

DELTA STATE PUBLIC PROCUREMENT COMMISSION LAW

PART VII: PROCUREMENT METHODS

(GOODS AND SERVICES)

Open or Selecting competitive bidding

25. (1) except as provided by this Law, all procurement of goods, works and services by all Procuring entities shall be conducted by open or selective competitive bidding.

(2) Any reference to open or selective 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, works and services 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 specifications and standards in relation to the tender document.

26. (1) Invitations to bid may be either by way of National/State Competitive Bidding or International Competitive Bidding and the Commission set the monetary threshold for which procurement shall fall under either system.

(2) Every invitation to an open Competitive bid shall:

(a) In the case of goods and works under International Competitive Bidding, the invitation for bids shall be advertised in at least two national newspapers, a relevant state newspaper and one relevant internationally recognized

publication, any official website of the procuring entity and the Commission, not less than six weeks before the deadline for submission of the bids for the goods and works.

(b) in the case of goods and works valued under National/State Competitive Bidding the invitation for bid shall be advertised on the notice board of the procuring entity, any official website of the procuring entity and at least two national newspapers, a relevant state newspaper and if necessary the procurement journal, not less than two weeks before the deadline for submission of the bids for the goods and works.

27. (1) Subject to tire monetary threshold and prior review thresholds as may be set by the Commission all procurement value in excess of the sums as prescribed by the Commission shall require a bid security in and amount not more than 20% of the bid price by way of a bank guarantee/insurance bond issued by a reputable bank/ insurance company acceptable to the procuring entity.

(2) The Commission shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.

(3) When the procuring entity requires suppliers or contractor submitting tender to provide a bid security the requirement shall apply to each supplier or contractor.

Requirement for Biding

28. (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 contract and placed in a sealed envelope.

- (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.
- (6) No communication shall take place between procuring entities and any supplier or contractor alter the publication of a bid solicitation other than as provided in this Law.
 - (a) reject all bids at any time prior to the acceptance of a bid without

Rejection of Bids

29. A procuring entity may:

- (a) reject all bids at any time prior to the acceptance of a bid without incurring 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 withdraw of tenders

30. (1) The period of validity for a bid shall be the period specified in the tender documents.
- (2) A procuring entity may 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 unexpired period of effectiveness.

(4) A supplier or contractor may modify or withdraw its bid prior the deadline for the submission of bids,

(5) The modification or notice of withdrawal of a bid is effective if it is received by the procuring entity before the deadline for the submission of tenders.

31. 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 addresses of all those present at the bid opening and the organizations they represent which is recorded by the Secretary of the Tender 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 details are recorded A by the Secretary of the Tenders Boards or his delegate in the minutes of the bid opening.

Requirement stipulated in bidding document

32. (1) All bids shall be first examined to determine if they:

- (a) meet the minimum eligibility requirement stipulated in the bidding documents;
- (b) have been duly signed; and
- (c) are substantially responsive to the bidding documents

(2) A procuring entity may ask a supplier to contractor 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 unless with prior consent in writing of the approving entity or authority:

- (a) changes in prices;
- (b) changes of substance in a bid; and
- (c) changes to make an unresponsive bid responsive..

(4) Notwithstanding subsection (3), 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 while minor deviation shall be subject to clarification.

(7) The following shall be considered as major deviations:

(a) with respect to clauses an offer;

(i) unacceptable sub -contracting;

(ii) unacceptable time schedule, lifetime is of essence;

(iii) unacceptable alternative design; and

(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; and

(ii) any bid submitted at the wrong location

(8) In cases of deviations, bids shall not be considered any further and where opened, shall be returned as such to the bidder

(9) In all cases of rejections, 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) Subject to any provision to the contrary, the following shall be considered a major deviation,

(a) the use of codes:

(b) the difference in standards:

- (e) the difference in materials,
- (d) acceptable alternative design
- (e) modified liquidated damages
- (l) omission on minor items
- (g) discovery of arithmetical errors
- (h) sub-contracting that is unclear and questionable
- (i) different methods of contraction
- (i) difference in final delivery date
- (m) non-compliance with some technical local regulations
- (n) payment terms; and
- (o) any other condition that has little impact on the bid.

(11) 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:

- (a) where the impact on the costs is major, it shall be regarded as a major deviation; and
- (b) where the impact on the cost is minor, it shall be regarded as a minor deviation

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

(13) Where a supplier or contractor does not accept the correction of a deviation, his bid shall be rejected.

(14) At the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms.

(15) For the rejection of a bid, a written notice shall be given promptly to the supplier.

Evaluation of Bids

33. (1) For the evaluation and comparison of bids that have been adjudged valid for the purposes of evaluation, no other method or criteria shall be used except those stipulated the solicitation documents.

(2) The objective of bid evaluation shall be to determine and select the low, evaluated responsive bid.

(3) In the course of determination of the lowest evaluated responsive 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) clarification with bidders of questionable minor deviations;

(e) quantification in monetary terms of such questionable deviations;

(f) conversion to common currency;

(g) calculation and tabulation of bid amount with domestic preference where applicable;

(h) determination of the and

(i) post qualification of bidders, where applicable.

4) All relevant factors, in addition to price, that will be considered for the purpose 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 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 34(1) and subject to 34(2), if time is a critical factor, the value of early completion; and

(c) the value of early completion under section 35(2) shall not be taken into account unless in conformity with criteria pre-set in the bidding documents, the conditions of contract provided for commensurate penalties in case of late delivery.

(6) When bid prices are expressed in two or more currencies, the prices for all bids shall be translated 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 person not officially concerned with the evaluation process until the successful bidders is notified of the award.

Successful Bid

34. (1) The successful bid shall be that submitted by the lowest cost bidder in response to the solicitation document.

(2) Notwithstanding subsection (1), the selected bidder need not be lowest 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

35. (1) A procuring entity may grant a margin of preference in the evaluation of preferences tenders when comparing tenders from domestic bidders with those from foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods

(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 Commission by regulation shall from time to time set the limits and the formula for the computation of margins of preference and determine the contents of goods manufactured locally.

Margins Domestic Preference/Evaluation Tender

36. (1) In addition to other regulations as may be prescribed by the Commission, a mobilization fee as may be determined by the Council may be paid to a supplier or contractor supported by the following:

(a) in the case of National/State competitive bidding, an unconditional bank guarantee or insurance bond issued by a financial institution acceptable to the procuring entity; and

(b) in the case of National or International competitive bidding an unconditional bank guarantee or insurance Bond issued by a financial institution acceptable to the procuring entity

Determination of Mobilization Fees

(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.

Performance Guarantee

37. 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, provide however that 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

Payment of Goods Works and Services.

38. Payment for the procurement of goods, works and services shall be settled promptly and diligently.

Records Procurement Proceedings

39. (1) Every procuring entity shall maintain record of the comprehensive procurement proceedings.

(2) The record referred to in this Section shall, on request, be made available to.

(a) any persons after 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 offer or quotations, or applied prequalification after a tender proposal offer for quotation has been accepted or procurement proceeding have been terminated without resulting in a procurement contract.

(3) A disclosure of procurement proceeding records prior to award of contract may be ordered by a Court, provided that when ordered to do so by a Court the procurement entity shall not disclose such information if its disclosure would:

(i) be contrary to Law;

(ii) impede Law enforcement; and

(iii) prejudice legitimate commercial interest of the parties

(4) The procuring entity shall not be liable to suppliers, contractors or service providers for damage 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 Commission an investigator appointed by the Commission and the Auditor-General request and where donor finds have been used for the procurement, officials shall also have access upon request to procurement files for purpose of audit and review.