

## **PART V - PROCUREMENT METHODS (SERVICES AND WORKS )**

### **Open Competitive Bidding**

21. (1) Except as [provided by this Law, all procurement of goods, services and works by all procuring entities shall be conducted by open competitive bidding.
- (2) Any reference to open competitive bidding in this Law 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, services and works needed.
- (3) The winning bid shall be that which is the lowest evaluated responsive bid which has been responsive to the bid with regards to work specification and standard.
- (4) Notwithstanding, the provisions of this law, with respect to the award of contract, the Governor shall have power to award contract for the execution of projects and other jobs which total value shall not exceed 30% of the total annual budget approved for the execution of projects and other jobs in the State: PROVIDED ALWAYS that the Bureau shall exercise supervisory powers in the execution of such projects.

### **INVITATION TO BID**

22. (1) Every invitation to an open competitive bid shall:
- (i) in the case of goods and works, under international competitive bidding, the invitation for bids shall be advertised in not less than two national newspapers and one relevant international publication, an official websites of the procuring entity and the Bureau as well as the procurement journal (if any) not less than six weeks before the deadline for submission of the bids for the goods and works,
- (ii) in the case of goods and works valued under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, any official websites of the procuring entity, at least two newspapers (one of which must have national circulation), and in the procurement journal (if any) not less than six weeks before the deadline for submission of the bids for the goods and works.

### **BID SECURITY**

23. Where the procuring entity requires supplies or contractors submitting tenders to provide a bid security the requirement shall apply to each supplier or contractor.

## **SUBMISSION OF BIDS**

- 24**
- (1) All bids in response to an invitation to open competitive bidding shall be submitted in writing and in addition to any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contractor and placed in a sealed envelop .
  - (2) All submitted bids shall be deposited in a secured tamper proof bid box.
  - (3) All bids submitted shall be in English Language.
  - (4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.
  - (5) Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or contractor which submitted it.
  - (6) No communication shall take place between procuring entities and any supplier or contractor after the publication of a bid solicitation other than as provided in this Law.

## **REJECTION OF BIDS**

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

## **VALIDITY PERIOD OF BIDS, MODIFICATION AND WITHDRAWAL OF TENDER**

- 26.**
- (1) The period of validity for a bid shall the period specified in the tender documents.
  - (2) A procuring entity may request suppliers or contractors to extend the period of validity for an additional specified period of time.
  - (3) A supplier or contractor may refuse the request for the extension of bid, in which case the effectiveness of its bid will terminate upon the expiration of the un-extended period of effectiveness.
  - (4) A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission -of bids.

- (5) The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders

### **BID OPENING**

27. (1) All bids shall be submitted before the deadline or date specified in the tender documents or any extension of the deadline for submission and the procuring entity shall:
- (a) permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
  - (b) cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public;
  - (c) ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof;
  - (d) ensure that a register is taken of the names and address of each bidder, the total amount of each bid, the bid currency and shall ensure that these details are recorded by the Secretary of the tenders board; and
  - (e) call-over to the hearing of all present the name and address of each bidder, the total amount of each bid, the bid currency and shall ensure that these details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening.

### **EXAMINATION OF BIDS**

28. (1) All bids shall be first examined to determine if they:
- (a) meet the minimum eligibility requirements stipulated in the bidding documents;
  - (b) have been duly signed;
  - (c) are substantially responsive to the bidding documents; and
  - (d) are generally in order.
- (2) A procuring entity may request suppliers for clarification of its bid submission in order to assist in the examination; evaluation and . comparison of bids.
- (3) The following shall not be sought, offered or permitted;
- (a) Changes in price;

- (b) changes of substance in a bid; and
  - (c) changes to make an unresponsive bid responsive
- (4) Notwithstanding sub-section (3) of this section, *the* procuring entity. may correct purely arithmetical errors that are discovered during the examination of tenders.
- (5) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender.
- (6) A major deviation shall result in a rejection of bid.
- (7) The following shall be considered as major deviations:
- (a) with respect to clauses in an offer;
    - (i) unacceptable sub-contracting
    - (ii) unacceptable time schedule if time is of essence
    - (iii) unacceptable alternative design:
    - (iv) unacceptable price adjustment;
    - (v) the difference in standards;
    - (vi) the difference in materials;
    - (vii) omission in minor items;
    - (viii) sub-contracting that is unclear and questionable; and
    - (ix) different methods of construction .
  - (b) with respect to the status of the bidder
    - (i) the fact that' he is ineligible or not pre-qualified; and
    - (ii) the fact that he is uninvited.
  - (c) with respect to bid documents, an unsigned bid;
  - (d) with respect to time, date and location for submission:-
    - (i) any bid received after the date and time for submission stipulated in the solicitation document;

- (ii) Any bid submitted at the wrong location.
  - (iii) difference in final delivery date;
  - (iv) difference in delivery schedule; and
  - (v) non-compliance with some technical local regulations.
- (8) In cases of major deviations, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder.
  - (9) In all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.
  - (10) For the rejection of a bid, a written notice shall be given promptly to the supplier.

### **EVALUATION OF BIDS**

- 29.** (1) For the evaluation and comparison of bids that have been adjudged as valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents.
- (2) The objective of bid evaluation shall be to determine and select the lowest evaluation responsive bid from bidders that have responded to the bid solicitation.
- (3) In the course of its determination of the lowest evaluated responsive bid from the bidders that have responded to the bid solicitation, the Tenders Board shall; in particular, undertake the following processes as applicable:
  - (a) checking of deviations;
  - (b) checking of omissions with quantification of same;
  - (c) application of discounts, as applicable;
  - (d) calculation and tabulation of bid amount with domestic preference where applicable;
  - (e) determination of the lowest calculated prices in order or rank;
  - (f) post-qualification of bidders, where applicable; (g) listing of rejection of bids, where applicable;
  - (h) decision of rejection of all bids where justifiable;

- (j) writing up of the bid evaluation report.
- (4) All relevant factors, in addition to price, that will be considered for the purposes of bid evaluation and the manner in which such factors will be applied shall be stipulated in the solicitation documents.
- (5) Such factors shall be calculated in monetary terms as stipulated in the solicitation documents and shall include:
  - (a) for goods, among others, costs of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits or losses by damages;
  - (b) for works, in addition to factors stipulated in section 31( I) of this Law, and subject to section 32(2) of this Law, if time is a critical factor, the value of early completion; and
  - (c) the value of early completion under section 32(2) of this Law shall not be taken into account unless, in conformity with criteria pre-set in the bidding documents, the conditions of contract provide for commensurate penalties in case of late delivery.
- (6) When bid prices are expressed in two or more currencies, the prices of all bids shall be converted to Nigerian currency, according to the rate and date of rate specified in the solicitation documents.
- (7) If suppliers were pre-qualified, verification of the information provided in the submission for pre-qualification shall be confirmed at the time of award of contract and award may be denied to a bidder who no longer has the capability or resources to successfully perform the contract.
- (8) After opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning award shall not be disclosed to bidders or to persons not officially concerned with the evaluation process until the successful bidder is notified of the award.

### **ACCEPTANCE OF BIDS**

- 30.** (1) The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive as to the bid solicitation.
- (2) Notwithstanding subsection (1) of this section, the selected bidder needs not be the lowest cost bidder provided the procuring entity can show good grounds derived from the provisions of this Law to that effect.

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

### **DOMESTIC PREFERENCE**

31.
  - (1) A procuring entity may grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad.
  - (2) Where a procuring entity intends to allow domestic preferences, the bidding documents shall clearly indicate any preference to be granted to domestic suppliers and contractors and the information required to establish the eligibility of a bid for such preference.
  - (3) Margins of preference shall apply only to tenders under international competitive bidding.
  - (4) The Bureau shall by regulation from time to time set the limits and the formulate for the computation of margins of preference and determine the contents of goods manufactured locally.
  - (5) government shall -provide maximum opportunities for small and medium size entrepreneurs in the State to participate as suppliers, contractors, sub-contractors consultants in public procurement .
  - (6) a procurement of works, goods or services that has value not exceeding specified threshold shall at first instance' be reserved for indigenous firms, failing which offers shall be solicited without restrictions.

### **MOBILIZATION FEES**

32.
  - (1) In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of not more than 30% of the contract sum shall be paid to a supplier or contractor supported by a contract performance bond:
    - (a) in the case of National Competitive Bidding an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity; and
    - (b) in the case of International Competitive Bidding an unconditional bank guarantee issued by a banking institution acceptable to, the procuring entity.
  - (2) Where a mobilization fee has been paid to a 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.

### **CONTRACT PERFORMANCE GUARANTEE**

- 33.** 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.

### **INTEREST ON DELAYED PAYMENT**

- 34.**
- (1) Payment for the procurement of goods, works, and services shall be settled promptly and diligently.
  - (2) Any payment due for more than six 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.
  - (3) All delayed payments shall attract interest at the rate specified in the contract document.
  - (4) All contracts shall include, terms, specifying the interest rate for late payment of more than sixty days, which rate shall not exceed the commercial bank lending rate at the time of contract award.

### **RECORD OF PROCUREMENT PROCEEDINGS**

- 35.**
- (1) A procuring entity shall maintain a comprehensive record of procurement proceedings.
  - (2) The portion of the record referred to in this section shall, on request, be made available to:
    - (a) any person after a tender, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract; and
    - (b) suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for pre-qualification, after a tender, proposals, offer or quotation has been accepted or procurement proceedings have been terminated without resulting in a procurement contract.
  - (3) A disclosure of procurement proceeding, shall not be made to a person prior to



award of contract unless the portion of the record is required to be disclosed at an earlier time pursuant to a regulation or an order of court.

- (4) The procuring entity shall not be liable. to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings in accordance with this section.
- (5) The records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau, an investigator appointed by the Bureau and the Auditor-General upon request; or upon request of a law enforcement agency in pursuance of its statutory duty where a criminal offence is suspected to have been committed in the course of a specific procurement; 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. to do so.