



EDO STATE GOVERNMENT

**EDO STATE PUBLIC PROCUREMENT
AGENCY (EDPPA)**

**PROCUREMENT PROCEDURES
MANUAL**

FOR

**PUBLIC PROCUREMENT
IN
EDO STATE**

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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 Edo State. This manual provides procurement guidance or direction to the State Government, Local Government Council all Ministries, departments, Agency, offices and agencies of the State, extra-ministerial offices, parastatals, corporations and all procuring entities in the State. All entities outside the foregoing which derives any funds appropriated or proposed to be appropriated for any type of procurement described in the law from the State Government's Share of Consolidated Revenue Fund are also included.

Public Procurement Law- section 12

The objective of this Manual is to guide and assist procurement staff and procuring entities 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 with Chapter 1 with a review of policy and institutional aspects of procurement that have broad applicability and about which questions arise more frequently. Subsequent chapters deal with procurement implementation and contract administration. Where necessary, topics are cross-referenced to other relevant chapters of the Manual and the Public Procurement Law to enable a clearer understanding of the topics in issue.

ABBREVIATIONS and ACRONYMS

APG	Advance Payment Guarantee
Agency	Edo State Public Procurement Agency
CQ	Consultants Qualification (Selection Method)
GPN	General Procurement Notice
ICB	International Competitive Bidding
IFB	Invitation for Bid
IS	International Shopping
LCS	Least Cost Selection
MTB	Ministerial Tenders Board
NCB	National Competitive Bidding
LIB	Limited International Bidding
DC	Direct Contracting
FA	Force Account
NS	National Shopping
PE	Procuring Entity
QBS	Quality Based Selection
QCBS	Quality, Cost Based Selection
REoI	Request for Expression of Interest
SFB	Selection under Fixed Budget
SPN	Special Procurement Notice
STB	State Tender's Board
STD	Standard Tender Document

1. 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, value for money and produce timely results; on the other hand, 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?

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

2.1 The principal hallmarks of proficient public procurement are:

- F- Fairness;
- R- Reliability;
- E- Economy;
- E- Efficiency;
- T- Transparency; and
- A- Accountability and Ethical Standards

2.1.1 Fairness: Good procurement is impartial, consistent, and therefore predictable. 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.

2.1.2 Reliability: Good procurement is reliable and result oriented. It provides more efficient and economical procurement which will deliver goods, works and services in an acceptable and timely manner.

2.1.3 Economy: Procurement is a purchasing activity whose purpose is to give the purchaser best value for money. For complex purchases, value may imply more than just price, since quality issues also need to be addressed. Moreover, lowest initial price may not equate to 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.

2.1.4 Efficiency: The best public procurement is simple and swift, producing positive results without protracted delays and is economical in staff time and other administrative costs. 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.

2.1.5 Transparency: Good procurement establishes and maintains rules and procedures that are accessible and unambiguous. It is not only fair, but it is seen to be fair. Bidders know what is required and how offers will be evaluated and are therefore better prepared to address the buyer's needs.

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

Conversely, a procurement system that fails to demonstrate 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 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.

3. 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, roads, highways and basic physical infrastructure;
- goods - typically equipment, material and supplies, commodities, textbooks, medical supplies; and
- services - both consultancy services that provide expert advice and training, as well as those involving physical job performance by contracted labourers, such as building maintenance, cleaning, guarding, 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. Much of this process is highly visible, as well as

controversial; exposing public sector executives and civil servants to scrutiny and second-guessing the procurement choices they made, deferred or discarded.

3.3 There are five basic concerns that govern procurement policies:

- to ensure that goods and services needed are procured with due attention to economy and efficiency;
- to ensure that public funds are used to buy only those goods and services needed for development;
- to give all qualified bidders an equal opportunity to compete for contracts;
- to encourage development of local contractors and manufacturers; and
- to ensure that the procurement process is transparent.

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

CHAPTER 1 - PROCUREMENT POLICY AND INSTITUTIONAL TOPICS

4. Edo State Public Procurement Agency's Policies

4.1 The **Edo State Public Procurement Agency** 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 Law applies, including certifying all State wide procurement prior to the award of contracts.

Public Procurement Law – Section 16

4.2 Subject to the exceptions under the law, all Procurements carried out by any Procuring Entity shall be governed by the following rules:

- (a) Open competitive bidding using clearly defined criteria and offering to every interested bidder equal information and opportunities to offer the works, goods, and services needed;
- (b) Promotion of competition, economy, efficiency and equal opportunities to all parties who are eligible and qualified to participate in public contracts;
- (c) Simple, sustainable, standardized with uniform application to all government procurement and shall be adaptable to advancement in public administration and modern technology;
- (d) Executing in an effective, efficient, transparent, timely, equitable manner to ensure accountability which shall conform with the provisions of the law and its regulations with the aim of achieving value for money and fullness of purpose;
- (e) A system of accountability where public officers and persons involved directly or indirectly in the procurement process or its implementation are required to explain and justify their actions and, when warranted by circumstances, are investigated and held liable for their actions;
- (f) Public monitoring of the procurement process and the implementation of contracts awarded to ensure that all public contracts are awarded pursuant to the provisions of the law and its regulations, and that all public contracts are performed strictly according to specifications;
- (g) Procurement intentions shall be set out in plans that are supported by prior budgetary appropriation; no procurement proceeding shall be formalized until the procuring entity has ensured that funds are budgeted and appropriated to meet the obligations.

4.3 Where the Agency has set prior review thresholds, no funds shall be disbursed from the Treasury/State 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 request for payment is accompanied by a certificate of compliance to award of contract duly issued by the Agency.

4.4 The Edo State Public Procurement Agency shall set thresholds for contracts that must be awarded a certificate and compliance under the public procurement law before they may be effected.

- 4.5 Every procurement contract within the purview of the public procurement law shall contain a clause stipulating that the non-issue by the Agency of a certificate of compliance to contract award shall render the contract null and void.
- 4.6 All procurement contracts shall contain warranties for durability of goods, exercise of requisite skills in service provision, and use of genuine materials and inputs in execution.
- 4.7 The values in procurement documents shall be stated in Nigerian currency and where 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 for transparency in the procurement process.

5. Eligibility

- 5.1 As a general rule, all suppliers, contractors and consultants are entitled to a fair opportunity to tender for provision of goods, works and services in public entities. However, a Procuring entity may exclude suppliers, contractors and consultants from bidding for procurement opportunities on the following grounds:
 - 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 Agency 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 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 with respect to allowance, deference of such outstanding payments or payment thereof in instalments,
 - 5.1.5 If the bidder has been 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 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 or debarred from participating in public procurement activity
- 5.1.8 If the bidder fails to submit a statement regarding its dominating or subsidiary relationship with respect to other parties to the proceedings and persons acting on behalf of the procuring entity participating in same proceeding or who remain in subordinate relationship with other participants to the proceedings.
- 5.1.9 Companies, individuals, firms or its affiliates provided consulting services for the preparation and implementation of a project, and in order 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 or the Agency for having been engaged in fraudulent or corrupt practices.

Public Procurement Law – Sections 3, 4 and 5

6 Roles and Responsibilities of The Agency

- 6.1 The Edo State Public Procurement Agency exercises its fiduciary and developmental responsibilities with respect to procurement by:
- certifying all State-wide procurement above the threshold 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 database and technology;
 - performing procurement audits; and
 - applying administrative sanctions where necessary

Public Procurement Law – Section 19

- 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, in the case 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.

7 Notice Board Public Procurement Law – Section 21

- 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 any of the national newspapers of general circulation.
 - 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.

8 Handling Request for Clarifications

- 8.1 It shall be the responsibility of the respective procuring entity to provide any clarifications on prequalification or bidding 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 bidding documents.

9 Transparency and Anti-Corruption Measures

- 9.1 The Edo State Public Procurement Agency (EDPPA) is committed to vigorously addressing instances of fraud, corruption, collusion and coercion in government financed contracts and taking appropriate action whenever any contractor, consultant or staff member is found to have engaged in a fraudulent or corrupt practice.
- 9.2 Procurement offences relating to public procurement are defined in Section 54 of the public procurement law.

CHAPTER 2 - INSTITUTIONS, PROCUREMENT COMMITTEES AND THEIR FUNCTIONS

10. EDO STATE PUBLIC PROCUREMENT AGENCY GOVERNING BOARD

10.1. Powers of the Edo State Public Procurement Governing Board

- 10.1.1 The board shall consider, set, amend and review prior benchmark for the application of the provisions of the law by procuring entities;
- 10.1.2 Consider and approve policies on public procurement
- 10.1.3 Make recommendations in respect of any procurement guidelines or regulations to be made pursuant to the provisions of the law;
- 10.1.4 Approve the employment of the Directors of the Edo State Public Procurement Agency;
- 10.1.5 Receive and consider for approval the audited accounts of the Edo State Public Procurement Agency; and
- 10.1.6 Give such other directives and or perform such other functions not being inconsistent with the provisions of the law, as may be necessary to achieve the objectives of the law.

11. THE EDO STATE PUBLIC PROCUREMENT AGENCY

11.1 The Edo State Public Procurement Agency (EDPPA) 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 State wide procurement prior to, during, and after 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 afore-mentioned documents

11.2 Objectives Of The Public Procurement Agency

The Edo State Public Procurement Agency was established with the following objectives:

- 11.2.1 To ensure probity, accountability and transparency;
- 11.2.2 To establish fair pricing standards and benchmarks;
- 11.2.3 To ensure application of fair and competitive, value-for-money, standards and practice for the procurement and disposal of public assets and services;

- 11.2.4 To create ample opportunities for the citizenry particularly, small and medium scale enterprises to participate in the economic opportunities and benefits of public procurement;
- 11.2.5 To create cost and time efficient and effective adjudicatory mechanism for the resolution of complaints arising from public procurement process in the State and its Local Governments filed by procuring entities, bidders and the general public; and
- 11.2.6 To attain transparency, competitiveness, professionalism and guarantee Integrity and public trust in the procurement procedure of the Governing Board on public procurement

11.3 Key Functions of the Edo State Public Procurement Agency

- 11.3.1 consider, amend and review the monetary benchmark for the application of the law;
- 11.3.2 approve the employment of staff of the Agency other than the Managing Director;
- 11.3.3 approve changes in procurement process to adapt to changes in technology;
- 11.3.4 give such other directive and perform such other functions as may be necessary to achieve the objective of the law;
- 11.3.5 formulate general policies and guidelines relating to public sector procurement for the approval of the Governor;
- 11.3.6 publicise the provisions of the law;
- 11.3.7 certify all State procurements prior to, during and after the award of any contract;
- 11.3.8 supervise the implementation of established procurement policies;
- 11.3.9 oversee and superintend compliance by all procuring entities with procurement policies of the State;
- 11.3.10 monitor the prices of tendered items and keep a database of standard prices;
- 11.3.11 publish the details of major contracts in the State Procurement Journal;
- 11.3.12 publish paper and electronic editions of the State Procurement Journal and procurement manual and maintain an archival system for the State Procurement Journal; and
- 11.3.13 carry out such other function which are essential to run an efficient procurement process and the effective implementation of its functions under the law.

12. MINISTERIAL OR PARASTATAL TENDERS BOARD

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 officer of coordinate responsibility 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 Governing Board on Public Procurement, the Edo State Public Procurement Agency shall, from time to time, prescribe guidelines for the membership of the Tenders Board. However, best practice principle is to have the membership limited to five as follows:

- (i) The Permanent Secretary or the Director General or officer of coordinate responsibility shall be the Chairperson
- (ii) Four other Heads of Department within the Ministry or the Parastatal.
- (iii) The Head of the Procurement Office of the Procuring Entity or his representative shall be a non-member Secretary to the Tenders Board. If the Head of the Procurement Office or his/her 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. Each permanent member on the Tenders Board shall have an alternate member to ensure continuity in the absence of any of the permanent members.

13. Functions of the Tenders Board

13.1 The Tender Board is primarily responsible to ensure that all contracting and procurement processes are executed in accordance with:

- (a) Good commercial practices
- (b) Edo State Public Procurement Law 2012
- (c) This Public Procurement Manual

13.2 A Quorum for a meeting to consider submissions shall be the Chairperson or his/her alternate and two other members;

13.3 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.

13.4 Where there is a need for pre-qualification, the Chairperson of the Tenders Board shall constitute a Technical evaluation sub committee of the Tenders Board.

13.5 The decisions of the Tenders Board shall be communicated to the Commissioner for implementation

14. TECHNICAL EVALUATION SUB COMMITTEE OF THE TENDERS BOARD

- 14.1 The Accounting Officer shall constitute a Technical evaluation sub committee with the responsibility for the evaluation of bids and assisting with prequalification, where necessary.
- 14.2 The Technical Evaluation sub-committee of the Tenders Board shall be made up of relevantly qualified and experienced professional staff of the Procuring entity. However, the user department, subject matter expert (who may be invited from another ministry if not available in-house) and the procurement officer shall be members of the sub-committee.
- 14.3 The Secretary of the Tenders Board shall be the Chairperson of the technical evaluation sub committee.

15. MINISTRY OR PARASTATAL PROCUREMENT PLANNING COMMITTEES (MPPC/PPPC)

15.1 The Permanent Secretary (for Ministries) or the Director General or officer of coordinate responsibility (for Parastatals) shall appoint the Procurement Planning Committee to carry out Procurement Actions. The composition of the Procurement Planning Committee is given below:

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

- (i) The Permanent Secretary (for Ministry)/ Director General or officer of coordinate responsibility (for Parastatal) of the Procuring Entity 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 Officer of the Ministry/Parastatal/Agency, who shall be the Secretary

15.3 Functions of the Procurement Planning Committee

15.3.1 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 cost implications of 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
- (vi) Integrating the Ministry's/Parastatal's procurement expenditure into the yearly budget
- (vii) Prescribing appropriate method for effecting the procurement and securing necessary approval for its implementation

16. THE PROCUREMENT OFFICE

16.1 The Permanent Secretary (for Ministries) or the Director General or officer of coordinate responsibility (for Parastatals) shall set up a Procurement Department for the purpose of implementing its procurement plans.

16.1.1 The Procurement Office shall:

- (a) Initiate the entity's procurement process;
- (b) Carry out appropriate market and statistical surveys and prepare analysis of cost implication of a proposed procurement;
- (c) Aggregate its requirement within and between procuring entities, to obtain economical and reduce procurement cost;
- (d) Conduct pre-qualification exercise for suppliers, contractors or consultants based on requisite Expression of Interest;
- (e) Develop technical specifications;
- (f) Conduct pre-bid conferences when necessary;
- (g) Ensure that the advertisement and publications in solicitation for bids are in conformity with the provisions of the Law and Regulations as may be issued from time to time;
- (h) Prepare bid documents;
- (i) Issue bid documents;
- (j) Supervise the development of all tenders;
- (k) Organise communications with bidders;
- (l) Issue receipts and keep bids in safe custody until opening;
- (m) Receive and evaluate any bids received in response to solicitation;
- (n) Maintain procurement records;
- (o) Evaluate Expression of Interest by suppliers, contractors, or consultants and forward lists of qualified submissions to the board;
- (p) Prescribing any method for effecting the procurement subject to necessary approval;
- (q) Developing the Tender;
- (r) Advertising or soliciting for bids in accordance to established procedures and guidelines;
- (s) Receiving and preparing for evaluation on any bids received in response to solicitations.

17. THE TECHNICAL AND FINANCIAL EVALUATION SUB-COMMITTEE

Upon completion of the evaluation process, the Technical Evaluation Sub-Committee shall prepare a bid evaluation report setting out the process by which it evaluated the bids to be submitted to the Tenders Board for action. A Standard Bid evaluation Report covers among other things:

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

18. COMMUNICATION WITH BIDDERS

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.

CHAPTER 3: ORGANISATION OF THE PROCUREMENT FUNCTION

19. Chief Executive or Permanent Secretary shall have overall responsibility for control and coordination of procurement process under a public procuring entity. The Procurement Office shall include, at least, one Procurement Specialist who will handle the procurement workloads, review the procurement process proposed under the annual plan and will provide assistance to the entity's team on interpretation and application of the Procurement Law and Regulations.
20. The Procurement Office will carry out procurement for the entity and shall be responsible for:
 - procurement planning and processing for the activities under its responsibility, in coordination with the Chief Executive or Permanent Secretary/Accounting Officer;
 - supervising performance of contracts with suppliers, contractors, service providers and consultants.
 - providing secretariat to the entity's procurement team for its Procurement Activities.
21. A prior certificate of compliance to award of contracts shall be required from the Edo State Public Procurement Agency for all public procurements
22. The Agency shall carry out procurement reviews of public entities procurement activities on a periodic basis.

23. The Agency shall perform procurement and contract performance audits and submit such report to the Governing Board.

Public Procurement Law – Section 19

24. Subject to the monetary and prior review thresholds for procurements, the Parastatal Tenders Board of 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.

25. Budgeting / Annual Procurement Plan

- 25.1 Planning of Project expenditures (budgeting) is a critical aspect in financial management and procurement. Budgeting should be based upon the following stages:

- (i.) The procuring entity, with the support of the procurement specialist, the procurement planning committee, shall prepare the annual procurement plan with the corresponding Budget for the year. The Plan shall show the estimated procurement, value, time schedule, method, packages/lots.
- (ii.) The Accounting Officer (Permanent Secretary/Chief Executive) shall submit the Procurement Plan and the related Budget for the year to the Agency for review and retention. Changes to the procurement plan shall be accordingly notified to the Agency prior to initiation of the procurement process.

26 Procurement Monitoring and Evaluation

The Procurement Office will 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 Edo State Public Procurement Agency not later than 3 months after the end of the financial year, and shall show:

Public Procurement Law – Section 16 (12) & (13)

- 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.

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

Public Procurement Law – Section 49

27. Record Keeping

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

- public notices of bidding opportunities

- bidding documents and addenda
- tender opening information
- bid evaluation reports
- formal appeals by bidders and outcomes
- signed contract documents and addenda and amendments
- records of claims and dispute resolutions
- record of time taken to complete key steps in the process
- comprehensive disbursements data in relation to payments

28. Staffing

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.

29. Revisions to the Procurement Manual

29.1 Users of this manual are encouraged to recommend revisions to:

The Managing Director,
 Edo State Public Procurement Agency,
 Plot 89 Dennis Osabedey Avenue,
 G.R.A., Benin City, Edo State.
 TEL. NOS: 08054662673, 08063893134, 09021174725, 09099751202
 E-mail: info.edppa@edostate.gov.ng.
 Website: www.edppa.edostate.gov.ng
 Providing chapter, page and recommended change.

29.2 Consecutively numbered update bulletins will be issued to effect changes to this Manual after due consideration and approval by the Governing Board. 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.

30. Quick Reference

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

- 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.

CHAPTER 4:PROCUREMENT PLANNING

31 Strategic Considerations

- 31.1 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, a number of more fundamental decisions should have been made first. The starting question is: What are the most effective procurement arrangements for achieving the entity's objectives?
- 31.2 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.
- 31.3 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.

32. Procurement Planning Committee

Public Procurement Law – Section 19

- 32.1 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

33 Preparing the Plan

- 33.1 Procurement planning may take either of two fundamentally different approaches, depending on whether it is for a specific investment project or one of the more programmatic types of operations. Regardless of which type of project, however, it is essential to develop a plan that clearly sets out the framework in which procurement will be done.

33.2 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 done.

33.3 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 into contract packaging
- (iii.) carry out appropriate market and statistical survey
- (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 State budget.

Public Procurement Law – Section 19

33.4 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 to established procedures and guidelines; and
- Receiving and preparing for evaluation any bids received in response to solicitations.

Public Procurement Law – Section 28

34 Procurement Scheduling

34.1 One of the considerations in choosing contract packaging is the timing 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 backwards from the desired date of delivery to determine whether sufficient time is available to carry out the necessary procurement steps for each element.

35. Procurement Time Requirements

35.1 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

Procurement Method	Suitable Applications	Approximate/ Indicative Range of Times for each Method
International Competitive Bidding (ICB)	<ul style="list-style-type: none"> • Preferred method of Procurement, for large contracts for goods, works and related services • There is an interest by foreign suppliers or contractors in supplying the required goods or works. • The requirements for procurement are widely available, and • Although efficiency is important, there is no specific urgency in processing the procurement. 	<ul style="list-style-type: none"> • ICB for works with prequalification needs: 9-12 months • ICB for works without prequalification needs: 5-7 months • ICB for goods: 5-7 months
Limited International Bidding (LIB)	<ul style="list-style-type: none"> • There are only a few known suppliers. Best practice is for all eligible suppliers to be invited to bid. • Small amounts of money are involved e.g. in procurement of a small number of vehicles or machine tools; or • Exceptional reasons such as emergency actions related to a major natural disaster, which may justify the waiving of advertising of competitive bids. 	<ul style="list-style-type: none"> • LIB goods: 4-6 months
National Competitive Bidding (NCB)	<ul style="list-style-type: none"> • The capability and competitiveness of local bidders make it unattractive for foreign bidders to compete for contracts below a certain value; • In the case of works, they are spread geographically over time in a manner that upsets the economies of scale; and • The goods or works are available locally at prices significantly below those in the international markets. 	NCB goods: 4-6 months
Direct Contracting	<ul style="list-style-type: none"> • Where extension of an existing contract is necessary as works are already underway; • Similar goods as those purchased under an existing contract are required (subject to reasonableness of price and where no benefit can be gained from competition); • Standardization of equipment and spare parts of compatibility with existing equipment is required; • Equipment required is proprietary and there is only one source and no alternative equipment or products with equivalent performance characteristics are available; • Critical components or materials from a particular supplier are required by the contractor responsible for a process design as a condition for the guarantee for performance; or • Direct contracting is also used where, in exceptional cases, early delivery of essential goods is needed in emergency operations. 	Direct contracting: 1-3 months

Shopping	<ul style="list-style-type: none"> • Goods required are readily available off-the-shelf goods or standard commodities in quantities of small value; • In some cases, small simple works for e.g. for essential repairs to restore a basic 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. 	Shopping goods: 1-2 months
Force Account	<ul style="list-style-type: none"> • 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; • Works are small and scattered or in remote locations with no local contractors and demobilization costs for outside contractors would be too high; • Works must be carried out without disrupting existing operations; • The risk of unavoidable work interruptions is better borne by procuring entity than by a contractor; • No contractor is interested in conducting the work at a reasonable price; • It has been demonstrated that Force Account is the only practical method for constructing and maintaining works under special circumstances; or • Where national security would be compromised if any other method was used. 	Force account: 1-3 months

35.2 In some cases, it may be possible to modify certain contract packages and procurement methods and shorten the time needed until delivery in order to meet desired schedules, provided that the modified approach is still consistent with the procedures required and the types of approaches permitted under the Law. 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.

36. Procurement Plan Presentation

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.

CHAPTER 5:PROCUREMENT IMPLEMENTATION

37 Advertising and Notification of Procurement Opportunities

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.

38 General Procurement Notice

Public Procurement Law – Section 21

38.1 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 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 programme of activity;
- the scope of procurement under ICB and consulting assignments (i.e. technical services) estimated to cost N100m or more; and
- if known, the schedule dates for availability of the bidding documents or as appropriate, the prequalification documents.

38.2 Prior to issuing the GPN, the procuring entity should prepare it and forward it to the Agency for review not later than 8 weeks prior to the earliest date of availability to the public of any prequalification or bid documents for ICB contracts. (update with the provisions of the Regulations regarding timing and places)

39 Specific Procurement Notice

39.1 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 or in the absence of pre-qualification, as an Invitation for Bids. It is recommended in practice that the invitation also be incorporated in the front of the prequalification or bid documents as appropriate for reference purposes. SPNs should provide adequate notification of specific contract opportunities or Invitation for Bids (IFB) by a procuring entity regardless of what procurement method is used.

39.2 The SPN should be issued in the following way:

- as an advertisement in at least two national dailies;
- by an announcement in the government official gazette

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

39.3 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 bidding documents;
- cost of the bidding documents;
- place and deadline for bid delivery;
- required bid security amount and form;
- the place, date and time of bid 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.

As is the case for the GPN, under the prior review procedure, Procuring Entity is required to send the SPN to the Agency for review before publication, with a note drawing attention to the prequalification or tender closing date.

40 Requests for Expressions of Interest

A Request for Expression of Interest (REoI) should also be published in at least two national dailies. 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 preparation of the short list.

41 Other Notifications

The procuring entity may also use other means of publishing information on bidding opportunities including on any procurement websites or other electronic media.

42 Prequalification of Bidders

Public Procurement law – Section 22

42.1 Best practice 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 supply and ordinary goods.

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

42.3 Procuring entities shall supply a set of prequalification 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.

42.4 The prequalification documents shall include:

Public Procurement law – Section 23

- 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 the law and procurement regulations relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.

42.5 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 at least ten days before the deadline for the submission of applications to pre-qualify.

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

42.7 A procuring entity shall promptly notify each supplier, contractor or service provider which submitted an application 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.

42.8 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.

42.9 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.

42.10 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.

43. Invitations to Bid

Public Procurement Law – Section 21

43.1 Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Agency shall from time to time set the monetary thresholds for which procurements shall fall under either system.

- 43.2 Every invitation to an Open Competitive Bid shall:
In the case of goods and works under International Competitive Bidding, be advertised in at least 2 national newspapers, 1 relevant internationally recognised newspapers, any official website of the procuring entity and the Agency as well as the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works;
- 43.3 In the case of goods and works valued under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, any official website of the procuring entity and in the procurement journal, not less than two weeks or more than four weeks before the deadline for submission of the bids for the goods and works.

Public Procurement Law – Section 22

- 43.4 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;
 - The place and deadline for the submission of the bids;
 - The place, date and time for the opening of the bids.
- 43.5 If the procuring entity had previously conducted pre-qualifiers for the procurement in question, the bid documents shall be issued only to those suppliers and contractors who had pre-qualified and paid the necessary fee for the bid documents.
- 43.6 The price to be stipulated for any bid documents must not exceed the reasonable cost of printing, compilation and delivery of the documents plus a commensurate administrative fee.
- 43.7 Any person may after collecting the bid documents, request for clarifications of matters contained in the bid documents. All such requests for clarifications shall be in writing addressed to the procuring entity no later than 2 weeks before the deadline for the submission of the bids.
- 43.8 The response by the procuring entity shall provide a written response within a reasonable time and in any event not later than one week before the deadline for submission of bids so as to enable the supplier or contractor to make a timely submission of its bid.

- 43.9 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 bid documents.
- 43.10 At anytime before the deadline for submission of bids, the procuring entity may modify the bid documents by issuing an addendum either in response to a request for clarification or for any other reason. The addendum shall be sent in writing to all prospective suppliers and contractors who had obtained the bid documents.
- 43.11 A procuring entity if it finds it expedient so to do may convene a pre-tender conference for the suppliers and contractors in order to clarify all matters pertaining to the bid 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 suppliers and contractors.
- 43.12 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 bid 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.

44. Submission of Bids

Public Procurement Law – Section 25

- 44.1 All bids in response to an invitation to Open Competitive Bidding shall be submitted in writing and or any other format stipulated in the bid 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.
 - All bids must be in English language.
 - The procuring entity shall issue a receipt showing the 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 for the purpose of providing additional clarifications

45 Rejection of Bids

Public Procurement Law – Section 27

- 45.1 A procuring entity may:
- Reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders,
 - Cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

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

46. Validity period for bids; modification and withdrawal of tenders

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

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

47. Bid Opening Public Procurement Law – Section 29

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

- 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 organisations they represent which is recorded by the Secretary of the tenders board; and
- call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and ensure that these details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening.

48 Examination of Bids Public Procurement Law – Section 30

48.1 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.

48.2 A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.

- 48.3 The following shall not be sought, offered or permitted –
- changes in prices;
 - changes in substance of a bid; and
 - Changes to make an unresponsive bid responsive.
- 48.4 Notwithstanding the above, the procuring entity may correct purely arithmetical errors that are discovered during the examination of tenders.
- 48.5 The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender. A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification. The following shall be considered as major deviations:
- with respect to clauses in an offer:
 - unacceptable sub-contracting;
 - unacceptable time schedule if time is of essence;
 - unacceptable alternative design; and
 - unacceptable price adjustment.
 - with respect to the status of the bidder
 - the fact that he is ineligible or not pre-qualified; and
 - the fact that he is uninvited.
 - with respect to bid documents
 - an unsigned bid;
 - with respect to time, date and location for submission
 - Any bid received after the date and time for submission stipulated in the solicitation document; and
 - Any bid submitted at the wrong location.
- 48.6 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.
- 48.7 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 essence;
 - non-compliance with some technical local regulation;
 - payment terms; and
 - any other condition that has little impact on the bid.

48.8 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.

48.9 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.

48.10 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.

49. Bid Security:

Public Procurement Law – Section 24

49.1 Subject to the monetary and prior review thresholds as may from time to time be set by the Agency all procurements valued in excess of the sums prescribed by the Agency must require a bid security in an amount not less than 1% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity.

49.2 The Agency shall from time to time specify the principal terms and conditions of the required bid security in the bid documents.

49.3 When the procuring entity requires suppliers or contractors submitting tenders to provide a bid security:

- (a) The requirement shall apply to each supplier or contractor;
- (b) The bid documents shall stipulate that the issuer and confirmer of the bid security are acceptable to the procurement entity
- (c) Notwithstanding paragraph (b), a bid security shall not be rejected by the procuring entity on the grounds that the bid security was not issued by an issuer in the country, if the bid security and the issuer otherwise conform to requirements in the invitation documents;
- (d) a supplier or contractor may request the procuring entity to confirm the acceptability of a proposed issuer or a proposed confirmer of a bid security before submitting a bid and the procuring entity shall respond promptly to the request;
- (e) Confirmation of the acceptability of a proposed issuer or of a proposed confirmer does not preclude the procuring entity from rejecting the bid security on the ground that the issuer or confirmer has become insolvent or is otherwise not creditworthy.

49.4 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 if stipulated in the bid documents;
- failure to sign the procurement contract if required by the procuring entity to do so;
- Failure to provide a 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 bid documents.

49.5 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:

- the expiry of the bid security;
- 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 bid documents;
- the termination of the procurement proceedings without the entry into force of a procurement contract; or
- the withdrawal of the bid prior to the deadline for the submission of bids.

50. Bid Evaluation

50.1 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 bid and obtain the necessary approval from different authorities. Thus bid evaluation shall be undertaken expeditiously, leaving ample time to seek all the requisite formal approvals. Hence bids shall be evaluated within the period specified in the agreed time schedule i.e. the Procurement Time Schedule. To enable the Procuring Entity to award the contract within such bid validity period after carrying out the other procedures, it is required that Technical Evaluation Committee should complete the evaluation report generally within 50% of the bid validity period.

50.2 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 Procurement Committee 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 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).

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

51. Bid Evaluation Stages

51.1 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 favour a particular bidder. Therefore it is required that Procurement Committees and Technical Evaluation Committees are familiar with and understand how it should be done and to 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 out come of the procurement. Hence during the bid evaluation substantially responsive concept is used rather than following fully responsive bids.

51.2 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 substantial 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 the manner in which 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).

51.3 The lack of clarity in statements on bid evaluation, or an incomplete statement, will leave bidders in doubt about the treatment on their bids by the PE and has frequently been cause of uncertainty and disagreement during the evaluation of bids. All the criteria specified must be applied to the extent necessary and in the manner in accordance with 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.

51.4 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.

52. Preliminary Bid Examination

52.1 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. For e.g., if the bidding documents stipulated that each page of the bid should be signed or initialled 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.

52.2 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 case of works contracts the domestic bidder should have required Entity's registration;
 - (c)for foreign funded projects if so specified by the funding agency:
 - i.in the case of works contracts, the bidder shall be from the member country of the funding agency; and
 - ii.in the case of goods contracts the goods shall be manufactured in one of the member countries of the funding agency
- bid is signed properly by an authorized party, including the power of attorney if stipulated and generally in order;
- bid securities submitted are in acceptable format, for required amount and duration;
- bid is containing all required critical documents including supporting evidence of bidder eligibility and qualifications;
- bid is complete and quote 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 with a view to subjecting such Bids for detailed bid evaluation.

52.3 Deviation from any provisions of the bidding documents (instruction to bidders, Bid Form, price schedules, Bills of Quantities, condition of contracts and technical specifications, etc.) is a common feature in many Bids. These deviations fall in to 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 as “substantially responsive” and are, therefore, evaluated and considered for contract award by determining any financial value of each deviation and adding to the bid price. The sum of the bid price and the total of adjustments made for deviations and other evaluation factors specified in the bidding documents is the “evaluated bid price”. The question is to determine which deviations are to be classified as “major” and which as “minor”. In the absence of clearly defined distinction between major and minor deviations there is room for different interpretations. To facilitate the categorization of deviations the following approach may be used.

A major deviation would be one which either;

- (a) has an effect on 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 in substantial way to the scope, quality, functionality or performance;
or
- (d) will limit in any substantial way the Procuring Entity's rights or bidders 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) has no effect on the validity of the bid; or
- (b) has no effect in substantial way to 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 bidders obligations;
or
- (e) has 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 does not exceed a previously determined percentage of the bid price.

52.4 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 a bid which is incomplete, based on a clause in the bidding documents in which it reserved the right to wave irregularities in bids.
- (b) **Completeness of bids:** If the Procuring Entity intends to reject incomplete bids, it should be clearly stated in the bidding documents. If Procuring Entity intends to consider incomplete bids, the bidding document should 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 estimate is not available, the average price quoted by other bidders should be used for adjustment (loading) purposes (disregarding the highest and lowest prices if there are great differences in prices). Items for which no bids were received may be ignored in the comparison. Using the highest price bid by any bidder for loading purposes should be avoided as it tends to distort the value of the bid, particularly if there is a substantial difference between bid prices quoted for the missing item. If the bidding documents do not indicate whether incomplete bids will be accepted or rejected, the question whether such bids are "substantially responsive" must be decided during bid evaluation.

- (c) **Procedural Deviations in submission of bids:** Most deviations in submission of bids (such as the marking of envelopes, sealing of bids) other than the signature to the form of bid are normally considered as minor. Absence of signature on the form of bid and similar deviations are considered as major deviations.
- (d) **Bid Security:** If the bidders are required to furnish a bid security with his bid, failure to submit it is considered as a major deviation and grounds for rejection. The submission of bid security after the bids are opened should be treated in the same manner as the not submitting a bid security. If the amount of the bid security submitted is less than the amount stated the bid 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 substantially different 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 as grounds for rejection of bid. If so specified the evaluation should be carried out accordingly.

Otherwise it may be treated as follows:

There are two kinds of documentation which 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 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.

52.5 Lack of documentation of the first kind is normally considered as major deviation and, grounds for rejection of the bid. Lack of the second kind of documentation is usually considered as a minor deviation which can be remedied by subsequent submissions.

- (f) **Fixed price against variable price:** When bids are required at a firm price, 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 deviation 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 which 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 for the purpose of evaluating the bid: and
 - ii. consider such deviation 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 to 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 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 as 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 effect the main responsibilities of the bidder, the bid may be considered as non responsive.
- (i) **Alternative bids:** Submission of a bid based on entirely different design, where such had not been permitted is considered as a major departure.
- 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 prior sale of the equipment offered, availability of material in the market are considered as non responsive.

52.6. **Debatable Deviations:**

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

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

- (a) Requesting different amount of 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 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 to the balance works or items if the omitted items or works are procured differently.

53. General Principles of Detailed Bid Evaluation And Comparison Of Bids.

53.1 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 bid which was determined as a substantial 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 comparison is to determine the lowest evaluated cost that will be incurred by the Procuring Entity from the substantially responsive bids received. The lowest evaluated bid may or may not necessarily be the lowest quoted bid. In order to determine the lowest evaluated bid the Procuring Entity should only use the evaluation criteria disclosed in the bidding document. No additional evaluation criteria other than that were disclosed 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.

53.2 Detailed Bid Evaluation – Principles and Methodologies

It is again emphasized that Procuring Entity should only use the evaluation criteria disclosed in the bidding document. 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 delivery period;
- Adjustments for inland transportation;
- Operational costs and life cycle costing;
- Conversion to common currency;
- Domestic preference;
- Reassess ranking order;
- Examine for unbalance bidding;
- After sales services
- Clarifications during evaluation
- Alternate Bids

Exclude VAT, contingencies and provisional sum amounts:

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

(a) Correction of arithmetical errors:

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

The correction of arithmetical errors should be done as follows:

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

If the bid price of any bid is adjusted as above the Technical evaluation committee (TEC) 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 a stated amount.

(b) **Application of applicable discount;**

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

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

(c) **Adjustment to bid prices for omissions;**

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

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

(d) **Adjustments for acceptable departures:**

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

(e) **Adjustments for delivery periods**

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

(f) **Adjustments for inland transportation;**

For works contracts, no adjustments for inland transportation are needed. However, for supply contracts, an adjustment may be needed if the price offered are based on FOB or CIF basis for goods to be imported and supply and Ex works basis for goods already

imported or that will be supplied within the country, and the bidder's were not requested to include such inland transportation costs within the bid price.

(g) **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 PE to evaluate bids on the basis of life cycle cost. The following elements (but not limited) would generally comprise a typical life cycle assessment:

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

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

(h) **Conversion to common currency;**

In order to minimize the foreign exchange risk for bidders in certain procurement (especially in ICB procedures) the bidders are allowed to bid in foreign currencies. This results in bids being presented in a wide variety of currencies which must be converted to a single common currency, generally to Nigerian Naira. These conversions are made using the mean 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 in supply contracts it is customary that the bidders are allowed to quote proportions in different currencies for the same item.

(i) **Domestic preference;**

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

Goods:

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

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

Works:

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

(j) **Comparison with engineers estimate in the case of work contracts:**

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

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

54 Extension of Bid Validity

- 54.1 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 bid, obtain the necessary approvals from the competent authorities and also obtain a no objection from the Agency for the proposed award of the contract. Bids should thus remain valid for the period stated in bidding documents. A bid that is valid for a shorter period than required by the bidding documents should be rejected by the Procuring Entity as non-responsive.

54.2 Where there is a delay in bid evaluation, the Procuring Entity may request bidders to extend the period of validity of their bids. Bidders may refuse to grant any extension of validity of their 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 bids, unless the bidding documents provide for an adjustment in price.

55. Bid Evaluation Report

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

- Key dates and steps in bidding process (copy of the invitation to bid as advertised attached);
- Bid opening information (copy of the bid opening minutes should be attached);
- For all bidders: Table showing the bidders compliance with major commercial conditions (e.g. completeness, bid security. Bid validity, delivery or completion period. Payment terms);
- For all bidders: Table showing bidder's compliance with key provisions of the technical specifications (e.g. capacity, operating characteristics, etc.);
- For all substantial responsive bids: Table showing arithmetical errors, discounts and currency conversion;
- For all substantial responsive bids: Table showing additions and adjustments (indicating methods used in computing the adjustments);
- For all substantial responsive bids: Table showing currency conversion;
- For all substantial responsive bids: Table showing domestic preference;
- For all substantial responsive bids: Table showing various steps from bid price announced to evaluated bid price);
- Record of clarifications made from all bidders;
- For lowest evaluated bidder: Post qualification verification;
- Names of bidder's rejected and reasons for rejection;
- The proposed contract award recommendation;

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

56. Acceptance of Bids

Public Procurement Law – Section 32

56.1 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.

56.2 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.

56.3 Notwithstanding the above, where the procurement proceeding is with regard to a value for which approval should be sought from either the Commissioner or State Executive Council, notice given to a successful bidder shall serve for notification purposes only and

shall not howsoever be construed as a procurement award until after all such approvals have been obtained.

56.4 Where the procurement proceeding is with regard to a value which the Tenders Board is the approving authority, then subject to the fulfilment 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.

57 Contract Performance Guarantee Public Procurement Law – Section 48

57.1 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.

58. Award and Signing of the Contract

58.1 Prior to contract award the Procuring Entity should ensure that budgetary provision is confirmed to meet the cost of 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.

58.2 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 evaluation of Bids and after obtaining approval from the relevant authorities.

58.3 Once the Procuring Entity has evaluated the bids and made a determination on the lowest evaluated responsive bid, and a decision has been made about the award, the Procuring Entity should:

- request and obtain the Agency’s “Certificate of Compliance” prior to awarding the contract, if applicable;
- not negotiate the award with the successful bidder;
- not require the selected bidder to provide performance in excess of that specified in the Bidding documents;
- send notification of the award, and a contract form to the successful Bidder in a manner and within the time specified in the bidding documents;
- request the Bidder to return the signed contract together with the required performance security within the time specified in the bidding documents; and
- notify unsuccessful Bidders as soon as possible after receiving the signed contract and the performance security from the successful bidder.

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

- require forfeiture of the Bidder’s Bid security; and
- proceed to offer the contract to the second lowest evaluated Bidder, provided that he is capable of performing satisfactorily.

59. Execution of Contract Agreement

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

60. Default on Bid Security

When a bid security declaration is requested with the bid and any particular bidder fails to fulfil 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 a performance security before the time period given or refuse/fails to execute the contract agreement the Procuring Entity shall promptly inform the Agency of such failure, with relevant details of the supplier or contractor. Summary of the nature of the default (should include copies of all relevant correspondents, and explained the proceedings in chronological order starting from close of bids with dates.

61. Contract Administration – Payment of VAT

1. In respect of VAT registered contractors or suppliers, the amount of VAT on the value of work done, value of goods supplied or value of services provided, should be paid by the Procuring Entity, provided such goods or services are not exempted or not excluded from VAT;
2. Such payment of VAT will apply in respect of advance payments as well
3. When retention money is paid, relevant amount of VAT should also be paid by the Procuring Entity

62. Variation To Contracts

62.1 The variations to contracts during the implementation stage cause very high burden on the Procuring Entity and to 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 change of scope and quantity variations.

62.2 To minimize variations due to change of scope the Procuring Entity should 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 exceed more than the contingency amount, and the Procuring Entity requires approval for the varied amount.

62.3 To minimize variations due to inaccurate quantities or omissions in the 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 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, to compare the BOQ with the final measurements made to such “Type” structure or building before finalizing the BOQ.

62.4 Despite all 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 Agency. Otherwise, it should be referred to the Tenders Board.

63. Record of procurement proceedings

63.1 Every procuring entity shall maintain a record of the procurement proceedings containing the information specified in the Public Procurement Law. Such information shall include overall data on numbers, types, values and dates of contracts awarded and names of awardees, and procuring organisations. A procuring entity shall also maintain for all contracts, a record which includes, inter alia:

- public notices of bidding opportunities
- bidding documents and addenda
- tender opening information
- bid evaluation reports
- formal appeals by bidders and outcomes
- signed contract documents and addenda and amendments
- records of claims and dispute resolutions
- record of time taken to complete key steps in the process
- comprehensive disbursements data in relation to payments

63.2 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.

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

64 Mobilization Fees

Public Procurement Law – Section 47

64.1 In addition to any other regulations as may be prescribed by the Agency, a mobilization fee of no more than 25% for suppliers and contractors may be paid to a supplier or contractor supported by the following:

- In the case of National Competitive Bidding - an unconditional bank guarantee or insurance bond issued by an institution acceptable to the procuring entity;
- In the case of International Competitive Bidding - an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity.

64.2 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.

65. Retention Money Security

65.1 Retention money on the other hand is a portion of the payments due under the contract which is retained to ensure performance by the supplier/contractor. When used as a guarantee, it should not exceed 5% 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.

66. Publication of Contract Awards

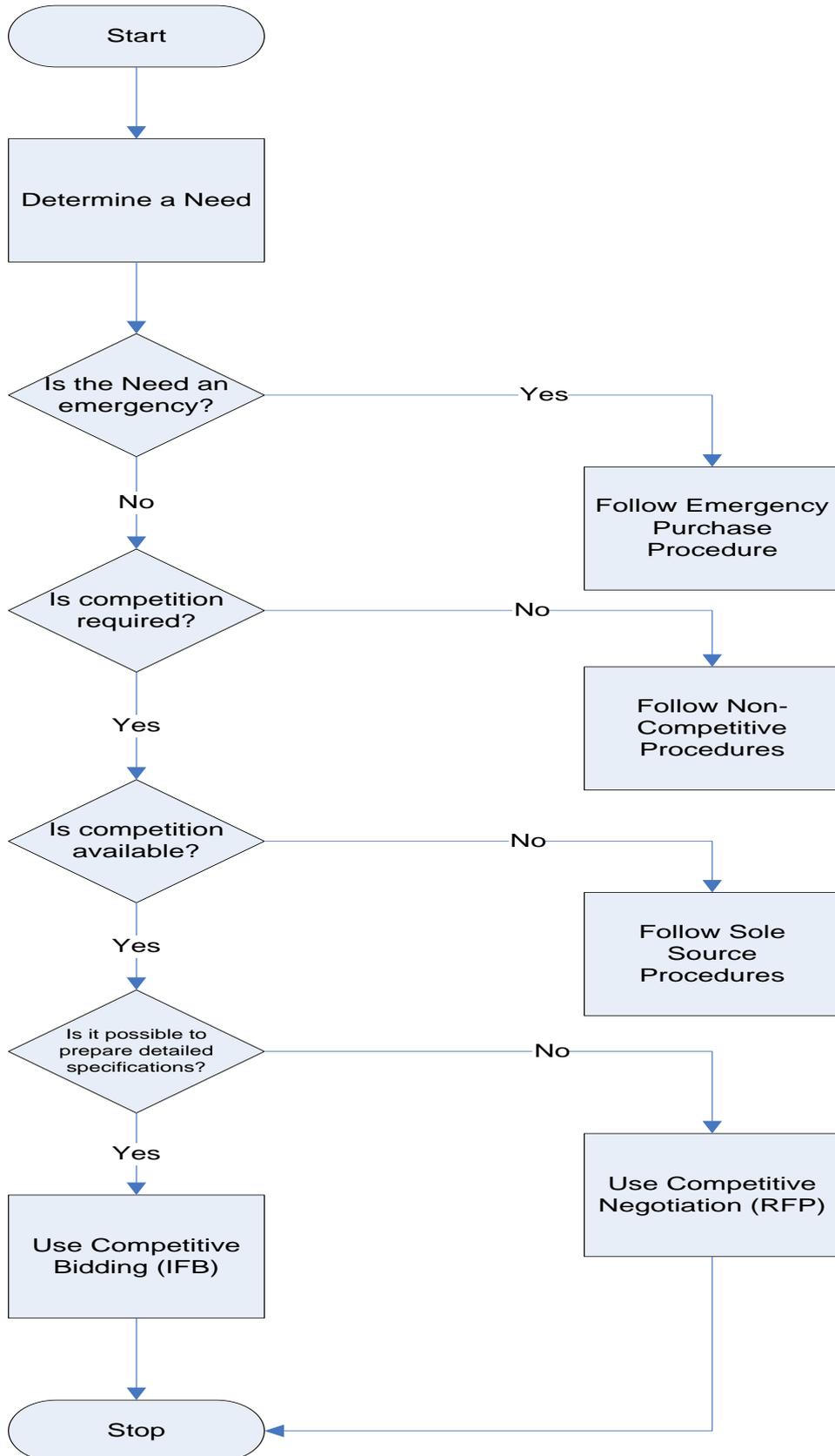
The award of all contracts should be notified to the Agency of Public Procurement and should be published in two national dailies with description of the contract, name of contractor/supplier and the contract price clearly stated.

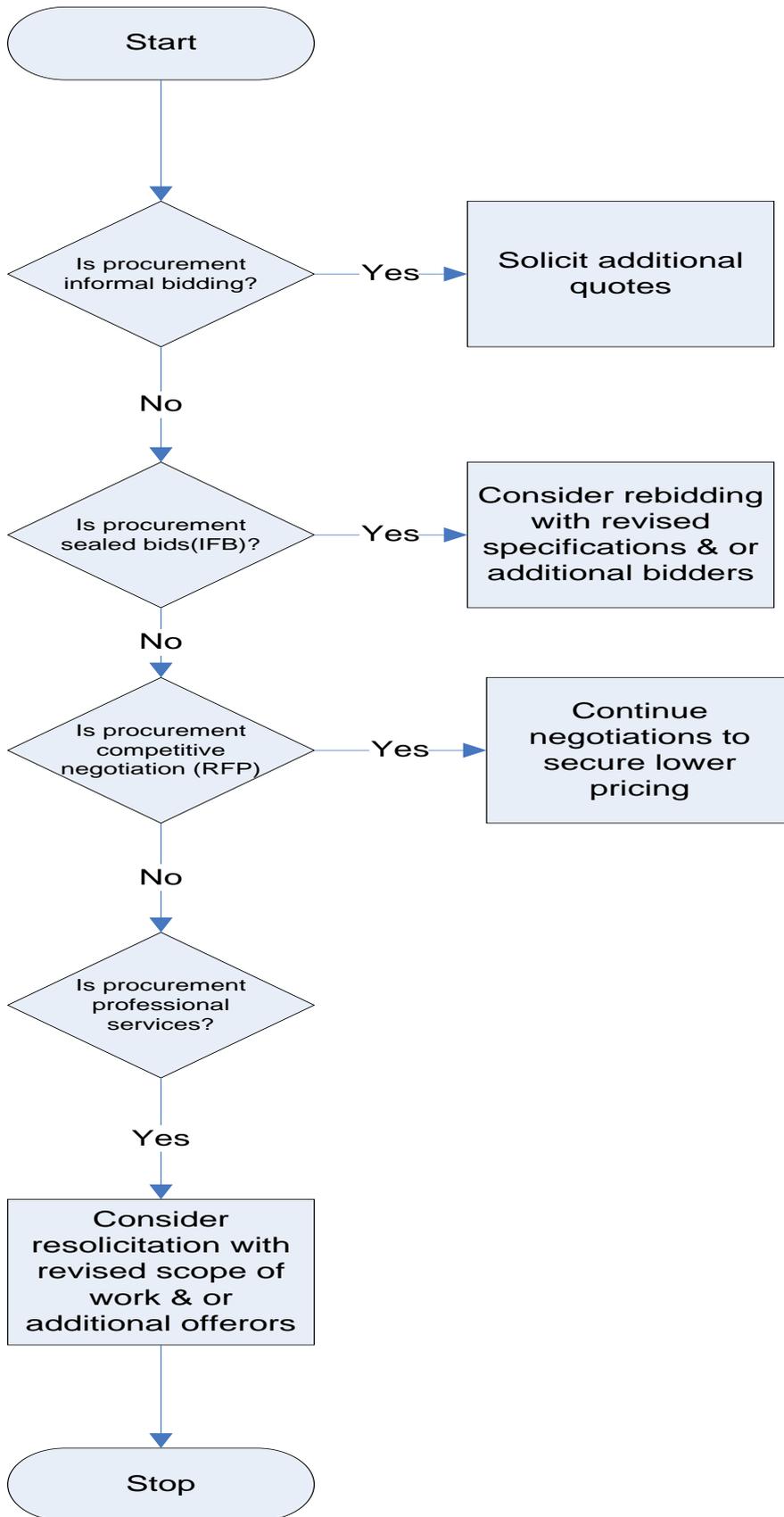
67. Confidentiality

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

68. FLOW CHART OF THE COMPETITIVE PROCUREMENT PROCESS

Public procurement should be handled as follows:





CHAPTER 6: PROCUREMENT METHODS FOR GOODS, WORKS AND SERVICES

69. Introduction: Open Competitive Bidding

Public Procurement Law – Section 20

69.1

- All procurements of goods, works and services 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, effects public procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods, works and needed.

The winning bid shall be the lowest evaluated responsive bid which has been responsive to the bid with regards to work specification and standard

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

- (i.) selection of a method of procurement
- (ii.) preparation of the relevant procurement documents
- (iii.) pre-qualification of bidders
- (iv.) submission/receipt of tenders
- (v.) evaluation of tenders
- (vi.) comparison of tenders
- (vii.) recommendation of the winning bid
- (viii.) certification of the Procurement Action
- (ix.) award of the contract.

70. Selecting the Method of Procurement

70.1 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 method is to understand what situations are suitable for each of them. Depending on the nature and size of the procurement and its elements, Procuring Entity may use any of the methods set out in this Manual to procure goods, works and services. The choice of procurement method should depend on:

- (a) the nature of the goods and services to be procured;
- (b) the value of the procurement;
- (c) the local availability and cost of goods and services;
- (d) critical dates for delivery;
- (e) agreement with the funding agency. and
- (f) transparency of procedures proposed.

70.2 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. 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.

71. International Competitive Bidding (ICB)

71.1 The purpose of ICB is to give all prospective and qualified bidders 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 following circumstances:

- (a) when the capacity of the domestic contractors, suppliers and service providers are 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 in view of the development of domestic construction industry, the possibility of slicing the contract and following "slice and package approach" to suit domestic contractors may be considered.

71.2 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 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.

71.3 Procuring Entity is required to:

- (a) advertise, at least, in one widely circulated national newspaper.
- (b) relevant websites including the Agency's web site;
- (c) internationally such as in World Bank UN Business Development, and
- (d) transmit such invitations to embassies and trade representatives of countries from where suppliers and contractors are likely to participate, and post them in relevant websites.

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

72. Types of ICB

72.1 Procurement using ICB method can follow either a one-stage and two-stage bidding process. In a one-stage process, the procuring entity will prepare a bidding document which, among other things, detailed functional and technical requirements. In response, suppliers submit tenders containing their technical and financial proposals at the same time to be opened in one single public opening. The Procuring Entity then evaluates each of the bidders' proposals and awards the contract to the lowest evaluated bidder, according to the method and criteria specified in the bidding documents.

72.2 In a two-stage process, the procuring entity prepares a first stage bidding document with functional performance specifications, rather than detailed technical specifications. In response, bidders offer un-priced technical proposals (i.e., no financial proposal is submitted at this time). The procuring entity then:

- assesses the suppliers' qualifications;
- evaluates the technical proposals;

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

72.4 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 are not permissible in a one-stage process. In this way, an agency can learn from the market and adapt its requirements to maximize competition. In addition, a two stage process allows a procuring entity, in the first stage, to state its requirements in more general functional terms than the detailed functional and technical requirements necessary to carry out a one-stage process. By knowing the bidders and their technologies prior to the second stage, this reduces the burden of preparing detailed functional and technical requirements which are so comprehensive as to accommodate the entire universe of potential technical proposals.

72.5 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 make the two stage process much more suitable for the

procurement of goods such as complex information systems and procurements which involve extensive technical services.

73. Procedures for two-stage bidding

- 73.1 The procuring entity shall call upon suppliers or contractors to submit, in the first stage of two-stage bidding proceedings, initial bids which contain their proposals without a bid price. Such proposals may relate to technical, quality or other characteristics of the goods, works or services as well as contractual terms and conditions of supply and the professional competence and technical qualifications of the suppliers or contractors.
- 73.2 The procuring entity may, in the first stage, engage in negotiations with any supplier or contractor whose bid has not been rejected under an open competitive bidding procedure with respect to any aspect of its bid.
- 73.3 In the second stage of the two tender proceedings the procuring entity, shall invite suppliers or contractors whose bids have not been rejected to submit final bids with prices on a single set of specifications. The procuring entity may, in the invitation to submit final bids, communicate to the suppliers or contractors, any deletion, modification or addition; and may permit a supplier or contractor who does not wish to submit a final bid to withdraw from the bidding proceedings.
- 73.4 The final bids shall be evaluated and compared in order to ascertain the successful bid as defined in an open competitive bid.

74. National Competitive Bidding (NCB)

74.1 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.

74.2 When NCB is used:

- (i.) (The invitation to bid should be advertised at least in one widely circulated national newspapers, and in relevant websites where possible;
- (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 prior to the Bid closing date
- (iv.) in the case of contract for works, to be eligible for contract award, the domestic contractors shall have a valid and appropriate registration at the time of submitting the Bid. However registration should not be an eligibility criterion for purchasing the Bidding document or submitting a Bid.

74.3 NCB may be used in foreign funded project on the following conditions:

- with the agreement of the funding agency
- by allowing foreign contractors or suppliers to bid on same terms with the domestic contractors or suppliers
- by not giving preference to domestic bidders

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

75. Limited / Restricted International & National Bidding (LIB/LNB)

Public Procurement Law – Section 43

75.1 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.

75.2 The procedure is chosen when:

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

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

76. Shopping

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

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

76.2 The Procuring Entity may:

- (a) publish a notice for inviting applications for registration of suppliers; and after evaluating the past experience and other qualifications such as capacity of the applicant, by a committee consisting of not less than three members appointed by the Accounting Officer of the procuring entity, prepare a list comprising names of suppliers who are able

- to supply particular categories of goods and services such as stationery, electrical items, motor vehicle repairs, periodicals and publications etc.
- (b) remove any supplier or contractor who has not responded twice for an invitation to submit a quotation or performed unsatisfactorily under any contract previously awarded.
 - (c) The selection shall be based on comparison of price quotations obtained from several invited bidders appearing on the registry.
 - (d) When the appropriate authority is satisfied, in the case of supplies of goods, that sufficient number of reputed vendors are registered quotations may be invited from those lists.
 - (e) Requests for quotations shall be addressed to firms borne in a register of suppliers and shall indicate:
 - (i) the description and quantity of the Goods;
 - (ii) time and place of delivery, and
 - (iii) warranties
 - (f) When shopping procedures are used for works, request for quotation shall be only from the registered contractors and the minimum number of quotation 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.

76.3 Applicable Procedures for Shopping:

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

76.4 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.

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

The registered list of suppliers shall be updated periodically at least once a year.

77. Direct Contracting

Public Procurement Law – Section 44 (2)

77.1 Direct contracting is a means of Procurement of Goods or Services or Works from a single supplier 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
- (iii.) owing to a catastrophic event, there is an urgent need for goods, works, or services, making it impracticable to use other methods of procurement because of time constraint.
- (iv.) additional supplies need to be procured from a supplier 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.) the required equipment is proprietary and obtainable only from one source (such as proprietary software, text books, spare parts, defense items) and no alternative equipment or products with equivalent performance characteristics are available;
- (vii.) the process design requires the purchase of critical components or materials from a particular supplier as a condition of a performance guarantee.

77.2 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.

78. Procurement Under Emergency

Public Procurement Law – Section 44

78.1 A Procurement Entity may carry out an emergency procurement under the situations described in the Public Procurement Law.

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

- (a) the bidding document will disclose an itemized priced Bills of Quantity based on
- (b) the Engineer's/Consultant's estimate;
- (c) all bidders who participate in bidding will be allowed to bid a percentage above or

- (d) below the Engineer's/Consultant's estimate;
- (e) the lowest Bid price shall be selected as the winner provided the Bid is substantially
- (f) responsive otherwise;
- (g) the bidding period may be not be reduced below three (03) days in the case of limited bidding by invitation and seven (07) days when open advertisement is used;
- (h) lump sum contracts shall be used wherever possible, with milestone payments
- (i) identified at intermediate levels;
- (j) purchases from government institutions must be given preference.

78.2 Immediately after the cessation of the situation warranting any emergency procurement, the procuring entity shall file a detailed report thereof with the Agency of Public Procurement which shall verify same and if appropriate, issue a Certificate and compliance.

79. SELECTION AND EMPLOYMENT OF CONSULTANTS

Introduction

Public Procurement Law – Section 34

76.1 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 systems and two-envelope procedures are standard features in selection of consultants. Selecting consultants on the basis of cost alone is unlikely to achieve the required quality of services.

79.2 Where a procuring entity wishes to procure services for its needs which are precise and ascertainable:

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

However, where the value of the services to be procured is less than one million naira, or with the approval of the Agency, of such a low value that only national consultants would be interested, the procuring entity may without placing a notice under 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/fee for the service.

79.3 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 on the basis of 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.
- Evaluation of technical proposals.
- Opening and evaluation of financial proposals.
- Consolidated evaluation according to the criteria stated in the RFP.
- Negotiations and award of the contract to the selected firm.

79.4 The Terms of Reference (TOR)

The TOR must define clearly 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 time periods for the deliverables;
- Not be over-detailed or inflexible, so that competing consultants may propose their own 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.
- Specify detailed requirements when transfer of knowledge or training is an objective, to allow candidates to estimate the required resources.

79.5 Preparation of Cost Estimates and Budget

After 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 time schedule with breakdown of duration for home and field works, and all other charges. Budget estimates should reflect the following costs:

- Key and support staff, including social charges
- Mobilisation and demobilisation;
- Transportation;
- Per diem allowances;
- Communications;
- Office rent and consumables;
- Documents and reports preparation;
- Training;
- Miscellaneous (computer equipment, insurance, translations, etc.);
- Duties and taxes.

79.6 A procuring entity wishing to procure services for its needs may do so by requesting for 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 the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development cost.

79.7 Procuring entities shall procure the services of consultants by soliciting for 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 procurement journal.

79.8 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 similar reason of confidentiality.

Public Procurement Law – Section 36

Please refer to the Standard Requests for Proposals for a detailed content.

Public Procurement Law – Section 37

79.9 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 more than 14 days before the deadline for submissions respond to the request within 7 working days and shall, without identifying the source of the invitation, simultaneously communicate the clarification to the other consultants to whom the procurement entity has provided the invitation for proposals;
- Where the clarification is sought less than 14 days to the deadline for the submission of proposals respond promptly and early enough to enable the consultant make a timely submission of its proposal and shall, without identifying the source of the invitation, simultaneously communicate the clarification to the other consultants to whom the procurement entity has provided the invitation for proposals.

79.10 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 prior to the deadline for submission of proposals.

79.11 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.

79.12 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.

79.13 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 take the minutes into account in preparing their proposals.

Public Procurement Law– Section 38

80. Submission of Proposals

80.1 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.

80.2 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.

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

81. Criteria for Evaluation of Proposals

Public Procurement Law – Section 39

81.1 The procuring entity shall establish criteria to evaluate the proposals and prescribe the relative weight to be accorded to each criterion and the manner in which 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;
- 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 defence and security considerations.

81.2 A procuring entity may accord a margin of preference for domestic consultants or service providers, which shall be calculated in accordance with the regulations and guidelines as issued from time to time by the Agency and shall be reflected in the record of the procurement proceedings.

81.3 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 staff 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 for this person. Individuals should be evaluated on the following sub-criteria as relevant to the task:

General Qualifications: General education and training, professional qualifications, length of experience, positions held, time with the consulting firm, experience in similar countries, etc;
Adequacy for the Assignment: Specific experience relevant to the assignment in the sector, field, subject, process or activity; and

Experience in the Region: Knowledge of local languages, administrative systems, government organisations, etc.

81.4 The criteria may be divided into sub-criteria to enhance the objectivity of the evaluation. For example, sub-criteria under methodology might be innovation and level of detail. It is usual to use sub-criteria for key staff to evaluate their qualifications, technical experience and language capabilities. The number of sub-criteria should be kept to the essential minimum and must be fully detailed within the RFP. The minimum qualifying technical score to be achieved for a bid to proceed to the Financial Evaluation must be specified in the RFP.

82. General Selection Procedure (Services)

82.1 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.

Public Procurement Law – Section 42

82.2 Where price is not a factor

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

82.3 The procurement entity shall:

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

The procuring entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants.

Public Procurement Law– Section 42 (4)

82.4 Negotiations and Award of Contract

The procuring entity shall invite for negotiations on the price of its proposal, the consultant that has attained the best rating in technical and financial proposals. If negotiations with the consultant with the best rating fails, it shall invite the consultant that obtained the second best rating, and if the negotiations with that consultant do not result in a procurement contract, the procuring entity shall invite the other suppliers or contractors for negotiations on the basis of their rating until it arrives at a contract or rejects the remaining proposals.

82.5 Where price is a factor

Public Procurement Law – Section 41

Where the procuring entity elects to choose the successful proposal based on price only, it shall:

- Establish a threshold with respect to quality and technical aspects of the proposals in accordance with the criteria other than price as might have been set out in the request for proposals and rate each proposal in accordance with such criteria and the relative weight and manner of application of the criteria as stipulated in the request for proposals; and then
- The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold;
- The procuring entity shall notify the consultants whose proposals did not meet the minimum qualifying mark or were non responsive to the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of 14 working days after the decision has been taken by the procurement entity;
- The 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, the quality scores for the technical component of the proposal shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened;
- The procuring entity shall prepare the minutes of public opening of financial proposals which shall be part of the evaluation report and shall retain this record.

The successful proposals shall be:

- 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; or

- the proposals with the lowest price in the case of least-cost selection; or
- the highest ranked technical proposal within the budget.

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

82.6 Hiring of Government Officials

Government officials and civil servants cannot be hired under 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 fulltime employment contract with their institutions and have regularly exercised their function for a year or more before they are contracted.

83. Agency's Review of Procurement Actions

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

80.2 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 action has been taken by the Procuring Entity.

83.3 The Procuring Entity shall furnish to the Agency, 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.

83.4 The Agency may carry out normal procurement audit aimed at reviewing the Procurement Activities of a procuring entity or conduct an investigation into any matter related to the conduct of procurement proceedings by a procuring entity, or the conclusion or operation of a procurement contract if it considers that an investigation is necessary or desirable to prevent or detect a contravention of procurement policies and practices.

84 Scope of Prior Review

84.1 The following procurement documentation should be reviewed by the Agency before the Procuring Entity issues the Certificate and compliance 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;
- bidding documents and addenda;

- bid evaluation and the proposal for award of contract; and
- modifications to the contract during execution.

84.2 Where prequalification is required, prior review by the Agency staff is mandatory for all documentation and proposals relating to prequalification. Any advance procurement action related to contracts that would require ICB and LIB; and other large contracts expected to be above the prior review threshold level should also be reviewed.

85. Post Review of Procurement Documentation

85.1 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:

- the Invitation for Bids;
- Bidding documents;
- Public tender opening record;
- Bid 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 ex-post reviews are also used to examine the Procuring Entity's capacity to maintain adequate accounting records, systems for control and auditing arrangements.

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

CHAPTER 7: BIDDING DOCUMENTS

Preparing the relevant procurement documents

86. Standard Bidding documents

86.1 The Procuring Entity prepares bidding documents for each proposed purchase involving international and national competitive bidding, both to inform and instruct potential bidders, suppliers and contractors of the requirements expected of them in particular procurement opportunities. Bidding documents are to be drafted so as to permit bidders to submit responsive tenders. Bid documents should clearly define the scope of works, goods or services to be supplied, the rights and obligations of the Procuring Entity (purchaser) and of suppliers and contractors, and the conditions to be met in order for a tender to be declared valid and responsive. They should also set out fair and non-discriminatory criteria for selecting the winning tender. Bidding 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.

86.2 The details and complexity of bidding documents vary according to the nature and size of the contract but they generally include the following:

- ***Invitation for Bid;*** the IFB (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 Bidders;*** providing information to bidders regarding the form, procedure and timing of bidding.
- ***The Bid Data Sheet;*** which specifies the parameters of the Instructions to Bidders for the particular procurement including source of funds, eligibility requirements, procedure for clarification, bid preparation form, number of copies to be submitted, language of the tenders, pricing and currencies and currency conversion mechanism, instructions on modification and withdrawal of bids, bid submission procedures, closing date, bid validity period, opening and evaluation of bids, and award of contract procedures, procedure for correction of mathematical discrepancies in bids, purchaser's right to accept any bid and reject any or all bids; award criteria; notification of award and procedures for signing of contract.
- ***Evaluation and Qualification Criteria;*** this section specifies the criteria that the Procuring Entity will use to evaluate the bids and post-qualify the lowest evaluated Bidder.
- ***The General Conditions of Contract;*** setting out the general provisions of the contract between the Procuring Entity and the bidder awarded the contract.
- ***Special 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).
- ***Bidding Forms;*** which include forms for Bid Submission and Price Schedules, Bid 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.

86.3 In procurement through ICB procedures, Procuring Entities are required to use Standard Bidding Documents (SBDs) issued by the Agency, with minimum changes acceptable to

the Agency. 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 bid or contract data sheets or through Special Conditions of Contract. The following Standard Documents currently exist for use by Procuring Entity

- Standard Bid Document for the Procurement of Small Works
- Standard Bid Document for the Procurement of Works
- Standard Bid Document for the Procurement of Goods
- Sample Document for National Shopping
- Standard Request for Proposals for the Selection of Consulting Firms (Small Assignments – Time Based)
- Standard Request for Proposals for the Selection of Consulting Firms (Complex Time Based)
- Standard Request for Proposals for the Selection of Consulting Firms (Small Assignments – Lump Sum)
- Standard Request for Proposals for the Selection of Consulting Firms (Complex Lump Sum)
- Standard Request for Proposals for the Selection of Individual Consultants

87. Technical Specifications

87.1 Precise and clear specifications are prerequisite for bidders to respond realistically and competitively to the requirements of the Procuring Entity without qualifying or conditioning their tenders. In the context of ICB, 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, responsiveness of tenders be ensured, and the subsequent task of bid evaluation be facilitated.

87.2 For the goods, plant and other supplies to be incorporated in the works, the specification should require that they be new, unused, and of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. For works contracts, a clause setting out the scope of works is often included at the beginning of the Specifications, and it is customary to give a list of the Drawings. Where the contractor is responsible for the design of any part of permanent works the extent of his obligations must be stated.

87.3 In the procurement of works, specifications are usually written by the Procuring Entity or Engineer to suit specific contracts. There are no standard specifications for universal application in all sectors in all countries, but there are established principles and practices that are acceptable. 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 in the event that such guarantees are not met.

87.4 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.

88. Contract Provisions in the STDs

88 Refer to the Standard Bid 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 Contract and those of the Special Conditions of Contract, the provisions of the latter prevail.

CHAPTER 8: CONTRACT MANAGEMENT AND PROCUREMENT REPORTING

89. Contract Management, Delivery and Payment

89.1 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 preventative action can be taken when problems arise or are foreseen. There are a number of post-contract issues that need to be addressed, monitored and resolved before any contract is completed including:

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

89.2 Contract supervision and administration for goods will be undertaken by the Purchasing & Stores Department or the Technical Department as appropriate. Supervision and administration is straightforward in most contracts for goods. Monitoring delivery

schedules, processing of documents and organizing/performing the inspection of goods are essential to ensure that the correct goods are delivered on time.

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

Public Procurement Law – Section 16 (3)

- 89.4 Where the Agency has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury 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 request for payment is accompanied by a Certificate and compliance to the award of Contract” duly issued by the Agency.
- 89.5 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 sixty days.
- 89.6 Payment for works contracts will normally be made against Payment Certificates approved in strict accordance with the terms of the Contract.

90. Contract Performance

90.1 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 Agency are informed of any serious failings in performance.

90.2 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 Agency 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 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.

90.3 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 time schedule, or from 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 Certificate of Compliance to amendment of Contract terms from the Agency)
- Distribute copies in the same way as the original contract.

CHAPTER 9: DISPOSAL OF PUBLIC PROPERTY

91. Disposal of Public Property

Public Procurement Law– Section 53

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

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

92 Planning of Disposals

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

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

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

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

93. Disposal Methods

Procuring Entity's property, which is no longer needed, may be disposed of in accordance with 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 priced 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 similar 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 bid) 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.

94. Destruction or Abandonment

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

95. Documentation

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.

96. Approval

State funded acquisitions often carry stipulations regarding disposal. These stipulations should be reviewed prior to disposing of equipment that was originally purchased with State funds.

CHAPTER 10: PROCUREMENT REPORTING

97. The routine reporting of Procurement Activity is essential for procurement planning and budgeting, and for 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.

98. Monthly Report of Procurement shall be submitted 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 cancelled after receiving an initial procurement approval by the relevant authority or cancelled/terminated; and contracts completed, i.e. contracts completed during the month following performance by the supplier, contractor, service provider or consultant; final payment by the Procuring Entity, and the release of any performance security.