or payment thereof in installments,

- 5.1.5 If the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;
- 5.1.6 If the bidder has in its management or is in any portion owned by any person that has been validly sentenced for a crime committed in connection with a procurement proceeding, or other crime committed to gain financial profit;
- 5.1.7 If the bidder has been blacklisted/debarred from participating in public procurement activity.
- 5.1.8 If the bidder fails to submit a statement regarding its dominating or subsidiary relationship concerning other parties to the proceedings and persons acting on behalf of the Procuring Entity participating in the same proceeding or who remain in a subordinate relationship with other participants to the proceedings.
- 5.1.9 An individual or a firm or its affiliates provided consulting services for the preparation and implementation of a project, and to prevent a conflict of interest, they and their affiliates are disqualified from subsequently providing goods and works for the same project.
- 5.1.10 Firms or individuals who have been debarred by the Procuring Entity/the Bureau for having been engaged in fraudulent or corrupt practices.

Practitioners need to pay attention to specific forms in the Standard Bidding Documents 2023 edition which support compliance to these rules. Failure by any Tenderer to supply these forms should be adjudged a non-compliance with requirements of the provisions in Section 16 of the PPA 2007 as amended. The forms are as follows;

- a) Disclosure of Commissions, gratuities/fees
- b) Certificate of Independent Tender Determination
- c) Self-Declaration (SD1) Self Declaration that the person /contractor is not debarred in the matter of the Public Procurement Act 2007 as amended
- d) SD2 Declaration that the person /tenderer will not engage in any corrupt or fraudulent practice
- e) Declaration and Commitment to code of conduct
- f) Confidential Business Questionnaire Forms
 - i. Disclosure of interest in the Procuring Entity
 - ii. Conflict of Interest disclosure
- g) Tender Security or Tender Securing Declaration Forms

Procurement Officers need to ensure that the above forms and all other Tender Forms are included in the Procurement solicitation documents they issue out for every bid.

Section 16 Public Procurement Act 2007 as amended

Roles and Responsibilities in Procurement

6.1 Every public Procuring Entity shall have the ultimate responsibility for all aspects of procurement planning and implementation. The Bureau of Public Procurement exercises its fiduciary and developmental responsibilities concerning procurement by:

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

Section 16& 17 of the Public Procurement Act2007 as amended

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

Ministerial Tenders' Board shall be the Approving Authority for the conduct of public procurement.

Section 17 Public Procurement Act 2007 as amended –

Notice Board

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

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

7.2 If the Procuring Entity maintains an internet website, that website should contain a page on which the above information is also posted.

Handling Request for Clarifications

8.1 It shall be the responsibility of the respective Procuring Entity to provide any clarifications on prequalification or tendering documents within the stipulated time limit. Every Procuring Entity must respond to the communication from potential bidders and, if appropriate, send copies to others who purchased the tendering documents. It should specify the time for clarification and responses by the Procuring Entity in the Tender Data Sheet (TDS) issued as part of the solicitation documents

Transparency and Anti-Corruption Measures

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

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

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

SECTION 2 — INSTITUTIONS, PROCUREMENT COMMITTEES, AND THEIR FUNCTIONS

National Council on Public Procurement

10.1 Objectives of the National Council on Public Procurement.

- 10.1.1 The Council shall consider, approve and amend the monetary and prior review thresholds for procuring entities to the Public Procurement Act applies.
- 10.1.2 Consider and approve policies on public procurement.
- 10.1.3 Approve the appointment of the Directors of the Public Procurement Bureau.
- 10.1.4 Receive and consider for approval the audited accounts of the Bureau of Public Procurement.
- 10.1.5 Approve changes in the procurement process to adapt to improvements in modern technology.
- 10.1.6 Give such other directives and perform such other functions as may be necessary to achieve the objectives of the Public Procurement Act.

The Bureau of Public Procurement

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

- 11.1.1 Establishing general policies and guidelines relating to public sector procurement
- 11.1.2 Supervising procurement implementation as well as reviewing the procurement and award of contract procedures of every public entity,

including certifying all Federal wide procurement before, during, and after the award of contracts.

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

11.1.4 Providing clarifications for any of the provisions of the Procurement Manual or the aforementioned documents.

11.2 Objectives of the Public Procurement Bureau

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

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

11.2.2 To ensure better transparency and good governance concerning government procurement awards.

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

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

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

11.2.6 To put in place a monitoring system concerning selection of successful bidders and award of government tenders.

11.3 Key Functions of the Bureau of Public Procurement.

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

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

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

Ministerial or Parastatal Tenders’ Board

Section 17 Public Procurement Act 2007 as amended.

12.1 Composition of the Tenders’ Board:

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

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

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

- (i) The Accounting Officer i.e., Permanent Secretary or the Director General or CEO shall be the Chairperson.
- (ii) Other Heads of Department within the Ministry or the Parastatal,
- (iii) The Procurement Director of the Procuring Entity or his Representative shall be the Secretary to the Tenders’ Board. If the Procurement Director or his Representative is unavailable, a senior officer from the Ministry or Parastatal, not below the rank of an Assistant Director (or equivalent) may serve as the non-member Secretary.
- (iv) Each permanent member on the Tender’s Board shall have an Alternate member to ensure business continuity in the absence of any of the permanent members.

Section 17 (2), (3), (4), (5), (6) of the PPA 2007 as amended by Section 64 of the Finance Act 2020.

(2) The chief executive and accounting officer of the procuring entity shall chair the parastatal Tenders Board; the Permanent Secretary shall chair the Ministerial Tenders Board; while the President or his representative shall chair the Federal Executive Council.

(3) The accounting officers of the parastatals under the National Assembly shall chair the Parastatals Tenders Board, while the Clerk to the National Assembly shall chair the National Assembly Tender's Board.

(4) The Secretaries and Chief Registrars shall chair the Boards of the Judicial Bodies respectively; while the Chief Justice of Nigeria, or his representative, shall chair the National Judicial Council Tender's Board.

(5) The Secretary- to the Government of the Federation or his representative, shall be the Secretary of the Federal Executive Council; the Secretary, Directorate of Procurement, Estate and Works shall serve as Secretary to the National Assembly Tender's Board, while the Executive Secretary of the National Judicial Council, or his representative, shall be the secretary of the National Judicial Council Tender's Board.

(6) For the Parastatal Tenders Board and the Ministerial Tender's Board, the Directors of Procurement shall be the secretaries, and in the case of the judiciary, the Secretaries of the judicial bodies and the Chief Registrars of the Courts thereof shall be the secretaries.

12.2 Functions of the Tenders' Board:

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

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

Quorum

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

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

Resolution

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

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

The decisions of the Tender's Boards shall be confirmed respectively by the political heads of the procuring entities, provided that the political heads are not the Chairmen of the Tender's Board- as required by Section 66 of the Finance Act 2020.

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

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

Technical Evaluation Subcommittee of the Tenders' Board

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

13.2 The Technical Evaluation Subcommittee of the Tenders' Board shall be made up of the relevant qualified and experienced professional staff of the Procuring Entity. However, the user department, subject matter expert, and procurement officer shall be members of the subcommittee. The report of evaluation supporting a request for No Objection shall contain the names and relevant qualification of members of the Tenders Board

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

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

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

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

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

14.3 Functions of the Procurement Planning Committee.

14.3.1 The Procurement Planning Committee shall be responsible for:

- (i) Preparing the needs assessment and evaluation of the Procuring Entity;
- (ii) Identifying the goods, works, and services required;
- (iii) Carrying out appropriate market and statistical surveys in conjunction with the Department of Planning, Research, and Statistics (where available);
- (iv) Preparing an analysis of the cost implications of the proposed procurement;
- (v) Aggregating its requirements whenever possible, both within the Procuring Entity and between procuring entities, to obtain economy of scale and reduce procurement cost;

- i (vi) Integrating the Ministry's/Parastatal's procurement expenditure into the yearly budget;
- (vii) Prescribing appropriate methods for effecting the procurement and securing necessary Approval for its implementation.

The Procurement Unit or Department

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

15.2 Functions of the Procurement Unit or Department.

15.2.1 The Procurement Department shall:

- (a) Undertake Procurement Planning with support of Procurement Planning Committee, Finance and User Departments, secure Tender Board approval and submit planning templates to BPP-----
- (b) Prepare procurement solicitation Documents.
- (c) Advertise and solicit bids in compliance with guidelines issued by the Bureau from time to time.
- (d) Receive and maintain appropriate documentation for bids received, examine bids received, support Tenders Board and its sub-technical evaluation committee in evaluating and selecting a winning Tenderer, make necessary submissions to the entity's Tenders' Board. Support Accounting Officer in seeking and obtaining a "Certificate of 'No Objection' to Contract Award" from the Bureau of Public Procurement if applicable, and
- (e) Debrief the bid losers on request.
- (f) Support Accounting Officer in resolving complaints and disputes, if any.
- (g) Obtain and confirm the validity of any performance guarantee.
- (h) Announce and publicize Contract Awards.
- (i) Support Accounting Officer in ensuring execution of all Contract Agreements.

The Technical & Financial Evaluation Sub Committees

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

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

The BPP evaluation template should be used in preparing every tender evaluation report.

Communication with Bidders

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

Section 32 (8)

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

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

18. Chief Executive (if a parastatal) or Permanent Secretary (if a ministry) shall have overall responsibility for control and coordination of the procurement process under a public Procuring Entity.

19. A prior no-objection to the award of contracts shall be required from the Bureau of Public Procurement for all procurement within the prior review threshold.

PPA Section 5(p)

20. The Bureau shall periodically carry out procurement reviews of public entity's procurement activities.

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

Section 17 of the Public Procurement Act 2007 as amended –

21. Subject to the monetary and prior review thresholds for procurements, the Parastatal Tenders' Board of a government agency, parastatal, or corporation or in the case of a ministry or extra-ministerial entity, the Ministerial Tenders' Board shall be the Approving Authority for the conduct of public procurement. The Tender Board decision is final in procurements below the prior review threshold except reversed pursuant to a complaint. In procurement activities within the prior review threshold, Tender board decisions are subject to a No Objection by BPP.

Budgeting / Annual Procurement Plan

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

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

Section 5(i0 of Public Procurement Act

21.3 The Accounting Officer (Permanent Secretary/Chief Executive) shall submit the Procurement Plan and the related Budget for the year to the Bureau for review and

retention. Changes to the procurement plan shall be accordingly notified to the Bureau before initiation of the procurement process.

Procurement Monitoring and Evaluation

22. The Procurement Unit shall establish a system to continuously monitor all procurement and financial information related to procurement implementation. The monitoring should provide information on procurement implementation at all levels. Procuring Entity shall maintain both file and electronic records of all procurement proceedings made within each financial year and copies of all procurement records shall be transmitted to the Bureau of Public Procurement not later than 3 months after the end of the financial year, and shall show: *(Section 16(13) Public Procurement Act 2007 as amended).*

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

Section 16 Public Procurement Act 2007 as amended

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

Record Keeping

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

- Public notices of tendering opportunities
- Tendering documents and addenda
- Tender clarifications if any
- Tender opening information
- Tender evaluation reports
- Formal appeals by bidders and outcomes
- Signed contract documents and addenda and amendments
- Records of claims and dispute resolutions

- Record of time taken to complete key steps in the process
- Comprehensive disbursements data concerning payments

Staffing

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

Revisions to the Procurement Manual

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

- Contacting:

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

- Providing chapter, page, and recommended change.

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

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

Quick Reference

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

- Is there budgetary provision for the goods and services to be procured?
- Are these goods and services found in the Procuring Entity's Procurement Plan?
- Are these goods or services exempt from the requirement of competition?
- How can qualified vendors be located?
- Which competitive procurement method should be used?
- How are adequate specifications written?
- How is a procurement solicitation constructed?

- How should bids or proposals be evaluated?
- What about contract administration?
- What can the Procuring Entity do if a vendor does not perform?
- What are the consequences for a vendor who fails to perform?
- What remedies do vendors have in contractual disputes?
- What are the ethical questions that must be considered in procurement? Etc.

SECTION 4 — PROCUREMENT PLANNING

Strategic Considerations

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

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

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

Procurement Planning Committee

28. For each financial year, every Procuring Entity shall establish a Procurement Planning Committee comprising of:

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

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

Section 21 Public Procurement Act 2007 as amended.

Preparing the Plan

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

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

The Procurement Planning Software

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

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

The system offers the following:

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

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

How to access the Procurement Planning Software

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

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

Surname	First Name	e-mail address	Mobile number	Designation

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

Step ONE

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

Step TWO

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

Step THREE

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

Step FOUR

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

29.3 The Procurement Planning Committee shall have the responsibility for planning the Procuring Entity's procurement as follows:

- (i) Prepare the list of all known goods, works, and services needed to achieve the set goals for the Procuring Entity;
- (ii) Evaluate the list and divide it into contract packaging;
- (iii) Carry out appropriate market and statistical surveys;
- (iv) Prepare an analysis of the cost implications of the proposed procurement;
- (v) Aggregate the procurement requirements both within the Procuring Entity and between procuring entities, to obtain economy of scale and reduce procurement cost;
- (vi) Prescribe appropriate method for effecting procurement subject to the necessary approval of the Procurement Planning Committee;
- (vii) Integrate procurement expenditure into the entity's yearly budget;
- (viii) Ensure that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate procurement method; and

- (ix) Ensure that adequate appropriation is provided specifically for the procurement in the Federal budget.
- (x) upload the procurement plan on the BPP web portal using the approved planning software/tool

Section 18 Public Procurement Act 2007 as amended

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

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

Section 19 Public Procurement Act 2007 as amended

Procurement Scheduling

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

Procurement Time Requirements

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

Table 1 - Procurement Time Requirements

<i>Procurement Method</i>	<i>Suitable Applications</i>	<i>Approximate/ Indicative Range of Times for Each Method</i>
International Competitive Bidding (ICB)	<p>Preferred method of Procurement, for large contracts for goods, works, and related services.</p> <p>There is an interest by foreign suppliers the required goods or works.</p> <p>The requirements for procurement are widely available, and</p> <p>Although efficiency is important, there is no specific urgency in processing the procurement.</p>	<p>ICB for works with prequalification needs: 9-12 months</p> <p>ICB for works without prequalification needs: 5-7 months</p> <p>ICB for goods 5-7 months</p>
Limited International Bidding	<p>There are only a few known suppliers. Best practice is for all eligible suppliers to be invited to bid.</p> <p>Small amounts of money are involved E.g., in the procurement of a small number of vehicles or machine tools; or</p> <p>Exceptional reasons such as emergency actions related to a major natural disaster, which may justify the waiving of advertising of competitive bids.</p>	LIB goods: 4-6 months
National Competitive Bidding	The capability and competitiveness of local bidders make it unattractive for foreign bidders to compete for contract below a certain value;	NCB goods: 4-6 months

	<p>In the case of works, they are spread geographically over time in a manner that upsets the economies of scale; and</p> <p>The goods or works are available locally at prices significantly below those in the international markets.</p>	
Direct Contracting	<p>Where extension of an existing contract is necessary as works are already underway;</p> <p>Similar goods as those purchased under an existing contract is required (Subject to the reasonableness of price and where no benefit can be gained from competition);</p> <p>Standardization of equipment and spare parts of compatibility with existing equipment is required;</p> <p>Equipment required is proprietary and there is only one source and no alternative equipment or products with equivalent performance characteristics are available;</p> <p>Critical components or materials from particular suppliers are required by the contractor responsible for a process design as a condition for the guarantee for performance; or</p> <p>Direct contracting is also used where, in exceptional cases, early delivery of essential goods is needed in emergency operations.</p>	Direct contracting: 1-3 months
National Shopping	<p>Goods required are readily available off-the-shelf goods or standard commodities in quantities of small value;</p> <p>In some cases, small simple works for E.g., for essential repairs to restore a basic</p>	Shopping goods: 1-2 months

	<p>industry or service, or other reconstruction work after natural disasters where delays may result in greater damage and loss of life or property; desired goods are ordinarily available from more than one source in the country.</p>	
<p>Force Account (Direct Labour)</p>	<p>The Procuring Entity has ascertained that a schedule of rates, cost - plus or target contract would not be feasible, as quantities of work to be carried out cannot be defined in advance;</p> <p>Works are small and scattered or in remote locations with no local contractors and demobilization costs for outside contractors would be too high;</p> <p>Works must be carried out without disrupting existing operations;</p> <p>The risk of unavoidable work interruptions</p> <p>No contractor is interested in conducting the work at a reasonable price;</p> <p>It has been demonstrated that Force Account (Direct Labour) is the only practical method for constructing and maintaining works under special circumstances; or</p> <p>Where national security would be compromised if any other method was used.</p>	<p>Force account: 1-3 months</p>

31.2 In some cases, it may be possible to modify certain contract packages and procurement methods and shorten the time needed until delivery to meet desired schedules, provided that the modified approach is still consistent with the procedures required and the types of approaches permitted under the Act. In other cases, it will have to be recognized that no other approach is permissible for that particular procurement need and that the time required cannot be shortened by changing packaging or procurement methods. An appropriate solution to bring forward the date of delivery or completion of a contract is by starting the procurement process earlier.

Procurement Plan Presentation

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

SECTION 5 — PROCUREMENT IMPLEMENTATION

Advertising and Notification of Procurement Opportunities

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

Section 19 Public Procurement Act 2007 as amended.

General Procurement Notice

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

- The name of the Procuring Entity;
- Description of the entity's program of activity;
- The scope of procurement under NCB and ICB and consulting assignments (i.e., technical services) estimated to cost US\$ ——— equivalent or more; and

- If known, the scheduled dates for availability of the tendering documents or, as appropriate, the prequalification documents.

Specific Procurement Notice

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

35.2 The SPN should be issued in the following way:

- As an advertisement in at least two national newspapers and the Federal tenders Journal;
- By an announcement in the government official gazette;
- By placement on the Procuring Entity's website.

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

35.3 The SPN contains information concerning:

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

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

Requests for Expressions of Interest

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

Other Notifications

37. The Procuring Entity may also use other means of publishing information on tendering opportunities including on any procurement websites or other electronic media.

Prequalification of Bidders

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

Public Procurement Act Section 23

38.2 Where a Procuring Entity has decided concerning the minimum qualifications of suppliers, contractors, or service providers by requesting interested persons to submit applications to pre-qualify, it shall set out precise criteria upon which it seeks to consider the applications and in deciding as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the prequalification documents and no more.

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

38.4 The prequalification documents shall include:

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

Section 23 Public Procurement Act as amended.

38.5 The procurement entity shall respond to any request by a supplier, contractor, or service provider for clarification of the prequalification documents if the request is made within the time specified in the Pre-qualification Data Sheet (PDS) which is often a number of days before the deadline for the submission of applications to pre-qualify.

38.6 The response by the Procuring Entity shall be given within a reasonable time and in any event within the time indicated in the PDS 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.

38.7 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.

38.8 Suppliers, contractors, or service providers who have been pre-qualified **may** participate further in the procurement proceedings. The Procuring Entity shall upon request communicate to suppliers, contractors, or service providers who have not been pre-qualified, the grounds for disqualification but the Procuring Entity is not required to specify the evidence or give the reasons for its findings.

Post Qualification of Bidders

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

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

Invitations to Bid

39.1 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.

39.2 Every invitation to an Open Competitive Bid shall:
In the case of goods and works under International Competitive Bidding, be advertised in at least two national newspapers, the relevant internationally recognized publication, 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;

39.3 In the case of goods and works valued under National Competitive Bidding, For NCB- be advertised on the notice board of the procuring entity, any official websites of the procuring entity; at least two national newspapers, and in the procurement journal not more than four weeks for contracts within the thresholds of the Parastatals and Ministerial Tender's Boards and not more than six weeks for contracts above the threshold of the Ministerial Tenders Board before the deadline for submission of the bids for the goods, works and services.”

For the low-value procurement, the advert shall be for one week on the notice board of the procuring entity – Section 65 Finance Act.

Section 25 Public Procurement Act 2007 as amended

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

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

If pre-qualification has not occurred, the detailed qualification required of tenderer including statutory compliance requirements

- The place and the deadline for the submission of the bids;
- The place, date, and time for the opening of the bids.

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

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

39.7 Any person may after collecting the tender documents, request for clarifications of matters contained in the tender documents. All such requests for clarifications shall be

in writing and addressed to the Procuring Entity no later than within the time stipulated in the tender documents which must be before the deadline for the submission of the bids.

39.8 The response by the Procuring Entity shall provide a written response within a reasonable time and in any event not later than within the number of d indicated in the tender document which must be before the deadline for submission to enable the supplier or contractor to make a timely submission of its bid.

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

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

39.11 A Procuring Entity if it finds it expedient so to do may convene a pre-tender conference for the suppliers and contractors 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.

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

Submission of Bids

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

- All submitted bids shall be deposited in a secured tamper-proof bid box or be submitted by electronic means in accordance with applicable rules.

- All bids must be in the English language.
- The Procuring Entity shall issue a receipt showing the date and time the bid was delivered and record the same in a Bids Return register. An electronic submission shall also be receipted with a response message indicating date, and time the bid was delivered.
- Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or the contractor which submitted it.
- All bids submitted shall be securely kept in a tamper-proof bid box.
- No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than to provide additional clarifications

Rejection of bids; Section 28 Public Procurement Act 2007 as amended.

41.1 A Procuring Entity may:

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

41.2 Bidding documents usually carry provisions 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 a lack of effective competition; or no substantially responsive bid received; inadequate competition; all bid prices were unreasonably high and substantially above the Procuring Entity's budget provision; bidding documents found to be defective, or the requirements of the Procuring Entity has changed.

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

Validity Period for Bids; Modification and Withdrawal of Tenders

Section 29 Public Procurement Act 2007 as amended.

42.1 The period of validity for a bid shall be the period specified in the tender documents. A Procuring Entity may request suppliers or contractors to extend the period of validity for an additional specified period. 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.

42.2 A supplier or contractor may modify or withdraw its bid before 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.

Section 19 Public Procurement Act 2007 as amended.

Bid Opening

43.1 All bids shall be submitted before or by the deadline or date specified in the tender documents or any extension of the deadline for submission and the Procuring Entity shall:

- Invite two credible persons as observers, one person each representing a recognized (i) private sector professional organization whose expertise is relevant to the particular goods or service being procured and (ii) non-governmental organization working in transparency, accountability, and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have the right to submit their observation report to the Bureau and any other relevant agency including their organizations or associations.
- Permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
- cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public;
- ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;
- ensure that a register is taken of the names and addresses of all those present at the bid opening and the organizations they represent which is recorded by the Secretary of the tender's board; and

- call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency, validity period, completion period in the order of priority set out below:

First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Tender shall not be opened but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the “power of attorney” confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at the Tender opening.

Next, envelopes marked “SUBSTITUTION” shall be opened and read out, and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at the Tender opening.

Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at the Tender opening.

Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security, if required; and any other details as the Procuring Entity may consider appropriate.

Only Tenders, alternative Tenders, and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bills of Quantities are to be initialed by the members of the tender opening committee attending the opening. The number of representatives of the Procuring Entity to sign shall be specified in the TDS.

At a bid opening. The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, per ITT).

The details mentioned above shall be accurately recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening Section. 70, Finance Act 2020.

The bid opening exercise shall be carried out by the procurement department of the procuring entity in the presence of the legal officer or other relevant official of the entity and all those specified in the Act - Section 70 Finance Act 2020.

- Ensure that relevant pages of financial bids are endorsed by all bidders present to avoid substitution of documents.

An electronic bid opening shall as much as is practicable mirror the provisions above for manual bid opening.

Section 31 Public Procurement Act 2007 as amended

Examination of Bids

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

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

44.2 A Procuring Entity may ask a supplier or a contractor for clarification of its bid submission to assist in the examination, evaluation, and comparison of bids.

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

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

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

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

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

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

Concerning clauses in an offer:

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

Concerning the status of the bidder

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

Concerning bid documents

- An unsigned bid;

Concerning time, date, and location for submission

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

44.6 In cases of major deviations, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder. In all cases of rejection, a letter

stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.

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

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

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

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

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

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

Section 26 Public Procurement Act 2007 as amended

Bid Security

45.1 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 bid security in an amount not more than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the Procuring Entity.

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

45.3 When the Procuring Entity requires suppliers or contractors submitting tenders to provide bid security:

- (a) The requirement shall apply to each supplier or contractor;
- (b) The bid security shall be submitted in the same format attached in the Standard Bidding Documents or otherwise be rejected by the Procuring Entity;
- (c) Notwithstanding paragraph (b), a tender security shall not be rejected by the Procuring Entity because the tender security was not issued by an issuer in the country, if the tender security and the issuer otherwise conform to requirements and format prescribed in the bidding documents and is acceptable to the Procuring Entity;

- (d) A supplier or contractor may request the Procuring Entity to confirm the acceptability of a proposed issuer or a proposed confirmer of a tender security before submitting a tender and the Procuring Entity shall respond promptly to the request;
- (e) Confirmation of the acceptability of a proposed issuer or a proposed confirmer does not preclude the Procuring Entity from rejecting the tender security on the ground that the issuer or confirmer has become insolvent or is otherwise not creditworthy.

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

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

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

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

Bid Evaluation

46.1 Time Frame for Bid Evaluation & Extension of Bid Validity

It is required to keep bids valid for a specific period to allow the Procuring Entity to examine and evaluate them, select the lowest evaluated responsive bid, and 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 schedule i.e., the Procurement Time Schedule. To enable the Procuring Entity to award the contract within such bid validity period after carrying out the other procedures, it is required that Technical Evaluation Committee should complete the evaluation report generally within 50 % of the bid validity period.

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

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

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

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

Bid Evaluation Stages

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

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

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

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

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

- (a) Preliminary examination of bids;
- (b) Detailed evaluation and comparison of bids;
- (c) Post qualification verification; and
- (d) Writing bid evaluation report in accordance with BPP issued bid evaluation report template.

Preliminary Bid Examination

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

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

Stage 1: To ascertain whether the:

The bidder is eligible - Example:

- (a) The bidder shall not be blacklisted;
- (b) In the case of goods, works, and consultancy contracts the domestic bidder should have required CAC registration; Tax Clearance Certificate, Have NSITF and PENCOM compliance certification where applicable and Industrial Training Fund (ITF) contributions if specified in the Tender Documents.
- (c) For foreign-funded projects, if so, specified by the funding agency:
 - (i) In the case of works contracts, the bidder may be from the member country of the funding agency; and
 - (ii) In the case of goods contracts the goods may be manufactured in one of the member countries of the funding agency.
- (d) Bid is signed properly by an authorized party, including the power of attorney if stipulated and generally in order;

- (e) Bid securities submitted are in an acceptable format, for the required amount and duration;
- (f) Bid is containing all required critical documents including supporting evidence of bidder eligibility and qualifications;
- (g) Bid is complete and quotes for all items in the lot or packages if so, stipulated in the bidding document.

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

48.3 Deviation from any provisions of the bidding documents (instruction to bidders, Bid Form, price schedules, Bills of Quantities, condition of contracts, technical specifications, etc.) is a common feature in many Bids. These deviations fall into two basic categories, Major deviations by the bidder result in a finding of “-non-responsiveness” and consequent rejection of the bid. Bids with minor deviations, on the other hand, are considered “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 a clearly defined distinction between major and minor deviations, there is room for different interpretations. To facilitate the categorization of deviations the following approach may be used.

A major deviation would be one which either:

- (a) Affects the validity of the bid; or
- (b) Has been specified in the bidding documents as grounds for rejection of the bid;
or
- (c) Has an effect substantially on the scope, quality, functionality, or performance;
or

(d) Will limit in any substantial way the Procuring Entity's rights or bidder's obligations or

(e) Is a deviation from the terms or the technical specifications in the bidding documents whose effect on the bid price is substantial but cannot be given a monetary value?

A minor deviation would be one which either:

(a) Does not affect the validity of the bid; or

(b) Has no effect substantially on the scope, quality, functionality, or performance; or

(c) Has no effect on the price, quality, or delivery of the goods or services offered; or

(d) Will not limit in any substantial way the Procuring Entity's rights or bidder's obligations: or

(e) has a such effect but the difference from the commercial terms or technical specifications in the bidding documents is such that it can be given a monetary value; or

(f) Has not been specified in the bidding documents as grounds for rejection of the bid, provided that the total amount of adjustments for such deviations do not exceed a previously determined percentage of the bid price.

48.4 Ways of treating most frequent deviations:

(a) **General:** In establishing the substantial responsiveness of bids, a specific clause in the ICB take precedence over general clauses; for example, if the bidding documents required bids to be submitted for all items and stated that incomplete bids will be rejected, the Procuring Entity should not propose to base the award by accepting an incomplete bid, based on a clause in the bidding documents in which it reserved the right to waive irregularities in bids.

(b) **Completeness of Bids:** If the Procuring Entity intends to reject incomplete bids, it shall be clearly stated in the bidding documents. If Procuring Entity intends to consider incomplete bids, the bidding document shall specify the minimum number of items for which prices must be quoted in the bid or the minimum

value of the items to be quoted. Bidding documents should also state how incomplete bids meeting the minimum requirements will be evaluated. In such cases, incomplete bids would have to be adjusted (loaded) for missing items to make the bids comparable. If Procuring Entity can estimate the actual cost that will be incurred in procuring the missing items, that cost should be added (loaded) to the bid for purpose of comparison. If such an estimate is not available, standard practice is to apply the highest price quoted by other bidders for adjustment (loading) purposes. Items for which no bids were received may be ignored in the comparison. If the bidding documents do not indicate whether incomplete bids will be accepted or rejected, the question of whether such bids are “substantially responsive” must be decided during bid evaluation.

(c) ***Procedural Deviations in Submission of Bids:*** Most deviations in the submission of bids (such as the marking of envelopes and sealing of bids) other than the signature to the form of the bid is normally considered minor. The absence of a signature on the form of a bid and similar deviations are considered major deviations.

(d) ***Bid Security:*** If the bidders are required to furnish a bid security with his bid, failure to submit it in the prescribed format is considered a major deviation and sufficient grounds for rejection. The submission of bid security after the bids are opened should be treated in the same manner as not submitting bid security. If the amount of the bid security submitted is less than the amount stated in the bid, it shall be rejected. Similarly, if the period of the bid security submitted is less than the period stated the bid shall be rejected. If the form of the bid security is in a different format from that prescribed in the bidding documents, the bid should be rejected.

(e) ***Lack of Supporting Documents:*** The bidding documents should specify what documentary evidence is required to support the bid. In addition, they should specify whether a bidder’s failure to submit any of the requested documentation with the bid will be considered grounds for rejection of the bid. If so, specified the evaluation should be carried out accordingly. Otherwise, it may be treated as follows:

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

These must be treated differently, depending on their purpose.

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

48.5 Lack of documentation of the first kind is normally considered a major deviation and, grounds for rejection of the bid. A lack of the second kind of documentation is usually considered a minor deviation that can be remedied by subsequent submissions. However, for procurement of information systems, kindly follow the detailed prescriptions on required manuals, brochures and other supporting documents prescribed in the tender documents.

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

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

(i) Accept such deviations proposed by a bidder, not only to evaluate the bid; and

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

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

(h) **Subcontracting:** The bidding document for the works contract should indicate to what extent subcontracting is permitted and whether the proposed subcontractor

has to be named in the bid. Any bid not complying with this stated requirement may be considered -non-responsive and grounds for rejection. If the bidding document did not contain any statement regarding the permissible extent of subcontracting, the Procuring Entity should review the extent of subcontracting of major works by the bidder and if found as excess to affect the main responsibilities of the bidder, the bid may be considered as -non-responsive.

- (i) **Alternative Bids:** Submission of a bid based on an entirely different design, where such had not been permitted is considered a major deviation.
- (j) **Delivery Period:** If goods are offered outside the delivery period or in the case of works contract unacceptable time phasing, not conforming to specified key dates or program is considered as a major deviation.
- (k) **Conditional bids:** Bids that are offered with conditions such as the prior sale of the equipment offered, and availability of the material in the market are considered -non-responsive.

48.6 **Debatable Deviations:**

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

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

- (a) Requesting different amounts of the advance and other payment terms (including liquidated damages and retention): If such proposals are accepted the additional cost that will be incurred by the Procuring Entity should be loaded to the bid price for evaluation; In the case of advances and payment stages the additional cost may be the respective interests and in the case of liquidated damages and retention it may be the maximum amounts specified in the bidding documents for liquidated damages and retention respectively.

- (b) Proposed changes in the construction period which is not critical: Similarly, if such proposals are accepted the additional cost (may include additional rentals, supervision cost, effects to liquidated damages) that will be incurred by the Procuring Entity should be loaded to the bid price for evaluation.
- (c) Omissions of minor works or items included in the scope of work; if such omissions are acceptable there cannot be any effect on the balance works or items if the omitted items or works are procured differently.

General Principles of Detailed Bid Evaluation and Comparison of Bids

49.1 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 were determined as a substantially responsive bid. Therefore, only the bids that have been determined to be substantially responsive to the bidding documents, i.e., do not contain material deviation, should be considered for detailed evaluation. Out of the three stages of bid evaluation described in this manual only during this stage, the bids are compared with each other. The purpose of the 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. To determine the lowest evaluated bid the Procuring Entity should only use the evaluation criteria disclosed in the bidding document. No additional evaluation criteria other than those which were disclosed in the Advertisement or bidding documents should be used during the evaluation. A systematic and logical sequence as described in this manual should be followed during the detailed evaluation and comparison of bids,

49.2 Detailed Bid Evaluation – Principles and Methodologies

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

- Exclude VAT, contingencies, and provisional sum amounts;
- Correction of arithmetical errors;
- Application of applicable discount;
- Adjustment to bid prices for omissions;

- Adjustments for acceptable departures;
- Adjustments for the delivery period;
- Adjustments for inland transportation;
- Operational costs and life cycle costing;
- Conversion to common currency;
- Domestic preference;
- Reassess ranking order;
- Examine for unbalanced bidding;
- After-sales services;
- Clarifications during evaluation;
- Alternate Bids

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

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

(b) Correction of arithmetical errors:

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

to his bid. If the bidder refuses to accept the corrections, its bid shall be rejected, and action is taken against the bid security submitted.

The correction of arithmetical errors should be made as follows:

- (i) Where there is a discrepancy between the amounts in figures and 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 a 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 binding upon the bidder.

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

- (c) Application of applicable discount;

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

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

such lump sum amount shall be uniformly distributed to all the items, excluding for contingencies and provisional sums.

(d) Adjustment to bid prices for omissions;

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

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

(e) Adjustments for acceptable departures;

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

(f) Adjustments for delivery periods;

In many cases, bidders will present their bids where the delivery periods deviate from bidding document requirements, accidentally or deliberately. Regardless of the reason, such deviations should be quantified in 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 should be done in the manner described in the bidding documents. Generally, no advantage is given to a bid offering early delivery than that specified in the bidding document. Any bid offering a delivery beyond a finally acceptable cutoff date specified in the bidding documents should be rejected as a 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 is 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 based on life cycle cost. The following elements (but not limited) would generally comprise a typical life cycle assessment:

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

- Depreciation cost.

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

- (i) Conversion to common currency;

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

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

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

Goods:

- The application of the applicable preference should be used only if it was disclosed in the bidding documents;
- The goods being procured are “manufactured goods” involving assembly, fabrication, processing, etc., where a commercially recognized final product is substantially different from the basic characteristics of its components and raw materials;
- The goods qualified for domestic preference are identical or comparable to requirements given in the bidding documents concerning quality, capacity, and performance;

- Satisfying the minimum domestic values as specified in the bidding documents;
- The margin of price is added to the bid price of the foreign product rather than subtracted from the domestic product.

Works:

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

(k) Comparison with engineer's estimate in the case of works contracts;

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

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

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

- Bid is reasonable under given circumstances and should be accepted;
- If the bid prices are marginally low the bidder shall be requested to prove to the satisfaction of the Procuring Entity, how the bidder intends to procure such

items/perform the Works/provide the Services as per the quoted rates, for such purposes the bidder may be asked to provide a rate analysis; If the Procuring Entity is of the view that the justification/explanation provided by the bidder is unacceptable, and hence the bidder would fail in the performance of his obligations within the quoted rates, higher performance security may be requested to mitigate such risks; If the bidder refuses to provide such additional performance security, his Bid shall be rejected.

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

Section 29 Public Procurement Act 2007 as amended

Extension of Tender Validity

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

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

Bid Evaluation Report

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

- Key dates and steps in the bidding process (copy of the invitation to bid as advertised attached);
- Bid opening information (copy of the bid opening minutes should be attached);

- For all bidders: Table showing the bidders' compliance with major commercial conditions (e.g., completeness, bid security. Bid validity, delivery or completion period. Payment terms);
- For all bidders: Table showing bidder's compliance with key provisions of the technical specifications (e.g., capacity, operating characteristics, etc.);
For some procurement; Table showing the eligibility of bidders offered goods or services as different from eligibility of tenderer.
- For all substantially responsive bids: Table showing arithmetical errors, discounts, and currency conversion;
- For all substantially responsive bids: Table showing additions and adjustments (indicating methods used in computing the adjustments);
- For all substantially responsive bids: Table showing currency conversion;
- For all substantially responsive bids: Table showing domestic preference;
- For all substantially responsive bids: Table showing various steps from bid price announced to evaluated bid price);
- Record of clarifications made from all bidders;
- For lowest evaluated responsive bidder: Post qualification verification;
- Names of bidders rejected and reasons for rejection;
- The proposed contract award recommendation;

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

Acceptance of Bids; Section 33 Public Procurement Act2007 as amended.

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

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

The decisions of all Tender's Boards shall be confirmed respectively by the political heads of the procuring entities, provided that the political heads are not the Chairmen of the Tender's Board. - Section 66 of the Finance Act, 2020

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

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

Contract Performance Guarantee; Section 36 *Public Procurement Act 2007 as amended.*

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

Award and Signing of the Contract

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

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

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

- Request and obtain the Bureau’s “no-objection” before awarding the contract, if applicable;
- **Not** negotiate the award with the successful bidder without approval from relevant authorities;
- **Not** require the selected tenderer to provide performance above that specified in the Tendering Documents;
- Send notification of the award, and a contract form to the successful tenderer in a manner and within the time specified in the tendering documents;
- Request the tenderer to return the signed contract together with the required performance security within the time specified in the tendering documents; and
- Notify unsuccessful tenders as soon as possible after receiving the signed contract and the performance security from the successful bidder.

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

- Require the forfeiture of the tenderer’s Tender Security; and
- Proceed to offer the contract to the second lowest evaluated responsive Tenderer, provided that he is capable of performing satisfactorily.

Execution of Contract Agreement

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

Upon award of the contract and before the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract / Notification of the award to all Tenderers which shall contain, at a minimum, the following information:

- (a) the name and address of the Tenderer submitting the successful tender.
- (b) the Contract price of the successful tender.
- (c) a statement of the reason(s) the tender of the unsuccessful Tenderer to whom the letter is addressed was unsuccessful unless the price information in (c) above already reveals the reason;
- (d) the expiry date of the Standstill Period; and
- (e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

The Contract shall not be awarded earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied candidate to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

Where Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

Default on Bid Security

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

Contract Administration – Payment of Value-Added Tax (VAT)

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

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

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

Variation to Contracts

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

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

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

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

Record of Procurement Proceedings; Section 38 *Public Procurement Act 2007 as amended.*

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

- Public notices of tendering opportunities
- tendering documents and addenda

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

59.2 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.

59.3 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 audit and review.

Mobilization Fees; Section 35 of *Public Procurement Act 2007 as amended by Section 71 of the Finance Act 2020.*

60.1 In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of no more than 30% for Local Contractors and 15% for foreign contractors may be paid to a supplier or contractor supported by the following:

- In the case of National Competitive Bidding for local contractors only- an unconditional bank guarantee or insurance bond issued by an institution acceptable to the Procuring Entity;
- In the case of International Competitive Bidding and or foreign contractors - an unconditional bank guarantee issued by a banking institution acceptable to the Procuring Entity.

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

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

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

Publication of Contract Awards

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

Within fourteen days after signing the contract, the Procuring Entity shall publish and publicize the awarded contract on its notice boards, entity website; and the website of the Authority in the manner and format prescribed by the Authority. At the minimum, the notice shall contain the following information:

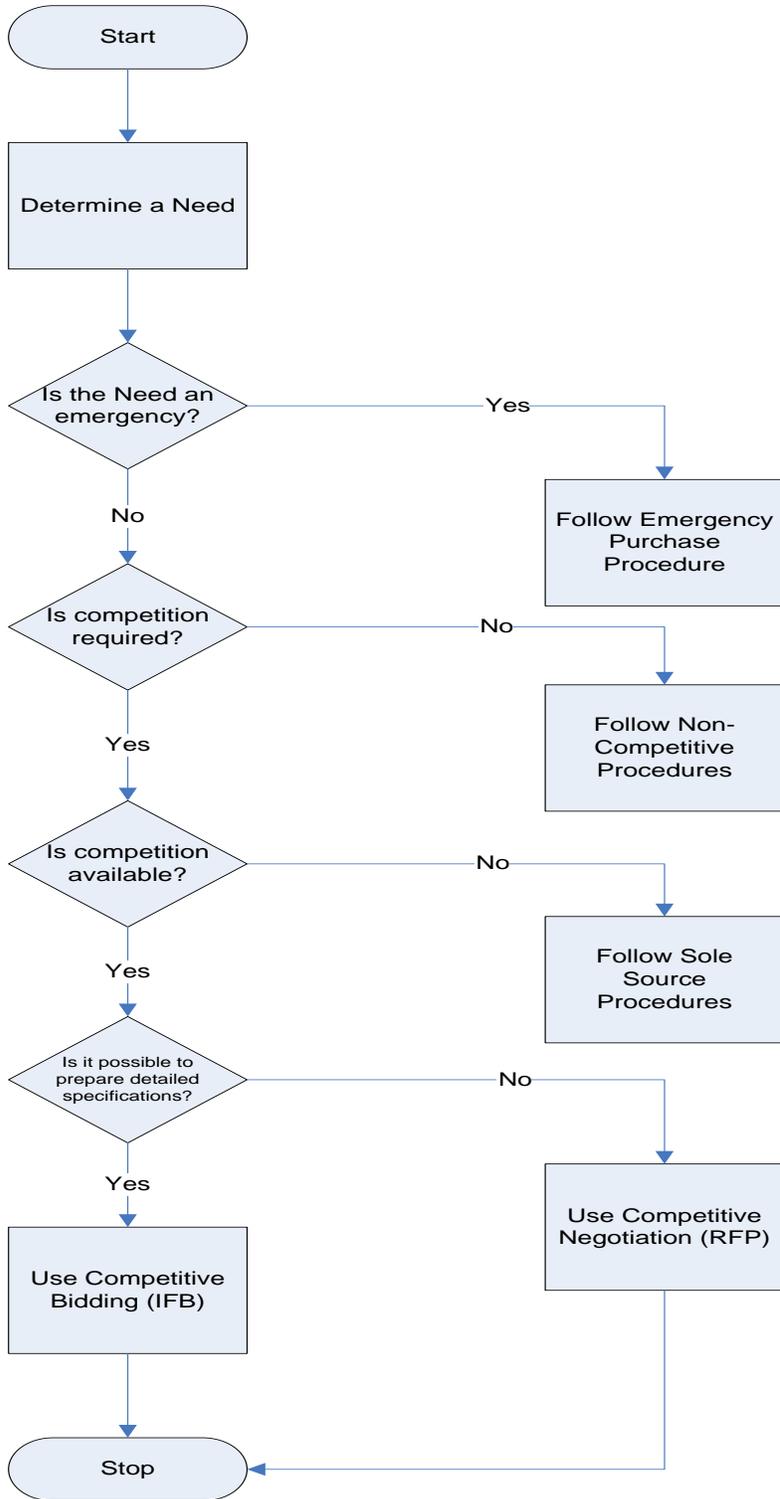
- (a) name and address of the Procuring Entity.
- (b) name and reference number of the contract being awarded, a summary of its scope, and the selection method used.
- (c) the name of the successful Tenderer, the final total contract price, and the contract duration.
- (d) dates of signature, commencement, and completion of contract.
- (e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening;

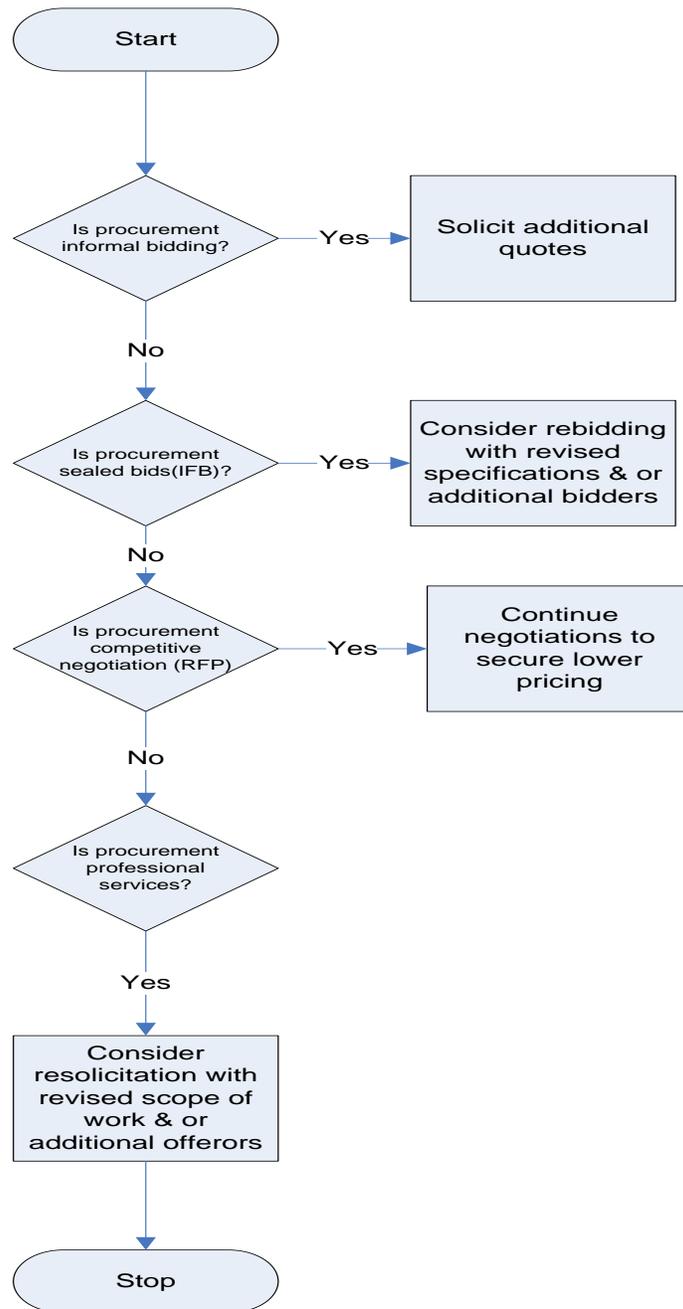
Confidentiality

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

64. FLOW CHART OF THE COMPETITIVE PROCUREMENT PROCESS

Public procurement should be handled as follows:





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

Introduction: Open Competitive Bidding Section 24 of the *Public Procurement Act 2007 as amended*

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

However, any procuring entity that applies any other procurement option prescribed in this Act, the accounting officer of the entity shall submit a request and obtain the approval of the Bureau in Accordance with Section 24 of the PPA as amended by Section 67 of the Finance Act 2020.

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

Section 24 Public Procurement Act 2007 as amended.

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

- (i) preparation of a procurement plan based on proper needs assessment
- (ii) Selection of a method of procurement

- (iii) Preparation of the relevant procurement documents

- (iv) Transparent Pre-qualification of bidders

- (v) Submission/receipt of tenders

- (vi) Evaluation of tenders

- (vii) Comparison of tenders

(vii) Recommendation of the winning bid to the Tenders Board or Accounting Officer

(viii) Certification of the procurement action by the Bureau (prior review items only)

(ix) Award of the contract.

Selecting the Method of Procurement

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

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

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

International Competitive Bidding (ICB)

67.1 The purpose of ICB is to give all prospective and qualified bidders (local and foreign) adequate and timely notifications of the Procuring Entity's requirements and to

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

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

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

67.2 When ICB is used, domestic preference criteria stipulated under the Procurement Guideline shall be used. All other conditions including currencies, taxes, and other statutory levies shall be equally applied to foreign and domestic bidders. Any supplier, service provider, or contractor, who desires to obtain the bidding document, whether a foreign or domestic bidder shall be allowed to purchase the same, provided the bidder is prepared to pay the specified fees. The Procuring Entity is required to give worldwide publicity to the tender notice in various media to ensure maximum competition. Also, under ICB the procurement regulations now require application of existing local content rules and prescribes that where no local content policy exists foreign bidders are to ensure a minimum 40% local content inputs (material or labor) in their bids. An exemption exists for situations where the local industry is not capable of generating up to 40% content. In considering ICB therefore a Procuring Entity will need to ascertain the existence of sectoral local content policy and where it does not exist, apply the 40% local content rule. However, if it determines that the local industry cannot generate local content policy, then it must seek BPP No objection to apply an exemption, in which case it will require foreign bidders in their bid to provide a plan to build local content. The standard bidding documents provide additional guidance and relevant forms to support compliance.

When ICB is used: **Section 25(2) *Public Procurement Act 2007 as amended***

67.3 The Procuring Entity is required to:

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

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

Types of ICB

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

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

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

68.3 Following the first stage evaluation, the Procuring Entity prepares a memorandum of changes for each bidder and may prepare an addendum to the tendering documents, including revisions to the technical requirements made in the light of the first stage technical evaluation, and initiates the second stage tendering process. During the second stage tendering process, bidders offer final tenders containing their final technical

proposal and a financial proposal. The Procuring Entity then evaluates the proposals (technical and financial) according to the criteria specified in the tendering documents.

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

68.5 A one-stage process is most appropriate for relatively straightforward procurement of fairly standard technologies and ancillary services. In contrast, the additional capacity to review technical proposals, revise technical requirements, and interact directly with the suppliers during the first stage makes the two-stage processes much more suitable for the procurement of goods such as complex information systems and procurements which involve extensive technical services.

Procedures for Two-Stage Tendering

Section 39 Public Procurement Act 2007 as amended.

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

69.2 The Procuring Entity may, in the first stage, engage in negotiations with any supplier or contractor whose tender has not been rejected under an open competitive bidding procedure concerning any aspect of its tender.

69.3 In the second stage of the two tender proceedings the Procuring Entity, shall invite suppliers or contractors whose tenders have not been rejected to submit final tenders with prices on a single set of specifications. The Procuring Entity may, in the invitation to submit final tenders, communicate to the suppliers or contractors, any

deletion, modification, or addition; and may permit a supplier or contractor who does not wish to submit a final tender to withdraw from the tendering procedure.

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

National Competitive Bidding (NCB)

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

70.2 When NCB is used: Section 25(2) ***Public Procurement Act as amended.***

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

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

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

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

Limited / Restricted International & National Bidding (LIB/LNB)
Section 40 Public Procurement Act 2007.

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

71.2 Subject to the approval by the Bureau, a Procuring Entity may for reasons of economy and efficiency engage in procurement through limited or restricted tendering if:

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

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

National Shopping

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

- (i) Readily available -the-shelf goods of small value;

(ii) Small value (threshold to be specified by BPP) commodities for which specifications are standard;

(iii) Small value (threshold to be specified by BPP) works or services

72.2 Under National Shopping Procuring Entity may:

(a) publish a notice for inviting applications from suppliers; and after evaluating the experience and other qualifications such as capacity of the applicant, by a committee consisting of not less than three members appointed by the Accounting Officer of the Procuring Entity, prepare a list comprising names of at least three suppliers who can supply particular categories of goods and services such as stationery, electrical items, motor vehicle repairs, periodicals, and publications, etc.

(b) Remove any supplier or contractor who has not responded twice to an invitation to submit a quotation or performed unsatisfactorily under any contract previously awarded.

(c) The selection shall be based on a comparison of price quotations obtained from invited bidders appearing on the bidders' list.

(d) When the appropriate authority is satisfied, in the case of supplies of goods, that a sufficient number of reputed vendors are available, quotations may be invited from the list.

(e) Requests for quotations shall be addressed to firms in the approved bidders list of suppliers and shall indicate:

(i) The description and quantity of the goods;

(ii) Time and place of delivery; and

(iii) Warranties

(f) When shopping procedures are used for works, requests for quotation shall be only from the shortlisted contractors and the minimum number of quotations shall be three. The comparison of quotations shall follow NCB principles wherever applicable, but the terms of the accepted offer shall be incorporated in a purchase order.

72.3 Applicable Procedures for National Shopping:

- Quotations must be obtained from at least 3 unrelated contractors or suppliers.
- Each contractor or supplier from whom a quotation is requested shall be informed whether any factors other than the charges for the goods, works, or services themselves, such as any applicable transportation and insurance charges, customs duties, and taxes are to be included in the price.
- Each contractor or supplier shall give only one quotation and shall not be allowed to change or vary the quotation.
- No negotiations shall take place between a Procuring Entity and a contractor or supplier concerning a quotation.
- Telephone or verbal quotations shall not be accepted, but online or email quotations are acceptable
- The procurement shall be awarded to the qualified contractor or supplier that gives the lowest-priced responsive quotation.

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

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

Direct Contracting; Section 42 Procurement Public Procurement Act 2007 as amended

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

- (i) Goods, works, and services are only available from a particular supplier or contractor, or if a particular supplier or contractor has exclusive rights in respect of the goods, works, or services and no reasonable alternative or substitute exists;
- (ii) There is an urgent need for the goods, works, or services, and engaging in tender proceedings or any other method of procurement is impracticable due to unforeseeable circumstances giving rise to the urgency which is not of dilatory conduct on the part of the Procuring Entity;
- (iii) Owing to a catastrophic event, there is an urgent need for goods, works, or services, making it impracticable to use other methods of procurement because of time constraints;
- (iv) Additional supplies need to be procured from a supplier or contractor because of standardization;
- (v) An extension of an existing contract is necessary as works are already underway and were procured through competitive procurement procedures;
- (vi) A Repeat procurement of goods, works, or services that had recently been competitively tendered and satisfactorily executed/received or is still a work in progress and for which the supplier or contractor is willing to maintain his tender prices/rates. Repeat procurement can be applied only within a period not exceeding two years from the date of the original tender.
- (vii) There's a need for compatibility with existing goods, equipment, technology, or services, taking into account the effectiveness of the original procurement in meeting the needs of the Procuring Entity.
- (viii) The required equipment is proprietary and obtainable only from one source (such as proprietary software, textbooks, spare parts, and defence items), and no alternative equipment or products with equivalent performance characteristics are available;
- (ix) The process design requires the purchase of critical components or materials from a particular supplier as a condition of a performance guarantee.

73.2 Procedure for direct contracting:

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

Emergency Procurement: Section 43 *Public Procurement Act 2007 as amended.*

74.1 A Procuring Entity may carry out an emergency procurement where:

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

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

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

74.2 Immediately after the cessation of the situation warranting any emergency procurement, the Procuring Entity shall file a detailed report thereof with the Bureau of

Public Procurement which shall verify the same and if appropriate, issue a Certificate of No Objection.

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

SELECTION AND EMPLOYMENT OF CONSULTANTS

Section 44 Public Procurement Act 2007 as amended.

Introduction

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

75.2 Where a Procuring Entity wishes to procure services for its needs that are precise and ascertainable:

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

- However, where the value of the services to be procured is less than one million naira, or with the approval of the Bureau, of such a low value that only national consultants would be interested, the Procuring Entity may without placing a notice as indicated above, request at least 3 and not more than 10 consultants or service providers to make proposals for the provision of the services in a format stipulating:
 - (i) A statement of qualifications of the consultant to provide the service;
 - (ii) A statement of understanding of the Procuring Entity's needs;
 - (iii) The methodology for providing the service;
 - (iv) The timeframe for providing the service; and
 - (v) The cost or fee for the service.

75.3 The Steps of the Selection Process

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

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

75.4 The Terms of Reference (TOR)

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

The TOR should:

- Describe the background to the assignment;
- State the objectives of the assignment including:
 - The scope of the services;
 - The duration of the assignment;
 - A detailed list of the consultants' duties and responsibilities;
 - Where applicable, the required inputs in terms of expert days, or months;
- Detail the required outputs, e.g.: reports, detailed designs, recommendations, draft laws, etc. which the consultants will be required to produce (also referred to as 'deliverables');
- Set the periods for the deliverables;
- Not be over-detailed or inflexible, so that competing consultants may propose their methodology and staffing.
- List any services and surveys necessary to carry out the assignment;
- Include details of the services, facilities and counterpart staff to be provided by the Client.

Indicate participation of nationals amongst project experts

- Specify detailed requirements when the transfer of knowledge or training is an objective, to allow candidates to estimate the required resources.

75.5 Preparation of Cost Estimates and Budget

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

- Key and support staff remuneration, including social charges;

- Mobilization and demobilization;
- Transportation;
- Reimbursables:
- Communications;
- Office rent and consumables;
- Documents and reports preparation;
- Training;
- Miscellaneous (computer equipment, insurance, translations, etc.);
- Duties and taxes.

Section 45 Public Procurement Act 2007 as amended.

75.6 A Procuring Entity wishing to procure services for its needs may do so by requesting proposals when:

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

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

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

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

Please refer to the Standard Bidding Document for Procurement of Services for detailed content.

Section 47 Public Procurement Act 2007 as amended.

75.9 Clarification and modification of requests for proposals.

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

- Where the clarification is sought before the deadline for submissions, and within the period specified in the Bidding Documents respond to the request within the number of days stipulated for responses in the bidding documents and shall, without identifying the source of the request, simultaneously communicate the clarification response to the other consultants to whom the procurement entity has provided the request for proposals (RfP);

75.10 A Procuring Entity may, whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposals by issuing an addendum at any time before the deadline for submission of proposals.

75.11 The addendum shall be communicated promptly before the deadline for the submission of proposals to the short-listed consultants to whom the Procuring Entity has provided the request for proposals and shall be binding on those consultants.

Section 47 Public Procurement Act 2007 as amended.

75.12 If the Procuring Entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the issues submitted at the meeting for clarification of

the request for proposal and its responses to those issues, without identifying the sources of the requests for clarifications.

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

Submission of Proposals; Section 48 *Public Procurement Act 2007 as amended.*

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

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

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

Criteria for Evaluation of Proposals

77.1 The Procuring Entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and how they are to be applied in the evaluation of proposals. The criteria may concern only the following;

- The qualifications, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;
- experience on similar assignments and in similar conditions
- evidence of similar assignments successfully completed in the past 3-5 years

- The effectiveness of the proposal submitted by the consultant or service provider in meeting the needs of the Procuring Entity;

- The proposal price, subject to any margin of preference applied, including any ancillary or related costs;
- The effect that the acceptance of the proposal will have on the balance of payments position and foreign reserves of the government, the extent of participation by local personnel, the economic development potential offered by the proposal, including domestic investment or other business activity, the encouragement of employment, the transfer of technology, the development of managerial, scientific and operational skills and the counter trade arrangements offered by consultant or service providers; and
- National defense and security considerations.

Domestic Preferences Section 34 Public Procurement Act 2007 As amended.

77.2 In the case of ICB, when comparing bids from foreign contractors or suppliers with national Bidders, Procuring Entities may grant a margin of preference to domestic contractors, and suppliers for goods manufactured in Nigeria. The BPP will from time to time set the margins of preference to be granted. Bid documents may provide a domestic preference of 15% of the delivered price for goods and 7.5 % for works. Domestic preference is only applicable if provided for in the bid document.

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

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

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

Participation by nationals:	0 to 10 points
Total:	100 points

Consultant’s Specific Experience:

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

Methodology:

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

Key Personnel:

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

General Qualifications:

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

Adequacy for the Assignment:

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

Experience in the Region:

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

77.4 The criteria may be divided into sub-criteria to enhance the objectivity of the evaluation. For example, the 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. It could look at key personnel's general and specific experience. The number of sub-criteria should be kept to the essential minimum and must be fully detailed within the RFP. The minimum qualifying technical score to be achieved for a bid to proceed to the Financial Evaluation must be specified in the RFP.

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

General Selection Procedure (Services); Section 50 *Public Procurement Act 2007 as amended.*

78.1 The Procuring Entity shall select the successful proposal by either:

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

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

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

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

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

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

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

- a) Complex or highly specialized assignments for which it is difficult to define a precise TOR and the required input from the consultants;
- b) Assignments where the downstream impact is so large that the quality of the service is of overriding importance for the outcome of the project e.g., engineering design of major infrastructure;
- c) Assignments that can be carried out in substantially different ways such that financial proposals may be difficult to compare; and
- d) Assignments include the supervision of large and complex construction works for which it is particularly important to take safety precautions.

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

78.3 The procurement entity shall:

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

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

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

- (i) for tasks that represent a natural continuation of previous work carried out by the firm;
- (ii) in emergency cases, such as in response to disasters;
- (iii) for very small assignments; or
- (iv) when only one firm is qualified or has the experience of exceptional worth for the assignment.

78.4 Where price is a factor: Quality and Cost-Based Selection

Section 51; *Public Procurement Act 2007 as amended*

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

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

- Establish a weight concerning quality and technical aspects of the proposals per the criteria other than price as might have been set out in the request for proposals and rate each proposal per such criteria and the relative weight and manner with the application of the criteria as stipulated in the request for proposals; and then

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

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

78.5 Least-Cost Selection – LCS:

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

78.6 Fixed Budget Selection – FBS:

Selection based on a fixed budget, for simple assignments for which the budget is fixed

and cannot be increased. Only the technical proposals which have passed the minimum technical score set in the RfP will proceed to the financial evaluation. Financial proposals higher than the fixed budget amount indicated in the RfP are rejected.

78.7 Hiring of Government Officials.

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

As you can see, choosing the method for selection of a winning bid should be the product of an informed and careful consideration of many factors including; the simplicity or complexity of service, level of specialization required, the expected down field impact, availability of competition etc., the process of procurement planning should enable an evaluation of the service and determination of the optimum selection method to achieve procuring entity objectives.

Bureau's Review of Procurement Actions

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

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

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

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

Scope of Prior Review

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

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

Post Review of Procurement Documentation

81.1 Post review is similar in scope to prior review but is carried out only on a sampling basis, on procurement documentation usually retained by the Procuring Entity. The review usually covers the following documents:

- Budget appropriation
- The Invitation for Tenders;
- Tendering Documents;
- Public tender opening record;
- Tender evaluation report;
- Final contracts;

- Other documents as appropriate to check if the agreed procedures were correctly followed, whether the documents are consistent with procurement rules; and

- Whether the lowest evaluated (responsive) bidder was indeed awarded the contract.

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

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

SECTION 7 — STANDARD BIDDING DOCUMENTS

Preparing the Relevant Procurement Documents

Standard Bidding Documents

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

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

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

- ***Invitation To/Tender;*** the IFB/IFT (or SPN) is used by the Procuring Entity to invite potential bidders to present their tenders for the requirement at hand, and it describes the Procuring Entity and source of financing and indicates the goods, works or services to be procured.
- ***Instructions to Tenderers;*** Provide information to bidders regarding the form, procedure, and timing of tendering.
- ***The Tender Data Sheet;*** is used to complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). It specifies the parameters of the Instructions to Bidders for the particular procurement including the source of funds, eligibility requirements, the procedure for clarification, tender preparation form, number of copies to be submitted, the language of the tenders, pricing and currencies and currency conversion mechanism, instructions on modification and withdrawal of tenders, tender submission procedures, closing date, tender validity period, opening and evaluation of tenders, and award of contract procedures, the

- procedure for correction of mathematical discrepancies in tenders, purchaser's right to accept any tender and reject any or all tenders; award criteria; notification of award and procedures for signing of the contract.
- ***Evaluation and Qualification Criteria;*** this section specifies the criteria that the Procuring Entity will use to evaluate the tenders and post-qualify the lowest evaluated Bidder.
 - ***The General Conditions of the Contract;*** setting out the general provisions of the contract between the Procuring Entity and the bidder awarded the contract.
 - ***Particular Conditions of Contract;*** which complement the General Conditions of Contract for the particular procurement.
 - ***For Goods: Schedule of Supply;*** which specifies the quantities, delivery locations, and dates for the items required by the purchaser.
 - ***For Works: Bill of Quantities or Schedule of Works*** which specifies the quantities, unit rates, or payment items for the works required to be carried out.
 - ***The Technical Specifications and drawings;*** which provide details of the characteristics of the technologies and technical services required (and for goods/equipment specify the common format in which bidders must present their materials, including a technical responsiveness cross-reference form). It is advisable to indicate Standards of materials and workmanship required for the production and manufacturing of the Goods and delivery of works. The sustainable procurement requirements shall be specified to enable the evaluation of such a requirement and to encourage Tenderers' innovation in addressing sustainable procurement requirements.
 - ***Tendering Forms;*** which include forms for Tender Submission and Price Schedules, Tender Security, Contract Agreement, Performance Security, Bank Guarantee for Advanced Payment, and/or the Manufacturer's Authorization.
 - ***Eligibility for Provision of Goods, Works, and Services in Public Procurement;*** which lists the grounds of disqualification for participating in public procurement.

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

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

- Standard Bidding Documents for Procurement of Goods
- Standard Bidding Documents for Procurement of Works Small
- Standard Bidding Documents for Procurement of Works Large – Building
- Standard Bidding Documents for Procurement of Works Large - Roads and Bridges
- Standard bidding Documents for Procurement of Services - Maintenance - Lump Sum
- Standard Bidding Documents for Procurement of Services - Maintenance - Time and Materials
- Standard Prequalification Document for Works
- Standard Prequalification Document for Goods (1)
- Standard Bidding Documents for Non-Consulting Services (such as Facility Management)
- Standard Bidding Documents for Management Information System (with and without Prequalification)
- Standard Prequalification Document for Procurement of Health Commodities
- Standard Bidding Documents for Procurement of Health Commodities
- Standard Bidding Documents Framework Agreement – Works
- Standard Bidding Documents Framework Agreement - Goods
- Standard Bidding Documents for Procurement of Complex Projects – EPC
- Standard Asset Disposal Procedure Document (1)
- Standard Bidding Document for Procurement of Consulting Services
- Standard Bidding Document for Procurement of Defense Commodities

Technical Specifications

83.1 The purpose of the Technical Specifications (TS), is to define the technical characteristics of the Goods and Related Services required by the Procurement Entity. Precise and clear specifications are required for bidders to respond realistically and competitively to the requirements of the Purchaser/Procuring Entity without qualifying or conditioning their tenders. In the context of ICT/ICT, the specification must be drafted to permit the widest possible competition, and at the same time make a clear statement of the required standards of workmanship to be provided, standards of plant and other supplies, and performance of the goods and services to be procured. Only if this is done will the objectives of economy, efficiency, and fairness in procurement be realized, the

responsiveness of tenders be ensured, and the subsequent task of tender evaluation be facilitated.

83.2 Technical specifications in this instance should be descriptive and give the full requirements in respect of, but not limited to, the following:

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

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

83.4 The Procurement Entity should prepare the detailed Technical Specification (TS) to take into account that:

- the TS constitutes the benchmarks against which the Procurement Entity will verify the technical responsiveness of Tenders and subsequently evaluate the Tenders. Therefore, a well-defined TS will facilitate the preparation of responsive Tenders by Tenderers, as well as the examination, evaluation, and comparison of the Tenders by the Procurement Entity.
- the TS shall require that all Goods and materials to be incorporated in the Goods be new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided for otherwise in the contract.
- The TS shall make use of best practices. Samples of specifications from successful similar procurements in the same country or sector may provide a sound basis for drafting the TS.
- Standardizing technical specifications may be advantageous, depending on the complexity of the Goods and the repetitiveness of the type of procurement. Technical

Specifications should be broad enough to avoid restrictions on workmanship, materials, and equipment commonly used in manufacturing similar kinds of Goods.

- Standards for equipment, materials, and workmanship specified in the ITT document shall not be restrictive. Recognized international standards should be specified as much as possible. Reference to brand names, catalog numbers, or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words “or substantially equivalent.”

83.5 Technical Specifications shall be fully descriptive of the requirements in respect of, but not limited to, the following:

(a) Standards of materials and workmanship are required for the production and manufacturing of the Goods.

(b) Any sustainable procurement technical requirements shall be specified. The sustainable procurement requirements shall be specified to enable the evaluation of such a requirement on a pass/fail basis. To encourage Tenderers’ innovation in addressing sustainable procurement requirements, as long as the Tender evaluation criteria specify the mechanism for monetary adjustments for Tender comparisons, Tenderers may be invited to offer Goods that exceed the specified minimum sustainable procurement requirements.

(c) Detailed tests are required (type and number).

(d) Other additional works and/or Related Services are required to achieve full delivery/completion.

(e) Detailed activities to be performed by the Supplier, and any relevant activities by the Procurement Entity.

(f) List of detailed functional guarantees covered by the Warranty and the specification of the liquidated damages to be applied if such guarantees are not met.

83.6 The TS shall specify all essential technical and performance characteristics and requirements, including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the Procurement Entity shall include an additional ad-hoc Tender form (to be an Attachment to the Letter of Tender), where the Tenderer shall provide detailed information on such technical performance characteristics concerning the corresponding acceptable or guaranteed values.]

When the Procurement Entity requests that the Tenderer provides in its Tender a part or all of the Technical Specifications, technical schedules, or other technical information, the Procurement Entity shall specify in detail the nature and extent of the required information and how it has to be presented by the Tenderer in its Tender.

If a summary of the Technical Specifications (TS) has to be provided, the Procurement Entity shall prepare it to justify compliance with the requirements

83.7 There are existing standards that can serve as reference benchmark to procurement officers and user departments in writing technical specifications. For roads and bridges for example there is the Standard Specifications for road and bridge works issued by the Nigeria Roads and Highway Authority. For Buildings, there is the National Building Code. This is a set of minimum standards on building pre-design, designs, construction and post-construction stages with a view to ensuring quality, safety and proficiency in the building industry. For goods, the Standards Organization of Nigeria (SON) has issued catalogues that provide minimum standards applicable in Nigeria. They may be found at; <http://www.arso-oran.org/wp-content/uploads/2014/09/Catalogue-of-Nigerian-Standards-2005.pdf>

<https://standards.lawnigeria.com/2019/07/18/standards-organisation-of-nigeria-son-nigerian-standards-and-specifications/>.

Regarding food and drugs, the National Food and Drug Administration (NAFDAC) has developed several standards that provide a guide to approved food and drugs and related substances. See <https://www.nafdac.gov.ng/resources/guidelines/>
<https://www.nafdac.gov.ng/drugs/drug-guidelines/>
<https://www.nafdac.gov.ng/drugs/drug-regulations/>

Regarding Environmental Protection, the National Environmental Standards and Regulation Enforcement Agency (NESREA) has developed many regulatory instruments that can be a veritable guide in specification of standards of related works or goods. Many other agencies exist in other sectors that support standards definition and specification.

Procurement officers are advised to regularly study related regulatory instruments in sectors of their operation and consult them when writing up specifications.

Contract Provisions in the STDs

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

SECTION 8 — CONTRACT MANAGEMENT AND PROCUREMENT REPORTING

Contract Management, Delivery, and Payment

85.1 Effective management of contracts is essential to ensure that the objectives of the procurement process are achieved and that all contractual obligations and activities are completed efficiently by both parties to the contract. The Procurement function or the Technical Department concerned must ensure that routine monitoring of all current contracts is maintained so that prompt remedial or preventive action can be taken when problems arise or are foreseen. There are several post-contract issues that need to be addressed, monitored, and resolved before any contract is completed including:

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

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

85.3 Contract supervision and administration of works contracts are usually more complex than for goods due to the nature of works, the fact that they are usually implemented the outside, in remote areas, and that the circumstances (soil, climate) may be different than what was foreseen at the time the detailed design of the works was made. The daily control and supervision of such contract is usually the responsibility of a Supervising Engineer appointed or hired by the Procuring Entity. The Procuring Entity must therefore ensure that it is kept informed of progress and problems which arise through routine reports. The Supervising Engineer is obliged to obtain approval from the Procuring Entity (the Procuring Entity) for major contract management decisions (e.g., issuing variation orders above a specified value, granting an extension of time, approving additional payments, issuing taking-over or defect liability certificates). Where necessary, the Procuring Entity should establish a multi-discipline monitoring and evaluation team for periodic field inspection and monitoring of projects.

85.4 Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury/Federation Account/ or any Bank account of any Procuring Entity for any procurement falling above the set thresholds unless the cheque, warrant, or other form of a t payment request is accompanied by a “Certificate of ‘No Objection’ to the award of Contract” duly issued by the Bureau.

Interest in Delayed Payments Section 37 of the Public Procurement Act 2007 as amended

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

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

Contract Performance

86.1 Monitoring Supplier's or Contractor's Obligations

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

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

86.2 Contract *Termination*

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

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

86.3 Contract *Amendment*

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

The Supervising Department will:

- Identify and agree with the Supplier, Contractor, Service Provider, or Consultant the specific clauses in the contract which need to be changed, and the new values or terms and conditions which are to apply;

- Prepare a draft contract amendment document for approval by the relevant authority together with a report justifying the reasons for the amendment;
- Obtain approval from the relevant authority (and no objection to the amendment of Contract terms from the Bureau);
- Distribute copies in the same way as the original contract.

SECTION 9—DISPOSAL OF PUBLIC PROPERTY

Public Procurement Act – Sections 55 & 56

Disposal of Public Property

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

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

Planning of Disposals

88. Before slating any public property for disposal, the Accounting Officer (whether acting in his own authority or at the direction of any superior or other authority) in charge of any public property set for disposal shall authorize the preparation of a valuation report for such property by an independent Evaluator or such professional with the appropriate competence to carry out the valuation.

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

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

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

Disposal Methods

89. Procuring Entity's property, which is no longer needed, may be disposed of per the methods indicated below:

• ***Trade-in***

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

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

- The procurement must be competed.

- Both the item to be purchased and the item to be traded in are listed separately on the solicitation.

- The low bidder is determined by subtracting the price offered on the trade-in from the price of the new equipment.

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

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

• ***Public Auctions***

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

• ***Sales by Sealed Bid***

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

• ***Negotiated Sale***

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

• ***Set Price***

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

Destruction or Abandonment

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

Documentation

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

Approval.

92. Federally funded acquisitions often carry stipulations regarding disposal. These stipulations should be reviewed before disposing of equipment that was originally purchased with federal funds.

SECTION 10 — PROCUREMENT REPORTING

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

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

SECTION 11 — PROCUREMENT SURVEILLANCE AND REVIEW

Sections 53 and 54 of the Public Procurement Act as amended.

95. The Bureau may review and recommend for investigation by any relevant authority any matter related to the conduct of procurement proceedings by a Procuring Entity, or the conclusion or operation of a procurement contract if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of the Act.

96. The Bureau may pursuant to the advice of a Procuring Entity, results of its review of a procurement or report of an investigation by a relevant government agency issue a variation order requiring a contractor at its own expense to repair, replace, or to do anything in his or her contract left undone or found to be carried out with inferior or defective materials or with less skill and expertise than required by the contract award.

97. The Bureau shall if satisfied that there has been a contravention of the Act or any regulations concerning procurement proceedings or procurement contracts, take action to rectify the contravention which action shall include:

- a) Nullification of the procurement proceedings
- b) Cancellation of the procurement contract
- c) Change the award recommendation to reflect the right decision
- d) Ratification of anything done concerning the proceedings which is consistent with any relevant provisions of the Act

98. On completion of any investigation, the relevant authority shall, if an offence is disclosed, take all necessary steps to commence prosecution and inform the Bureau and Procuring Entity accordingly, but where no offence is disclosed, the file shall be closed, and the Bureau and Procuring Entity shall be duly informed.

A Bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of the Act or any regulations or guidelines made under the Act or bidding documents.

99. A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer within 15 working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier.

The accounting officer shall:

- a) On reviewing a complaint make a decision in writing within 15 working days indicating the corrective measures to be taken if any, including the suspension of

the proceedings where he deems it necessary and giving reasons for his decision;
or

- b) Where the accounting officer does not make a decision within the period specified above or the bidder is not satisfied with the decision of the accounting officer, he/she may make a complaint to the Bureau within 10 working days from the date of communication of the decision of the accounting officer.

100. Upon receipt of a complaint, the Bureau shall promptly

- a) Give notice of the complaint to the affected Procuring Entity for its response and suspend any further action on procurement proceedings until the Bureau has settled the matter;
- b) Unless the Bureau dismisses the complaint;
 - Prohibit a Procuring Entity from taking any further action;
 - Nullify in whole or in part an unlawful act or decision made by the Procuring Entity;
 - Declare the rules or principles that govern the subject matter of the complaint
 - Revise an improper decision by the procuring or disposing entity or substitute the Bureau's decision for such a decision

101. Before taking any decision on a complaint, the Bureau shall notify all interested bidders and/or convene a Right of Reply meeting with all interested bidders and the affected procuring or disposing entity in attendance for a transparent discussion of all the issues raised in the complaint.

102. The Bureau shall make its decision within 21 working days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.

103. Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Bureau, the bidder may appeal to the Federal High Court within 30 days after the receipt of the decision of the Bureau, or expiration of the time stipulated for the Bureau to deliver a decision.

SECTION 12 — CODE OF CONDUCT FOR PROCUREMENT PROCEEDINGS

104. *Public Procurement Act – Section 57*

- a) The Bureau shall, with the approval of the Council, stipulate a Code of Conduct for all public officers, suppliers, contractors, and service providers with regard to their standards of conduct acceptable in matters involving the procurement and disposal of public assets.
- b) The conduct of all persons involved with public procurement, whether as an official of the Bureau, a Procuring Entity, supplier, contractor, or service provider shall at all times be governed by principles of honesty, accountability, transparency, fairness, and equity.
- c) All officers of the Bureau, members of Tenders Boards, and other persons that may come to act regarding the conduct of public procurements shall subscribe to an oath as approved by Council.
- d) Where a transaction involves the procurement or disposal of public assets, the following principles shall apply:
- e) In carrying out their duties all public officers shall maintain the highest standard of ethical conduct in dealing with Contractors and suppliers and shall conduct their activities per the following Code of Ethics:
- f) all contractors, suppliers and their staff shall be dealt with in an equitable and business-like manner; staff shall declare any potential as well as actual conflicts of interest.
- g) The law and international regulations shall be fully complied with; any unlawful act is unacceptable, whatever the justification. Public Officers should reject any practice which is, or might reasonably be deemed to be, improper."

105. *Compliance with the Law*

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

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

106. Compliance with Contractual Obligations

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

107. Accurate Records

All procurement dealings, and in particular all payments and receipts, should be fully and accurately recorded. No individual public officer should take or permit others to take any action that would not accurately, fairly, and completely reflect the results of such transactions. No one should make false or misleading entries in any Entity's record for any reason.

108. Abuse of Office

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

109. Declaration of Interest

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

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

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

Specifically within the Procurement Departments/Units, the following shall apply:

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

111. Procurement Units shall maintain a departmental register, which will be updated half-yearly by procurement Unit heads. The register shall be presented to the accounting officer on an annual basis for review and signature. The register must be available for Unit Heads to complete should they become aware of a conflict involving themselves.

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

113. Impropriety by Others

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

114. Contractor and Supplier Relations

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

115. **Hospitality**

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

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

116. **Gifts**

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

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

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

117. **Corporate Gifts and Entertainment**

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

118. Improper Conduct by Contractors and Suppliers

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

119. Official Authorities

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

120. Whistle Blowing

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

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

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

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

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

Section 58 Public Procurement Act 2007 as amended

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

(2) Any offence in contravention of this Act shall be tried by the Federal High Court or a tribunal set up by the Chief Justice of Nigeria.

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

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

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

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

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

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

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

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

(e) bid-rigging;

(f) altering any procurement document with intent to influence the outcome of a tender proceeding; (g) uttering or using fake documents or encouraging their use; and

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

(5) Any person who while carrying out his duties as an officer of the Bureau, or any procuring entity who contravenes any provision of this Act commits an offence and is liable on conviction to a cumulative punishment of: (a) a term of imprisonment of not less than 5 calendar years without any option of fine; and (b) summary dismissal from government services.

(6) Any legal person that contravenes any provision of this Act commits an offence and is liable on conviction to a cumulative penalty of: (a) debarment from all public procurements for a period not less than 5 calendar years; and (b) a fine equivalent to 25% of the value of the procurement in issue.

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

(8) An alternation pursuant to subsection 4(f) shall include: (a) insertion of documents such as bid security or tax clearance certificate which were not submitted at bid opening; and (b) request for clarification in a manner not permitted under this Act.

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

(10) Bid-rigging pursuant to subsection 4(e) means an agreement between persons whereby: (a) offers submitted have been pre-arranged between them; or (b) their conduct has had the effect of directly or indirectly restricting free and open competition, distorting the competitiveness of the procurement process and leading to an escalation or increase in costs or loss of value to the national treasury.

(11) For the purposes of the presumption under Section 51 (7) of this Section, consideration shall be given to a suspect's ability to control the procurement proceedings or to control a solicitation or the conditions of the contract in question, whether total or partial.

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

