

DELTA STATE PUBLIC PROCUREMENT COMMISSION LAW

PART IX - PROCUREMENT OF CONSULTANCY SERVICES

Expression of interest to provide services for ascertained needs

45 (1) Where a procuring entity wishes to procure services for its needs which are precise and ascertainable:

- (a) it shall solicit for expressions of interest of applications, to pre-qualify to provide the services: by publishing a notice to that effect in at least two national newspapers; a relevant state newspaper and the procurement journal;
- (b) where the value of the services to be procured is less than ten million naira, or with the approval of the Commission, of such a low value that only local consultants would be interested, the procuring entity may without placing any notice request at least three and not more than ten 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 need;
 - (iii) the methodology for providing the service;
 - (iv) the time frame for providing the service;
 - (v) the cost or fee for the service.

(c) every consultant shall register with the State Contract Registration Board or any other appropriate authority.

Request proposal to provide services for unascertained needs

46. (1) Procuring entity wishing to procure services for its needs may do so by requesting for proposals when it intends to enter into a contract for the purpose of research, experiment, study or development, except where the contract include the production of goods sufficient to establish their commercial viability or to recover research and development cost.

(2) The procuring entities shall procure the services of consultant by soliciting for expressions of interest by publishing a notice to that effect in one national newspaper, a relevant state newspaper and the procurement journal.

(3) A procuring entity may make direct requests to a single or limited number of consultants, requesting proposal for the provision of services if:

(a) the services are only available from no more than three consultants;

(b) 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

(c) it is in the interest of state security or similar reason of confidentiality

Contents of the Request for Proposals.

47. (1) Request for proposal shall include:

- (a) the name and address of the- procurement entity;
- (b) a requirement that the proposals are to be prepared in the English Language;
- (c) the manner, place and deadline for the submission of proposals;
- (d) a statement to the effect that the procuring entity reserves the right to reject proposals;
- (e) the criteria and procedures for the evaluation of the qualifications of the consultant;
- (f) the requirement, on documentary evidence or other information that shall be submitted by consultants to demonstrate their qualification;
- (g) the nature and required characteristic of the services to be procured including the location where the services are to be provided and the time when the services are to be provided;
- (h) whether the procuring entity is seeking proposals on various possible ways of meeting its needs;
- (i) a requirement that the proposal price is to be expressed in Nigerian Currency;
- (j) the manner in which the proposal price is to be expressed, including a statement on whether the price covers elements apart from the cost of services, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;

- (k) whether the procedure to ascertain successful proposal shall be based on the lowest cost, or quality and or a combination of the lowest cost quality and criteria other than cost but, stipulated in the request for, proposal; and
 - (l) a short list to be made of only national consultants for consulting assignment, contract within a set threshold in the procurement regulation provided that the national consultants possess such requisite skills,
- (2) The entity shall provide the same information to every consultant requested to submit proposals.

Notification of request of proposal

48. (1) A consultant shall be allowed to request for clarification on the request from the procuring entity and such request may be made within a reasonable time to be specific.
- (2) A procuring entity may, whether on its initiative or as a result of a request for clarification by a consultant, modify the request for proposal by issuing an addendum at any time prior to the deadline for submission of proposals,
- (3) 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 proposal and shall be binding on those consultants.
- (4) If the procuring entity convenes a meeting of consultants, it shall prepare minutes of the meeting containing the 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.

(5) The minutes shall be provided promptly before the deadlines for the submission of proposal to the consultants participating in the selection proceedings to enable them take the minutes into account in their proposal.

Submission of Proposal

49. (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 thirty days between the issue of the notice or request and the deadline for submission.

(2) The technical and financial proposals shall be submitted simultaneously; but in separate envelope.

(3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.

(4) 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.

(5) The Technical Evaluation Committees shall not have access to or insights into the financial proposals until the evaluation including Tenders Board reviews are concluded.

Criteria for Evaluation of Proposals.

50. (1) The procuring entity shall establish the 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.

- (a) the qualification, experience, reliability, professional and managerial competence of the consultant or service provider and of the personnel to be involved in providing the services;
- (b) the effectiveness of the proposals submitted by the consultant or service provider in meeting the needs of the procuring entity;
- (c) the proposal price, including any ancillary or related cost;
- (d) the effect that acceptance of the proposal will have on the Government's financial position and 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
- (e) national defense and security considerations.

(2) A procuring entity may accord margin of preference for domestic consultants or service provider which shall be calculated in accordance with the regulations and guidelines issued by the Commission and shall be reflected in the record of the procurement proceedings.

General Selection Procedure

51. (1) The procuring entity shall select the successful proposal by either choosing the proposal with:
- (a) the lowest evaluated competitive price; or
 - (b) the best combined evaluation in terms of the general criteria set out in the request for proposals and the price quoted.
- (2) 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 in subsection (1).
- (3) Nothing in this section shall prevent the procuring entity from resorting to the use of any impartial panel of experts to make the selection.

Procedure for Selection Proposal

52. (1) Where the procuring entity elects to choose the successful proposal based on technical and price factors, it shall establish a weight with respect to quality and technical price factors of the proposals in accordance with such 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.
- (2) The procuring entity shall compare the prices of those proposals that have attained a rating at or above the threshold.
- (3) The procuring entity shall if necessary notify the consultants whose proposals did not meet the minimum qualifying mark or were no responsive to

the invitation for proposals and terms of reference after the evaluation of quality is completed within a period of fourteen working days after the decision has been taken by the procurement entity.

(4) The name of the qualifying consultants and the quality scores for the technical component of the proposals shall be read aloud and recorded alongside the price proposed by each consultant or service provider when the financial proposals are opened.

(5) 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,

(6) The successful proposals shall be:

(a) the proposals with the best combined evaluation in terms of the criteria established under subsection (1) from price in the case of quality and cost-based selection;

(b) the proposals with the best evaluated price in the case of least-cost selection;
or

(c) the highest ranked technical proposal within the budget,

(7) The Consultants with the winning proposal shall be invited for negotiations, shall focus mainly on the technical proposals.

(8) The proposed unit rates for staff-months and reimbursable shall not be negotiated unless there are exceptional reasons.

Selection of Proposal where price is not factor

53. (1) Where the procuring entity elects to make a quality based selection on consultant's qualification or single-source selection, it shall engage in negotiation with consultant in accordance with this section.

(2) The procurement entity shall:

(a) establish a weight with respect .to quality and price of the proposals;

(b) invite for negotiations on the price of the proposal, the Consultant that has attained the best rating in accordance with subsection (1);

(c) inform the Consultants that attained ratings above the weight that may be considered for negotiation if the negotiations with the consultant with the best rating do not result in a procurement contract; and

(d) inform the Consultant with the best rating, that it is terminating the negotiations if it becomes apparent to the procuring entity that the negotiations with that Consultant invited under paragraph (b), will not result In a procurement contract.

(3) The procuring entity shall, if negotiations with the consultant with the best rating fails, 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 ther -suppliers or contractors for negotiations on the basis of their rating until it arrive at a contract or rejects the remaining proposals.

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