

# **Yobe State**

## **Public Procurement Guidelines**

2019

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## **DEFINITION**

The terms used in these Guidelines have the following meaning assigned to them.

<b>Word or Term</b>	<b>Definition/Description</b>
Asset Disposal	The formal process of selling of assets which are no longer of use to a Procuring Entity.
Authorized Person	Any person who has been granted the power to authorize a transaction or otherwise commit the Procuring Entity.
Code of Ethics	A statement of the standards of practice and conduct to be followed by all Public officials and officials of Government owned organizations in procurement activities.
Development Partner	An International Financing Institution (such as the World Bank or African Development Bank) providing external funds to the Government.
Evaluation Committee	A Committee established by the accounting officer to undertake evaluation and ranking of tenders, proposals and quotations for procurement.
INCOTERMS	A set of trade terms (13 in number) for which precise definitions have been set down by the International Chamber of Commerce (Paris) which when used in a contract, clearly indicate the rights and obligations of the Procuring Entity and the supplier (e.g. CIF, C&F, FOB).
Originating Officer	An officer of the Procuring Entity having formal authority to initiate a procurement process.
Procuring Entity	means any public body in Yobe State engaged in procurement and includes Ministries, Departments, Bureaus, Offices and Agencies of the Yobe State Government, Extra- Ministerial Offices, Parastatals, Corporations, State University and Colleges, Government Institutions and Local Government Councils, Local Council Development Areas and their derivative Units.
Procurement Officer	An officer of the Procuring Entity having formal authority to undertake procurement activity.

Procurement Management Unit A unit of Procuring Entity with the responsibility of managing procurement activities.

Request for Proposals Tender for the procurement of consultancy services, where the Procuring Entity invites proposals.

Request for Quotations A simple procurement procedure for the purchase of low value goods, works and simple non-consultancy services.

## ACRONYMS

BOQ	Bill of Quantity
Bureau	Bureau on Public Procurement
C&R	Cost and freight
CIF	Cost Insurance and Freight
CIP	Carriage and Insurance Paid
CPT	Carriage Paid To
EOI	Expression of Interest
EXW	Ex-Works
FBS	Fixed Budget Selection
FOB	Free on Board
GCC	General Conditions of Contract
ICB	International Competitive Bidding
ISO	International Standards Organization
ITB	Instructions to Bidders
LC or L/C	Letter of Credit
LCS	Least Cost Selection
LOI	Letter of Invitation
MOF	Ministry of Finance
MTEF	Medium Term Expenditure Framework
NCB	National Competitive Bidding
PIU	Project Implementation Unit
PPG	Public Procurement Guidelines
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
RFP	Request for Proposal

RFQ	Request for Quotations
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
SPF	Standard Procurement Form
TOR	Terms of Reference

## CHAPTER 1: INTRODUCTION

### 1.1 Introduction

The Government of Yobe State enacted the Public Procurement Law in 2016 (Law). The Law provides the general principles and rules governing public procurement. These Guidelines contain step-by-step procedures to assist Procuring Entities to undertake public procurement in accordance with the Law.

### 1.2 Purpose of the Guidelines

The purpose of these Guidelines is to regulate the procurement of works, goods and services carried out by the State, Local Government Council and all other Procuring Entities in the State. These Guidelines shall not apply to the procurement of special goods, works and services involving security unless the Governor's approval has first been sought and obtained that the provisions shall specifically apply.

### 1.3 Exceptions to Guidelines

1.3.1 Exceptions to the provisions of these Guidelines may arise for a number of reasons including the following:

1. A special situation, which momentarily makes a departure from the Guidelines a necessity;
2. One-off requirements introduced as special provisions in a loan or credit facility which are not otherwise covered in these Guidelines and do not constitute a revision of the Guidelines,
3. The necessary use of non-Standard Bidding Documents for specialist procurements;
4. New legislation or government policy change which causes any part of these Guidelines to be inconsistent with the new provisions until an appropriate revision has been approved.

1.3.2 Exceptions shall normally be of a short-term and one-off nature. Where they are recurrent, or became repetitive, then the Yobe State Bureau on Public Procurement (Bureau) shall decide whether there is a need to introduce revisions to the Guidelines to reflect the necessary change, in accordance with provision under this guideline 1.3; or to issue a circular as an addendum to these Guidelines, which will then be regarded as part of the Guidelines.

1.3.3 Where an exception is considered essential, the accounting officer of the procurement entity may submit a formal request to the Bureau detailing the circumstance warranting the exception and include a full justification for the proposed exception. The Bureau may approve such requests by issue of a specific waiver or reject the request.

1.3.4 Exceptions and waivers granted shall be carefully reviewed in the monitoring activities of the Bureau and subject to audit.

1.3.5 The Bureau shall review all exceptions requests to determine whether the relevant provisions of the Guidelines need to be amended.

## **1.4 Revision to the Guidelines**

### 1.4.1 Necessity for Revision

A number of factors may necessitate a need for revision of these Guidelines including:

1. New legislation related to public procurement or allied matters;
2. Policy changes by government or a funding/donor organisation;
3. Introduction of new improved practices, policies or procedures;
4. Removal of out-dated practices, policies or procedures; and
5. Lessons gained from practical experience.

### 1.4.2 Request for revision by a Procuring Entity

Where a revision to these Guidelines is deemed necessary, a formal request may be submitted to the Bureau in accordance with the following procedure:

1. The request shall be prepared by the relevant Tenders Board, and authorized by the accounting officer of a procurement entity;
2. The request shall state the purpose of the revision and provide a comprehensive justification, together with the precise changes suggested to the relevant text of the Guideline; and
3. The Bureau will formally consider each request, seek legal and procurement practice advise and may agree to a general modification of the Guideline, a specific exemption to be granted to the requesting procurement entity or may reject the request with reasons.

Notwithstanding, the Bureau may on its volition initiate a revision of the Guidelines anytime it deems fit.

## **1.5 Use of standard procurement forms**

To facilitate the application of standard practices and procedures in public sector procurement, standard procurement forms (SPFs) may be introduced for use under this guideline.

## **1.6 Procurement numbering system**

### 1.6.1 Purpose

1.6.1.1 The purpose of the procurement numbering system is to ensure each requirement is given a unique identification to assist in the tracking, monitoring and audit of the procurement and in the tracing and maintenance of records and files. The procurement number is assigned at the requisition stage and will form the basis for document filing and management information systems.

1.6.1.2 Procurement numbers are initiated and allocated for procurement package and entered into a register maintained by the Procurement management unit. Numbers must not be re-used, even if the original procurement is cancelled.

### 1.6.2 Structure of the procurement number

1.6.2.1 The procurement number shall identify at a minimum:

1. the procurement entity;
2. The department or project;
3. The financial Year; and
4. A unique sequence number for each requirement.

1.6.2.2 The Bureau will issue further regulations on the derivation of procurement numbers to ensure compatibility with existing numbering system for procurement planning, Medium Term Expenditure Framework (MTEF) and the pre-numbered activity and expenditure initiation standard form.

### 1.6.3 Use of procurement numbers

The procurement number must appear on all correspondence and documents related to the procurement.

## **1.7 Public procurement principles**

The overall objective of the public procurement system is to provide value for money to the government by ensuring that public funds are spent in a transparent, efficient and fair manner. These Guidelines incorporates provisions and procedures to promote transparency, accountability and ethics in the operation, management and reporting of procurement and asset disposal. All public servants shall consistently apply these policies and procedures, together with professional judgment and good management.

## **CHAPTER 2: ESTABLISHMENT AND COMPOSITION OF THE TENDERS BOARDS AND BOARD OF SURVEY**

### **2.1 Establishment and functions of Tenders Board**

There shall be established in each ministry, extra-ministerial department or parastatal/corporation and local government, a Tenders Board, whose functions shall include the following:

1. Approve the entities procurement plans;
2. Approve prequalification evaluation reports and the bid evaluation reports;
3. Awarding or approving contracts for the procurement of good, works and services within the threshold set in these Guidelines;
4. Constituting, by its Chairman, at least 2 weeks to bid submission date, a technical sub-committee for the evaluation of bid, which shall be made up of professional staff of the procuring entity and the secretary of the Tenders Board, who shall be the chairman of the evaluation sub-committee; and
5. Communicating the decision of the Tenders Board to the accounting officer for implementation.

### **2.2 Membership of the Tenders Board**

The members of the Tenders Board shall include:

1. The Chairman shall be the Accounting Officer, that is: the Permanent Secretary of the Ministry or the Chief Executive of the extra ministerial department/parastatals or the Chairmen of the Local Government, respectively;
2. Directors/Heads of Departments of the ministries, parastatals and extra ministerial departments or local governments;
3. Where there is a Department for Planning, Research and Statistics (DPRS), the Director in charge of the Department shall be the Secretary; where there is no DPRS, the Director in charge of administration shall be the Secretary;
4. a representative, as observers, from the Bureau, Budget and Economic Planning Directorate, Ministry of Justice and Ministry of Finance (Office of the Accountant General) for each ministry, extra ministerial department and parastatals Tenders Board;
5. a representative from the Bureau and the Ministry for Local Government and Chieftaincy Affair shall attend all Local Government Tenders Board (LGTB) meetings, as observers.

## **2.3 Composition of Board of Survey for Disposal of Government Property**

2.3.1 The members of a Procuring Entity's Board of Survey at the State or Local Government for the disposal of Government Property shall include the following:

1. The Chairman, who shall be an officer on Grade Level 14 or above;
2. The Head of Accounts Division or the Deputy; and
3. A professional or technical officer whose expertise relates to the items being disposed.

2.3.2 The transport officer, store keeper(s) or other stores officials of the Procuring Entity shall not serve on the Board.

**CHAPTER 3: CONTRACT AWARD/APPROVAL THRESHOLDS AND DUE PROCESS  
CERTIFICATION**

**3.1 Contract award thresholds**

The following award thresholds are to be observed strictly by the relevant contract awarding or approving authorities, for the purposes of accountability, probity and transparency in the conduct of Yobe State public procurement:

SN	Awarding/Approving Authorities	Monetary Thresholds
1	Directors of Ministries, Parastatals and Extra Ministerial Departments	Up to N 100, 000
2	Heads of departments of Local Governments	Up to N 100, 000
3	Local Government Secretaries	Above N 100, 000 to N 500, 000
4	Chief Executives of Boards, Parastatal and Extra Ministerial Departments	Above N 100, 000 to N 500, 000
5	Governing Boards of Parastatals and Extra Ministerial Department	Above N 500, 000 to N 1 Million
6	Local Government Chairmen	Above N 500, 000 to N 1 Million
7	Permanent Secretaries	Above N 100, 000 to N 1 Million
8	Hon. Commissioners, Head of Service (HOS), Secretary to the State Government (SSG)	Above N 1 Million to N 5 Million
9	Local Government Tenders Board	Above N 1 Million to N 5 Million
10	Ministerial Tenders Board	Above N 5 Million to N 10 Million
11	Local Government Executive Council	Above N 5 Million to N 20 Million  Local Government contract valued above N 20 Million shall be subject to the Governor's approval.
12	The State Governor	Above N 10 Million to N 100 Million Above N 100 Million subject to the ratification of the State Executive Council
13	State Executive Council	Above N 100 Million

### **3.2 The Governor's consent**

All recommendations for contract award as indicated above shall be with the consent of the State Governor.

### **3.3 Bureau's review and approval**

Procuring Entities shall, for all contracts whose value exceeds N 5 million or as may be prescribed by the Bureau, apply for prior review and certification by the Bureau at each of the following stages of procurement:

1. After the compilation or preparation of tender documents/dossier, before commencement of procurement or issuing of invitation to bid or prequalify;
2. After the evaluation of expressions of interest, proposals or bids, before the notification of prequalification or award to bidders, and signing of contract between the Procuring Entity and the successful contractor; and
3. Before payment of mobilization fee, contract sum or retention money to the contractor.

### **3.4 Certificate of No Objection**

3.4.1 The following are the two types of due process certification:

1. Due process certificate for the award of contract; and
2. Due process certificate for progress payment.

3.4.2 The Bureau shall issue a Due Process Certificate to Procuring Entities for complying with the procurement law and guidelines. This is issued after careful review of the process to confirm that it was transparent and produced the right winner and the cost for the contract.

3.4.3 No Procuring Entity shall pay for any capital project without a due process certificate.

3.4.4 The Accountant General shall not make payments in respect of any capital project except if the request for such payment is accompanied by a Due Process Certificate, among other required documentations.

3.4.5 Procuring Entities are entitled to spend their monthly recurrent expenditure without seeking any further approval, except where a single expenditure exceeds Five Million Naira (N5,000,000), in which case the proposed expenditure supported by all necessary documents shall be forwarded to the Bureau for vetting, after which it shall then be forwarded to the State Governor for approval.

3.4.6 All contract for works, goods and services shall, relying on market indicators, attract a profit of not more than 25% and 5% value added tax (VAT).

## **CHAPTER 4: PROCUREMENT IMPLEMENTATION**

### **4.1 Advertising and Notification of Procurement Opportunities**

Timely appropriate notification of procurement opportunities for goods, works and services is essential for economic and efficient project execution, and is the basis for securing maximum competition, with fair opportunities for all potential bidders.

### **4.2 General Procurement Notice**

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 National Competitive Bidding (NCB) and International Competitive Bidding (ICB) procurement and consultants of upcoming opportunities. The GPN contains:

1. The name of the Procuring Entity;
2. Description of the entity's programme of activity;
3. The scope of procurement under NCB and ICB and consulting assignments: estimated to cost... or its equivalent or more; and
4. If known, the scheduled dates for availability of the tendering documents or, as appropriate, the prequalification documents.

### **4.3 Specific Procurement Notice**

4.3.1 A Specific Procurement Notice (SPN), for each of the major procurement packages in the procurement plan shall also be issued. SPNs are issued either as a public Invitation for Prequalification, or in the absence of pre-qualification, as an Invitation for Bids. The invitation may also be incorporated in the front of the prequalification or tender documents as appropriate for reference purposes. SPNs shall provide adequate notification of specific contract opportunities or Invitation for Bids (IFB) by a Procuring Entity regardless of what procurement method is used.

4.3.2 The SPN shall be issued in the following way:

1. As an advertisement in at least two national dailies and the State Procurement Journal;
2. By an announcement in the government official gazette or the public procurement journal;
3. By placement on the notice board of the Procuring Entity; and
4. By placement on the Bureau's website.

4.3.3 Advertisements for contracts of between Five Million Naira (N5, 000, 000.00) and Two Hundred and Fifty Million Naira (N250,000,000.00) shall be placed on the notice board in a conspicuous layout at the Procuring Entity's office and the public procurement journal (if available) or the government official gazette. However, if the tendering is to be selective or restricted, the SPN may not be placed on the notice board, since the bidders are invited directly.

4.3.4 Advertisements for contracts above Two Hundred and Fifty Million Naira (N250,000,000.00) for State contracts and Twenty Million Naira (N20,000,000.00) for Local Government contracts shall be placed in at least two national newspapers; and the website of the Bureau, government gazette and the public procurement journal could also be used if available.

4.3.5 If there has been prequalification, the Procuring Entity sends the Invitation for Bid (IFB) 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 shall be issued under these circumstances.

4.3.6 The SPN contains information concerning:

1. The name of the Procuring Entity;
2. The name or nature of the contract;
3. Items to be procured;
4. Contact information for obtaining tendering documents;
5. Cost of the tendering documents;
6. Place and deadline for tender submission;
7. Required Bid security amount and format;
8. The place, date and time of tender opening; and
9. 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.

#### **4.4 Request for Expressions of Interest**

A Request for Expression of Interest shall also be published in at least two national dailies. Interested consultants shall be requested to provide the minimum information required to make a judgment on the

firm's suitability for being short-listed. Sufficient time (not less than 14 days) shall be provided for responses before preparation of the short list.

#### **4.5 Other Notifications**

The Procuring Entity may also use other means of publishing information on tendering opportunities, including on any procurement websites or other electronic media.

#### **4.6 Prequalification of Bidders**

4.6.1 Best practice is that the procurement plan usually specifies whether prequalification is required and for which categories of contracts. Prequalification is common for large works, civil works, turnkey plants, Build Operate & Transfer, some special goods and complex information technology systems. However, prequalification is not generally needed for ordinary/regular supplies and goods.

4.6.2 Where a Procuring Entity has made a decision with respect to the minimum qualifications of suppliers, contractors or service providers by requesting interested persons to submit applications to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which supplier, contractor or service provider qualifies, shall apply only the criteria set out in the prequalification documents and no more.

4.6.2.1 Except where the Bureau prescribes or approves to the contrary, the following shall be the prequalification criteria:

##### **1. Necessary conditions (Do not attract any mark);**

- a. Evidence of incorporation or business name registration; 0%
- b. Registration with Yobe State BPP 0%
- c. Audited accounts of the business for at least the last financial year: 0%
- d. Evidence of tax clearance certificate for three years 0%

##### **2. Scored condition totaling 100%**

- a. Evidence of financial capability and banking support: 15%
- b. Experiences and technical qualifications of key personnel: 20%
- c. Similar project executed and evidence of the knowledge of the industry: 15%
- d. Equipment and technological capacity: 20%
- e. Annual turnover: 5%

f. VAT registration and evidence of past VAT remittances: 5%

g. Indigenous contractors (individual/corporate): 20%

4.6.2.2 All requirements with zero score are considered responsive. The non-provision of any one of these requirements shall automatically disqualify an applicant from pre-qualification. The pre-qualification benchmark score which respondents can be considered to be competent is 70% and above.

4.6.3 Procuring entities shall supply a set of prequalification documents to each supplier, contractor or service provider that requests them; and the price that a Procuring Entity may charge for the prequalification documents shall reflect only the cost of printing and providing them to suppliers or contractors and service providers.

4.6.4 The prequalification documents shall include:

1. Instructions to prepare and submit prequalification applications;
2. A summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
3. Any documentary evidence or other information that must be submitted by suppliers, contractors or service providers to demonstrate their qualifications;
4. The manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for suppliers, contractors or service providers to prepare and submit their applications, taking into account the reasonable needs of the Procuring Entity; and
5. Any other requirement that may be established by the Procuring Entity in conformity with the Law and regulations relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.

4.6.5 The procurement entity shall respond to any request by a supplier, contractor or service provider for clarification of the prequalification documents if the request is made at least 10 days before the deadline for the submission of applications to pre-qualify.

4.6.6 The response by the Procuring Entity shall be given within a reasonable time and in any event within a period of at most seven working days so as to enable the supplier, contractor or service provider to make a timely submission of its application to pre-qualify. The response to any request that might reasonably be expected to be of interest to one supplier, contractor or service provider shall, without

identifying the source of the request, be communicated to all other suppliers or contractors or service providers provided with the prequalification documents by the Procuring Entity.

4.6.7 A Procuring Entity shall promptly notify each supplier, contractor or service provider which applied to pre-qualify of whether or not it has been pre-qualified and shall make available to any member of the general public upon request, the names of the suppliers, contractors or service providers who have been pre-qualified.

4.6.8 The next stage is to draw up a list of pre-qualified bidders (the competent bidders) which shall include all respondents with at least 70% score, each of whom is to be issued with an invitation to tender or bid.

4.6.9 Suppliers, contractors or service providers who have been pre-qualified may participate further in the procurement proceedings. The Procuring Entity shall upon request communicate to suppliers, contractors or service providers who have not been pre-qualified, the grounds for disqualification but the Procuring Entity is not required to specify the evidence or give the reasons for its findings.

#### **4.7 Post Qualification of Bidders**

4.7.1 The Procuring Entity may require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or service provider.

4.7.2 The Procuring Entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so. The Procuring Entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or service provider has done so to the satisfaction of the Procuring Entity.

#### **4.8 Invitations to Bid**

4.8.1 Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under either system.

4.8.2 Every invitation to an Open Competitive Bid shall:

1. In the case of goods and works under International Competitive Bidding to be advertised in at least two national newspapers, the relevant internationally recognized newspapers, any official websites of the Procuring Entity and the Bureau, as well as the Tenders Journal, where available, not less than six weeks before the deadline for submission of the bids for the goods and works;

2. In the case of goods and works valued under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the Procuring Entity, any official websites of the Procuring Entity, at least two national newspapers, and in the Tenders Journal not less than six weeks before the deadline for submission of the bids for the goods and works.

4.8.3 Every advert of an invitation to an Open Competitive Bid shall include:

1. The name and address of the Procuring Entity;
2. The nature, quantity, category and place of delivery of goods to be procured or the nature, category, and location of the works to be procured;
3. A statement that submissions must be made only in the English language;
4. The deadline for delivering or performing the procurement;
5. Information about the requirements to be met by suppliers and contractors;
6. A statement of the application of domestic preferences if any;
7. The instructions for obtaining the documents containing the specifications of the essential provisions of the procurement and the price, if any, for these documents;
8. The place and deadline for the submission of the bids; and
9. The place, date and time for the opening of the bids.

4.8.4. If the Procuring Entity had previously conducted pre-qualification for the procurement in question, the tender documents shall be issued only to those suppliers and contractors who had been pre-qualified and paid the necessary fee for the tender documents.

4.8.5 The price to be stipulated for any tender documents must not exceed the reasonable cost of printing, compilation and delivery of the documents plus a commensurate administrative fee.

4.8.6 Any person may after collecting the tender documents, request for clarifications of matters contained in the tender documents. All such requests for clarifications shall be in writing addressed to the Procuring Entity no later than 10 days before the deadline for the submission of the bids.

4.8.7 The response by the Procuring Entity shall provide a written response within a reasonable time and in any event not later than 7 working days before the deadline for submission of bids so as to enable the supplier or contractor to make a timely submission of its bid.

4.8.8 The response to any requests for clarifications shall, without identifying the source of the request, be copied to all other prospective suppliers and contractors who had paid for and collected the tender documents.

4.8.9 At any time before the deadline for submission of bids, the Procuring Entity may modify the tender documents by issuing an addendum either in response to a request for clarification or for any other reason. The addendum shall be sent in writing to all prospective suppliers and contractors who had obtained the tender documents.

4.8.10 A Procuring Entity may convene a pre-tender conference for the suppliers and contractors in order to clarify all matters pertaining to the tender documents. All requests for clarifications and the responses provided during the conference shall be recorded in the minutes of the meeting without identifying the source of the requests and the minutes shall be distributed to all prospective suppliers and contractors who had obtained the tender documents.

4.8.11 In all such cases where addendums have been issued, the Procuring Entity shall be obliged to extend the deadline by such a length of time as would be reasonable to allow the suppliers and contractors to consider the clarifications and, or addendums to the tender documents and make the appropriate inputs to their bids. Notice of the extension shall be promptly dispatched to every supplier or contractor who had obtained the Tender documents.

#### **4.9 Submission of Bids**

4.9.1 All bids in response to an invitation to Open Competitive Bidding shall be submitted in writing and, or any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in two sealed envelopes marked 'Original' and 'Duplicate'.

1. All submitted bids shall be deposited in a secured tamper-proof bid-box.
2. All bids must be in English language.
3. The Procuring Entity shall issue a receipt showing the date and time the bid was delivered and record same in a Bids Submission Register.
4. Any bid received after the deadline for the submission of bids shall not be opened and must be returned to the supplier or the contractor which submitted it.
5. All bids submitted shall be securely kept in a tamper-proof bid-box.
6. No communication shall take place between Procuring Entities and any supplier or contractor after the publication of a bid solicitation other than for the purpose of providing additional clarifications as permitted under the Law.

4.9.2 A Procuring Entity or the State Government may:

1. Reject all bids at any time prior to the acceptance of a bid, without incurring thereby any liability to the bidders;
2. The rejection of all Bids requires prior consent of the Bureau or the State Executive Council; or
3. Cancel the procurement proceedings in the public interest, without incurring any liability to the bidders.

4.9.3 Tender documents usually carry provision for the rejection of all bids received. However, rejection of all bids shall be done only under exceptional circumstances and can be justified when: there is lack of effective competition; or no substantially responsive bids were received; or there was inadequate competition; or all bid prices were unreasonably high and substantially above the Procuring Entity's budget provision; or Tender documents were found to be defective; or the requirements of the Procuring Entity have changed.

4.9.4 However, if following competitive bidding only one bid was received and the bid is of good quality, meets the requirements of the tender documents, is technically and financially responsive compared to market prices, and otherwise in order, the bid may be accepted and following evaluation, awarded to the sole bidder.

#### **4.10 Validity Period for Bids; Modification and Withdrawal of Bids**

4.10.1 The period of validity for a bid shall be the period specified in the tender documents. A Procuring Entity may request suppliers or contractors to extend the period of validity for an additional specified period of time. A supplier or contractor may refuse the request and the effectiveness of its bid will terminate upon the expiry of the un-extended period of effectiveness.

4.10.2 A supplier or contractor may modify or withdraw its bid prior to the deadline for the submission of bids. The modification or notice of withdrawal is effective if it is received by the procurement entity before the deadline for the submission of tenders.

#### **4.11 Bid Opening**

4.11.1 All bids shall be submitted before or by the deadline or time and date specified in the tender documents or any extension of the deadline for submission.

4.11.2 The Procuring Entity shall:

1. Invite two credible persons as observers, one person each representing a recognized (i) private sector professional organization whose expertise is relevant to the particular goods, service or

works being procured (e.g. a representative of the Nigerian Society of Engineers for construction contracts) and (ii) a reputable non- governmental organization working in the area of transparency, accountability and anti-corruption. The observers shall not intervene in the procurement process but shall have the right to submit their observation report to the Bureau and any other relevant agency including their own organizations or associations;

2. Permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;
3. Check for any withdrawals or modifications submitted, match these with the original Bid before proceeding, and withdrawn bids shall not be opened once the authenticity of the withdrawal notice has been confirmed;
4. Open the first Bid after confirming that all conditions regarding marking and sealing of the envelope have been met and the envelope has not been tampered with, then stamp/endorse at least the original copy of each bid and annotate with a sequential serial number as it is opened (e.g. “1 of 7” where the total number of bids is 7);
5. 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 on the same day;
6. ensure that the bid opening takes place immediately on the same time and date of the deadline stipulated for the submission of bids;
7. 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 must be recorded by the Secretary of the Tenders Board or his representative; and
8. 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 representative in the minutes of the bid opening;
9. ensure that relevant pages of financial bids are endorsed by all bidders in that lot present to avoid substitution of documents; and
10. ensure that a copy of each bid submitted as read or as recorded along with the Procuring Entities estimate are sent to the Bureau.

#### **4.12 Examination of Bids**

4.12.1 All bids shall be first examined to determine if they:

1. Meet the minimum eligibility requirements stipulated in the tender documents;
2. Have been duly signed;
3. Are substantially responsive to the tender documents; and

4. Are generally in order.

4.12.2 A Procuring Entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.

4.12.3 The following shall not be sought, offered or permitted –

1. Changes in prices;
2. Changes of substance in a bid; and
3. Changes to make an unresponsive bid responsive.

4.12.4 Notwithstanding the above, the Procuring Entity may correct purely arithmetical errors that are discovered during the examination of tenders.

4.12.5 The bid price read out at bid opening shall be adjusted for any arithmetic errors, and adjustments shall be made for any quantifiable non-material deviations or reservations. Price adjustment provisions applying to the period of implementation of the contract shall not be considered in the evaluation.

4.12.6 The Procuring Entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender. If bidder does not agree with this correction, its bid shall be rejected.

4.12.7 A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification. The following shall be considered as major deviations.

1. With respect to clauses in an offer:

- i Unacceptable sub-contracting;
- ii Unacceptable time schedule if time is of the essence;
- iii Unacceptable alternative design; and
- iv Unacceptable price adjustment.

2. With respect to the status of the bidder:

- i The fact that he is ineligible or not pre-qualified; and
- ii The fact that he is uninvited.

3. With respect to bid documents:

- i An unsigned bid;

4. With respect to time, date and location for submission:

- i. Any bid received after the date and time for submission stipulated in the solicitation document; and
- ii. Any bid submitted at the wrong location.

4.12.8 In cases of major deviations, bids shall not be considered any further and, where unopened, shall be returned as such to the bidder. In all cases of rejection, a letter stipulating the reasons for rejection shall be sent, and the bidder shall not be permitted to amend his bid to become compliant.

4.12.9 On the contrary, the following shall be considered as 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 of 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 the essence;
14. Non-compliance with some technical local regulation;
15. Payment terms; and
16. Any other condition that has little impact on the bid.

4.12.10 In cases not mentioned above and where there exists a doubt as to whether a particular condition in a bid is a major or a minor deviation, the following rules shall apply:

1. Where the impact on the costs is major, it shall be regarded as a major deviation; and
2. Where the impact on the costs is minor, it shall be regarded as a minor deviation.

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

4.12.12 Where a supplier or contractor does not accept the correction of a minor deviation, his bid shall be rejected. At the stage of evaluation and comparison, all minor deviations shall be quantified in monetary terms. For the rejection of a bid, a written notice shall be given promptly to the supplier/contractor.

#### **4.13 Bid Security**

4.13.1 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 Twenty Million Naira (N 20, 000, 000) shall require a bid security in an amount not less than 2% of the bid price by way of a bank guarantee issued by a reputable bank acceptable to the Procuring Entity.

4.13.2 The Bureau shall from time to time specify the principal terms and conditions of the required bid security in the tender documents.

4.13.3 When the Procuring Entity requires suppliers or contractors submitting bids to provide a bid security:

1. The requirement shall apply to each supplier or contractor;
2. The bid security shall be submitted in exactly the same format attached in the Standard Bidding Documents or otherwise be rejected by the Procuring Entity;
3. Notwithstanding paragraph (2), a bid security shall not be rejected by the Procuring Entity on the grounds that the bid security was not issued by an issuer in the country, if the bid security and the issuer otherwise conform to requirements and format prescribed in the Tender documents;
4. A supplier or contractor may request the Procuring Entity to confirm the acceptability of a proposed issuer or a proposed confirmer of a bid security before submitting a bid and the Procuring Entity shall respond promptly to the request; and
5. Confirmation of the acceptability of a proposed issuer or of a proposed confirmer does not preclude the Procuring Entity from rejecting the bid security on the ground that the issuer or confirmer has become insolvent or is otherwise not credit worthy.

4.13.4 Any requirement on bid security that refers directly or indirectly to conduct by the supplier or contractor submitting the bid may only relate to:

1. Withdrawal or modification of the bid after the deadline for submission of bids, or before the deadline if stipulated in the tender documents;
2. Failure to sign the procurement contract if required by the Procuring Entity to do so; or
3. Failure to provide a required guarantee 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.

4.13.5 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:

1. The expiry of the bid security;
2. The entry into force of a procurement contract and the provision of guarantee for the performance of the contract, if the guarantee is required by the tender documents;
3. The termination of the procurement proceedings without the entry into force of a procurement contract; or
4. The withdrawal of the bid prior to the deadline for the submission of bids.

#### **4.14 Bid Evaluation: Time Frame for Bid Evaluation & Extension of Bid Validity**

4.14.1 It is required to keep bids valid for a specific period to allow the Procuring Entity to examine and evaluate them, select the lowest evaluated responsive bid, obtain the necessary approvals from different authorities. Thus, bid evaluation shall be undertaken expeditiously, leaving ample time to seek all the requisite formal approvals. Hence bids shall be evaluated within the period specified in the agreed time schedule i.e. the Procurement Time Schedule. To enable the Procuring Entity to award the contract within such bid validity period after carrying out the other procedures, it is required that Technical Evaluation Committee shall complete the evaluation report generally within 50 % of the bid validity period.

4.14.2 Where there is a delay in bid evaluation so that above requirement is unlikely to be achieved, the Procuring Entity with the concurrence of the respective Approving Authority shall request the bidders to extend the period of bid validity of their bids. However, when such a request is made in the case of fixed price bids, bidders have to choose between:

1. Refusing to grant extension of bid validity of their bids: and
2. Absorbing any cost increases that might occur during such extensions (bidders are not allowed to increase their bid prices as a condition of extending the validity of their bids).

4.14.3 Due to the above reason a bidder who has submitted a low bid may refuse to extend their bid validity resulting to additional cost to the Procuring Entity. Hence, the extension of bid validity shall be requested only under exceptional situation.

#### **4.15 Bid Evaluation Stages**

4.15.1 Regardless of how well the other steps in the procurement process are conducted, if bids are not evaluated correctly and fairly, the process will fail. Unfortunately, bid evaluation is the stage that is most often manipulated by public officials where they want to favour a particular bidder. Therefore, it is required that Procurement Planning Committees and Technical Evaluation Sub Committees are familiar with the process of bid evaluation and understand how to conduct the evaluation, and know how to review evaluated bids. Departures from the bidding documents are a common feature of the bids submitted by the bidders. Bids that comply fully with the requirements of the bidding document may be

extremely rare. What is important is how materially the deviations from the bidding documents affect the outcome of the procurement. Hence, during the bid evaluation stage, the concept of substantially responsive bids is used to evaluate bids rather than evaluating on the basis of fully responsive bids.

4.15.2 The main objective of bid evaluation is to determine which bid provides the lowest evaluated cost to the Procuring Entity, among the substantially responsive bids received from qualified bidders. All criteria to be used in the bid evaluation and the method of their application must be specified in the bidding documents. The Tender document must contain a statement on the manner in which the Procuring Entity proposes to evaluate the bids received. This statement must include:

1. A listing of the factors other than the price which it proposes to consider; and
2. An explanation of the method to be used in applying the evaluation factors. (Both for those factors susceptible to monetary adjustment and those to which other criteria must be applied).

4.15.3 The lack of clarity in statements on bid evaluation, or an incomplete statement, will leave bidders in doubt about the treatment on their bids by the Procuring Entity and has frequently been a cause of uncertainty and disagreement during the evaluation of bids. All the criteria specified must be applied to the extent necessary and in the manner specified in the bidding documents. Evaluation factors not specified in the bidding documents shall not be used in bid evaluation. No information relating to bid evaluation shall be communicated, after the bid opening, to the bidders or any other person unless they are officially involved in the process until after the contract award recommendation is officially notified to the successful bidder. No information can be communicated to any bidder at any stage other than at a debriefing requested by a bidder, where only the reasons for not selecting the bidder as the successful bidder is discussed.

4.15.4 The basic sequence for bid evaluation is the same for goods and works, and consists of the following steps:

1. Preliminary examination of bids;
2. Detailed evaluation and comparison of bids;
3. Post qualification verification; and
4. Writing bid evaluation report.

#### **4.16 Preliminary Bid Examination**

4.16.1 All the bids received before the scheduled closing time shall be considered for preliminary bid examination. The purpose of this examination is to eliminate any bid from further and more detailed consideration if it does not meet the minimum standards of acceptability as set out in the bidding

documents and therefore not substantially responsive. However, the Procuring Entity shall exercise reasonable judgment in applying these tests and shall avoid rejecting bids on trivial procedural grounds. For e.g., if the Tender documents stipulated that each page of the bid shall be signed or initialled and a bidder failed to initial one or more pages of supporting information, this shall not be a ground for bid disqualification. These can be rectified through the clarification process without giving any benefit to the bidder and without prejudice to the interest of other bidders. Such discrepancies shall be noted, however, and decisions about their acceptance or rejection shall be recorded in the bid evaluation report.

4.16.2 The preliminary examination of bids determines whether the bids meet the general procedural requirements of the bidding documents, in particular the compliance with the following requirements shall be examined using the bidding documents as the reference point.

4.16.3 **Stage 1:** To ascertain that:

1. The bidder is eligible –for example, bidder shall not be currently debarred or blacklisted;
2. In case of goods, works and consultancy contracts the domestic bidder shall have: certificate of incorporation/registration from the Corporate Affairs Commission (CAC); Tax Clearance Certificate, certificate of Pension Fund and Industrial Training Fund (ITF) contributions, and proof of registration on the State Database of Contractors, Consultants and Service Providers.
3. For foreign funded projects, if so specified by the funding agency:
  - a. In the case of works contracts, the bidder shall be from one of the eligible or member countries of the funding agency, and
  - b. In the case of goods contracts, the goods shall be manufactured in one of the eligible or member countries of the funding agency;
4. Bid is signed properly by an authorized person, including the power of attorney if stipulated, and generally in order;
5. Bid securities submitted are in acceptable format, for required amount and duration;
6. Bid contains all required critical documents, including supporting evidence of bidder eligibility and qualifications; and
7. Bid is complete and quotes for all items in the lot or packages, if so stipulated in the Tender document.

4.16.4 **Stage 2:** To ascertain the deviations from the provisions of bidding documents and categorize such deviations into major or minor deviations. Also, to identify deviations (debatable deviations) which may be categorized as either minor or major deviations depending on: the requirements of the specific provisions in the tender documents, the materiality of the deviation, the value of the contract in

comparison to the value of the deviation and the judgment of the Technical Evaluation Committee on the materiality of the deviations. The purpose is to identify substantially responsive Bids with a view to subjecting such Bids for detailed bid evaluation.

1. Deviation from any provisions of the bidding documents (instruction to bidders, Bid Form, price schedules, Bills of Quantities, condition of contracts and technical specifications, etc.) is a common feature in many Bids. These deviations fall into two basic categories:

a. Major deviations by the bidder resulting in a finding of “non-responsiveness” and consequent rejection of the bid; and

b. Bids with minor deviations, are considered as “substantially responsive” and are, therefore, evaluated and considered for contract award. The sum of the bid price and other evaluation factors specified in the bidding documents is the “evaluated bid price”. The question is to determine which deviations are to be classified as “major” and which as “minor”. In the absence of clearly defined distinction between major and minor deviations there is room for different interpretations. To facilitate the categorization of deviations the following approach may be used.

2. A major deviation would be one which:

(i) Has an effect on the validity of the bid; or

(ii) Has been specified in the bidding documents as grounds for rejection of the bid; or

(iii) Has an effect in substantial way to the scope, quality, functionality or performance of the contract; or

(iv) Will limit in any substantial way the Procuring Entity’s rights or bidders’ obligations; or

(v) A deviation from the terms or the technical specifications in the Tender documents whose effect on the bid price is substantial but cannot be given a monetary value.

3. A minor deviation would be one which either:

(i) Has no effect on the validity of the bid; or

(ii) Has no effect in a substantial way to the scope, quality, functionality or performance of the contract;  
or

(iii) Has no effect on the price, quality or delivery of the goods or services offered; or

(iv) Will not limit in any substantial way the Procuring Entity’s rights or bidders’ obligations: or

(v) has such effect but the difference from the commercial terms or technical specifications in the tender documents is such that it can be given a monetary value; or

(vi) Has not been specified in the bidding documents as grounds for rejection of the bid, provided that the total amount of adjustments for such deviations does not exceed a previously determined percentage of the bid price.

#### 4. Ways of treating most frequent deviations:

- (i) **General:** In establishing the substantial responsiveness of bids, a specific clause in the ITB take precedence over general clauses; for example, if the tender documents required bids to be submitted for all items and stated that incomplete bids will be rejected, the Procuring Entity shall not propose to base the award by accepting a bid which is incomplete, based on a clause in the tender documents in which it reserved the right to waive irregularities in bids.
- (ii) **Completeness of Bids:** If the Procuring Entity intends to reject incomplete bids, it shall be clearly stated in the bidding documents. If Procuring Entity intends to consider incomplete bids, the tender document shall specify the minimum number of items for which prices must be quoted in the bid, or the minimum value of the items to be quoted. Tender documents shall also state how incomplete bids meeting the minimum requirements will be evaluated. In such cases, incomplete bids would have to be adjusted for missing items to make the bids comparable. If Procuring Entity can estimate the actual cost that will be incurred in procuring the missing items, that cost shall be added to the bid for purpose of comparison. If such estimate is not available, standard practice is to apply the highest price quoted by other bidders for adjustment purposes. Items for which no bids were received may be ignored in the comparison. If the tender documents do not indicate whether incomplete bids will be accepted or rejected, the question whether such bids are “substantially responsive” must be decided during bid evaluation.
- (iii) **Procedural Deviations in Submission of Bids:** Most deviations in submission of bids (such as the marking of envelopes, sealing of bids) other than the signature to the form of bid are normally considered as minor. Not signing the bid and similar deviations are considered as major deviations.
- (iv) **Bid Security:** If the bidders are required to furnish a bid security with their bid, failure to submit it in the prescribed format is considered as a major deviation and sufficient grounds for rejection. The submission of bid security after the bids are opened shall be treated in the same manner as not submitting a bid security. If the amount of the bid security submitted is less than the amount stated in the bid, it shall be rejected. Similarly, if the period of the bid security submitted is less than the period stated in the bid, it shall be rejected. If the form of the bid security is in a different format from that prescribed in the tender documents, the bid shall be rejected. Bid security from a different country but in the prescribed format shall not be rejected.
- (v) **Lack of Supporting Documents:** The tender documents shall specify what documentary evidence is required to support the bid. In addition, they shall specify whether a bidder’s failure to submit any of the requested documentation with the bid will be considered as grounds for rejection of bid. If so specified, the evaluation shall be carried out accordingly. Otherwise it may be treated as provided below,

under this paragraph. There are two kinds of documentation which may be required to be submitted with bids. These must be treated differently, depending on their purpose.

- a) One kind is intended to substantiate the legitimacy of the bid (i.e., that the bid is not speculative, exploratory, or frivolous and/or the source and reliability of the equipment offered;
- b) The other is to provide additional details on the technical part of the bid (e.g. brochures describing the equipment offered).

Lack of documentation of the first kind is normally considered as major deviation and grounds for rejection of the bid. Lack of the second kind of documentation is usually considered as a minor deviation which can be remedied by subsequent submissions.

- (vi) **Fixed Price against Variable Price:** When bids are required at a firm price, proposal in bids to apply an escalation clause to the bid price shall be regarded as a major deviation and the bid shall be rejected.
- (vii) **Technical Specifications:** The variety of possible deviations from technical specifications is infinite, making it impossible to discuss all such deviation in a manual or guidelines. The basic principles governing the treatment of technical deviations can, however, be stated. First, the tender documents shall indicate those parts of the technical specifications which the Procuring Entity considers so important that deviations from them will not be accepted. If the Procuring Entity is willing to accept deviations on technical specifications not designated as major in the bidding documents, a decision must be made whether the Procuring Entity is prepared to:
  - (a) accept such deviations proposed by a bidder, not only for the purpose of evaluating the bid; and
  - (b) Consider as a contractual obligation, if the bid is accepted for the contract award.

If the deviation is acceptable, the monetary value of the minor deviation shall be determined and added to the bid price. If on the other hand, the deviation offered is not acceptable for an eventual contract, the deviation shall be classified as major and the bid rejected.

- (viii) **Subcontracting:** The bidding document for works contract shall indicate to what extent subcontracting is permitted and whether the proposed subcontractor has to be named in the bid. Any bid not complying with this stated requirement may be considered as non-responsive and grounds for rejection. If the bidding document did not contain any statement regarding the permissible extent of subcontracting, the Procuring Entity shall review the extent of subcontracting of major works by the bidder and if found as excess to affect the main responsibilities of the bidder, the bid may be considered as non-responsive.

- (ix) **Alternative Bids:** Submission of a bid based on entirely different design, where such had not been permitted is considered as a major deviation.
- (x) **Delivery Period:** If goods are offered outside the delivery period or in the case of works contract unacceptable time phasing, not conforming to specified key dates or program is considered as a major deviation.
- (xi) **Conditional bids:** Bids that are offered with conditions such as prior sale of the equipment offered, availability of material in the market are considered as non-responsive.
- (xii) **Debatable Deviations:** There may be some deviations which do not appear at first sight as a major deviation but at the same time cannot be considered as a minor deviation. In some cases, such deviations may be considered as major whereas in some other cases, they may be considered as minor deviations. However, if it is specifically mentioned in the tender document that such deviations are grounds for rejection or the applicable procurement guideline does not allow the acceptance of such deviations, then the bid shall be rejected. Otherwise the Procuring Entity may consider such deviation as minor and the bid may be considered for further evaluation.

In such situations, the bid evaluation report shall contain a statement, justifying such deviations as minor deviations. Some of the examples of debatable deviations include the following:

- (i) Requesting different amount of advance and other payment terms (including liquidated damages and retention): If such proposals are accepted the additional cost that will be incurred by the Procuring Entity shall be added to the bid price for evaluation. In the case of advances and payment stages, the additional cost may be the respective interest; and in the case of liquidated damages and retention, it may be the maximum amounts specified in the tender documents for liquidated damages and retention respectively.
- (ii) Proposed changes in construction period which is not critical. Similarly, if such proposals are accepted the additional cost (may include additional rentals, supervision cost, effects on liquidated damages) that will be incurred by the Procuring Entity shall be added to the bid price for evaluation.
- (iii) Omissions of minor works or items included in the scope of work; if such omissions are acceptable there cannot be any effect on the balance of works or items and the cost to the PE if the omitted items or works are procured differently.

#### **4.17 General Principles of Detailed Evaluation and Comparison of Bids**

4.17.1 The main objective of detailed bid evaluation is to determine the cost that Procuring Entity will incur if the contract is awarded to each of the bids, which was determined as a substantially responsive bid. Therefore, only the bids that have been determined to be substantially responsive to the tender documents, i.e. do not contain material deviation, shall be considered for detailed evaluation. Out of the three stages of bid evaluation described in this guideline, it is only during this stage are the bids compared with each other. The purpose of comparison is to determine the lowest evaluated cost that will be incurred by the Procuring Entity from the substantially responsive bids received. The lowest evaluated bid may or may not necessarily be the lowest quoted bid. In order to determine the lowest evaluated bid the Procuring Entity shall only use the evaluation criteria disclosed in the tender document. No additional evaluation criteria other than those which were disclosed in the advertisement or tender documents shall be used during the evaluation. A systematic and logical sequence as described in this guideline shall be followed during the detailed evaluation and comparison of bids.

#### **4.17.2 Detailed Bid Evaluation – Principles and Methodologies**

4.17.2.1 It is again emphasized that Procuring Entity shall only use the evaluation criteria disclosed in the bidding document. Most frequently used evaluation criteria are given below. The Procuring Entity may use other appropriate criteria for a particular procurement and disclose such factors together with the evaluation methodology in the tender document:

- 1- Exclude VAT, contingencies and provisional sum amounts;
- 2- Correction of arithmetical errors;
- 3- Application of applicable discount;
- 4- Adjustment to bid prices for omissions;
- 5- Adjustments for acceptable departures;
- 6- Adjustments for delivery period;
- 7- Adjustments for inland transportation;
- 8- Operational costs and life cycle costing;
- 9- Conversion to common currency;
- 10- Domestic preference;
- 11- Re-assess ranking order;
- 12- Examine for unbalanced bidding;
- 13- After sales services;
- 14- Clarifications during evaluation; and

## 15- Alternate Bids.

### 4.17.2.2

#### (a) Exclude VAT, contingencies and provisional sum amounts

Before commencing evaluation of bids under other steps the VAT and the amounts stated as provisional sum and contingencies shall be excluded from the bid prices.

#### (b) Correction of arithmetical errors

Bids shall be checked carefully for arithmetical errors in the bid to ensure the stated quantities and prices are consistent. The quantities shall be same as that stated in the tender documents. The total bid price shall be the total of all line items. The line item total shall be the product of quantity and unit rate quoted or, when a lump sum is quoted, the lump sum amount. If there is a discrepancy, a correction has to be made and the corrected price as described below is considered as the bid price. After the correction of arithmetical errors, the Procuring Entity shall notify, in writing, each bidder of the detailed changes. A bidder shall agree for such arithmetical corrections made to his bid. If the bidder refuses to accept the corrections, its bid shall be rejected and action is taken against the bid security submitted. The correction of arithmetical errors shall be made as follows:

- (i) Where there is a discrepancy between the amounts in figures and in words, the amount in words will prevail;
- (ii) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Procuring Entity that there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected; and
- (iii) If the bid price changes by the above procedure, the amount stated in the Form of Bid shall be adjusted with the concurrence of the bidder and shall be considered as binding upon the bidder.

If the price of any bid is adjusted as above, the Evaluation Committee shall give a detailed report explaining where and how such adjustments were made, rather than merely stating the bid price was adjusted due to arithmetical error.

(c) Application of applicable discount

Discounts offered by the bidders prior to closing of bids which are valid for the entire bid validity period may be considered for evaluation. If conditional discounts are offered which will create more than one bid price within the bid validity period, such discounts shall be ignored for the purpose of evaluation. These discounts shall be considered in the manner the bidder has offered them:

- (i) If discounts are offered on limited items it shall be applicable to such items;
- (ii) If the discount offered is on the total bid price as a percentage it shall be applicable to all the items at the percentage discount offered, excluding for contingencies and provisional sum items;
- (iii) If the discount offered is on the total bid price as a lump sum, such lump sum amount shall be considered for evaluation and before the award of contract such lump sum amount shall be uniformly distributed to all the items, excluding for contingencies and provisional sums.

(d) Adjustment to bid prices for omissions

In many cases, bidders will present their bids without quoting for certain items, accidentally or deliberately. Regardless of the reason such omissions shall be quantified in money terms whenever possible, to permit direct comparison with other bids, provided such omissions were considered as minor deviations during the preliminary examination of bids.

Generally, for works contracts, instructions to bidders will include clauses indicating that if a bidder fails to quote for any item in bills of quantities the bidder will not be paid by the Procuring Entity for such items when executed and shall be deemed covered by the rates of other items and prices in the bills of quantities. In that case no further adjustment is needed during the bid evaluation. If such provision is not included, in the case of omission of one or more items from the bid, rather than rejecting the bid entirely and if it is already considered as substantially responsive during the preliminary examination, the deemed/surrogate prices shall be added to the bid price for the comparison purposes. To that effect, surrogate prices for these items may be obtained from printed price lists if available or the highest of the other bids for the corresponding items shall be used.

(e) Adjustments for acceptable departures

In many cases, bidders will present their bids that deviate from bidding document requirements, accidentally or deliberately. Regardless of the reason, such deviations shall be quantified in monetary terms whenever possible, to permit fair comparison with other bids, provided such deviations were

considered as minor deviations during the preliminary examination of bids. The most common deviations in bids are due to different commercial terms offered; i.e., for amounts of advances, changes in payment schedules etc. These can usually be adjusted by applying an appropriate discount rate (preferably disclosed in the tender documents) and converting them to their equivalent present values. Another form of bid deviation is to offer a higher capacity or standard performance than is specified in the tender document; for example, a larger engine capacity, greater carrying capacity or storage, etc. No additional advantage shall be given to such offers unless the tender document specifically provides for this and set out how the difference will be evaluated.

(f) Adjustments for delivery periods

In many cases, bidders will present their bids where the delivery periods deviate from bidding document requirements, accidentally or deliberately. Regardless of the reason, such deviations shall be quantified in monetary terms whenever possible, to permit fair comparison with other bids, provided such deviations were considered as minor deviations during the preliminary examination of bids. The adjustments to the bid prices shall be done in the manner described in the tender documents. Generally, no advantage is given to a bid offering delivery earlier than that specified in the bidding documents. Any bid offering a delivery beyond a finally acceptable cut-off date specified in the bidding documents shall be rejected as non-responsive bid.

(g) Adjustments for inland transportation

For works contracts, no adjustments for inland transportation are needed. However, for supply contracts, an adjustment may be needed if the price offered are based on FOB or CIF basis for goods to be imported and supplied and Ex works basis for goods already imported or that will be supplied within the country, and the bidders were not requested to include such inland transportation costs within the bid price.

(h) Operational costs and life cycle costing

Life cycle cost is the assessment of the initial acquisition cost plus the follow-on costs of ownership to determine the total cost during the life of a plant or equipment. In the procurement of equipment in which the follow-on costs of operation and maintenance are substantial, a minor difference in the initial purchase price between two competing bids can easily be overcome by the difference in follow-on cost. In these cases, it is most appropriate for the Procuring Entity to evaluate bids on the basis of life cycle cost. The following elements (but not limited) would generally comprise a typical life cycle assessment:

- (i) Initial purchase price;
- (ii) Adjustments for extras, options, delivery, variations, deviations;

- (iii) Estimated operational costs (fuel, labour etc.);
- (iv) Estimated cost of spare parts and other consumables;
- (v) Efficiency and productivity; and
- (vi) Depreciation cost.

The follow-on cost such as fuel, spare parts, maintenance cost and depreciation costs shall be discounted to net present value.

- (i) Conversion to common currency

In order to minimize the foreign exchange risk for bidders in certain procurement (especially in ICB procedures) the bidders are allowed to bid in foreign currencies. This results in bids being presented in a wide variety of currencies which must be converted to a single common currency, generally to Nigerian Naira. These conversions are made using the prevailing selling rates established for similar transactions by the Central Bank of Nigeria on the specified date. In some works contracts and in supply contracts, it is customary that the bidders are allowed to quote proportions in different currencies for the same item.

- (j) Domestic preference (applicable under the International Competitive Bidding only)

In the case of goods or works contracts, when procurement is carried out using public funds and foreign bidders are allowed to participate in bidding, the applicable domestic preference clauses shall be included in the bidding document. In the case of goods contracts, if the goods required are manufactured in Nigeria the applicable domestic preference clauses shall be included in the bidding document. When applying domestic preference, the following guidance shall be used:

***Goods:***

- (i) The application of the applicable preference shall be used only if it was disclosed in the bidding documents;
- (ii) The goods being procured are “manufactured goods” involving assembly, fabrication, processing etc., where a commercially recognized final product is substantially different from the basic characteristics of its components and raw materials;
- (iii) The goods qualified for domestic preference are identical or comparable to requirements given in the bidding documents with respect to quality, capacity and performance;
- (iv) Satisfying the minimum domestic values as specified in the bidding documents; and
- (v) The margin of price, which shall not be more than 20%, is added to the bid price of foreign product (for evaluation purposes), rather than subtracting from the domestic product.

**Works:**

- (i) The application of the applicable preference shall be used only if it was disclosed in the bidding documents;
  - (ii) Satisfying the minimum domestic values as specified in the bidding documents;
  - (iii) The margin of price, which shall not be more than 20%, is added to the bid price of foreign bidders (for evaluation purposes), rather than subtracting from the domestic bids.
- (k) Comparison with engineer's estimate in the case of works contracts.

4.17.2.3 A bid shall not be rejected solely because the bid price exceeds the engineer's estimate by some pre-determined margin; nor shall they be rejected solely on the grounds that they are substantially lower than such estimates. The measure of acceptability shall rather be the "reasonableness" of a bid price as determined during the evaluation. The reasonableness may be established by considering all factors such as market conditions, special terms specified in the bidding documents, prices of similar items procured in the recent past, any other relevant factors. If great differences between the bid price and engineer's estimate are found, the reasons for the discrepancy must be analysed, as follows:

- (i) Review engineer's estimate to discover whether any unusual provisions are included which may have affected the prices;
- (ii) Analyse current market conditions to discover whether they would tend to increase or decrease the bid prices;
- (iii) If these reviews would account for the discrepancy, three alternative conclusions may be reached:
  - a Bid is reasonable under given circumstances and shall be accepted;
  - b If the bid prices are marginally low the bidder shall be requested to prove to the satisfaction of the Procuring Entity, how the bidder intends to procure such items/perform the Works/provide the Services as per the quoted rates, for such purposes the bidder may be asked to provide a rate analysis. If the Procuring Entity is of the view that the justification/explanation provided by the bidder is unacceptable, and hence the bidder would fail in the performance of his obligations within the quoted rates, a higher performance security may be requested to mitigate such risks; if the bidder refuses to provide such additional performance security, his Bid shall be rejected.
  - c Aspect of bidding documents are suspected to be the likely cause; all bids may be rejected and initiate re-bidding with modified bidding documents. Rejection of all bids requires the prior approval of the Bureau.

#### **4.18 Extension of Bid Validity Period**

4.18.1 Bidders are required to keep their offers valid for a specified period to allow the Procuring Entity to examine and evaluate offers, select the lowest evaluated responsive bid, obtain the necessary approvals from the competent authorities and also obtain a no objection from the Bureau (prior review items) for the proposed award of the contract. Bids shall thus remain valid for the period stated in bidding documents. A bid that is valid for a shorter period than required by the bidding documents shall be rejected by the Procuring Entity as non-responsive.

4.18.2 Where there is a delay in bid evaluation, the Procuring Entity may request bidders to extend the period of validity of their bids. Bidders may refuse to grant any extension of validity of their bids without losing their bid security, if any. Bidders are not allowed to increase their prices as a condition of extending the validity of their bids, unless the bidding documents provide for an adjustment in price.

#### **4.19 Bid Evaluation Report**

4.19.1 After the completion of the evaluation process the Procuring Entity shall prepare a bid evaluation report setting out the process of evaluation. The Procuring Entity shall use standard forms available for the purpose. This report covers amongst other things:

1. Key dates and steps in the bidding process (copy of the invitation to bid as advertised attached);
2. Bid opening information (copy of the bid opening minutes attached);
3. 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);
4. For all bidders: Table showing bidder's compliance with key provisions of the technical specifications (e.g. capacity, operating characteristics, etc.);
5. For all substantially responsive bids: Table showing arithmetical errors, discounts and currency conversion;
6. For all substantially responsive bids: Table showing additions and adjustments (indicating methods used in computing the adjustments);
7. For all substantially responsive bids: Table showing currency conversion (where applicable);
8. For all substantially responsive bids: Table showing domestic preference (where applicable);
9. For all substantially responsive bids: Table showing various steps from bid price announced to evaluated bid price);
10. Record of clarifications made from all bidders;
11. For lowest evaluated responsive bidder: Post qualification verification;
12. Names of bidder's rejected and reasons for rejection; and
13. The proposed contract award recommendation.

4.19.2 In addition, the evaluation report shall include narrative section in which any information not suitable for presentation in the form of tables, together with any supplementary information necessary for a complete understanding of all the factors considered during bid evaluation, is presented.

#### **4.20 Confidentiality**

This Procurement Guidelines stresses the confidential nature of the evaluation process. After suppliers, contractors and consultants have submitted their bids to the Procuring Entity by the required deadline, the bid evaluation process outlined above begins on the date indicated in the bidding documents for bid opening.

#### **4.21 Acceptance of Bid**

4.21.1 The successful bid shall be that submitted by the lowest cost evaluated bidder from the bidders' response as to the bid solicitation; but need not necessarily be the lowest cost bidder, provided the Procuring Entity can show good grounds for its award decision.

4.21.2 Notice of the acceptance of the bid shall, after the expiration of the standstill period of 10 calendar days following notice of award to bidders, be immediately given to the successful bidder after due consideration and approval by the approving authority.

4.21.3 Notwithstanding the above, where the procurement proceeding is with regard to a value threshold for which approval shall be sought from either the Bureau or the State Executive Council, notice given to a successful bidder shall serve for notification purposes only and shall not howsoever be construed as a procurement award until after all such approvals have been obtained.

4.21.4 Where the procurement proceeding is with regard to a value threshold for which the Bureau/ the State Executive Council is the approving authority, then subject to the fulfilment by the successful bidder of any special conditions expressed in the bid solicitation documents and the execution of the procurement contract, the notice shall serve as notice of a procurement award.

#### **4.22 Contract Performance Guarantee**

The provision of a Performance Guarantee shall be a pre-condition for the award of any procurement contract upon which any mobilization fee is to be paid, provided however it shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilization fee requested by the supplier or contractor – whichever is higher.

#### **4.23 Award and Signing of the Contract**

4.23.1 Prior to contract award, the Procuring Entity shall ensure that budgetary provision is confirmed to meet the cost of the contract. Thereafter, the Letter of Acceptance shall be issued within the validity period of the bid, and no sooner the final decision of contract award is completed. This Letter of Acceptance shall be free from any new conditions.

4.23.2 This shall essentially state the sum that will be paid to the contractor by the Procuring Entity in consideration of the execution and completion of construction as prescribed in the contract. The issuance of this letter constitutes the formation of the contract. The Letter of Acceptance shall be sent to the successful bidder only after evaluation of bids and after obtaining approval from the relevant authorities.

4.23.3 Once the Procuring Entity has evaluated the tenders and decided on the lowest evaluated responsive bid, and a decision has been made about the award, the Procuring Entity shall:

1. Request and obtain the Bureau's "No-objection" prior to awarding the contract, if applicable;
2. Not negotiate the award with the successful bidder without approval from relevant authorities;
3. Not require the selected bidder to provide performance Guarantee in excess of that specified in the bidding documents;
4. Send notification of the award, and a contract form to the successful bidder in a manner and within the time specified in the bidding documents;
5. Request the successful bidder to return the signed contract together with the required performance security within the time specified in the bidding documents; and
6. Notify unsuccessful Bidders as soon as possible after receiving the signed contract and the performance security from the successful bidder.

4.23.4 If the successful Bidder fails to return the signed contract or provide the required performance security, the Procuring Entity may:

1. Require forfeiture of the bidder's bid security; and
2. Proceed to offer the contract to the second lowest evaluated responsive bidder, provided that he is capable of performing satisfactorily.

#### **4.24 Execution of Contract Agreement**

Following the acceptance of a bid submitted by a bidder, a formal letter of acceptance shall be issued forthwith to the bidder by the Procuring Entity. This shall be followed by the execution of a formal contract.

#### **4.25 Default on Bid Security**

When a bid security declaration is requested with the bid and any bidder fails to fulfil any of the conditions in the bid security declaration (e.g. does not accept the arithmetical errors as described in the instruction to bidders, fail to submit a performance guarantee before the period given or fails to execute the contract agreement) the Procuring Entity shall promptly inform the Bureau of such failure, with relevant details of the supplier or contractor and a summary of the nature of the default (shall include copies of all relevant correspondents, and explain the proceedings in chronological order starting from close of bids with dates).

#### **4.26 Contract Administration – Payment of Value Added Tax (VAT)**

4.26.1 In respect of VAT registered contractors or suppliers, the amount of VAT on the value of work done, goods supplied or services provided, shall be paid by the Procuring Entity, provided such goods or services are not exempted or not excluded from VAT.

4.26.2 Such payment of VAT will apply in respect of advance payments as well.

4.26.3 When retention money is paid, relevant amount of VAT shall also be paid by the Procuring Entity.

#### **4.27 Variations to Contracts**

4.27.1 The variations to contracts during the implementation stage cause very high burden on the Procuring Entity and to the Government. If the contribution from the variation to the final contract sum is high it will dilute the procurement process that was carried out when awarding the contract. Therefore, the Procuring Entity must ensure that all professional and human efforts are taken to minimize this situation. Variations are mainly due to change of scope and quantity variations.

4.27.2 To minimize variations due to change of scope the Procuring Entity shall ensure that the detailed design and drawings are ready prior to the award of contracts for major projects or get a comprehensive briefing from the persons who are involved in design, whether they are internal or external consultants before inviting bids. In case the aggregate variation exceeds the contingency amount, the Procuring Entity requires approval from the Bureau for the varied amount.

4.27.3 To minimize variations due to inaccurate quantities or omissions in the Bill of Quantities (BOQ)/ Bill of Engineering Measurement and Evaluation (BEME), it is recommended that before the start of preparation of Tender documents, the Procuring Entity shall obtain a certificate from the persons who prepared the BEME/BOQ, confirming that a second person has checked the BEME/BOQ for its accuracy

and completeness. It is also highly recommended that when “Type” structures or buildings are constructed, to compare the BEME/BOQ with the final measurements made to such “Type” structure or building before finalizing the BEME/BOQ.

4.27.4 Despite all of the above, if the aggregate amount of the variations (due to quantity changes and extra works orders issued), is within the contingency provision (which shall be 10% maximum) the Accounting Officer of the Procuring Entity may approve the change order with notification to the Bureau.

#### **4.28 Record of Procurement Proceedings**

4.28.1 Every Procuring Entity shall maintain a record of the procurement proceedings containing the information specified in the Public Procurement Law and submit to Bureau. Such information shall include overall data on numbers, types, values and dates of contracts awarded and names of awardees, and procuring organizations. A Procuring Entity shall also maintain for all contracts, a record which includes, inter alia:

1. Public notices of tendering opportunities;
2. Tender documents and addenda;
3. Bid opening information;
4. Tender evaluation reports;
5. Formal complaints/appeals by bidders and outcomes;
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. Comprehensive disbursements data in relation to payments.

4.28.2 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.

4.28.3 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.

#### **4.29 Mobilization Fees**

4.29.1 In addition to any other regulations as may be prescribed by the Bureau, a mobilization fee of no more than 40% to supplier or contractor may be paid subject to the approval of an Advance Payment Guarantee (APG) by the Bureau and supported by the following:

1. In the case of National Competitive Bidding - an unconditional bank guarantee or insurance bond issued by an institution acceptable to the Procuring Entity;
2. In the case of International Competitive Bidding - an unconditional bank guarantee issued by a banking institution acceptable to the Procuring Entity;
3. Once a mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an interim payment certificate issued in accordance with the contract agreement.

#### **4.30 Retention Money**

4.30.1 Retention money is a portion of the payments due under the contract which is retained to ensure performance by the supplier/contractor. When used as a guarantee, it shall not exceed 10% of the contract value. Instead of the Procuring Entity retaining part of the due payments, the supplier/contractor may also provide a money retention security in form of a bank guarantee or irrevocable Letter of Credit.

4.30.2 If the contract provides for both a performance guarantee and retention fees, the total amount of both performance guarantee and retention fee shall not exceed 20% of the contract sum.

#### **4.31 Publication of Contract Awards**

The award of all contracts shall be notified to the Bureau and shall be published in a national daily with description of the contract, name of contractor/supplier and the contract price clearly stated.

## **CHAPTER 5: PROCUREMENT OF WORKS AND GOODS**

### **5.1 Definition of Works and Goods**

5.1.1 **Works** means work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and includes site preparation, excavation, erection, assembly, installation of plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract.

5.1.2 **Goods** mean 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 if the value of those incidental services does not exceed that of the goods themselves.

### **5.2 Procurement Methods**

5.2.1 The procurement methods that can be used for the procurement of Works and Goods are:

1. International Competitive Bidding (ICB)
2. National Competitive Bidding (NCB)
3. Two-Stage Tendering (National or International)
4. Restricted Tendering (National or International)
5. Single Source/Direct Procurement
6. Request for Quotations (RFQ)
7. E-Procurement

5.2.2 Competitive tendering using ICB or NCB is the preferred method for public procurement and the use of alternative methods is strictly limited to the provisions of the Law and the approval of the Bureau.

#### **5.2.1 International Competitive Tendering**

International Competitive Tendering is appropriate for high value or complex procurements, or where the works / goods by their nature or scope, are unlikely to attract adequate local competition. The Law requires the use of ICB for procurement of work/goods above the threshold provided by the Bureau.

#### **5.2.2 National Competitive Tendering**

National Competitive Tendering is appropriate for lower value procurements, where the works/goods by their nature or scope are unlikely to attract foreign competition, or where there are justifiable reasons for the Procuring Entity to restrict tendering to domestic contractors. The Law permits the use of NCB for procurement of works and goods valued above Two Hundred and Fifty Million Naira (N250,000,000.00) for State contracts and Twenty Million Naira (N20,000,000.00) for Local Government contracts.

### 5.2.3 Restricted Tendering

5.2.3.1 Restricted Tendering is a tendering process by direct invitation to a shortlist of pre-registered or known contractors, and is subject to a specific approval being granted by the Bureau.

5.2.3.2 It is an appropriate method of procurement where:

1. the requirement is of a specialized nature or has requirements of public safety, or public security;
2. which make an open competitive bid inappropriate;
3. due to the urgent nature of the requirement, an open competitive bid is not practical;
4. the number of potential contractors is limited; or
5. an open competitive bid has failed to result an award of contract.

### 5.2.4 Two-Stage Tendering

5.2.4.1 Two-stage Tendering is an infrequently used procurement process in which a Procuring Entity invites bidders in the initial stage to contribute to the detailed specification of the works/goods. Following review and consultations, new detailed specifications for the works/goods are prepared and a restricted bid issued in the second stage to all participants who were not rejected in the first stage.

5.2.4.2 It is an appropriate method of procurement when it is not feasible for the Procuring Entity to formulate detailed specifications or plans for the works, to identify their characteristics in a defined manner, or the works/goods is subject to rapid technological advances.

### 5.2.5 Direct Procurement

Direct procurement from a supplier without competition (single source procurement) is subject to a specific approval using the Guidelines issued by the Bureau. Direct procurement may be appropriate when:

1. the purchase is for urgently needed remedial works/goods, provided this is restricted to the minimum requirement to meet the urgent need until a procurement by other methods can be fulfilled; or
2. the works/goods can only be provided by one source for physical, technical or policy reasons. e.g. requiring the use of proprietary techniques that are obtainable only from one source;
3. in circumstances where emergency procurement shall be applicable as provided **under section 44 of the Law**; and
4. when state security (non-economical) considerations are paramount.

### 5.2.6 Request for Quotations (RFQ)

5.2.6.1 This is based on comparing price quotations obtained from several suppliers, usually at least three, to ensure competitive prices.

5.2.6.2 Request for Quotations may be used when:

1. the estimated value is less than the monetary threshold that the Bureau may from time to time specify; and for procuring readily available off-the-shelf goods or standard specification items of low value;
2. the requirement is for widely available goods / works activities such as redecoration, repairs, and minor alterations which do not require detailed specification and may be readily estimated by a contractor from a simple site visit; and
3. the standard RFQ documents are suitable for the procurement of the required items.

5.2.6.3 For higher value or more complex requirements, a more appropriate Standard Bidding Documents and contract format shall be used by the Procuring Entity.

### 5.2.7 E-Procurement

Any procuring entity may conduct any or all of its tenders by electronic auction and or simulation on its electronic portal or the Yobe State Government Electronic Procurement System, when established, provided that the use of the electronic system shall be transparent, efficient, economical and according to the Law and Guidelines.

## **5.3 Specification of Requirements**

5.3.1 The requirement needs to be fully identified with detailed technical specifications, drawings, and plans as appropriate.

5.3.2 The technical department of the Procuring Entity shall prepare plans, drawings, detailed specifications and a bill of quantities or activity schedule for the required works. If the Procuring Entity does not have a recognized technical department for this purpose, the assistance of technical ministries - e.g. the Ministry of Works-shall be solicited for this task.

5.3.3 The Description of Goods to be procured shall contain or be accompanied by a complete, precise and unambiguous description of the goods required. The description may include drawings where appropriate.

Specifications shall include:

1. the purpose and objectives of the goods;
2. a full description of the requirement;
3. a functional description of the goods, including any environmental or safety features;
4. performance parameters, including outputs and any indicators or criteria by which satisfactory performance can be judged;
5. process and materials descriptions;
6. dimensions, symbols, terminology language, packaging, marking and labelling requirements;
7. inspection and testing requirements; and
8. any applicable national or international standards required.

#### 5.3.4 Use of Brand Names

Descriptions of goods shall not include any reference to a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item, unless there is no other sufficiently precise or intelligible way of describing the requirement, in which case the words “or equivalent” shall be included; and the description shall serve only as a benchmark during the evaluation process. Notwithstanding the above, where a particular trademark, brand name, patent, design, type, specific origin, producer, manufacturer, catalogue or numbered item is essential for reasons of technical compatibility, servicing, maintenance or preservation of warranty conditions, such description may be used, subject to inclusion of the words “or equivalent”. The requirement needs to be fully identified with detailed technical specifications. If detailed specifications cannot be prepared by the originating department or unit, the advice of the Procurement management unit or the appointment of a specialist technical advisor may be relied upon for assistance.

#### **5.4 Pre -Qualification of Contractors**

Pre-qualification is required for works / goods contracts estimated at the threshold value provided by the Bureau. However, pre-qualification proceedings may be used on lower value contracts to identify bidders who are qualified prior to the submission of bids. Pre-qualification:

1. is appropriate for large or complex works / goods, or in other circumstances when the high costs of preparing detailed bids could discourage competition;
2. is often used for contracts to be let under turnkey, design and build, or management contracting;
3. is often used for custom-designed equipment and industrial plant under turnkey contracts;
4. ensures that invitations to bid are extended only to those contractors who have adequate capabilities and resources;

5. helps to ensure that only bids from competent contractors are considered and eliminates disputes that may arise from rejection of lowest bidders because the bidders are not considered qualified; and
6. may be required of development partner funded procurements.

#### 5.4.1 Pre-qualification Criteria

Pre-qualification is based upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, considering their:

1. experience and past performance on similar contracts;
2. capabilities with respect to personnel, equipment, and construction facilities;
3. required licensing and professional registrations;
4. commercial and financial resources; and
5. other criteria as specified by the Bureau.

#### 5.4.2 Advertisement for pre-qualification

The invitation to pre-qualify for bidding on specific contracts or groups of similar contracts shall be advertised as in Competitive Tendering. The scope of the contract and a detailed statement of the requirements for qualification must be provided in the advertisement and shall contain:

1. name and address of the Procuring Entity;
2. nature and location of the works to be executed;
3. desired or required time for the completion of the works;
4. criteria and procedures to be used to evaluate the qualifications of contractors;
5. means to obtain the pre-qualification documents and the place from where they can be obtained; price charged by the Procuring Entity for the pre-qualification documents (which shall reflect only the cost of printing and provision to contractors);
6. currency and terms of payment for the pre-qualification documents;
7. language in which the pre-qualification documents are available; and
8. place and deadline for the submission of applications to prequalify and the time allowed for the preparation of pre-qualification applications (which shall not be less than four weeks).

#### 5.4.3 Pre-qualification evaluation

No formal opening of submissions is required but a formal evaluation of the capabilities of each supplier is required by the Technical Committee against the criteria as stated in the advertisement.

1. Where a large number of contractors pass the stated qualification criteria, it may not be realistic to invite more than eight to participate in the specific bid. If so, only the best qualified contractors shall be selected and invited to bid.

2. Inform all applicants of the results of pre-qualification.
3. Applicants who fail to meet the pre-qualification criteria shall be briefly advised of the reasons. No further correspondence will be entered into regarding applications.
4. When pre-qualification is completed, issue the bidding document to all qualified contractors, or to an appropriate shortlist of the qualified bidders.

#### 5.4.4 Pre-qualification document

A procurement entity shall supply a set of pre-qualification documents to each contractor that requests them. The pre-qualification documents shall include:

1. instructions to prepare and submit prequalification applications;
2. a summary of the main terms; qualifications and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
3. any documentary evidence or other information that must be submitted by contractors to demonstrate their qualifications;
4. the manner and place for the submission of applications to pre-qualify and the deadline for the submission, expressed as a specific date and time which allows sufficient time for contractors to prepare and submit their applications, considering the reasonable needs of the Procuring Entity; and
5. any other requirement that may be established by the Procuring Entity in conformity with the Law and Regulations relating to the preparation and submission of applications to pre-qualify and to the prequalification proceedings.

### **5.5 Tendering Procedures**

#### 5.5.1 Standard Bidding Documents

5.5.1.1 The Bureau shall develop the various Standard Bidding Documents. A Standard Bidding Document is the set of documents issued by a Procuring Entity, which establishes the works / goods required (technical specifications, plans, bill of quantities or activity schedule), the procurement procedures to be followed, and specifies the proposed contract conditions. It shall contain all information necessary to allow the bidder to prepare a responsive bid or quotation.

5.5.1.2 The Standard Bidding Documents must contain information to:

1. instruct bidders on the procedure for submission of bids;
2. describe the works to be procured;
3. inform bidders of the criteria for evaluation of bids; and
4. define the conditions of any resulting contract.

5.5.1.3 Use of a Standard Bidding Document (SBD) format, having been made available and approved by the Bureau, is mandatory for all procurement of works funded by Government, unless an alternative format has been specifically approved by the Bureau. Note that procurement of works using development partners funds may be subject to the required use of their standard bidding documents, if so specified in the loan or credit agreement.

5.5.1.4 The updated versions of each approved SBD, together with an individual User Guide to assist in preparation of the SBD, may be obtained from the Bureau, or directly downloaded from the Bureau's website.

## 5.5.2 Preparation of Tender Documents

5.5.2.1 The Accounting Officer of a Procuring Entity shall direct the Procurement management unit or engage any other person, including a consultant, to prepare bidding documents.

5.5.2.2 Upon receipt of requisition to procure and notification of availability of funds, the Accounting Officer shall direct the preparation of the document.

5.5.2.3 The Tender documents must be prepared by modifying the appropriate Standard Bidding Document (SBD) issued by the Bureau. The SBDs as listed in the Law, may be obtained directly from the Bureau or downloading it from the Bureau's website.

5.5.2.4 The Instructions to Bidders and the General Conditions of Contracts shall not be changed. However, modifications can only be made through the Bids Data sheet and Special Condition of Contract respectively.

5.5.2.5 The key sections that need completion and modifications are:

1. The Invitation to Bid;
2. The Bid Data Sheet;
3. Technical Specification/Drawings;
4. The Bill of Quantities;
5. The Conditions of Particular Application;
6. Forms of Bid, Bid Security, Forms of Agreement; and
7. Performance Guarantee (to be completed by the Contractor).

5.5.2.6 The Head of Procurement management unit shall:

1. Select the appropriate Standard Bidding Documents s, if available, depending on the type of procurement;
2. Complete the Invitation to bid section with the relevant information which is generally self-explanatory;
3. Consult with the end-user, regarding finalization of the description of requirements (Specification) for inclusion in the document;
4. Complete the Bid Data Sheet with details of the tendering process e.g. the bid closing date, the address for submission, the evaluation criteria to be applied, any qualification criteria to be applied etc.;
5. Complete the Special Conditions of Contract with the conditions which will apply to the contract e.g. payment terms, delivery/completion period, warranty, liquidated damages; and
6. Complete the Bill of Quantities section by describing the required unit quantities etc.

## **5.6 Issue of Invitations for Restricted Tendering**

5.6.1 The bidding documents for a Restricted Tendering must be issued to all short-listed contractors simultaneously, either by registered post, or by hand in return for a written receipt.

5.6.2 The Procurement management unit shall:

1. Prepare the bid documents together with a personalized Letter of Invitation for each short-listed contractor;
2. Send the invitation by registered post to all short-listed contractors, or deliver by hand and obtain a written receipt;
3. If the Tender is subject to conformity with a sample or samples, obtain written acknowledgement from the bidder that the sample or samples have been inspected.

## **5.7 Issue of Request for Quotations**

5.7.1 The procedure for issue of Requests for Quotations to short-listed contractors follows the same principles as for Restricted Tendering above.

5.7.2 A Standard Request for Quotations (SRFQ), where provided by the Bureau, shall be used for simple requirements wherever practical. For more complex requirements when the normal SRFQ and Purchase Order documents are not appropriate nor provide an appropriate form of contract, the Procuring Entity may utilize appropriate formats from the available Standard Bidding Documents.

## **5.8 Opening of Standard Requests for Quotations**

5.8.1 There shall be public opening of the quotations submitted. All quotations must be opened on a pre-determined date and time by the Procurement management unit to avoid the opportunity for any Contractor to become aware of the prices quoted by other contractors.

5.8.2 The recording of quotations and the evaluation procedures followed are similar to those for Tenders except for the following:

1. Quotations will normally be submitted using the appropriate Standard Request for Quotations document;
2. Sealed quotations will be received directly by the Procurement management unit rather than being placed in the bid box;
3. The Procurement management unit will register the receipt of each quotation and keep the envelopes secure and unopened until the date of the opening; Contractors will not automatically be invited to attend the opening of quotations, but the basic procedures and formality of the Meeting must be maintained.

5.8.3 The Procurement management unit/Bid Opening Committee shall:

1. Ensure that the name, organization represented and contact details of all attendees are recorded in an attendance register.
2. Ensure the security of documents at all times during the procedure to prevent any unauthorized interference with the documents.
3. Bring in the unopened quotations and any samples received and check that the writing on each envelope confirms that it is for the correct RFQ.
4. Open the first quotation after confirming that any conditions regarding marking and sealing of the envelope have been met and the envelope has not been tampered with. Note each quotation with a serial number in sequence as it is opened (e.g. “1 of 4” where the total number of RFQs is 4).
5. Examine the contents of the envelope and identify, stamp/endorse and number at least all originals, and if convenient copies, and any separate sections and attachments.
6. Read out the following details from each quotation:
  - a. the number allocated to the quotation by the Bid Opening Committee;
  - b. name of the Contractor;
  - c. the total price quoted; and
  - d. any other appropriate information at the discretion of the Chairman.
7. Any obvious failure to provide a responsive quotation shall be noted in the Minutes. These quotations shall normally be rejected.

8. The Chairperson and two Members of the Committee shall initial quotations and all attachments thereto. Any corrections to prices or obvious errors and omissions shall be circled in red ink and also initialled.
9. Record the details read out of each quotation in the register of RFQ Opening, ensuring that amounts are recorded in words as well as figures, and record all corrections and errors or omissions which are noted in the minutes of the meeting.
10. Minutes of the RFQ Opening shall be prepared by the Procurement management unit.

### **5.9 Evaluation of Contract for Requests for Quotations**

Evaluation of quotations shall be undertaken by an Evaluation Committee set up by the Accounting Officer, which shall:

1. Rank all quotations that are responsive to the Request for Quotations according to price and select the lowest evaluated priced RFQ for contract award;
2. Prepare a brief report of the evaluation for the procurement record;
3. Prepare a Purchase Order for signature by the Accounting Officer of Procuring Entity; and
4. Issue the Purchase Order to the selected Contractor.

### **5.10 Resolution of Contractual Disputes**

5.10.1 Most minor contract-related disputes may be resolved by discussion and agreement between the Project Manager and the contractor/supplier to rectify the cause of complaint.

5.10.2 Any formal written complaints received from a Contractor shall be fully investigated and referred to the Accounting Officer to authorize correspondence or formal negotiations with the contractor/supplier.

5.10.3 Where an arbitrator is appointed under the contract, it shall be treated as a last resort, when all other possibilities for negotiated resolution are exhausted.

5.10.4 The Project Manager shall:

1. Examine the Contract carefully to be aware of all contract conditions relating to the Resolution of Disputes.
2. Determine if the Procuring Entity is at fault or partly at fault, and if so, take appropriate action to rectify the problem.
3. Invite the Contractor to a formal meeting, within 7 days of the complaint, to discuss the issues and try to agree a compromise acceptable to both parties. Ensure that accurate written Minutes are kept of any such meeting. If an agreement is reached which changes any of the conditions of the

Contract, approval of the Tenders Board or the Accounting Officer is required before the agreement can be implemented.

4. If no initial agreement is reached and negotiations conducted by the Accounting Officer also fail, consider the use of any mediation or arbitration options as specified in the contract.
5. Prepare any necessary addendum to the Contract for signature.

### **5.11 Termination of the Contract**

5.11.1 The parties to the contract normally have the right to terminate the contract, but to protect the Procuring Entity, the advice of the Legal Department shall be sought. Contracts shall not be terminated without examining all possible alternatives, unless the termination is mutually agreed by all parties to the contract.

5.11.2 The Procuring Entity shall

1. Examine the Contract carefully to be aware of all contract conditions and penalties relating to the Termination of Contract.
2. Follow the advice of the Legal Officer/ Ministry of Justice in the preparation of any correspondence and settlement of any contractual penalties.

### **5.12 Contract Amendment**

5.12.1 Contract amendment may become necessary as a result of the application of price fluctuation specified in the contract, re-measurement, day works, variation orders, compensation events, the resolution of disputes, additional or reduced requirements by the Procuring Entity, agreements to extend the time schedule, or from accepted increases or decreases in prices. The contract may allow the Procuring Entity to modify contract values by a pre-determined percentage when this is in the public interest and essential for the work of the Procuring Entity.

5.12.2 All other amendments to costs, quantities, time-periods and other terms and conditions of the contract must be approved by the Due process Committee and confirmed in a formal contract amendment or addendum.

5.12.3 The Procuring Entity shall:

1. identify and agree with the Contractor the specific clauses in the contract which need to be changed, and the new values or terms and conditions which are to apply;
2. prepare a draft contract amendment document for approval by the Tenders Board together with a report justifying the reasons for the amendment;

3. following approval by the Tenders Board:
  - a. record any change in contract value in the Commitment Register and in the Contract Register,
  - a record any other contractual changes in the Contract Register,
  - b obtain from the Contractor any necessary addition to the Performance Guarantee,
  - c arrange for signing of the contract amendment in four copies,
  - d distribute copies in the same way as the original contract.

## CHAPTER 6: THE SELECTION AND EMPLOYMENT OF CONSULTANTS

### 6.1 Definition of Consultancy Service

6.1.1 Procurement of Consultant Service is the request for services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills to study, design and organize specific projects, advice clients, conduct training or transfer knowledge.

6.1.2 The types of services include the following:

1. Feasibility Studies;
2. Preparation of Bid documents;
3. Construction Supervision;
4. Project Management;
5. Procurement support services;
6. Reorganization/Privatization;
7. Capacity Building;
8. Training and Knowledge Transfer;
9. Professional Advice;
10. Cleaning Services.

6.1.3 Where a Procuring Entity wishes to procure services for its needs which are precise and ascertainable, it shall solicit for expressions of interest (EOI) or applications to pre-qualify to provide the services by publishing a notice to that effect in at least two national newspapers and the Procurement Journal

6.1.4 However, where the value of the services to be procured is small, or with the approval of the Bureau, of such a low value that only national consultants would be interested, the Procuring Entity may without placing a notice as indicated above, request at least three and not more than 10 consultants or service providers to make proposals for the provision of the services in a format stipulating:

1. A statement of qualifications of the consultant to provide the service;
2. A statement of understanding of the Procuring Entity's needs;
3. The methodology for providing the service;
4. The time frame for providing the service; and
5. The cost or fee for the service.

## **6.2 Special Features of Consultancy Service**

6.2.1 The procurement of consultancy services is a specialized form of procurement requiring procedures and documents which are different from those used for goods and works.

6.2.2 The use of merit-point evaluation systems and two-envelope bidding procedures are routine features in the procurement and selection of consultants. Selecting consultants for long or complex assignments on the basis of cost alone is unlikely to achieve the required quality of services.

### **6.2.3 Merit-Point Systems**

A merit point system uses a point-scoring basis to determine the winning Bidder. Points are awarded for technical capability and usually for the financial cost, according to criteria specified in the Request for Proposals. The Bidder scoring the highest number of points is usually recommended for the award of contract.

Merit point systems can also be used to evaluate whether bids pass a minimum technical score to proceed to a final financial evaluation. The financial envelopes of all bidders whose bid pass the minimum technical score are then opened, and the bid with the lowest price recommended for award of contract.

### **6.2.4 Two-envelope Bidding**

To avoid any chance of the Bidder's price influencing the technical evaluation under a merit point system, financial bids are submitted in a separate sealed envelope. The financial envelope must only be opened after the technical evaluation is completed and approved by the Entity Tenders Board.

## **6.3 Method of Selecting Consultants**

The methods of selecting consultants are as follows:

1. Quality and Cost Based selection (QCBS).
2. Quality Based Selection (QBS).
3. Least Cost Selection (LCS).
4. Selection Under Fixed Budget (SFB).
5. Selection Based on Consultant's Qualification (SBCQ).
6. Single Source Selection (SSS).

### **6.3.1 Quality and Cost Based Selection (QCBS)**

6.3.1.1 Quality and Cost-Based Selection (QCBS) is the standard method of selection for most consultancy services, and uses a merit-point score system. The technical capabilities and experience of the Consultants and Personnel, and the quality of the proposal submitted in response to the Terms of

Reference, will receive the major percentage of the total points to be awarded. Only firms/consultant whose technical proposals achieved a minimum technical score will have their financial proposal considered. The general practice is that, the best compromise between technical quality and cost of the services is often achieved by allocating 80% of the total points to the technical features of the proposal and 20% to the financial score.

### **6.3.2 Quality-Based Selection (QBS)**

6.3.2.1 Quality-Based Selection (QBS) may be suitable for complex, difficult-to-define, or highly specialized assignments, where the best expertise available is required without consideration of the price. In this case, only technical proposals are evaluated, with the winning bidder being invited for detailed negotiations to agree on the price of the services and the contract.

6.3.2.2 QBS is suitable for the following types of assignments:

1. complex or highly specialized assignments where it is difficult to define precise Terms of Reference (TOR) and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, sector studies, multi-sector feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);
2. assignments that have a long-term impact and in which the objective is to have the best experts available (for example, feasibility and structural engineering design of such major infrastructure, such as large dams; policy studies of national significance; management studies of large government agencies); and
3. assignments that can be carried out in very different ways, and therefore proposals may not be directly comparable (for example, management advice, or policy studies in which the value of the services depends on the quality of the analysis).

6.3.2.3 The Request for Proposals (RFP) shall not indicate the estimated budget, but may provide the estimated number of key staff and time, specifying that this information is given as an indication only, and that consultants are free to propose their own staff compositions and estimates.

6.3.2.4 The RFP may require submission of a technical proposal only (without a financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). Only the financial envelope of the highest ranked technical proposal is opened. The rest are returned unopened to the bidders, after the negotiations are successfully concluded.

6.3.2.5 If technical proposals only are invited, after evaluating the technical proposals, the Consultant with the highest ranked technical proposal will be invited to submit a detailed financial proposal. The Procuring Entity and the Consultant shall then negotiate the financial proposal and the contract.

6.3.2.6 Other aspects of the selection process are identical to those of QCBS.

### ***6.3.3 Selection under a Fixed Budget***

6.3.3.1 Fixed Budget Selection (FBS) may be used when the assignment is simple, can be clearly defined, and there is only a strictly limited budget available for the services. Consultants are invited to submit their best technical proposal within the fixed budget price and award of contract is made to the highest scoring technical proposal.

6.3.3.2 This method entails the following:

1. The RFP will indicate the available budget and request the consultants to provide their best technical and financial proposals in separate sealed envelopes, within the stated budget.
2. The TOR must be carefully prepared to ensure that the budget is sufficient for the consultants to perform all of the expected tasks.
3. Technical proposals will be evaluated and bidders who pass the minimum technical score will be invited to a public opening of their financial envelopes.
4. Bidders whose technical proposals fail to meet the minimum technical score will have their financial envelopes returned unopened.
5. Any financial proposal that exceed the indicated budget shall be rejected.
6. The Consultant who has submitted the highest ranked technical proposal within the budget will be selected for award of contract.

### **6.3.4 Least-Cost Selection**

6.3.4.1 This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of non-complex works, etc.), where well-established practices and professional standards exist, and when the contract value is small.

6.3.4.2 This method entails the following:

1. A minimum qualifying score for the required quality is established and stated in the RFP.
2. Technical and Financial Proposals are required to be submitted in separate envelopes by the short-listed bidders. Technical envelopes are opened first and evaluated. Those bids scoring less than the minimum qualifying score are rejected. The financial envelopes of the remaining bidders are opened in public.

3. The firm with the lowest price is selected for contract award.

### **6.3.5 Selection Based on Consultants' Qualifications**

6.3.5.1 This method may be appropriate for very small assignments where the need for submission and evaluation of detailed competitive proposals is not justified.

6.3.5.2 This method entails the following:

1. Information on the consultants' experience and competence relevant to the assignment are requested.
2. The firm/consultant with the most appropriate qualifications and references is selected.
3. The selected firm is invited to submit a combined technical and financial proposal, and then invited to negotiate the proposal and the contract.

### **6.3.6 Single-Source Selection**

6.3.6.1 Single-source selection of consultants lacks the benefit of competition in regard to quality and cost, the selection is not transparent, and may encourage unacceptable practices. Therefore, Single source selection shall only be used in exceptional circumstances. The justification for Single source selection must be examined carefully to ensure economy and efficiency.

6.3.6.2 Single-source selection is appropriate:

1. If there is a clear advantage over competitive selection for instance:
  - (a) for tasks that are a natural continuation of previous work carried out by the Consultant;
  - (b) where rapid selection is essential (for example, in an emergency situation);
2. For very low value assignments;
3. When only one consultant/firm is qualified or has the necessary experience for the assignment; or
4. Single source selection would be based on the Bureau's guideline which is available on the Bureau's website.

## **6.4 Use of Individual Consultants**

Individual consultants are normally employed on assignments in the following circumstances:

1. Teams of personnel are not required;
2. Office professional support is not required;
3. The experience and qualifications of the individual are the major requirement;
4. Selection may be on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the Procuring Entity;
5. Individuals must meet all relevant qualifications and be fully capable of carrying out the assignment; and

6. Capability is judged on academic and professional background, experience, knowledge of local conditions and culture, administrative systems, and government organization, and language skills as appropriate.

If co-ordination, administration, or collective responsibility may become difficult because of the number of individuals required, it may be advisable to employ a firm.

## **6.5 The Steps of the Procurement Process**

The procedures and guidelines below are based on the standard QCBS process of selection although other selection methods are available for use in appropriate circumstances. The procurement of consultancy services will normally include the following steps:

1. Preparation of the Terms of Reference (TOR).
2. Preparation of a cost estimate and confirmation of available budgeted funds.
3. Advertising for expressions of interest (if appropriate) or preparation of the shortlist of consultants.
4. Preparation and issue of the Request for Proposals (RFP), including: a- Letter of Invitation (LOI); b- Information to Consultants (ITC); c- Draft contract.
5. Receipt of proposals in two envelopes.
6. Opening and Evaluation of technical proposals.
7. Opening and Evaluation of financial proposals.
8. Consolidated evaluation according to the criteria stated in the RFP.
9. Negotiations and Award of the contract to the selected firm.

### 6.5.1 The Terms of Reference

6.5.1.1 The Terms of reference (TOR) is the key document in the RFP. It ensures that both the Client and the Consultant are fully aware of the objectives and outputs of the services. Consultant services are expensive, and lack of careful thought, research and preparation of the Terms of Reference by the Client, may result in considerable waste of resources.

6.5.1.2 The Terms of Reference (TOR) shall provide sufficient information to enable consultants to fully understand the services required by the Client, and to prepare proposals that are realistic and competitive.

6.5.1.3 The TOR must be complete, precise, and clear to minimize request for clarifications from consultants. It must be prepared by staff with the requisite expertise. The Terms of Reference will normally contain the following headings:

1. Background;
2. Objectives;

3. Scope of the Services;
4. Transfer of Knowledge/Training (when appropriate);
5. Deliverables;
6. Assignment Reports and Schedule of Reports;
7. Facilities, services and resources to be provided by the Client;
8. Assignment Period; and
9. Assignment Management & Administration.

**1. Background:**

This shall be limited to the necessary general background and introduction to the assignment including overall details of the programme or project.

**2. Objectives:**

The objectives of the assignment shall be specified in clear and unambiguous terms.

**3. Scope of the Services:**

The scope of service defines in detail the specific services/duties/activities that the Consultant is expected to perform during the assignment.

**4. Transfer of Knowledge/Training (when appropriate):**

The transfer of knowledge includes the level of training or transfer of knowledge activities required by the Consultant. This may include on-the-job training of counterpart staff, training seminars and workshops, or the provision of overseas training facilities.

**5. Deliverables:**

The Deliverables detail the specific outputs expected from the Consultant.

These will include reports, achievements and other measurable progress indicators. For Lump Sum contracts key deliverables are often defined for use with a schedule of interim part payments.

**6. Assignment Reports and Schedule of Reports:**

The assignment and schedule of reports specify the reporting requirements and frequency of reports, and where appropriate the structure of Reports required.

Entities shall avoid specifying unnecessary routine reports, since these reports can easily distract the Consultant from more productive work for the Client. It shall be noted that reports are no substitute for effective personal management of an assignment.

**7. Facilities, services, and resources to be provided by the Client:**

The facilities, service and resources detail the nature and extent of facilities that will be made available to the Consultants (office accommodation, equipment, support or counterpart staff, etc.), any services (communication, photocopying, stationery, Guarantee, etc.) that will be provided, and any other resources or support that the Client (or the Government) will make available.

#### **8. Assignment Period:**

The assignment period indicates the anticipated period of time that the assignment will take to complete.

#### **9. Management & Administration of the Assignment:**

The Management and Administration of the assignment details the management arrangements that will apply to the Consultants during the assignment (who they will report to, frequency of meetings, etc.).

### 6.5.2 Estimating Cost and Budget

6.5.2.1 Preparation of a well thought-through cost estimate is essential for earmarking a realistic budgetary resource for the envisaged service. The cost estimate shall be based on the procurement management unit's assessment of the resources needed to carry out the assignment.

6.5.2.2 Cost estimate includes expenses relating to:

1. consultant staff remuneration;
2. travel and transport;
3. mobilization;
4. staff allowances;
5. communications;
6. office rent, supplies, equipment, shipping; and insurance;
7. surveys and training programs;
8. report translation and printing;
9. taxes and duties; and
10. contingencies.

6.5.2.3 The Head of Procurement management unit shall:

Prepare a cost estimate of the envisaged assignment by adding the remuneration of consultant staff and the direct expenses to be incurred by consultants during the execution of their duties. Those figures are based on an estimate of the staff time (per unit of time, hour, month) required to carry out the services and an estimate of each of the related cost components. Since the estimate of the needed staff time is derived from the TOR, the more exhaustive and detailed the TOR, the more precise the estimate.

### 6.5.3 Expression of Interest (EOI)

A request for Expressions of Interest is required by the Law for consultancy services estimated to cost above the threshold stated by the Bureau, but may be used on lower value contracts to identify consultants who are qualified prior to the issue of an RFP.

### 6.5.4 EOI Criteria

Pre-qualification is based upon the capability and resources of prospective consultants to perform the assignment satisfactorily, considering their:

1. experience and past performance on similar assignments;
2. capabilities with respect to personnel and facilities;
3. required licensing and professional registrations;
4. Commercial and financial resources; and
5. Other criteria as specified by the Bureau

### 6.5.5 Advertisement for Expressions of Interest

The request for Expressions of Interest shall be advertised in the same way as for Competitive Bids and shall contain:

1. name and address of the Procuring Entity;
2. background for the assignment;
3. the scope of the services required;
4. the location and required timescale for the completion of the services;
5. criteria and procedures to be used to evaluate the qualifications of consultants; and
6. Place and deadline for the submission of EOI (which shall not be less than four weeks following the first advertisement).

### 6.5.6 Evaluation of EOI and Short listing

6.5.6.1 No formal opening of submissions is required but a formal evaluation of the capabilities of each consultant is required against the criteria as stated in the advertisement.

6.5.6.2 The following details of each firm shall be assessed in the selection of a short-list of between three and eight consultants:

1. general background of the consultant;
2. eligibility in terms of country of origin, turnover requirements and any other conditions stated in the advertisement;
3. previous experience of similar assignments;
4. competence and sector related experience of the firm;

5. proficiency in English language;
6. relevant experience; and
7. quality of performance under previous contracts.

6.5.6.3 Where a large number of consultants pass the stated qualification criteria, it may not be realistic to invite more than eight to participate in the specific RFP. If so, only the best qualified consultants shall be selected and invited to respond to the RFP.

6.5.6.4 Inform all applicants of the results of the evaluation. Applicants who fail to meet the pre-qualification criteria or reach the shortlist shall be briefly advised of the reasons. No further correspondence will be entered into regarding applications.

6.5.6.5 On completion of the process and approval of the shortlist by the Bids Committee, the RFP will be issued to the qualified consultants.

#### 6.5.7 Preparation and Issue of Request for Proposal (RFP)

The Request for Proposals (RFP) provides all the information necessary for the short-listed consultants to prepare their proposals. It identifies the evaluation criteria, selection method, and procedures that will be used to evaluate the proposals.

A Standard Request for Proposal which can be adapted for any of the selection methods, includes the following parts:

1. Letter of Invitation (LOI);
2. Information to Consultants (ITC) (including the Data Sheet);
3. Technical Proposal—Standard Forms;
4. Financial Proposal—Standard Forms;
5. Terms of Reference; and
6. Standard Form of Contract.

The SRFP will be designed in such a way that some of its parts cannot be modified by the entity, such as the ITC. Other parts, such as the Data Sheet and TOR, are assignment specific and can be used to reflect the assignment conditions.

#### 1. Letter of Invitation (LOI)

- a) The Letter of Invitation states the intention of the Procuring Entity to enter into a contract for a given assignment and informs the short-listed consultants that they are invited to submit a proposal for the assignment. It provides basic information regarding:
  - i. the name of the entity and the sources of funds to finance the consulting services;

- ii. the names of the short-listed consultants;
  - iii. a brief description of the objectives and scope of the assignment;
  - iv. the method of selection; and
  - v. the date, time, and address for submission of proposals.
- b) The LOI also instructs consultants to indicate whether they intend to submit their proposal alone or in association with other short-listed consultants. This information is necessary to allow the entity to invite other consultants in case one or more short-listed consultants decline the invitation or decide to associate, thus reducing competition. In these cases, the deadline for submission of proposals may have to be extended.

## 2. Information to Consultants

- a) The ITC contains all information consultants need to prepare responsive proposals. It also informs consultants about the evaluation criteria and sub-criteria, their respective weights and the minimum qualifying mark, in order to provide for a fair and transparent selection process. The ITC shall not be modified other than through the Data Sheet.
- b) The Data Sheet is the part of the ITC that contains specific information relating to the entity and the assignment.

## 3. Technical Proposal Standard Forms

This contains the standard forms which are to be completed by the Consultant as part of the technical proposal. The Consultant is required to complete and submit the following documents pursuant to the requirements of the Request for Proposals:

1. Technical Proposal submission;
2. Firm's references;
3. Comments and suggestions of consultants on the Terms of Reference and on data, services, and facilities to be provided by the Client;
4. Description of the methodology and work plan for performing the assignment;
5. Team composition and task assignments;
6. Format of curriculum vitae (CV) for proposed professional staff;
7. Time schedule for professional personnel; and
8. Activity (work) schedule.

#### 4. Financial Proposal –Standard Forms

This section contains the standard forms which are to be completed by the Consultant in submitting the financial proposal. The Consultant is required to complete and submit the following documents in accordance with requirements included in the Request for Proposals:

1. Financial Proposal submission form;
2. Summary of costs;
3. Breakdown of price per activity;
4. Breakdown of remuneration per activity;
5. Reimbursable per activity; and
6. Miscellaneous expenses.

#### 6.5.8 Technical Evaluation Criteria

The criteria specified in the RFP shall include:

1. the firm’s relevant experience for the assignment;
2. the quality of the methodology proposed;
3. the qualifications and experience of the key staff proposed; and
4. the extent of participation by nationals among key staff in the performance of the assignment.

The marks for each criterion are aggregated to give the total technical score.

The table below shows the normal range of points to be specified for each criterion, which may be adjusted for specific circumstances. The proposed points must be declared in the SRFP.

Table 1 Indicative Weighting of Evaluation Criteria (Consultant Services)

Specific relevant experience	10 points
Response to the TOR and Methodology Proposed	35 points
Key personnel	40 points
Training	10 points
Participation by nationals/Yobe state indigenes or residents	5 points
Total	100 points

The criteria may be divided into sub-criteria to assist the objectivity of the evaluation. For example, sub-criteria under methodology might be *innovation* and *level of detail*. It is usual to use sub-criteria for key staff to evaluate their qualifications, technical experience and language capabilities. The number of sub-criteria shall be kept to the essential minimum and must be fully detailed within the RFP.

### 6.5.9 Minimum Technical Score

The minimum qualifying technical score to be achieved for a proposal to proceed to the Financial Evaluation must be specified in the RFP.

### 6.5.10 Financial Evaluation Criteria

6.5.10.1 Only proposals that have achieved the pass mark for technical proposals shall be subjected to financial evaluation. In addition to specifying the weighting for technical and financial scores, the RFP must specify the formula for award of points to each proposal price. Normally the lowest priced proposal receives 100 points and the other proposals receive points based on dividing their prices by the lowest priced proposal and multiplying by 100.

6.5.10.2 The standard procedures for correcting arithmetic and other errors in bid prices will apply to adjust the proposal price before the points are awarded to each proposal.

### 6.5.11 Weighting of Technical and Financial Scores

The relative weightings for technical and financial scores must be stated in the RFP. This is usually set at 80% for the technical score and 20% for the financial score. In this case, the technical score will be multiplied by 80% and the financial score by 20% to give the total score for each proposal

## **6.6 Contract Agreement for Employment of Consultants**

The type of contract must be selected when preparing the Request for Proposals and included as a draft with all relevant contract terms and conditions in the RFP.

### 6.6.1 Lump Sum (Fixed Price) Contracts

Lump sum contracts are used mainly for assignments in which both the content and the duration of the services; and the required output of the consultants are clearly defined:

1. Lump sum contracts are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, etc.
2. Payments are linked to defined outputs (deliverables), such as reports, drawings, bills of quantities, Bids documents, and software programs.
3. Lump sum contracts are simple to administer because payments are due on attainment of clearly specified outputs.

## 6.6.2 Time-Based Contract

6.6.2.1 This type of contract is widely used for complex studies, supervision of construction, technical advisory services, and training assignments. It may also be appropriate when:

1. it is difficult to define the full scope of services, or the input of the consultants required to attain the objectives of the assignment;
2. the length of services can be precisely defined and deliverables are only incidental to the main purpose of the assignment;
3. the services are related to activities which completion periods may vary;
4. Payments are based on:
  - a) Remuneration: Agreed hourly, daily, weekly, or monthly rates for staff;
  - b) Reimbursable: Reimbursable items using actual expenses and/or agreed unit prices.
5. The rates for staff remuneration include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances.

6.6.2.2 This type of contract must include a maximum amount of total payments (the contract ceiling) to be made to the consultants.

6.6.2.3 The contract ceiling usually includes a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate.

6.6.2.4 Time-based contracts need to be closely monitored and administered by the Procuring Entity to ensure that the assignment is progressing satisfactorily, and payments claimed by the consultants are appropriate.

## 6.6.3 Retainer and/or Contingency (Success) Fee Contract.

6.6.3.1 Retainer and contingency fee contracts are frequently used when consultants (banks or financial firms) are undertaking specialist financial activities such as preparing companies for sale, in mergers of firms, or in privatization operations.

6.6.3.2 The remuneration of the Consultant includes a retainer and a success fee; the latter being normally expressed as a percentage of the sale price of the assets.

## 6.6.4 Percentage Contract

These contracts are commonly used for architectural services but may also be used in similar circumstances, such as for procurement and inspection agents.

1. Percentage contracts directly relate the fees paid to the Consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected.
2. Contracts are negotiated on the basis of market standards for the services and/or estimated staff-month costs for the services.
3. In the case of architectural or engineering services, percentage contracts lack any incentive for economic design or performance. The use of a percentage contract format for architectural services is only recommended if based on a fixed target cost and covers precisely defined services.

#### 6.6.5 Definite Delivery Contract (Price Agreement)

These contracts are used when there is a need for “on call” specialized services to provide advice or services, the extent and timing of which cannot be defined in advance.

1. These are commonly used to retain “advisers” for implementation of complex project, adjudicating in dispute resolution, institutional reforms, procurement advice, technical troubleshooting, etc. normally for a period of a year or more.
2. The Procuring Entity and the firm agree on the unit rates to be paid, and payments are made on the basis of the time and resources actually used.

### **6.7 Bid Security and Performance Guarantee**

6.7.1 Bid Security and performance guarantee for consultants’ services are not recommended for the following reasons:

1. Bids securities are not an accepted standard for consultancy services bids and are likely to discourage participation by international consulting firms;
2. enforcement of bids securities may be subject to dispute, for example when final negotiations fail to reach a satisfactory conclusion;
3. performance securities can be easily abused by the client as personality clashes or other factors beyond the direct control of the Consultant may affect achievement under the contract;
4. there is often a strong element of subjectivity rather than objectivity in determining the success or failure of an assignment;
5. Securities increase the costs to the consulting industry without evident benefits, and the costs are inevitably passed on to the Client through higher prices.

6.7.2 However, the procurement entity may resort to the use of professional indemnity policy.

## **6.8 Receipt and Opening of Technical Proposals**

6.8.1 Bid Opening shall commence immediately after the deadline for submission of proposals (as stated in the RFP).

6.8.2 The Procurement management unit will co-ordinate the opening, ensure smooth operation of the proceedings, take a register of attendance, prepare Minutes of the opening, and advise the Chairperson of the opening session on procedural issues if requested.

6.8.3 The Bid Opening Committee shall comprise of at least three persons, including a member of the Tenders Board. They shall ensure that minutes of the opening proceedings are duly written.

6.8.4 The Chairperson of the Bid Opening Committee will control and direct the proceedings and not allow consultant's representatives to interfere with the work of the Committee. Any objections by a Consultant to the procedures or decisions of the opening shall be made in writing to the Accounting Officer. For purposes of transparency, it is not permitted for the opening to be halted or postponed once the process begins.

6.8.5 The Bid Opening Committee shall carry out the following functions.

1. Ensure that consultants' representatives are seated separately from the Bid Opening Committee and officials of the Procuring Entity, and that the name, organization represented and contact details of all attendees are recorded in an attendance register.
2. Open the meeting and outline the procedures to be used for the opening of Technical Proposals.
3. Ensure the security of documents at all times during the opening procedure to prevent any unauthorized interference with the documents and process.
4. Open the bid box, check that the inscription on each envelope confirms that it matches the correct proposal and complies with the wording and sealing required in the RFP. Stack all envelopes in clear view ready for opening.
5. Check for any withdrawals or modifications submitted, and match these with the original Proposal before proceeding. Withdrawn proposals shall not be opened once the authenticity of the withdrawal notice has been confirmed.
6. Open the first proposal after confirming that all conditions regarding marking and sealing of the envelope have been met and the envelope has not been tampered with.
7. Examine the Technical and Financial Proposal envelopes inside to confirm that all conditions regarding marking and sealing of both envelopes have been met and the envelopes have not been tampered with.

8. Sign as received and place the Financial Proposal envelope unopened in a separate pile and secure the proposals back into the bid box. This shall open only after the completion of the Technical Evaluation. Examine the contents of the envelope and identify, stamp and number all originals and copies, and any separate sections and attachments.
9. Read out the following details of each Technical Proposal from the Original copy: (a)-any Proposal modifications or withdrawals; (b)-the number allocated to the Proposal by the Bid Opening Committee; (c)-the name and country of the Consultant; and (d)-any other appropriate information at the discretion of the Chairman.
10. Any envelopes containing substitutions, or modifications, must be subject to the same level of scrutiny, including the reading out of critical details.
11. Any obvious failure to provide a responsive Proposal shall be reported to the Meeting and recorded in the Minutes. The Chairperson and two Members of the Committee shall initial the original of each Technical Proposal and all attachments thereto. Any corrections or obvious errors and omissions noted shall be circled in red ink and also initialled.
12. Record the details read out of each Proposal in the Register of Opening, and record any corrections and errors or omissions that were noted during the opening and captured in the Minutes of the Opening.

6.8.6 Minutes of the Opening shall be prepared by the Procurement management unit, signed by the Chairperson of the Bid Opening Committee and made available to any consultant submitting a Proposal who requests a copy in writing. The Technical Proposals shall be handed over to the Bid Evaluation Committee for evaluation.

## **6.9 Evaluation of Technical Proposals**

6.9.1 The Bid Evaluation Committee shall meet shortly before the deadline for submission of the proposals to confirm that there is a common understanding of the evaluation method, the evaluation criteria and sub criteria specified in the data sheet, and the selection procedure. They shall also familiarize themselves with the RFP (in particular the TOR). It is important not to wait until after the technical proposals are opened to define the rating system, since these definitions could be biased by the knowledge of the contents of the proposals.

6.9.2 The Evaluation Committee shall confirm that its members:

1. have no conflict of interest;
2. understand the rating and scoring system;
3. have been provided with evaluation worksheets; and

4. agree on how to evaluate the proposals.

6.9.3 A meeting of the Bid Evaluation Committee shall be held to examine the Technical Proposals to confirm substantial responsiveness to the conditions specified and that there are no important omissions or deviations from the stated objectives, TOR, or other key requirements of the RFP. The Bids Evaluation Committee may request clarifications from consultants concerning ambiguities or inconsistencies in the Proposal. Such requests shall be in writing, and no change in the scope of the originally offered services may be sought or accepted. The responses from consultants shall also be in writing.

6.9.4 Each evaluator shall conduct his or her detailed technical evaluation independently, and record scores using the format provided in the standard evaluation format provided by the Bureau. Evaluators shall also separately note particular strengths and weaknesses of each proposal to assist them in justifying the scores they have awarded.

6.9.5 Following completion of individual evaluations, the Evaluation Committee shall meet again to combine the scoring and to discuss the reasons for any wide variations in the scores awarded by individuals.

The Evaluation Committee will then prepare the Technical Evaluation Report using the standard format for approval by the Tenders Board.

Please find a sample Technical and Financial calculations in tables 2 and 3 below.

#### **6.10 Opening of Financial Proposals**

6.10.1 Following approval of the Technical Evaluation Report, the Procuring Entity shall notify any firms that failed to reach the required minimum technical score, and invite those firms that passed the minimum score to the opening of Financial Proposals.

6.10.2 The opening of Financial Proposals shall commence immediately after the deadline notified to all consultants invited to attend.

6.10.3 The Procurement management unit will co-ordinate the opening, ensure smooth operation of the proceedings, take a register of attendance, prepare minutes of the opening, and advise the Chairperson of the opening session on procedural issues if requested.

6.10.4 The Chairperson of the Bids Opening Committee will control and direct the proceedings and not allow consultant's representatives to interfere with the work of the Committee. Any objections by a

Consultant to the procedures or decisions of the opening shall be made in writing to the Accounting Officer.

For purposes of transparency it is not permitted for the opening to be halted or postponed once the process begins.

6.10.5 The Bid Opening Committee shall:

1. Open the meeting and outline the procedures to be used for the opening of Financial Proposals.
2. Ensure that consultants' representatives are seated separately from the Bid Opening Committee and officials of the Procuring Entity, and that the name, organization represented and contact details of all attendees are recorded in an attendance register.
3. Ensure the security of documents and proposals at all times during the opening procedure to prevent any unauthorized interference with the documents and process.
4. Bring in the unopened Financial Proposals and place in clear view of all participants.
5. Read out the Technical Scores awarded to each consultant during the technical evaluation.
6. Open the first Financial Proposal after confirming with the Consultant that his or her envelope has not been opened or tampered with in any way.
7. Examine the contents of the envelope and identify, stamp and number all originals and copies, and any separate sections and attachments.
8. Read out the following details of each Financial Proposal from the Original copy: (a)- the number allocated to the Proposal by the Bid Opening Committee; (b)- the name and country of the Consultant; the currency of the Proposal; (c)- the total Proposal price; (d)- any discounts offered; and €- any other appropriate information at the discretion of the Chairperson.
9. Any obvious failure to provide a responsive proposal shall be reported to the Meeting and recorded in the Minutes.
10. The Chairperson and two Members of the Committee shall initial the original of each Financial Proposal and all attachments thereto. Any corrections or obvious errors and omissions noted shall be circled in red ink and also initialled.
11. Record the details read out of each Proposal in the Register of Opening, and record any corrections and errors or omissions that were noted during the opening and capture in the Minutes of the Opening.

6.10.6 Minutes of the Opening shall be prepared by the Procurement management unit, signed by the Chairman of the Bid Opening Committee and made available to any consultant submitting a Proposal who requests a copy in writing.

6.10.7 The Financial Proposals shall be handed over to the Bid Evaluation Committee for evaluation whilst a copy is kept under lock and key.

### **6.11 Evaluation of Financial Proposals**

6.11.1 The Bid Evaluation Committee shall examine the Financial Proposals to confirm substantial responsiveness to the conditions specified and that there are no important omissions or deviations from key requirements of the RFP.

6.11.2 The Bid Evaluation Committee may request clarifications from consultants concerning ambiguities or inconsistencies in the Financial Proposal. Such requests shall be in writing, and no change in the price or scope of the originally offered services may be sought or accepted, except for the correction of arithmetic errors. The responses from consultants shall also be in writing.

6.11.3 The Bid Evaluation Committee shall:

1. Correct any purely arithmetical errors in bids in accordance with the procedure stated in the RFP. If there is any discrepancy between numbers and written figures, the written figures shall prevail. If both the number and the total price are indicated in the Proposal, arithmetic shall be checked and if there is a discrepancy, the unit price shall govern. All errors in extension (multiplying the unit price by the number) and totalling shall be corrected and the Consultant notified. A Consultant cannot be permitted to retain an arithmetical error in extension or totalling and correct the unit price. Notify Consultants of any such arithmetic corrections, and request written agreement of the Consultant to the correction. If a Consultant does not accept the correction of an arithmetical error, his Proposal must be rejected.
2. Any communications between the Procuring Entity and a Consultant during the examination of Proposals shall be made in writing.
3. Calculate the financial score of each proposal applying the formula specified in the RFP.
4. Combine the technical and financial scores for each proposal using the methodology stated in the RFP, rank proposals in the order of their total scores and recommend the Consultant with the highest score for contract negotiations.
5. Complete the Evaluation Report using the standard format with recommendations for approval by the Tenders Board.

Table 2: Sample of QCBS Combined Technical /Financial Evaluation – Award Recommendation

Consultants' names	Technical Evaluation			Financial Evaluation		Combined Evaluation	
	Technical Scores	Weighted Scores	Technical rank	Financial Scores	Weighted Scores	T - Scores + F - Scores	Rank
A							
B							
C							
D							
E							

Table 3: Sample Financial Evaluation Results

Consultants' names	Proposals' prices		Adjustment <sup>2</sup>	Evaluated price(s)		Conversion to currency of evaluation	Financial scores <sup>4</sup>
	Currency	Amounts (1)	(2)	(2) (3) = (1) +	Exchange Rate(s) <sup>5</sup>	Proposals' price (5)=(3)(4)	(6)
A							
B							
C							
D							
E							

1. Comment if any (e.g., exchange rates); three foreign currencies maximum, plus local currency
2. Arithmetical errors and omissions of items included in the technical proposals. Adjustments may be positive or negative.
3. As per RFP.
4. 20 points to the firm with lowest price; other scores to be determined in accordance with provisions of REP.
5. Value of local currency.

## **6.12 Negotiation of Contract**

1. Following approval of the Evaluation Report and recommendations by the Tenders Board, the Procuring Entity shall invite the recommended Consultant for contract negotiations, in accordance with the procedure stated in the RFP.
2. Negotiation is expected to ensure agreement on all points and to result in an agreed draft contract. Negotiation may include discussions on the technical proposals, the proposed methodology (Work Plan), staffing and any suggestions that may have been made by the consultant to improve the TOR. The Procuring Entity and the Consultant shall then establish the final TOR, staffing, scheduling of services and clarify any general financial issues such as taxes payable and mode of payment.
3. The selected firm shall not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. Any substitution of key staff by the Consultant will require the offering of an equivalent or better candidate.
4. Where the selection process specifies a time-based form of contract, the Consultant is requested to provide justification of the unit rates quoted for individual staff. Negotiation of staff rates and reimbursable expenses may be discussed in this instance. Financial adjustments to any lump-sum price proposals may only be made through minor modifications to the scope of the proposed services.
5. A detailed record of negotiations shall be maintained and signed by the Procuring Entity and the Consultant.
6. The final TOR, agreed methodology and any financial adjustments shall be incorporated in the draft contract for approval of contract award by the Tenders Board or appropriate Approving Authority.

## **6.13 Award of Contract**

Following approval from the relevant approving authorities, the contract will be awarded. Before issuing the contract, a formal commitment of the required funds against the budget of the Procuring Entity must be approved.

The Head of Procurement management unit shall:

1. Obtain approval of the commitment of funds against the budget of the Procuring Entity.
2. Prepare four copies (minimum) of the contract ready for signature by each party to the contract, and include all specific details relating to the Consultant, the Conditions of Contract, and the

Consultant's offer. A clear statement on when the contract becomes effective is also essential since certain contract clauses such as mobilization, and advance payment issues could be connected with this date.

3. Obtain the signature of the Accounting Officer on all copies of the contract.
4. Note that the four copies (minimum) of the Contract will be distributed after signature as follows:  
(a)- Original – Procurement management unit; (b)- 1st Duplicate – Consultant; (c)- 2nd Duplicate the Technical Department concerned; and (d)- 3rd Duplicate – Legal Officer.
5. Ensure that the contract is duly recorded in the Contracts Register maintained by the Procurement management unit.

#### 6.13.1 Contract Award Notification

6.13.1.1 A formal notice of Contract award shall be issued to the successful Consultant, who will be required, after the standstill period of ten calendar days, to confirm in writing the acceptance of the contract award.

6.13.1.2 The Consultant shall be invited to attend for contract signing, or where this is not practicable, provided with the copies of the Contract for signing and return of the original and two signed copies of the Contract to the Procuring Entity.

6.13.1.3 Failure of the Consultant to confirm acceptance of the award, or to sign the contract will constitute grounds for the annulment of the award. In that event, the Procuring Entity may cancel the proceedings and invite the Consultant who submitted the next ranked Proposal for negotiations.

6.13.1.4 Procuring entities are required to submit notice of contract awards to the Bureau not later than 14 days after contract signing, for publication on the Bureau's website and/or in the Procurement Journal.

The information on contracts awarded/signed shall include the:

1. Name of entity;
2. Name of the Consultant;
3. Description of the services;
4. Contract Sum;
5. Start and finished dates of the contract;
6. Method of procurement used; and
7. Source of funding.

#### 6.13.2 Notification to Unsuccessful Bidders (Consultants)

All unsuccessful Consultants shall be notified immediately once the contract has been awarded.

## **6.14 Contract Management**

Effective management of contracts is essential to ensure that the objectives of the procurement process are achieved and that all contractual obligations and activities are completed efficiently by both parties to the contract. The Procurement management unit or the technical department concerned must ensure that routine monitoring of all current contracts is maintained so that swift remedial measures can be taken when problems arise, or preventive action taken when problems are foreseen.

### 6.14.1 Contract Supervision and Administration

6.14.1.1 Contract supervision and administration shall be undertaken by the Head of the Procurement management unit in consultation with the relevant technical department, which entails the following:

1. Ensure that any contractual obligations of the procurement entity are provided in a timely and efficient manner Maintain routine supervision of the Consultant's performance and progress to ensure that potential problems are identified as early as possible, and notify the Consultant in writing requesting rectification of any deficiencies in required performance standards;
2. Receive regular progress reports from the Consultant and ensure that targets for submission of key deliverables required are met;
3. Conduct detailed checks on the Consultants claims for payment to ensure that contractual requirements are met and process invoices for payment; and
4. Confirm the provision of all contract deliverables before closing the contract file.

### 6.14.2 Payment for Consultant Services

For release of any Advance Payment or subsequent invoices approved by the Accounting Officer, the Head of the Procurement management unit will complete a payment advice and forward to the Accounts Department, ensuring the deduction of any advance payments already made, and any contractual penalties incurred by the Consultant. Attach the original invoice from the Consultant; and copies of relevant information from the contract document, records of approval and financial authorizations.

### 6.14.3 Resolution of Contractual Disputes

6.14.3.1 Most minor disputes may be resolved by discussion and agreement between the Head of Procurement management unit and the Consultant to rectify the cause of complaint.

6.14.3.2 Any formal written complaints received from a Consultant shall be fully investigated and referred to the Accounting Officer to authorize correspondence or formal negotiations with the Consultant.

6.14.3 .3 The Head of the Procurement management unit shall:

1. Examine the contract carefully to be aware of all contract conditions relating to the resolution of disputes. Determine if the Procuring Entity is at fault or partly at fault, and if so, take appropriate action to rectify the problem.
2. Invite the Consultant to a formal meeting, within seven days of the complaint, to discuss the issues and try to agree to a compromise acceptable to both parties. Ensure that accurate written minutes are kept of any such meeting. If an agreement is reached which changes any of the conditions of the contract, approval of the Tenders Board or the Accounting Officer is required before the agreement can be implemented.
3. If no initial agreement is reached and negotiations conducted by the Accounting Officer also fail, consider the use of any adjudication or arbitration services as specified in the contract.
4. Prepare any necessary addendum to the contract for signing.

#### 6.14.4 Termination of the Contract

6.14.4.1 The parties to the contract normally have the right to terminate the contract, but to protect the Procuring Entity, advice of the Legal Department shall be sought. Contracts shall not be terminated without examining all possible alternatives, unless the termination is mutually agreed by all parties to the contract.

#### 6.14.4.2 The Procuring Entity shall:

1. Examine the Contract carefully to be aware of all contract conditions and penalties relating to the Termination of Contract.
2. Follow the advice of the Legal Officer in the preparation of any correspondence.

#### 6.14.5 Contract Amendment

6.14.5.1 Contract amendment may become necessary as a result of the resolution of disputes, additional or reduced requirements by the Procuring Entity, agreements to extend the time schedule, or from accepted increases or decreases in prices. The contract may also allow the Procuring Entity to modify contract values by a pre-determined contingency percentage when this is in the public interest and essential for the work of the Procuring Entity.

6.14.5.2 All other amendments to costs, services, time-periods and other terms and conditions of the contract must be approved by the Tenders Board and confirmed in a formal contract amendment or addendum, and the Bureau shall be notified.

#### 6.14.5.3 The Procuring Entity shall:

1. identify and agree with the Consultant on any specific clauses in the contract which need to be changed, and the new values or terms and conditions which are to apply;
2. prepare a draft contract amendment document for approval by the Bureau, together with a report justifying the reasons for the amendment; and
3. Following approval by the Tenders Board:
  - a) record any change in contract value in the Commitment Register and in the Contract Register,
  - b) record any other contractual changes in the Contract Register,
  - c) arrange for signature of the contract amendment in four copies, and
  - d) distribute copies of the contract amendment in the same way as the original contract.