

USER GUIDE TO PUBLIC PROCUREMENT OBSERVATION CHECKLIST

PART 1 - ADVERTISEMENT TO BID OPENING

Introductory Notes:

1. This part of the Checklist should be completed within five working days from the date of Bid Opening.
2. Observers should study the Guidance Notes and also pay attention to the information inside the boxes.

1.0 Introduction

1.1 Who is an Observer?

| | |
|-------------------------|---|
| EXPLANATORY NOTE | Box 1: Who is an Observer? |
| | <i>Somebody who acts as a witness to an event, often officially and at the invitation of the participants.</i> [2009 Microsoft Encarta Dictionary] |

1.2 Observer Information

1.2.1 Observer's Name:

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| GUIDANCE NOTE |
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1. Observer shall provide surname followed by first names and any other middle name.
2. It is important that observer ensures that his/her name is correctly spelt out.
3. If the observer is sending a paper copy of the checklist, he/she **MUST COMPLETE THE NAME PORTION IN CAPITAL LETTERS.**

Example:

- a. Surname: *ABDULLAHI*
- b. First Name: *EMEKA*
- c. Middle Name: *KUNLE*

1.2.2 Observer’s Organisation:

GUIDANCE NOTE

1. It is important to write the name of the organisation in full.
2. Organisational names that are in vernacular or in local languages should be clearly spelt out IN CAPITAL LETTERS.

Examples:

- a. *National Association of Medical Workers*
- b. *Leadership and Good Governance Foundation*
- c. *OTU UMU-AGBOGHO ITEM*

| | |
|--------------------------|--|
| EXPLANATORY NOTES | Box 2: Observer’s Organisation |
| | <p>An observer can belong to any of the following organisations:</p> <ol style="list-style-type: none"> i. A private sector professional organization whose expertise is relevant the particular goods or service being procured, or ii. A non-governmental organisation working in transparency, accountability and anti-corruption areas. <i>[Section 19(b)(i) and (ii)]</i> |

1.2.3 Observer’s Address

GUIDANCE NOTE

1. The observer shall provide details of his/her office address in the format shown below:
 - a. Street: *No. 8 Liberty Road*
 - b. Town: *Ikeja*
 - c. State: *Lagos*
 - d. Telephone
 - i. Office phone:
 - ii. Mobile phone:
 - e. Email: *xyz@yahoo.com*

1.3 Information on Ministry, Department or Agency (MDA)

1.3.1 Name and Address of MDA Observed:

1. Name of MDA

GUIDANCE NOTE

1. The Observer shall write the name of the ministry, department and agency which he or she is observing in full.
2. In classifying whether the procuring entity is a ministry, department or an agency, it is important that the observer has studied and understood *Box 3* below - *Understanding MDAs*.

Examples:

- a. *Federal Ministry of Education*
- b. *National Primary Healthcare Development Agency*

| Box 3: Understanding MDAs | |
|---------------------------|---|
| EXPLANATORY NOTES | <p>1. It is important to understand the classification of the institution which is undertaking the procurement that is now the subject of observation.</p> <p>2. What is a Department? A Department is usually a semi-autonomous subset of a Ministry with a head. It is usually not a creature of any law but is designated as such for purely administrative purposes. Example: Under the Federal Ministry of Education, there is a Department known as <i>Federal Inspectorate Services Department</i>. This department is an integral part of the Ministry.</p> <p>3. What is an Agency? An Agency is an autonomous body usually established by Law and supervised by a parent ministry. In this regard, agency also includes Commissions, and Corporations. Example: National Oil Spill Detection and Response Agency in the Federal Ministry of Environment and National Library or Mass Literacy Commission under the Federal Ministry of Education.</p> <p>4. However, it must be pointed out that most often, an Agency is used in a more generic sense to include all manner of autonomous entities within a ministry (eg, Education) or sector (eg, Health) created by law. In this regard, an agency stretches further to include research institutes, Councils, universities, polytechnic, and colleges of education. The following are examples:</p> <ol style="list-style-type: none"> a. University of Lagos - (Ministry of Education) b. National Institute for Oceanography and Marine Research - (Ministry of Agriculture) c. Federal Medical Centre Umuahia - (Ministry of Health) d. Nigerian Defence Academy - (Ministry of Defence) <p>5. A Parastatal on the other hand is used in a wider and loose sense to connote any government establishment which is under the control of a Ministry. This could also include an Agency as described above. For this purpose of this Guide and the Checklist, Observers are allowed to use each one in place of the other.</p> |

2. Address samples

GUIDANCE NOTE

1. The observer shall provide details of the address of the MDA being observed in the format shown below:

| Table 1: Sample of addresses for procuring entity. | |
|--|---|
| Sample 1 | Sample 2 |
| <ol style="list-style-type: none"> i. Building: <i>Room 2a, Block C, Federal Secretariat Complex</i> ii. Location: <i>Central Area</i> iii. Town: <i>Abuja</i> iv. State: <i>FCT</i> v. Telephone: <ol style="list-style-type: none"> i. Office phone: <i>09.....</i> ii. Mobile phone: <i>080.....</i> vi. Email: mda@yahoo.com vii. Website: www.mda.gov.ng | <ol style="list-style-type: none"> a. Building: <i>Room 5, First Floor, Federal Ministry of Agriculture Building</i> b. Street: <i>Yakubu Gowon Street</i> c. Town: <i>Garki, Abuja</i> d. State: <i>FCT</i> e. Telephone: <ol style="list-style-type: none"> i. Office phone: <i>09.....</i> ii. Mobile phone: <i>080.....</i> f. Email: info@agric.gov.ng g. Website: www.agric.gov.ng |

1.3.2 Name and address of supervising Ministry (if any)

GUIDANCE NOTE

1. It is important that the observer make a very good distinction between a department, parastatal and agency on one hand and their supervisory ministry on the other hand. *(See Box 3 above).*
2. Where a department, parastatal or an agency engaged in procurement, it is important to in addition, state the name and address of the Ministry under which such a department, parastatal or an agency operates.
3. An Observer entering his or her report into the portal will see a drop list of Ministries, linked to each Ministry are parastatals, agencies, commissions, institutions and colleges supervised by it(procuring entities).

Example:

The table below shows examples of department, parastatal and agency and their supervisory ministries.

| Department, Parastatal or Agency | Status | Supervising Ministry |
|---|------------|-------------------------------|
| Nigerian Prison Service | Department | Ministry of Interior |
| National Oil Spill Detection and Response Agency (NOSDRA) | Agency | Ministry of Environment |
| National Youth Service Corps (NYSC) | Parastatal | Ministry of Youth Development |

4. Observers should fill the name and address of the supervising ministry using the format already used to fill for the MDA as shown in Table 1.1 above. In the portal the observer will see a drop list from which to tick of the particular procuring entity.
 - a. Name
 - b. Street/Location
 - c. Town
 - d. State
 - e. Telephone
 - i. Office phone
 - ii. Mobile phone
 - f. Email
 - g. Website: www.mda.gov.ng

1.3.3 Name of Accounting Officer:

GUIDANCE NOTE

1. Every procurement process is supervised by an Accounting Officer.
2. It is important that the Observer gets to know who the Accounting Officer for the Ministry, Department or Agency is. This the Observer can do by first ascertaining whether the procuring entity is a ministry, department or agency etc.
3. After reading Box 4 below, the Observer will have a better knowledge of who the Accounting Officer is and for which class of procuring entity.

| Box 4: Who is an Accounting Officer? | | | | | | | | |
|---|---|--|--|--------------------------------|--------------------|------------|---------------------|---|
| EXPLANATORY NOTES | <p>The accounting officer of a procuring entity shall be the person charged with line supervision of the conduct of all procurement processes. [Section 20(1)] The Accounting Officer shall have overall responsibility for the planning, organization, evaluation of tenders, execution of all procurements and shall perform the following functions:</p> <ol style="list-style-type: none"> i. Ensure compliance with the provisions of this Act by his entity and is liable in person for its breach or contravention or those of any regulation made under the Act ii. The Accounting Officer shall have overall responsibility for the planning, organization, evaluation of tenders and execution of all procurements. iii. Constitute the Procurement Planning Committee, Tenders board and Evaluation Committee. | | | | | | | |
| | <table border="1"> <thead> <tr> <th colspan="2">Accounting Officer for Public Procurements</th> </tr> <tr> <th>Type of Government Institution</th> <th>Accounting Officer</th> </tr> </thead> <tbody> <tr> <td>A Ministry</td> <td>Permanent Secretary</td> </tr> <tr> <td>Extra-ministerial departments and corporations. (This may include Commissions).</td> <td>The Director-General or CEO, Vice Chancellor or officer of co-ordinate responsibility. (This may include Executive Secretaries)</td> </tr> </tbody> </table> | Accounting Officer for Public Procurements | | Type of Government Institution | Accounting Officer | A Ministry | Permanent Secretary | Extra-ministerial departments and corporations. (This may include Commissions). |
| Accounting Officer for Public Procurements | | | | | | | | |
| Type of Government Institution | Accounting Officer | | | | | | | |
| A Ministry | Permanent Secretary | | | | | | | |
| Extra-ministerial departments and corporations. (This may include Commissions). | The Director-General or CEO, Vice Chancellor or officer of co-ordinate responsibility. (This may include Executive Secretaries) | | | | | | | |

1.4 Description of Procurement

1.4.1 Title of Procurement:

GUIDANCE NOTE

1. The Observer is required here to write/fill in the official title of the procurement.
2. This is a very important aspect of procurement observation.
3. It is important that the observer is able to identify, understand and verify the title of the procurement of which process he/she is observing.
4. It is also important to note that the titling of procurement could be technical or couched to reflect the language of a particular sector.
5. This information can be gathered from the invitation from the MDA for the observer to attend and observe the proceedings, or the advertisement for the particular procurement or other documents the observer is required to demand of the MDA's during the monitoring exercise.

Example:

- a. *Purchase of Nos 5 Earth Moving Tractors for Groundnut Cultivation.*
- b. *Construction of 10 Kilometre dual carriage way between Benin and Sapele.*
- c. *Expansion of the B Block of the Federal Secretariat in Birnin Kebbi.*
- d. *Design of Monitoring Framework for monitoring and evaluation of the realisation of the Educational Targets of the Vision 20-20-20.*

1.4.2 Nature of procurement: Is the procurement for goods, works or services?

GUIDANCE NOTE

1. Procurement could be for different purposes. In this section, the Observer is to identify in addition to the name of the procurement, the nature of the procurement.
2. In this sense, the nature of procurement could be – Goods, Works or Service. These are explained in *Box 5* below.
3. Observers are to complete this section by ticking the appropriate option.

4. Observers are to tick one option only.

Example:

- A. Goods
- B. Works
- C. Services?

| Box 5: Nature of Procurement | |
|-------------------------------------|---|
| EXPLANATORY NOTES | <ol style="list-style-type: none"> 1. "Goods means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form and electricity as well as services incidental to the supply of the goods." 2. "Works means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement of contract, where the value of those services does not exceed that of the construction itself." 3. "Services mean the rendering by a contractor or supplier of his time and effort and includes any object of procurement other than goods, works or construction." |

1.4.3 Sources of Procurement Funding and their respective Percentages (if any)

GUIDANCE NOTE

1. The purpose of this section is to enable the Observer ascertain what the sources of funding for the procurement are. See *Box 6* below.
2. Another purpose is to ascertain if the percentage of such fund is enough to make the procurement one that should be covered by the Public Procurement Act.
3. Observers are advised to ascertain the above information (on sources of funding and percentage) from officials of the MDA or members of the Procurement Committee present at bid opening, or at any other opportunity for interaction, often it will also be on the advertisement for the procurement and the bidding document in respect of goods and works or request for proposals in respect of services .
4. Observers are advised to mark (☒) the appropriate option that best suits their answers. In the case of question 1.4.3 D above, observers should select the appropriate range into which the percentage of government’s funding of the procurement falls into.

Example:

- a. If the percentage of government’s funding of the procurement is 50%, then the observer will mark option B in which has the range of 45%-55%.
 - b. If government funding in the procurement is 70%, then observer should select and mark option D which has the range 65%-75%.
5. Note that the percentages options should only apply when government is co-funding the procurement with another organization. Therefore, if the sole source of the procurement funding is government appropriations (as is the case in most procurements), observers should select and mark 'Not Applicable' in questions 1.4.3 C and D above.

A. What are the sources of funding for the procurement? (Please mark (☒) the appropriate)

- i. Annual Appropriations (Government budgets)

- ii. bilateral donor funds
 - iii. Grants
 - iv. Loans
- B. Is government co-funding or providing counterpart funding for the procurement with another institution? Yes No
- C. If government is co-funding the procurement, is its contribution/counterpart funding up to 35%? Yes No Not Applicable
- D. If your answer in C above is positive, which of the following category best describes the percentage range of government's contribution to the funding of the procurement?
- A. 35%-45% B. 45%-55% C. 55%-65% D. 65%-75%
 E. 75%-85% F. 85%-100% G. Not Applicable

Box 6: Procurement Funding

EXPLANATORY NOTES

- 1. What are the sources of funding for public procurement?**
 Various sources of funding for public procurements include: annual government appropriations (budgets), bilateral donor funds/grants; loans
- | Sources of funds | Meaning |
|--|---|
| Annual Appropriations (Government budgets) | Annual estimates of income and expenditure made by the government. Annual budgets are by far the greatest sources of funds for public procurement. |
| Bilateral donor funds | These refer to funds received from foreign governments or foreign government institutions, eg, United States Agency for International Development (USAID) |
| Grants | These include all funds given to the government or its agencies by international organisations. |
| Loans | These are funds given to governments by international lending organisations on the condition that they would be repaid. |
- 2. When will the provisions of the *Public Procurement Act* be applicable to public procurements?**
- The provisions of the Public Procurement Act is only applicable to the procurement of goods, works, and services:*
- (a) carried out by the Federal Government of Nigeria and all procurement entities
 (b) carried out by other entities or government where at least 35% of the funds appropriated or proposed to be appropriated for the procurement is derived from the Federation share of Consolidated Revenue Fund. Currently presidential approval exists pursuant to the Public Procurement Act 2007 for the Act to apply to all procurement relating to National defense and security, and so there are presently no exceptions.(BPP) [Section 15(1)]

2.0 Access to Documents

GUIDANCE NOTE

- The purpose of this section is to ascertain if the Observer is equipped with the requisite information and documents that will enable him/her perform legally and effectively, the function of observation of the public procurement process.
- Observers should mark (☒) the option that best suits their answers.

3. This also puts an obligation on the observer to apply for these documents in writing always retaining duplicate copy of such letters of application with acknowledgement of the MDA, where the documents are not made available to him voluntarily.

2.1 Which of the following documents were made available to you by the Ministry, Department or Agency (MDA) at the time of invitation or prior to the date of bid opening?

- A. A written invitation letter to observe. Yes No
- B. Copies of advertisement for pre-qualification or requesting for bid.
Yes No
- C. Procurement Plan. Yes No
- D. Bidding documents/Request for Proposal (RFP) Yes No

2.2 Did the MDA give you up to seven days Notice in its invitation?

Yes No

| Box 7: Documents for Public Procurement Observation | |
|--|---|
| EXPLANATORY NOTES | <ol style="list-style-type: none"> 1. A written invitation letter: This letter which should be addressed to the observer or to his/her organisation will clearly state the following: <ol style="list-style-type: none"> a. Name and address of the MDA b. The title of the Procurement c. The date, time and venue of the bid opening. d. Ideally should have copy of the advertisement attached. 2. Copies of advertisement for pre-qualification or requesting for bid: Observer should be able to have read and understood the advertisement for pre-qualification or the request for bids. 3. Procurement Plan: A procurement plan is usually prepared by the Procurement Planning Committee set up by the Procuring entity at the beginning of every fiscal year. The Plan “sets out the framework in which the procurement will be done.” [Section 21 of the Public Procurement Act; Paragraph 32.1 Procurement Procedure Manual] 4. Bidding documents/Request for Proposal (RFP): <i>See Box 8 below</i> |

Box 8: Relevant Procurement Documents**EXPLANATORY NOTES****A. PROCURMENT DOCUMENTS:**

1. **Invitation for Bid/Tender:** The IFB/IFT (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, the required standards and specifications, it is called bidding documents if in respect of goods and works and request for proposal if for goods, works and services.
2. **Instructions to Bidders:** Provides information to bidders regarding the form, procedure and timing of tendering.
3. **The Tender Data Sheet:** Specifies the parameters of the Instructions to Bidders for the particular procurement including source of funds, eligibility requirements, procedure for clarification, tender 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 tenders, tender submission procedures, closing date, tender validity period, opening and evaluation of tenders, and award of contract procedures, procedure for correction of mathematical discrepancies in tenders, purchaser's right to accept any tender and reject any or all tenders; award criteria; notification of award and procedures for signing of contract.
4. **Evaluation and Qualification Criteria:** Specifies the criteria that the Procuring Entity will use to evaluate the tenders and post-qualify the lowest evaluated Bidder.
5. **The General Conditions of Contract:** Sets out the general provisions of the contract between the Procuring Entity and the bidder awarded the contract.
6. **Particular Conditions of Contract:** Complement the General Conditions of Contract for the particular procurement.
7. **For Goods: Schedule of Supply:** Specifies the quantities, delivery locations and dates for the items required by the purchaser.
8. **For Works: Bill of Quantities or Schedule of Works:** Specifies the quantities, unit rates or payment items for the works required to be carried out.
9. **The Technical Specifications and drawings:** Provide details of the characteristics of the technologies and technical services required (and for goods/equipments specify the common format in which bidders must present their materials, including a technical responsiveness cross - reference form).
10. **Tendering Forms:** Include forms for Tender Submission and Price Schedules, Tender Security, Contract Agreement, Performance Security, Bank Guarantee for Advanced Payment and/or the Manufacturer's Authorization.
11. **Eligibility for Provision of Goods, Works and Services in Public Procurement:** Lists the grounds of disqualification for participating in public procurement.
[Paragraph 85.2 Procurement Procedure Manual for Public Procurement in Nigeria]

[It is important for the observer to note that there are different bidding documents issued by the BPP for use in different category of procurement as listed below, the full copies can be found in the bundle of standard documents issued by the BPP and available for members of the public at their office, soft can also be found at www.procurementmonitor.org.]

B. STANDARD BIDDING DOCUMENTS

- i. Standard Tender Document for the Procurement of Small Works
- ii. Standard Tender Document for the Procurement of Works
- iii. Standard Tender Document for the Procurement of Goods
- iv. Sample Document for National Shopping
- v. Standard Request for Proposals for the Selection of Consulting Firms (Small Assignments - Time Based)
- vi. Standard Request for Proposals for the Selection of Consulting Firms (Complex Time Based)
- vii. Standard Request for Proposals for the Selection of Consulting Firms (Small Assignments - Lump Sum)
- viii. Standard Request for Proposals for the Selection of Consulting Firms (Complex Lump Sum)
- ix. Standard Request for Proposals for the Selection of Individual Consultants
[Paragraph 85.3 Procurement Procedure Manual for Public Procurement in Nigeria]

3.0 Contents of Procurement Plan

3.1 Which of the following information or documents were contained in the Procurement Plan made available?

GUIDANCE NOTE

1. After studying *Table 3.1* below, Observers should mark (☒) the option that best suits their observation.
2. Observers are also advised to study *Table 3.1* below.

- | | | |
|---|----------------------------------|---------------------------------|
| 1. Needs assessment and evaluation? | [A] Yes <input type="checkbox"/> | [B] No <input type="checkbox"/> |
| 2. Identity of the goods, works or services required? | [A] Yes <input type="checkbox"/> | [B] No <input type="checkbox"/> |
| 3. Aggregation of needs where possible within the procuring entity or between procuring entities? | [A] Yes <input type="checkbox"/> | [B] No <input type="checkbox"/> |
| 4. Procurement Methodology? | [A] Yes <input type="checkbox"/> | [B] No <input type="checkbox"/> |

| Table 3: Description of Contents of a Procurement Plan | | |
|--|--|--|
| | Contents | Description |
| 1. | Needs assessment and evaluation | Refers to some form of organisational appraisal aimed at understanding the felt needs of the procuring entity. |
| 2. | Identity of the goods, works or services required | The Plan must be able to state in clear specifications, the goods, works or services required by the procuring entity to satisfy the needs. |
| 3. | Market and statistical surveys and analysis of the cost implications of the proposed procurement | Surveys conducted to ascertain the market availability (in quantity, quality and price) of the goods, works or services required and the cost of procuring same on the procuring entity. |
| 4. | Aggregation of needs where possible within the procuring entity or between procuring entities | The procurement plan should show, where applicable that an aggregation of the various needs within a procuring entity or across procuring entities is done in such a way as to reduce costs, duplicity of procurement and reduce costs |
| 5. | Procurement Methodology | This refers to the means or method through which a particular procurement would be implemented. See <i>Box 9</i> below for more descriptions and references. |

Section 18 of the Public Procurement Act

4.0 Procurement Methodology

GUIDANCE NOTE

1. This section is aimed at ascertaining the method which the procuring entity intends to use or is using to secure the procurement under observation.
2. Observer should study *Box 9* below before responding to the question in 4.1 below.

4.1 What procurement methodology was recommended for this particular procurement?

- | | | |
|-----------------------------|----------------------------------|---------------------------------|
| 1. Open Competitive Bidding | [A] Yes <input type="checkbox"/> | [B] No <input type="checkbox"/> |
| 2. Two-stage Tendering | [A] Yes <input type="checkbox"/> | [B] No <input type="checkbox"/> |
| 3. Restricted Tendering | [A] Yes <input type="checkbox"/> | [B] No <input type="checkbox"/> |
| 4. Direct Procurement | [A] Yes <input type="checkbox"/> | [B] No <input type="checkbox"/> |
| 5. Emergency Procurement | [A] Yes <input type="checkbox"/> | [B] No <input type="checkbox"/> |
| 6. Request for Quotations | [A] Yes <input type="checkbox"/> | [B] No <input type="checkbox"/> |

4.2 From the Procurement Plan, what were the reasons for choosing other methodologies instead of Open Competitive Bidding?

1. Expediency [A] Yes [B] No
2. Cost effectiveness [A] Yes [B] No
3. Emergency [A] Yes [B] No
4. Nature of procurement [A] Yes [B] No
5. Others [Please limit to 5 words]

Box 9: Description of Procurement Methodologies

| EXPLANATORY NOTES | Procurement Methodology | Description |
|-------------------|--------------------------|--|
| | Open Competitive Bidding | "...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 and works needed." [Section 24(2) PPA] |
| | Two-stage Tendering | This method is used in the following circumstances: (a) Where the formulation of 'detailed specifications' for the good or works is not possible or where the characteristics of the services requires multi-faceted means to gain satisfaction. (b) Where the character of the goods or works are subject to rapid technological advances (c) where the procuring entity seeks to enter into a contract for research, experiment, study or development costs (d) Production of goods in sufficient quantities. (e) Where the procurement is concerned with national security (f) Where initial tender process was not successful and a new process would produce similar result. [Section 39 (2)-(6); Paragraphs 72.1-72.4 Procurement Procedure Manual for Public Procurement in Nigeria] |
| | Restricted Tendering | A procuring entity may (subject to the approval of the Bureau) for reason of economy and efficiency engage in procurement by means of restricted tendering if: (a) Goods, works and services are available from only a limited number of qualified suppliers or contractors (b) Time and cost for evaluating tenders disproportionate to the value of the goods, works or services to be procured. [Section 40 PPA] |
| | Direct Procurement | This is used in the following circumstances: (a) If a particular supplier has an exclusive right or where an alternative does not exist. (b) Extreme urgency (which is not fault of the procuring agency) (c) Situation of urgency arising as a result of catastrophe and it will be impracticable to use any methods of procurement. (d) Procuring entity may decide to procure goods, equipment, technology or services procured from a particular supplier or contractor because of the following: i. Need to maintain standards and a particular size ii. Need to maintain compatibility with existing goods iii. Maintaining price reasonability (e) Procurement involves research, experiment, study or development (f) Procurement involving national security [Section 42 PPA, Paragraphs 76.1-2 Procurement Procedure Manual] |
| | Emergency Procurement | Emergency procedures can be used by a Procuring entity to engage in direct procurement of goods, works and services in the following circumstances: (a) National/public emergency involving disaster, war, or Act of God (b) Deterioration of the condition and quality of public goods (c) Likely delay of a public project due to the absence of an item of minor value. [Section 43 PPA] |
| | Request for Quotations | 1. This is usually deployed where the value of the goods or works to be procured does not exceed a lower sum that shall be set in the procurement regulation. 2. Generally quotations shall be obtained from at least 3 unrelated contractors or suppliers. 3. Procuring entity shall inform the contractor or supplier of factors that should be included in the price 4. Each bidder shall give only one quotation and shall not be allowed to change or vary the quotation or enter into any negotiation with the procuring entity. 5. The successful contractor or supplier shall be the one that gives the lowest priced responsive quotation. 6. Bureau's approval may be waived if total value is less than the threshold set. [Section 41 PPA] |

5.0 Advertisement

GUIDANCE NOTE

1. This section seeks to appraise the compliance of the procuring entity with the advertisement requirements of the Public Procurement Act.
2. The Observer can get the information requested in this section from the newspapers or by requesting for it in writing from the MDA or the Procurement Planning Committee present at the bid opening or representatives of the bidders or by a search on www.procurementmonitors.org.
3. However, Observers should first study *Box 10* below before responding to the questions.
4. In question 5.1.1, the observer is expected to mark (☒) the best that suits his/her answer.
5. If the response to question 5.1.1 is in the negative (ie No ☒), then response to questions 5.1.2 (1)-(6) and questions 5.2 and 5.3 **will not be possible. Observers are advised not to respond to these questions in this event.**
6. Observers are advised to mark (☒) the *Yes* or *No* option before supplying the details required in each question.
7. Observers who are responding to questions 5.1.2 (2),(3) and (4) are to provide the requested information in the following order:
 - a. Name: *Nigerian Times Newspaper*
 - b. Date of Issue: *14 January 2010* [Day/Month/Year]
 - c. Page: *20*
8. For question 5.1.2 (5) and (6), Observers are advised to write down the information requested in not more than 5 words.

Example:

- a. www.ministryofhealth.gov.ng
- b. Pamphlets
- c. Federal Procurement Journal

5.1 Type of Advertisement

5.1.1 Did the procuring entity advertise? Yes No

5.1.2 If the answer is in the affirmative, where was the advertisement placed?

1. Notice Board Yes No
2. National Newspapers Yes No
 - a. Name
 - b. Date of Issue: [Day/Month/Year]
 - c. Page
3. Procurement Journal Yes No
 - a. Name
 - b. Date of Issue: [Day/Month/Year]
 - c. Page
4. Relevant internationally recognized publication Yes No
 - a. Name
 - b. Date of Issue: [Day/Month/Year]
 - c. Page

5. Official websites (Specify) Yes No

6. Others (Specify) Yes No

| Box 10: Forms of Medium for Advertisement of Public Procurement | |
|---|---|
| Medium | Description of Advert |
| EXPLANATORY NOTES | Notice Board. 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: <ul style="list-style-type: none"> • Requests for Proposals (RFPs) - RFPs must also be advertised in at least two National newspapers of general circulation - <i>and the Federal Tender's Journal.</i> • Invitations for Bids (IFB), • Single source determinations, and • Emergency determinations. [Paragraphs 7.1 Procurement Procedure Manual] |
| | Newspapers, Procurement Journals and other Publications Every invitation to an open competitive bid shall: <ul style="list-style-type: none"> (i) in the case of goods and works under International Competitive Bidding, the invitation for bids shall be advertised in at least two national newspapers and one relevant internationally recognised publication, any official websites of the procuring entity and the Bureau as well as the procurement journal 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 web sites of the procuring entity, at least two national newspapers, and in the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works. [Section 25(2) PPA] |
| | Websites If the procuring entity maintains an internet web site, that web site should contain a page on which the above information is also posted. [Paragraphs 7.2 Procurement Procedure Manual] |

5.1.3 What was the advert for?

GUIDANCE NOTE

1. This section seeks to get information from the Observer on the stage of procurement which was advertised.
2. Observers are advised to study *Box 11* below before responding the questions.
3. Observers should respond to this question by marking (☒) the appropriate procurement method which was advertised.

Example:

If the method advertised was an Expression of Interest, the observer should mark as follows:

Expression of interest Yes No

- | | | | |
|--------------------------------|------------------------------|-----------------------------|--|
| A. Pre-qualification | Yes <input type="checkbox"/> | No <input type="checkbox"/> | |
| B. Expression of interest | Yes <input type="checkbox"/> | No <input type="checkbox"/> | |
| C. Invitation to tender | Yes <input type="checkbox"/> | No <input type="checkbox"/> | |
| D. Request for proposals (RFP) | Yes <input type="checkbox"/> | No <input type="checkbox"/> | |

| Box 11: Description of Stages of Procurement. | | |
|---|--|--|
| EXPLANATORY NOTES | Stages of Procurement | Description |
| | Pre-qualification | Pre-qualification is used where the procuring entity has set a minimum qualification for persons to submit applications to participate in a bid process. The procuring entity will provide a set of prequalification documents to each supplier, contractor or service providers which requests specific information of them. It is common for large works, civil works, turnkey plants, Build Operate & Transfer, some special goods and complex information technology systems. It is used to determine those qualified to provide the goods or works, and only those pre-qualified will receive the bidding documents. However, prequalification is not generally needed for vehicles, PC supply and ordinary goods. It must contain clear and precise criteria for selecting qualified contractors who will be issued bidding documents [Section 23 PPA; Paragraph 41 of the Public Procurement Manual] |
| | Expression of interest (EoI) | This is usually deployed when a procuring entity with precise and ascertainable needs seeks to engage in procurement of a service. It can solicit for EoI (or applications to pre-qualify to provide the services) by publishing in at least 2 national dailies and the procurement journal. EoIs are used to generate a short list of able consultants and contractors. It must contain clear and precise criteria for selecting consultants, and only selected consultants are issued the request for proposals. [Section 44 PPA] |
| | Invitation to tender/Bidding Documents | It is used in respect of works and goods, and in all categories of procurement of works and for implementing different procurement methods. Eg. It could be used (Open Competitive Bidding, and or) restrictive tendering(subject to the approval of the Bureau) if: (a) Goods, works and services are available from only a limited number of qualified suppliers or contractors (b) Time and cost for evaluating tenders disproportionate to the value of the goods, works or services to be procured. [Section 40 PPA] It may also be used for direct procurement or for emergency procurements. |
| | Request for proposals (RFP) | A procuring entity may request for proposals, where it intends to procure services of a determined nature and specification, and has shortlisted through an EOI process consultants qualified to provide the service. [Section 45PPA] |

5.2 Contents of Advertisement

GUIDANCE NOTE

1. The Public Procurement Act provides for various procedures for advertising procurements as well the contents of such advertisements.
2. This section deals with the compliance by the procuring entities of the different requirements relating to the contents of the advertisements for procurements.
3. Observers are advised to study *Box 12* below before responding the questions.
4. Observers should mark (☒) in the option that best suits their answer.
5. Observers should note that question 5.2.4 (H) is optional and depends on the availability of such information that will enable the Observer respond to the question.

5.2.1 Did the advert above contain clear criteria for short-listing/pre-qualification and selection of winners? Yes No Contains but not clear

5.2.2 What length of time did the advertisement give for the submission of bids?
 1 Week 2 Weeks 3 Weeks 4 Weeks 5 Weeks 6Weeks
 Others (Please specify)

5.2.3 In case of bidding documents or request for proposal, did the advert contain the following necessary information for collection and submission of bids?

- A. Time in the day Yes No
- B. Place/address Yes No
- C. Room number (If any) Yes No
- D. Cost Yes No

5.2.4 In the case of Advertisement for Bids/Proposals, did the advert contain the following:

- A. Detailed and clear technical specification of goods, works and service to be provided? Yes No
- B. Brand name descriptions of the goods, works or services? Yes No
- C. If yes, what reasons were given for the inclusion of brand names in the Procurement Plan?

- D. No description of goods, works and services at all. Yes No
- E. Criteria for selection of winning bidder or proposal Yes No
- F. Unclear criteria for selection of winning bidder or proposal
Yes No
- G. No criteria for selection at all Yes No
- H. If criteria were provided, which of the following three were provided:
 - i. Least cost responsive bid/proposal Yes No
 - ii. Proposal/bid with the best combined evaluation Yes No
 - iii. The proposal within the budget that has the highest technical ranking.
Yes No

5.2.5 Which of the following bidding categories did the procurement fall under?

- A. National Competitive Bidding Yes No
- B. International Competitive Bidding Yes No

5.2.6 If International Competitive Bidding, were the criteria for the application of margin of preference set out in the bidding document? Yes No

5.3 Statutory requirements

5.3.1 Which of the following statutory requirements were requested for in the advert or bidding document or request for proposal?

- A. Company registration (where applicable) Yes No
- B. Evidence of tax clearance for three years preceding the particular procurement.
Yes No
- C. Evidence of Pension contribution for organization having more than five employees. Yes No

- D. Affidavit verifying facts in the bids and indicating whether any member of the procuring entity or BPP has any pecuniary interests in the company or the Bid.
 Yes No
- E. A statement declaring any subsidiary or dominating relationship with any other bidder. Yes No

Box 12: Contents of Advertisement

| | | |
|-------------------|--|--|
| EXPLANATORY NOTES | Procurement Methods | Contents and Procedures for Advertisement |
| | Open Competitive Bid | <p>Every advert of an invitation to an Open Competitive Bid shall include:</p> <ul style="list-style-type: none"> • The name and address of the procuring entity ; • The nature, quantity, specifications, category and place of delivery of goods to be procured or the nature, category, and location of the goods,works or service 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 Pre-qualification documents, Expression of interest or the bids ; • The place, date and time for the opening of the bids/proposal. Etc <p>[Section 25 PPA; Paragraph 424 of the Public Procurement Manual]</p> |
| | General Procurement Notice | <p>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 :</p> <ul style="list-style-type: none"> • 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 US\$ – – equivalent or more ; and • If known, the schedule dates for availability of the tendering documents or, as appropriate, the prequalification documents. <p>[Paragraph 37.1 of the Public Procurement Manual]</p> |
| | Specific Procurement Notice (SPN) | <p>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 Tenders. It is recommended in practice that the invitation also be incorporated in the front of the prequalification or tender documents as appropriate for reference purposes. SPNs should provide adequate notification of specific contract opportunities or Invitation for Tenders (IFT) by a procuring entity regardless of what procurement method is used.</p> <p>38.2 The SPN should be issued in the following way :</p> <ul style="list-style-type: none"> • as an advertisement in at least two national dailies and the Federal tenders Journal; • by an announcement in the government official gazette <p>If there has been prequalification, the procuring entity sends the Invitation for Tender (IFT) and tendering documents only to the pre-qualified potential bidders, with notification of their successful prequalification. No additional notices or any advertising for tendering are required or should be issued under these circumstances.</p> <p>38.3 The SPN contains information concerning :</p> <ul style="list-style-type: none"> • The name of the procuring entity ; • The name or nature of the contract ; • Items to be procured ; • Contact information for obtaining tendering documents ; • Cost of the tendering documents ; • Place and deadline for tender delivery ; • Required tender security amount and form ; • The place, date and time of tender 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. <p>[Paragraph 38 of the Public Procurement Manual]</p> |

6.0 Qualification of Bidders

GUIDANCE NOTE

1. This section deals with the various qualifications of the bidders and how the Observer can assess the compliance by both the procuring entity and the bidder of these provisions.
2. Observers are advised to study *Box 13* below before responding the questions.
3. This section is divided into four sets, each having either two or three questions. Observers are expected to answer each question by marking (☒) the appropriate answer.
4. For questions 6.1(A3), 6.2(B3) and 6.4(D)(iv), observers are expected to write a summary of the expected information. Observers should limit themselves to 50 words.
5. Question 6.1(A3) is optional and response to it though encouraged is dependent on availability of information.

6.1 Professional qualifications

- (A1). Did this particular procurement require specific professional qualification of key personnel? Yes No
- (A2). If so, was it clearly prescribed? Yes No
- (A3). Which professional qualification of key personnel was prescribed?

6.2 Technical qualifications and experience

- (B1). Did this particular procurement require Technical qualification or experience? Yes No
- (B2). Which evidence of technical qualification or experience was required?
Please specify

- (B3). If so, was it clearly prescribed? Yes No

6.3 Availability of infrastructure and equipments

- (C1). Did this particular procurement require evidence of (ownership/lease) equipment and infrastructure? Yes No
- (C2). If so, were they clearly prescribed? Yes No

6.4 Financial qualifications

- (D1). Did this particular procurement require financial qualification?
Yes No
- (D2). If so, what evidence of financial qualification did it prescribe?
- i. Statement of Account Yes No

- ii. Turn Over Yes No
- iii. Audited Account Yes No
- iv. Others Yes No

Please specify.....

Box 13: Qualifications of Bidders

EXPLANATORY NOTES

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 ;
 - iv. shall have adequate personnel to perform the obligations of the procurement contracts.
- (b) Possess the legal capacity to enter into the procurement contract;
- (c) 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;
- (d) Have fulfilled all its obligations to pay taxes, pensions and social security contributions
- (e) 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 off acts relating to any matter;
- (f) Accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity or Bureau 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.

[Section 16 (6) PPA]

7.0 Bid Submission

GUIDANCE NOTE

1. This section is aimed at assessing the compliance of the procuring entity with the various provision and rules in respect to the submission of bids.
2. Observers are advised to study *Box 14* below before responding the questions.
3. Observers are expected to answer each question by marking (☒) the appropriate answer.
4. Observers whose answers were negative (No ☒) in question 7.6 below should supply details (justification) for their response in 7.7. This should be written and not exceeding 50 words.
5. In response to question 7.8 below, observers are expected to supply sufficient and clear information on the deadline for the submission of the bids using the following format:

Example:

- a. Day: Wednesday, 10
- b. Month: March
- c. Year: 2010

7.1 Was there a Bid register at the MDA for Bid submission? Yes No

7.2 Were all bidders/service providers submitting bids registered chronologically?
Yes No

7.3 Was each bidder/service provider issued a receipt of bid submission containing the following:

- A. Description of the bid Yes No
- B. Name of the bidder Yes No
- C. Name of MDA Yes No
- D. Date of submission of bids Yes No
- E. Time of submission of bid? Yes No

7.4 Did the MDA permit your sighting of the following:

- A. Bid submission register Yes No
- B. Duplicate copies of bid submission receipts Yes No

7.5 Did the MDA give you copies of the following:

- A. Bid submission register Yes No
- B. Duplicate copies of bid submission receipts Yes No
- C. Minutes of Bid opening Yes No

7.6 In your opinion, is there evidence that the bid submissions were done at the time stipulated in the advertisement? Yes No

7.7 If your answer is No, what in your view accounts for this?

7.8 What was the deadline for bid submission?

- a. Day/date:
- b. Time of the Day:

| Box 14: Submission of Bids and Proposals | |
|--|---|
| EXPLANATORY NOTES | Provisions under the PPA |
| | <p>Submission of Bids</p> <p>(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.</p> <p>(2) All submitted bids shall be deposited in a secured tamper-proof bid-box.</p> <p>(3) All bids submitted shall be in English language.</p> <p>(4) The procuring entity shall issue a receipt showing the date and time the bid was delivered.</p> <p>(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.</p> <p>(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 Act.</p> <p>[Section 27 PPA]</p> |
| | <p>Submission of Proposals</p> <p>(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.</p> <p>(2) The technical and financial proposals shall be submitted simultaneously but in separate envelopes.</p> <p>(3) A proposal received after the deadline for submission of proposals shall be returned to the sender unopened.</p> <p>(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.</p> <p>(5) The technical evaluation committee shall not have access to or insights to the financial proposals until the evaluations including any Tender Boards review are concluded.</p> <p>[Section 48 PPA]</p> |

8.0 Bid Opening

GUIDANCE NOTE

1. This section seeks to assess compliance with the various provisions and procedures relating to Bid Opening.
2. Observers are advised to study *Box 15* below and *Box 14* above before responding the questions.
3. To respond to questions 8.3 and 8.4 below, Observers should refer back to *Box 14*.
4. Observers are expected to answer each question by marking (☒) the appropriate answer.
5. Answer in 9.2d should not be more than 50 words

8.1 Bid opening information

8.1.1 Did the procuring entity supply you with the information regarding bid opening?

(A1) Date of bid opening Yes No

(A2) If yes, please specify in not more than 50 words

(B1) Time and place of bid opening Yes No

(B2) If yes, please specify in not more than 50 words

(C1) Venue/place of bid opening Yes No

(C2) If yes, please specify in not more than 50 words

8.2 Was the following present during the bid opening?

A. CSO Observer Yes No

B. Representative of relevant professional body Yes No

C. The bidders or their representatives Yes No

D. Other stakeholders (*Please specify below*) Yes No

8.3 Tamper-proof box

8.3.1 Did the MDA use a tamper proof box for the purpose of collecting the bids?

Yes No

8.3.2 Was the tamper proof box opened and the bid produced and opened from such tamper proof box in the presence of participants? Yes No

8.4 Opening of the Financial Proposals

8.4.1 Were the Financial Proposals opened at the same time with the Technical Proposals?

Yes No

8.4.2 Briefly explain how this was done in not more than 50 words

8.5 Bid Opening Formalities and Process Issues:

8.5.1 In the process of bid opening, did the following occur?

A. Permitting attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with?

Yes No

B. Causing all the bids to be opened in public, in the presence of the bidders and their representatives and any interested member of the public?

Yes No

C. Ensuring that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof?

Yes No

D. Counter-signing of each others bid by bidders present. Yes No

E. Ensuring that a register is taken of the names and addresses of all those present at the bid opening and the organizations they represent?

Yes No

- F. Calling over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and recording in the minutes of the bid opening? Yes No

- 8.6 Is there evidence that bids were accepted after the closing date for bid submission? Yes No

Box 15: Provisions Relating to Opening of Bids

EXPLANATORY NOTES

All bids shall be submitted before or by 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 tenders board ;
- (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 ensure that these details are recorded by the Secretary of the Tenders Board or his delegate in the minutes of the bid opening.

[Section 30 PPA; Paragraph 46.1 of the Public Procurement Manual]

Subject to regulations as may from time to time be made by the Bureau, under direction of Council, a procuring entity shall, in implementing its procurement plans:

- (b) Invite two credible persons as observers in every procurement process one person each representing a recognized
 - i. Private sector professional organization whose expertise is relevant the particular goods or service being procured, and
 - ii. Non-governmental organisation working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organizations or associations

[Section 19(b) PPA]

PART 2 - EXAMINATION OF BIDS TO CONTRACT AWARD

1.0 Examination of Bids

GUIDANCE NOTE

1. This section seeks to assess compliance with the various provisions and procedures relating to Examination of Bids.
2. Observers are advised to study *Box 13 above and 16 below* before responding to the questions.
3. Observers are expected to answer each question by marking (☒) the appropriate answer.
4. For questions 1.1(B); 1.2.2; 1.2.4; and 1.2.6, Observers are expected to fill in their answers by writing down their observations. Each response/information supplied should be limited to 100 words.
5. Question 11.2 is optional and response to it though encouraged is dependent on availability of information.

1.1 Eligibility requirements

A. Did the first three ranking bids evaluated meet the minimum eligibility requirements stipulated in the bidding documents? Yes No

B. If your answer is no, please give details

C. Were bids duly signed? Yes No

1.2 Changes in bids

1.2.1 During the process of bid evaluation, were there changes in quoted prices?

Yes No

1.2.2 If yes, explain why and how.

1.2.3 Did the procuring entity give notice of the correction of arithmetic errors to the supplier or contractor that submitted the tender? Yes No

1.2.4 If yes, how soon after the correction was the notice given? Explain

1.2.5 Which of the following other changes were made?

A. Sub-contracting Yes No

B. Time schedule if time is of essence Yes No

C. Alternative design Yes No

D. Price adjustment Yes No

1.2.6 What other changes if any were made? (Please specify)

(2) If yes, was it given to you? Yes No

E. (1) Contract document Yes No

(2) If yes, was it given to you? Yes No

F. (1) Any summary of details of contract published by the MDA or BPP

Yes No

(2) If yes, was it given to you? Yes No

2.2 In case your request for any of the above documents was turned down, what were the reasons given? Please give details below Not more than 50 words

| Box 17: Access to Procurement Documents and Information | | |
|--|--|---|
| Document/ Information | Description and Relevant Provisions | |
| EXPLANATORY NOTES | | <p>(12) Every procuring 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.</p> <p>(13) Copies of all procurement records shall be transmitted to the Bureau not later than 3 months after the end of the financial year and shall show:</p> <ul style="list-style-type: none"> (a) information identifying the procuring entity and the contractors (b) the date of the contract award (c) the value of the contract (d) the detailed records of the procurement proceedings, or such other information as Bureau may require <p>(14) any person shall on request be entitled to any portions of procurement proceedings after selection of a winner or termination of a procurement proceeding without it resulting in a procurement proceeding. [Section 38] PPA]</p> |
| | | <ol style="list-style-type: none"> 1. Public notices of tendering opportunities 2. Bid documents, Request For Proposal and addenda 3. Tender/Bid opening information 4. Tender/Bid evaluation reports 5. Formal complaints, appeals by bidders and outcomes/ decisions 6. Signed contract documents and addenda and amendments 7. Records of claims and dispute resolutions 8. Record of time taken to complete key steps in the process 9. Project Monitoring Reports and payment disbursements data in relation to payments [Paragraph 26 of the Public Procurement Manual] |
| | Bid Evaluation Report. | <p>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:</p> <ul style="list-style-type: none"> (a) Key dates and steps in bidding process (copy of the invitation to bid as advertised attached) (b) Bid opening information (copy of the bid opening minutes should be attached) (c) 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) (d) For all bidders: Table showing bidder's compliance with key provisions of the technical specifications (e.g. capacity, operating characteristics, etc.) (e) For all substantial responsive bids: Table showing arithmetical errors, discounts and currency conversion; (f) For all substantial responsive bids: Table showing additions and adjustments (indicating methods used in computing the adjustments) (g) For all substantial responsive bids: Table showing currency conversion (h) For all substantial responsive bids: Table showing domestic preference (i) For all substantial responsive bids: Table showing various steps from bid price announced to evaluated bid price) (j) Record of clarifications made from all bidders (k) For lowest evaluated bidder: Post qualification verification (l) Names of bidder's rejected and reasons for rejection (m) The proposed contract award recommendation [Paragraph 54.1 of the Public Procurement Manual] |
| | Maintenance of Records | <ol style="list-style-type: none"> 1. Every procuring entity shall maintain a record of the comprehensive procurement proceedings.(file and ectronic copies) 2. The portion of the record referred to in this Section shall on request, be made available to: <ul style="list-style-type: none"> (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 prequalification, after a tender, proposal, offer or 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 <ul style="list-style-type: none"> (a) be contrary to law; (b) impede law enforcement; or (c) prejudice legitimate commercial interests of the parties. 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 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. [Section 38 PPA] |

3.0 Post Bidding Information

GUIDANCE NOTE

1. This section seeks to access and record information relating to qualifications, disqualification and organisational details of the bid winner.
2. Observers are advised to study *Box 13 above* and *Boxes 18 and 19 below* before responding the questions.
3. Observers are expected to answer each question by marking (☒) the appropriate answer.
4. For questions 3.1.1 A and B, Observers are expected to supply information regarding to the personal and corporate details of the Bid Winners. Observers should follow the format in *Table 4 below* in filling information for this question.

| Table 4: Sample for name and addresses of Bid winners | |
|--|--|
| Sample 1 - Natural Person | Sample 2 - Company/Firm |
| i. Name: <i>John Abubakar</i> | a. Name: <i>DMK Enterprises Limited</i> |
| ii. Building: <i>Flat 3, Block D,</i> | b. Building: <i>DMK Plaza,</i> |
| iii. Street: <i>2 Peace Street, Shagari Estate</i> | c. Street: <i>Plot 442, Nnamdi Azikiwe Way</i> |
| iv. Town: <i>Ikeja</i> | d. Town: <i>Abuja</i> |
| v. State: <i>Lagos</i> | e. State: <i>FCT</i> |
| vi. Telephone: | f. Telephone: |
| i. Office phone: <i>09.....</i> | i. Office phone: <i>09.....</i> |
| ii. Mobile phone: <i>080.....</i> | ii. Mobile phone: <i>080.....</i> |
| vii. Email: jabubakar@yahoo.com | g. Email: info@dmk.com |
| viii. Website: [Optional] | h. Website: www.dmk.com |

5. For questions 3.1.1 D and E, Observers’ attentions are drawn to Table 5 below for the distinction between a Natural Person and a Legal Person (Company/Firm).
6. For questions 3.3.2 (A2), Observers are expected to fill in their answers by writing down their observations. Each response/information supplied should be limited to 100 words.

3.1 Information on the Winner

3.1.1 Corporate/Personal particulars

- A. Full names:
- B. Addresses:
- C. Was the winner’s name found in the register of bid submission?
 Yes No
- D. Nature of bid winner: Natural Person Legal Person (Company)
- E. If a Legal Person (Company), is there evidence of registration with the Corporate Affairs Commission? Yes No

| Table 5: Difference between a Natural Person and a Legal Person (Company/Firm) | |
|--|---|
| Natural Person | Legal Person (Company) |
| A human being (Eg; an individual consultant) | A registered company, firm, corporation |

| | |
|--------------------------|---|
| EXPLANATORY NOTES | Box 18: Understanding a Natural Person and a Legal Person |
| | <p>A supplier, contractor or service provider may be a natural person, a legal person or a combination of the two. Suppliers, contractors or service providers acting jointly are jointly and severally liable for all obligations and or responsibility arising from this Act and the non-performance or improper performance of any contract awarded pursuant to this Act. [Section 16(5)]</p> |

3.2 Qualifications of Bid winner:

3.2.1 Is there evidence that Bid winner met with the following requirements?

- A. Professional qualification/personnel required to executive the contract?
Yes No
- B. Financial capacity to execute the procurement? Yes No
- C. Equipment and infrastructure to execute the procurement? Yes No
- D. Technical qualification/experience Yes No

3.3 Disqualification of Bid winner

3.3.1 Is the winner in the BPP list of barred contractors? Yes No

3.3.2 Is there evidence that Bid winner is disqualified under the following grounds?

- A. (1). Being in receivership or subject of any form of insolvency/bankruptcy proceedings? Yes No

(2) If the answer is in the affirmative, please give details

- B. Failure to submit valid evidence of payment of taxes. Yes No
- C. Failure to submit valid evidence of payment of Pension contributions
Yes No
- D. Evidence of conviction of a director, owner or manager in any country for any criminal offence relating to procurement proceedings, fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter or crimes committed for financial gain? Yes No
- E. If a private company, is it controlled by persons who are subject to any bankruptcy proceedings, who have been declared bankrupt or made compromises with their creditors within the last two calendar years prior to the initiation of procurement proceedings? Yes No
- F. Failure to submit a statement regarding dominating or subsidiary relationships with other parties in the same procurement proceedings.
Yes No

- G. Failure to submit an affidavit disclosing pecuniary interest or lack of it and confirming the contents of the bid as true and correct? Yes No
- H. Failure to submit bid security where required. Yes No

| Box 19: Grounds for Disqualification of Bidders | |
|--|--|
| EXPLANATORY NOTES | <p>Disqualification of Bidders</p> <p>Whenever it is established by a procuring entity or the Bureau that any or a combination of the situations set out exist, a bidder may have its bid or tender excluded from any particular procurement proceeding if:</p> <ul style="list-style-type: none"> (a) there is verifiable evidence that any supplier, contractor or consultant has given or promised a gift of money or any tangible item, or has promised, offered or given employment or any other benefit, item or a service that can be quantified in monetary terms to a current or former employee of a procuring entity or the Bureau, 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 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. [Section 16(8) PPA] |
| | <p>Submission of Bid Security</p> <ul style="list-style-type: none"> (1) Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau all procurements valued in excess of the sums prescribed by the Bureau shall require a bid security in an amount not more than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the procuring entity. (2) The Bureau 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 contractors submitting tenders to provide a bid [Section 26 PPA] |

4.0 Evaluation of Bids

GUIDANCE NOTE

1. This section seeks to access and record information relating to the evaluation of bids.
2. Observers are advised to study *Box 20* below before responding the questions.
3. Observers are expected to answer each question by marking (☒) the appropriate answer.
4. For question 4.3.2, Observers are expected to fill in their answers by writing down their observations. The response/information supplied should be limited to 100 words.

4.1 In evaluation of bids, did the procuring entity use other criteria apart from the ones stipulated in the bid solicitation documents? Yes No

4.2 In the evaluation of the Bids, did the procuring entity conduct the following checks?

A. Check out omissions and quantify same?

Yes No Not Applicable

B. Apply discounts, as applicable? Yes No Not Applicable

C. Clarify with bidders of questionable minor deviations?

Yes No Not Applicable

- D. Quantify in monetary terms such questionable deviations?
 Yes No Not Applicable
- E. Convert foreign currency to Nigerian currency?
 Yes No Not Applicable
- F. Calculate and tabulate bid amount with domestic preference where applicable?
 Yes No Not Applicable
- G. Determine the lowest calculated prices in order of rank?
 Yes No Not Applicable
- H. Conduct post qualification of bidders where applicable?
 Yes No Not Applicable

Box 20: Process for the evaluation of bids

EXPLANATORY NOTES

1. The objective of Bid Evaluation is to determine and select the lowest evaluated responsive bid.
2. For the purpose of evaluation and comparison of bids, no other criteria shall be used except as stipulated in the solicitation documents.
3. Process for the evaluation of bids:
 - (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 lowest calculated prices in order of rank
 - (i) Post-qualification of bidders, where applicable
 - (j) Listing of rejection of bids where applicable
 - (k) Decision of rejection of all bids where justifiable
 - (l) Recommendation for award
 - (m) Writing up of the bid evaluation report.
4. Every other factor that shall be considered in the process of evaluation of bids shall be stated in the solicitation documents
5. When bid prices are denominated in other currencies, they shall be converted to naira based on the rate at date specified in the solicitation documents.
6. In case of pre-qualification, verification of qualification shall be carried out and a bidder who no longer has the resources or qualification may be denied award.
7. Information relating to examination and evaluation will not be communicated to any person until the bid winner has been notified.
 [Section 32 PPA]

4.3 Exclusion of bids

4.3.1 Was there an exclusion of any of the bids? Yes No

4.3.2 If your answer is in the affirmative, please give reasons for exclusion.

14.3.2 If any bid or bids were excluded, did the MDA inform the bidders in writing of reasons for exclusion of their bids? Yes No

5.0 Acceptance of Bids/Proposals

GUIDANCE NOTE

1. This section seeks to assess compliance with the provisions and practice relating to Acceptance of Bids/Proposals.
2. Observers are advised to study *Box 21* below before responding the questions.
3. Observers are expected to answer each question by marking (☒) the appropriate answer.
4. For question 5.4, Observers are expected to fill in their answers by writing down the value of the procurement. This is the total amount/cost of the winning bid/procurement. Observers should use the example below:

Example:

Two Million Naira (N 2,000,000)

- 5.1 For goods and works, was the successful bid the lowest cost bid from the bids responsive as to the bid solicitation? Yes No
- 5.2 Was the winning bid selected based on the criteria indicated in paragraphs 7.2 and 8.0 in Part 1 above? Yes No
- 5.3 For proposals, which of the following were the criteria for the acceptance of the bid?
- A. Least cost responsive proposal Yes No
- B. Proposal with the best combined evaluation in accordance with criteria set with respect to technical and price factors. Yes No
- C. The proposal within the budget that has the highest technical ranking.
Yes No
- 5.4 What was Value of Procurement: [This refers to the total amount of money involved in the procurement].....
- 5.5 Request for clarification
- 5.5.1 Was there a request from any bidder for clarification? Yes No
- 5.5.2 Did the procuring entity respond to the requests for clarifications? Yes No
- 5.5.3 Did the procuring entity communicate other bidders of its response to the request for clarification? Yes No

| Box 21: Procedure for Acceptance of Bids | | |
|---|-----------------------------------|---|
| EXPLANATORY NOTES | Acceptance of Bids | <p>(1) The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive as to the bid solicitation.</p> <p>(2) Notwithstanding subsection 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 Act to that effect.</p> <p>(3) Notice of the acceptance of the bid shall immediately be given to the successful bidder. [Section 33 PPA]</p> |
| | Request for clarifications | <p>1. Every bidder is entitled to make a request for clarification within ten days on the prequalification documents from the procurement entity which shall respond in not less than seven working days so that the bidder will have sufficient time to submit application.</p> <p>2. Other responsibilities of the procuring entities relating to requests for clarifications include:</p> <p>(a) Communicating the response to other bidders if it of interest to them</p> <p>(b) Informing each bidder of the result of the prequalification – whether or not the bidder has been pre-qualified</p> <p>(c) Making information on the names of bidders who have been pre-qualified available to members of the public upon request.</p> <p>(d) Upon request, communicate to bidders who have not been pre-qualified, the grounds for disqualification. [Section 23(4)-(7) PPA]</p> |

6.0 Post Evaluation Requirements

GUIDANCE NOTE

1. This section seeks to assess compliance with the provisions and practice relating to Acceptance of Bids/Proposals.
2. Observers are advised to study *Box 22* below before responding the questions.
3. Observers are expected to answer each question by marking (☒) the appropriate answer.

6.1 Margins of Preference if applicable

6.1.1 Were the criteria set out for margin of preference applied? Yes No

6.2 Certificate of “No Objection” to Contract Award

6.2.1 Is this procurement within the “No Objection” threshold? Yes No

6.2.2 If yes, was a certificate of “No Objection” to award of contract obtained before awarding the contract? Yes No

Box 22: Post Evaluation Requirements

| | | |
|-------------------|------------------------------------|--|
| EXPLANATORY NOTES | Domestic Preferences | <ol style="list-style-type: none"> 1. A procuring entity may grant a margin of preference in the evaluation of tenders in the following instances: <ol style="list-style-type: none"> (a) When comparing tenders from domestic bidders with those from foreign bidders. (b) When comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad. 2. If domestic preferences will be allowed, the procuring entity must state this fact in the bidding documents including the eligibility information for domestic suppliers and contractors. 3. Margins of preference shall apply only to tenders under international competitive bidding and the Bureau shall by regulation set the limits and the procedure for the computation of margins of preference and determine the contents of goods manufactured locally. [Section 34 PPA] |
| | Certificate of No Objection | <p>Meaning: "Certificate of No Objection" means the document evidencing and authenticating that due process and the letters of this Act have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers from the treasury"</p> <p>The Bureau shall have the power to:</p> <ol style="list-style-type: none"> (a) enforce the monetary and prior review thresholds set by the Council for the application of the provisions of this Act by the procuring entities (b) subject to the paragraph (a) of this subsection, issue certificate of "No Objection" for Contract Award" within the prior review threshold for all procurements within the purview of this Act : (c) from time to time stipulate to all procuring entities the procedures and documentation pre- requisite for the issuance of Certificate of 'No Objection' under this Act [Section 6(1)(a)-(c)] |
| | | <ol style="list-style-type: none"> (1) Where the Bureau has set prior review thresholds in the procurement regulations, no funds shall be disbursed from the Treasury or Federation Account or any bank account of any procuring entity for any procurement falling above the set thresholds unless the cheque, payments or other form of request for payments is accompanied by a certificate of "No Objection" to an award of contract duly issued by the Bureau. (2) For all cases where the Bureau shall set a prior review threshold, the Bureau shall prescribe by regulation, guidelines and the conditions precedent to the award of Certificate of "No Objection" under this Act. (3) Subject to the prior review thresholds as may be set by the Bureau, any procurement purported to be awarded without a "Certificate of 'No Objection' to Contract Award" duly issued by the Bureau shall be null and void. [Section 16(2)-(4)] |

7.0 General Compliance Issues

GUIDANCE NOTE

1. This section seeks to generally assess the compliance with the provisions and practice of the Public Procurement Act by the Procuring Entity.
2. For questions 7.2 - 7.4, Observers are advised to study *Box 22* below before responding to the question.
3. Observers are expected to answer each question by marking (☒) the appropriate answer.
4. For question 7.4, Observers are expected to fill in their answers by writing down their observations. The response/information supplied should be limited to 100 words.
5. For question 7.5, Observers are expected to select and mark (☒) one option that best suits their observation.

- 7.1 Was the procurement contained in the annual budget? Yes No
- 7.2 Did the methodology comply with the prior review thresholds set by the Bureau?
Yes No
- 7.3 Is there evidence that tenders have been split to avoid thresholds set by the Bureau?
Yes No
- 7.4 If the answer is in the affirmative, provide details
- 7.5 What was the language of the procurement proceedings?
English Hausa Igbo Yoruba Other(s)

8.0 Administrative Review

GUIDANCE NOTE

1. This section seeks to generally assess the compliance with the provisions and practice of the Public Procurement Act by the Procuring Entity.
2. For questions 8.2.1(B), 8.2.2(B), 8.2.3(B) and 8.2.4, Observers are expected to fill in their answers by writing down their observations. The response/information supplied should be limited to 100 words.
3. For question 8.3, Observers are advised to study *Box 23* below before responding to the question.

- 8.1 Are you aware of any complaint on this particular procurement proceeding?
Yes No
- 8.2 Were the complaints based on any of the following?
- 8.2.1 (A) Non-provision of equal and simultaneous opportunity? Yes No
(B) If the answer is in the affirmative, please give details
- 8.2.2 (A) Bribery, treating, or inappropriate conduct in the bidding?
Yes No
(B) If the answer is in the affirmative, provide details
- 8.2.3 (A) Moving an invalid bid from the examination to the evaluation stage?
Yes No
(B) If the answer is in the affirmative, provide details

8.2.4 Others (Please specify)

| Box 23: Administrative review and Offences | | |
|---|------------------------------|--|
| EXPLANATORY NOTES | Administrative review | A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this Act, or any regulations or guidelines made under this Act or the provisions of bidding documents. [Section 54(1) PPA] |
| | Offences | (a) Collusion or collusive agreements whether or not enforceable (b) Procurement Fraud using undue influence, favour, bribery, threats, promises, agreement etc. (c) Directly or indirectly trying to influence in any manner the procurement process to gain an unfair advantage (d) Bid Rigging - Pre-arrangement of offers where winners have been predetermined (e) Splitting of tenders to evade thresholds (f) Altering procurement document (insertion of vital documents or requesting for clarification in a manner not permitted by law) (g) Willful refusal to allow Commission and its officers access to any procurement records (h) Using fake documents or encouraging their use. [Section 58(4) PPA] |

8.3 Adjudication of complaints(where there has been a complaint.(optional)

- 8.3.1 Did the Accounting Officer make his decision within 15 days? Yes No
- 8.3.2 Did the Accounting officer make his decision in writing and addressed to the complainant? Yes No
- 8.3.3 Was there an appeal to the Bureau? Yes No
- 8.3.4 Did the Bureau make its decision within 30 working days? Yes No
- 8.3.5 Was the Bureau's decision in writing and delivered to the Complainant? Yes No

Box 24: Adjudication of Complaints

| EXPLANATORY NOTES | | Receiving authority | Time within which to submit a petition | Time limit to act/make a decision | Action |
|--------------------------|---------------------|---|---|--|---|
| | FIRST STAGE | Accounting Officer of procuring or disposing entity | Fifteen (15) working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier. | Fifteen (15) working days | Make a decision indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision |
| | SECOND STAGE | Bureau | Ten (10) working days from the date of communication of the decision of the accounting officer | Twenty-one (21) working days | i. Make any of the following decisions and stating reasons for such including remedies (if any) granted: ii. Dismissal of the complaint iii. Prohibit a procuring or disposing entity from taking any further action. iv. Nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity. v. Declare the rules or principles that govern the subject matter of the complaint vi. Revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision. |
| | THIRD STAGE | Federal High Court | Thirty (30) days after the receipt of the decision of the Bureau, or expiration of the time stipulated for the Bureau to deliver a decision | None | |

8.4 Conflict of Interest

8.4.1 Is there allegation/indication that public officer(s) involved in the procurement process has been involved in any of the following?

- A. Possessing an interest outside his/her official duties that materially influenced the outcome of the tender? Yes No
- B. Possessing a direct or indirect interest in or relationship with a bidder, supplier, contractor, or service provider that is inherently unethical or that may be implied or constructed to be, or make possible personal gain due to the person's ability to influence dealings? Yes No
- C. Entertaining relationships which are unethical, rendering his/her attitude partial towards the outsider for personal reasons or otherwise inhibits the impartiality of the person's judgments? Yes No
- D. Placing by acts or omissions the procuring entity he/she represents or the Government in an equivocal, embarrassing or ethically questionable position? Yes No
- E. Entertaining relationships compromising the reputation or integrity of the procuring entity he/she represents or the Government? Yes No

F. Receiving benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he/she represents or the Government?
 Yes No

G. Creating a source of personal revenue or advantage by using public property which comes into his/her hands either in course of his work or otherwise?
 Yes No

H. Disclosing confidential information being either the property of his/her procuring entity, the Government or to a supplier, contractor or service provider to unauthorized persons in bid to influence bidding outcomes?
 Yes No

8.5 Is there an allegation/indication that any person who participated in preparing the procurement process also bid directly or indirectly for the same procurement process? Yes No

9.0 Concluding Comments

9.1 In your opinion was the public procurement -

- A. Transparent? Yes No
 B. Timely? Yes No

9.2 Did the public procurement promote -

- A. Competition? Yes No
 B. Value for money? Yes No
 C. Fitness of purpose? Yes No
 D. Generally in accordance with the provisions of the PPA? Yes No

Box 25: The ends of Public Procurement

| | |
|--------------------------|--|
| EXPLANATORY NOTES | <p>Subject to any exemption allowed by this Act, all public procurement shall be conducted:</p> <p>(d) in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this Act and regulations deriving therefrom;</p> <p>(e) with the aim of achieving value for money and fitness for purpose;</p> <p>(f) in a manner which promotes competition, economy and efficiency [Section 16(d)(e)(f)]</p> |
|--------------------------|--|

10.0 Further Information

Use extra sheets of paper for further comments and issues not covered by this Checklist but which you consider relevant to the achievements of the objectives of the PPA

Signature

Date

| Distinction Between Major and Minor Deviations | | | |
|---|-------------------------|--|--|
| ANNEXURE 1 | Major Deviations | Examples 1. Clauses in an offer: (a) Unacceptable sub-contracting (b) Unacceptable time schedule if time is of essence (c) Unacceptable alternative design (d) Unacceptable price adjustment. 2. Status of the bidder: (a) Ineligibility or non pre-qualification (b) the fact that he is uninvited 3. An unsigned bid 4. Time, date and place of submission: (a) Receipt of bid after the deadline stipulated in the solicitation document (b) Submission of bid at the wrong location. [Section 31(7) PPA] | Effect/result 1. Rejection of bid 2. The bid shall not be considered any further 3. Where unopened, shall be returned as such to the bidder. [Section 31(8)] |
| | Minor Deviations | 1. The use of codes 2. The difference in standards 3. The difference in materials 4. Alternative design 5. Alternative workmanship 6. Modified liquidated damages 7. Omission in minor items 8. Discovery of arithmetical errors 9. Sub-contracting that is unclear and questionable 10. Different methods of construction 11. Difference in final delivery date 12. Difference in delivery schedule 13. Completion period where these are not of essence 14. Non-compliance with some technical local regulation 15. Payment terms 16. Any other condition that has little impact on the bid. [Section 31 (10) PPA] | 1. Shall be clarified. [Section 31(6)] 2. A written clarification may be obtained from the supplier or contractor 3. An offer made for the correction of the minor deviation. [Section 31(12)] |

| Procedures Relating to Bid Security | | |
|--|--|--|
| ANNEXURE 2 | General Procedure | <p>When the procuring entity requires suppliers or contractors submitting tenders to provide a bid security:</p> <ul style="list-style-type: none"> (a) The requirement shall apply to each supplier or contractor ; (b) The tender documents shall stipulate that the issuer and confirmer of the tender security are acceptable to the procurement entity ; (c) Notwithstanding paragraph (b), a tender security shall not be rejected by the procuring entity on the grounds that the tender security was not issued by an issuer in the country, if the tender 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 tender security before submitting a tender 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 tender security on the ground that the issuer or confirmer has become insolvent or is otherwise not creditworthy. <p style="text-align: right;">[Paragraph 48.3 of the Public Procurement Manual]</p> |
| | Conducts relating to Bid Security | <p>Any requirement on bid security that refers directly or indirectly to conduct by the supplier or contractor submitting the bid may only relate to:</p> <ul style="list-style-type: none"> a. Withdrawal or modification of the bid after the deadline for submission of bids , or before the deadline if stipulated in the tender documents ; b. Failure to sign the procurement contract if required by the procuring entity to do so ; c. 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 tender documents. <p style="text-align: right;">[Paragraph 48.4 of the Public Procurement Manual]</p> |
| | Expiry/Return of Bid Security | <p>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:</p> <ul style="list-style-type: none"> (i). the expiry of the tender security ; (ii). 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 tender documents ; (iii). the termination of the procurement proceedings without the entry into force of a procurement contract ; or (iv). The withdrawal of the bid prior to the deadline for the submission of bids. <p style="text-align: right;">[Paragraph 48.5 of the Public Procurement Manual]</p> |

| Conflict of Interest Situations | |
|--|---|
| ANNEXURE 3 | <p>A conflict of interest exists where a person</p> <ul style="list-style-type: none"> (a) possesses an interest outside his official duties that materially encroaches on the time or attention which should otherwise be devoted to affairs of government; (b) possesses a direct or indirect interest in or relationship with a bidder, supplier, contractor or service provider that is inherently unethical or that may be implied or constructed to be, or make possible personal gain due to the person's ability to influence dealings; (c) entertains relationships which are unethical, rendering his attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgments ; (d) places by acts or omissions the procuring entity he represents or the Government in an equivocal, embarrassing or ethically questionable position; (e) entertains relationships compromising the reputation or integrity of the procuring entity he represents or the Government; (f) receives benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or the Government; (g) creates a source of personal revenue or advantage by using public property which comes into his hands either in course of his work or otherwise ; and (h) discloses confidential information being either the property of his procuring entity, the Government or to a supplier, contractor or service provider to unauthorized persons (i) A person involved in the disposal of assets, shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal. <p>[Section 57(12) and (13) PPA]</p> |