

DELTA STATE PUBLIC PROCUREMENT

COMMISSION LAW

PART V - FUNDAMENTAL PRINCIPLES FOR PROCUREMENT

Fundamental principle for Procurement

17. (I) Subject to any exemption allowed by this Law, all public procurement shall be conducted:

(a) subject to the prior review thresholds that may from time to time be by the Council pursuant to section 3 (a) of this Law;

(b) based on procurement plans supported by budgetary appropriation and procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet obligations and subject to the threshold in the regulations made by the Commission and has obtained a "Certificate of No Objection" from the Commission;

(c) lay open competitive binding;

(d) in a manner which is transparent, timely and equitable for ensuring accountability and conformity with this Law and regulations deriving from;

(e) with the aim of achieving value for money and fitness for purpose;

(f) in a manner which promotes competition, economy and efficiency; and

(g) in accordance with procedures and timeline laid down in this Law and as may be specified by the Commission from time to time

(2) Where the Council has set prior review thresholds no funds shall be disbursed from the treasury to revenue account or any bank account of any procuring entity for any procurement falling above the set thresholds unless the cheque payment or other form of request for payments is accompanied by a "Certificate of No Objection" to an Award of Contract under this law.

(3) For all cases where the council shall set a prior review thresholds the Commission shall prescribe by regulation, guidelines and the conditions) precedent to the award of certificate of "No Objection" under this Law.

(4) subject to the prior review thresholds as may be set by the council, any procurement purported to be awarded without a "Certificate of No Objection" duly issued by the Commission shall be null and void.

(5) A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two; the supplier, contractors or service providers acting jointly are jointly and severally liable for all obligations and or responsibilities arising from this Law and the non-performance or improper

performance of any contract awarded pursuant to this Law

(6) All bidders, in addition to requirements contained in any solicitation documents shall:

(a) possess the necessary:

(i) Professional and technical qualifications to carry out particular procurements;

(ii) financial capability;

(iii) equipment and other relevant infrastructure;

(b) have adequate personnel to perform the obligations of the procurement contracts;

(c) possess the legal capacity to enter into the procurement contract;

(d) not be in receivership; the subject of any form of insolvency or bankruptcy proceedings or the subject of any form of winding up petition or proceedings;

(e) have fulfilled all its obligations to pay taxes, pensions and social security contribution;

(f) not have any director who has been convicted in any country for any criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;

(g) accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Commission is a former or present director, shareholder or has any pecuniary interest in the bidder and confirm that all information presented in its bid are true and correct in all particulars;

(h) accompany every bid, with its certificate of registration or incorporation with the Corporate Affairs' Commission; and

(i) any other requirements stated in the standard bidding document

(7) The procuring entity may require as bidder to provide documentary evidence or other information it considers necessary as proof that the bidder is qualified in accordance the solicitation documents and for this purpose any such requirements shall apply equally to all bidders

(8) Whenever it is established by a procuring entity or the Commission that any or a combination of the situations set out exist a bidder may have its bids or tender excluded from any procurement proceeding if:

(a) there is verifiable evidence that any supplier, contractor or consultant has giver promised a gift of money or any tangible items or has promised, or given employment or any other benefit, item or a service can qualified in monetary terms to a current or former employee of at procuring entity or the

Commission, in an attempt to influence any action, or decision making of any procurement activity,

(b) a supplier, contractor or consultant during the last three years prior to the commencement of the procurement proceedings in issue, failed to perform or to provide due care in performance of any public procurement;

(c) 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 to any bankruptcy proceedings and or have made any compromises with their creditors within; two calendar years prior to the initiation the procurement proceedings;

(d) the bidder is in arrears regarding payment of due taxes, 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 installments;

(e) the bidder has been validly sentenced for a crime committed in connection with a procurement proceeding, or any other crime committed to gain financial profit;

(f) the bidder has in its management or is in any portion owned by any person that has been validly sentenced for a crime committed connection with a procurement proceeding, or other crime committed

(g) 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 remains in subordinate relationship with other participants to the proceedings.

(9) In such cases the procuring entity shall inform the Commission and person referred to in subsection (8) (a)-(g) in writing, that the bid or tender in question has been excluded and the grounds for the exclusion and to keep a record of same in the file pertaining" to the public procurement proceedings in question.

(10) All communications and documents issued by procuring entities and the Commission shall be in the English Language.

(11) All communication regarding any matter deriving from this Law or proceedings or public procurement shall be in writing or such other form as may be stipulated by the Commission.

(12) Every procurement entity shall maintain both file and electronic records of all procurement proceedings made within each financial year and the procurement records shall be maintained for a period of ten years from the date of the award.

(13) Copies of all procurement records shall be transmitted to the Commission not later than 3 months after the end of the financial year and shall show:

(a) Information identifying the procuring entity and the contractors;

- (b) the date of the contract award;
- (c) the value of the contract; and
- (d) the detailed records of the procurement proceedings.

(14) All unclassified procurement records shall be opened to inspection by the public and the cost of copying and certifying the documents including administrative charges as may be prescribed from time to time by the

(15) The criteria stipulated as the basis upon which suppliers or contractors would be evaluated shall not be changed in the course of any procurement proceedings

(16) The burden of proving fulfillment of the requirement for participation in any procurement proceeding shall lie on the supplier or contractor.

(17) A contract shall be awarded to the lowest evaluated responsive bid from bidders substantially responsive to the bid solicitation.

(18) Notwithstanding subsection (16) the Commission may refuse to issue "Certificate of No Objection" to Contract Award on the grounds that the price is excessive.

(19) Pursuant to subsection (17), the Commission may either direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.

(20) Pursuant to subsection (18), the Commission may either direct that the procurement proceedings be entirely cancelled or that the procuring entity conduct a re-tender.

(21) The Accounting Officer of a procuring entity and any officer to whom responsibility is delegated are responsible and accountable for any actions taken or omitted to be taken either in compliance with or in contravention of this Law.

(22) The Accounting officer of a procuring entity has the responsibility to ensure that the provisions of this Law and the regulations laid down by the commission are complied with, and concurrent approval by the relevant Tender Board shall not absolve the accounting officer from responsibility for anything done in contravention of this Law or the regulations laid down hereunder.

(23) Procurement and disposal decisions of a procuring entity shall be taken in strict adherence to the provisions of this Law and any regulations as from time to time be laid down by the Commission.

(24) Persons who have been engaged in preparing for a procurement or part of the proceedings thereof may neither bid for the procurement in question or any part thereof either as main contractor or sub-contractor nor may they their cooperate in any manner with bidders in the course of preparing tenders.

(25) A procuring entity shall not request or stipulate that a bidder should engage a particular sub-contractor as a requirement for participating in any procurement proceedings.

(26) All procurement contracts shall contain provisions for mediation and or arbitration proceedings within the State as the primary form of dispute resolution.

(27) The values in procurement document shall be stated in Nigerian currency and where stated in a foreign currency, shall be translated to Nigerian currency using the exchange rate of the Central Bank of Nigeria valid on the day of opening the tender or bid.

(28) All procurement contracts shall contain warranties for durability of goods exercise of requisite skills in service provision and use of genuine materials and input in execution.

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