

Bayelsa State Public Procurement Manual

A Guide for
Procurement Officers
in Bayelsa State



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Public Procurement Manual
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The Bayelsa State Public Procurement Manual: A Guide for Procurement Officers was produced by the National Democratic Institute for International Affairs (NDI) in coordination with the Bayelsa State Due Process Bureau with the financial support of the Bayelsa state government, the United States Agency for International Development (USAID), the United Kingdom Department for International Development (DFID). It is based primarily on the Bayelsa State Public Procurement Law 2009 and related state and federal laws, and also draws from international best practices.



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Foreword

Over several “generations” of governance in this country, Nigeria has suffered sustained corruption in the area of Public Procurement. This may have been due to the absence of a clear template for the practice of Public Procurement or sheer determination by public officers and civil servants to deliberately short-change the people of the infrastructural development that could be made possible by available public resources.

Not surprisingly, over the years also, there have been various efforts to reform our public procurement system in line with international best practices, which when adopted and followed with conscience, would eradicate the irregularities and corruption that thrived.

One of the efforts is the birth of the Bayelsa State Public Procurement Law 2009 (“The Law”), by the state House of Assembly. The Law simply intends to streamline the practice of public procurement in the state and to bring sanity to the system. However, this is quite a bulky document and naturally people may find it difficult to go through it at will. Again the technical language of the “whereof’s”, “wherefore’s”, “therein’s” etc, may not permit a clear understanding of the document.

Hence the partnership of the Due Process Bureau and the National Democratic Institute has developed a veritable manual of this kind to support and explain the provisions of The Law.

The Bayelsa State Public Procurement Manual is not only necessary at this time of the implementation of the Law but quite indispensable to all procurement entities, officers and every other stakeholder. I recommend it very readily to all stakeholders and to the general public to avail themselves of the clarity and simplicity of this document to enhance their understanding of the Law.

Thank you folks, and welcome on board.

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Acknowledgements and Attributions

This manual draws heavily on the following resources, and in some cases adopts and adapts significant amounts of text from them:

- Bayelsa State Public Procurement Law 2009
- Bayelsa State Fiscal Responsibility Law 2009
- Nigeria Bureau of Public Procurement, “Procurement Procedures Manual for Public Procurement in Nigeria”
- United Nations Procurement Manual, Revision 6 March 2010
- Proposal on “Public Procurement,” Affiliated Network of Social Accountability (ANSA), Economic Governance Programme, Idasa, May 2010
- National Democratic Institute Handbook for Trainers and Supervisors for Domestic Election Observation, Nigeria 2011

SECTION I: OVERVIEW

Chapter 1. Introduction and Overview of the Bayelsa State Procurement Manual

Bayelsa State government needs to procure goods, services, and works to support its activities and ensure the development of the state. This manual is intended to provide guidance on procurement policies, procedures, and practices to all staff members involved in the procurement and acquisition processes and activities.

The manual is based on the Bayelsa State Fiscal Responsibility and Public Procurement Laws of 2009. It also draws on international best practices in procurement practice. It has been compiled for the Bayelsa State Government by the National Democratic Institute for International Affairs (NDI) with financial support from the Bayelsa State government.

The present manual provides the legal framework to undertake procurement activities in full compliance with current policies and industry practice. Staff should rely on the manual to guide their actions and to carry out their official duties.

Equally, the procedures in this manual are designed to ensure that those seeking to do business with the Bayelsa State government can be confident that their proposals are considered and assessed in a fair, objective and transparent manner.

After reading this procurement manual, procurement officers should be able to:

- Describe the principals of effective procurement
- Understand the activities in the process associated with procurement actors
- Understand what rules and procedures apply for procurement
- Conduct procurement planning and management
- Develop procurement strategies providing better fit to procurement requirements

Chapter 2: What is Public Procurement and Why is It Important?¹

What is public procurement?

Public procurement is the process by which governments buy inputs for vital public sector investments. Those investments, both in physical infrastructure and in strengthened institutional and human capacities, lay foundations for national development. In procurement terms, those inputs are generally grouped into three categories:



- civil works — for example, bridges and buildings, highways and basic physical infrastructure;
- goods — typically equipment, material and supplies, commodities, textbooks, medical supplies; and
- services — expert advice and training, as well as such things as building maintenance, computer programming, etc.



Sound public procurement policies and practices are one of the essential elements of good governance. Good practices reduce costs and produce timely results; poor practices lead to waste and delays and are often the cause of allegations of corruption and government inefficiency.



What are the elements of good public procurement?

The principal hallmarks of proficient public procurement are:

- Economy;
- Efficiency;
- Fairness;
- Reliability;
- Transparency; and
- Accountability and Ethical Standards.

Economy: Procurement is a purchasing activity whose purpose is to give the purchaser the best value for his or her money. For complex purchases, value may imply more than just price, for example, since quality issues also need to be addressed. Moreover, lowest initial price may not equate to lowest cost over the operating life of the item procured. But the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money.

¹ Adapted from the first section of the *Nigeria Procurement Procedures Manual for Public Procurement in Nigeria*.

Efficiency: The best public procurement is simple and swift, producing positive results without delays. In addition, efficiency is practical; it uses the fewest administrative and personnel resources.



Fairness: Good procurement is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers, and consultants a level playing field on which to compete and thereby, directly expands the purchaser's options and opportunities.

Transparency: Good procurement establishes and then maintains rules and procedures that are accessible and unambiguous. It is not only fair, but it is seen to be fair by the public.

Accountability and Ethical Standards: Good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to challenge and to sanction, if appropriate, for neglecting or bending those rules. Accountability is a key incentive for individuals and institutions to maintain their integrity and honesty, a key deterrent to collusion and corruption, and a key prerequisite for procurement credibility.

A sound procurement system is one that combines all the above elements. The desired impact is to inspire the confidence and willingness-to-compete of well-qualified vendors. This directly and concretely benefits the purchasing entity and its constituents, responsive contractors and suppliers, and donor agencies providing project finance.

Conversely, a procurement system that fails to take into account the above elements stimulates hesitation to compete, submission of inflated tenders containing a risk premium, or submission of deflated tenders followed by delayed or defective performance. Other direct results include collusion in bribery by frustrated or unscrupulous vendors and purchasing entities, bad value for those entities and their constituents, and betrayal and abuse of the public trust for personal gain.

Why is sound public procurement so important?

The quality, timeliness, suitability and affordability of goods, works, and services can largely determine whether a public investment will succeed or fail. The beneficial impact and contribution of the goods, works, and services, particularly in the case of technical assistance services, can exceed their direct costs.

Yet procurement costs can be substantial, consuming scarce resources of tightly constrained government budgets. Often the required funding must be borrowed. Moreover, the process also consumes scarce skilled public-sector human resources. It takes time, not merely for procurement planning and contracting, but also for contract supervision and execution. Much of this process is highly visible, as well as controversial; exposing public sector executives and civil servants to scrutiny and second-guessing for procurement choices they made, deferred, or discarded.

There are five basic concerns that govern procurement policies:

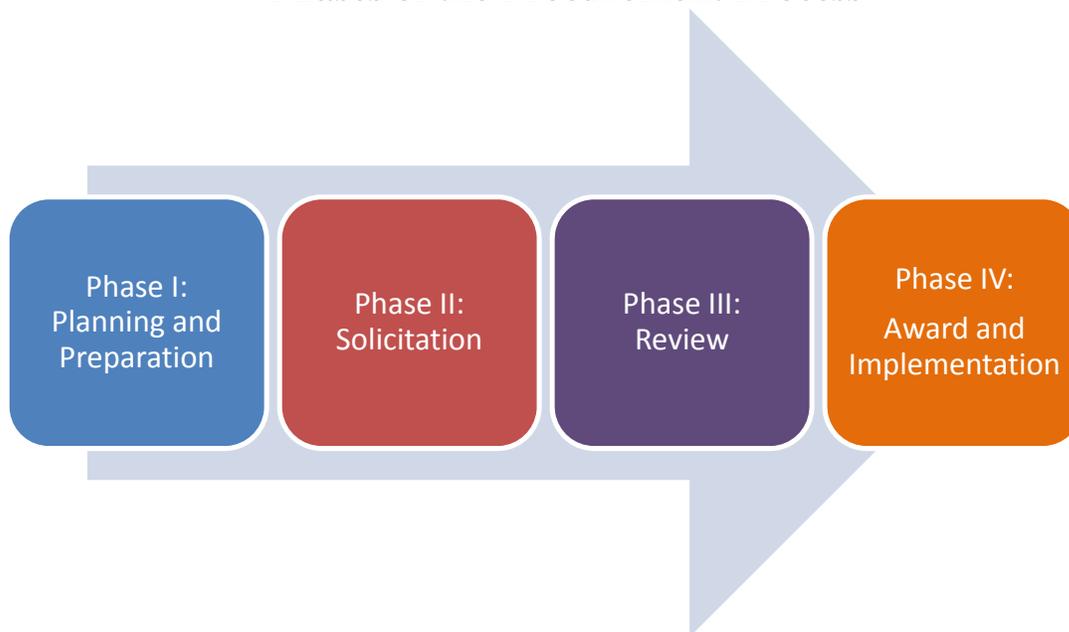
- to ensure that goods and services needed are procured with due attention to economy and efficiency;
- to ensure that public funds are used to buy only those goods and services needed for national development;
- to give all qualified bidders an equal opportunity to compete for contracts;
- to encourage development of local contractors and manufacturers; and
- to ensure that the procurement process is transparent.

The procurement policies and procedures contained in this manual have been designed to promote fairness and equal treatment.

Chapter 3: Overview of the Procurement Process

There are a number of steps that must be taken when procuring public goods, services, or works in Bayelsa State. These are briefly summarized below and discussed in detail in Section III: The Procurement Process.

Phases of the Procurement Process



Phase I: Planning and Preparation

- 1) **Check the Budget:** Ensure that the procurement plan is backed up by the procurement entity's budget and available funds.
- 2) **Create a File:** All aspects of the procurement process must be recorded to facilitate later review.
- 3) **Invite External Observers:** A representative of civil society and a representative of business should be invited to observe all aspects of the procurement process.
- 4) **Prequalify Bidders:** In some situations, the procurement entity will request applications demonstrating basic qualifications ahead of the bidding process.
- 5) **Establish the Basic Criteria for a Contract:** Set out the parameters for what needs to be accomplished and what qualities a contractor would need to achieve the goals.
- 6) **Select the Solicitation Method for Procurement:** Identify whether the criteria can be met through the standard open competitive bidding process, or if there are special circumstances that allow or require a different type of bidding process.

Phase II: Solicitation

- 7) **Publish or Distribute the Request for Bids/ Bidding Documents:** Share bidding documents with all relevant bidders (either through the media or directly), outlining the requirements for any proposal.

- 8) **Receive Bids:** Applicants submit their best proposals to the procurement entity.

Phase III: Review

- 9) **Open Bids:** The procurement entity opens all bids in a public gathering immediately after the deadline for submission.
- 10) **Examine Bids:** The procurement entity checks all bids for basic compliance with the terms of the bidding documents.
- 11) **Evaluate Bids:** The procurement entity evaluates the technical and financial aspects of the proposals, ranks the bids according to responsiveness to the request, verifies that bidders comply with all criteria, and selects a winning applicant.
- 12) **Obtain Necessary Approvals:** Based on the threshold matrix, obtain all necessary certifications, approvals, and ratifications for the award.

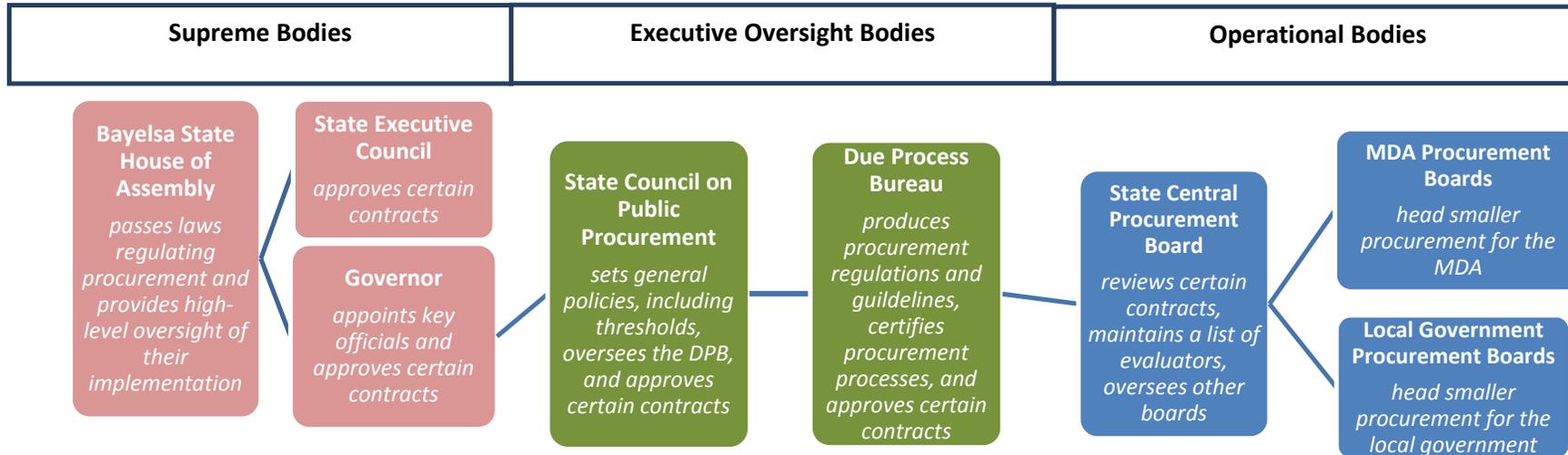
Phase IV: Award and Implementation

- 13) **Award the Procurement Contract:** The procurement entity issues a contract to the winning applicant.
- 14) **Publish the Results:** The procurement entity must announce the winner of the bid once it is decided, and unsuccessful bidders have 30 days from that announcement in which to file a complaint.
- 15) **Payment:** The first payment should be made as a mobilization fee, if applicable, and subsequent payments should be made according to the payment schedule outlined in the contract.
- 16) **Monitor Implementation:** The procurement entity should ensure that the terms of the contract are being fulfilled throughout the life of the contract.

When these steps apply: These rules apply to the Bayelsa State government and all of its ministries, departments, agencies, and other publicly funded entities, including any public schools, hospitals, and enterprises. It also applies to the procurement done by any other entities, if the procurement's funding comes from state revenue at the rate of 35% of funding or N500,000,000 (whichever is lowest). However, this process does not apply to any procurement related to public security, unless the governor approves otherwise. Additionally, procurement funded by international donors and lenders may have different required steps that must be followed.

SECTION II: ROLES AND RESPONSIBILITIES

Chapter 4: Organizational Chart of Procurement Bodies

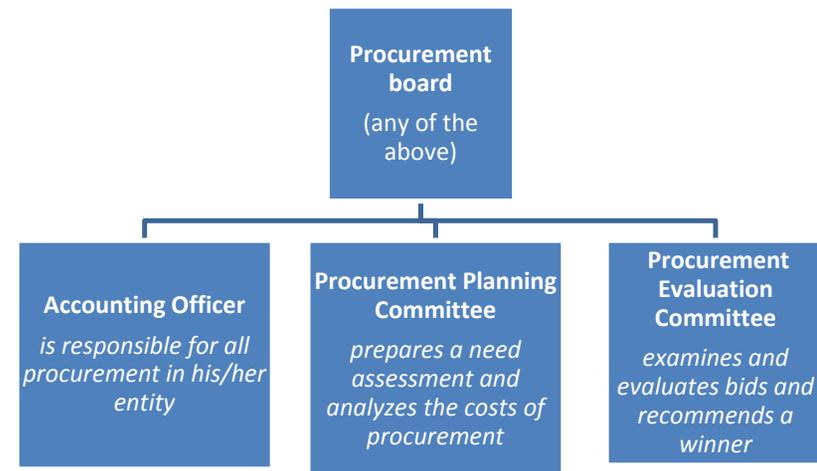


In Bayelsa State, there are a variety of bodies that engage in the procurement process.

At the top level, the **Supreme** bodies have ultimate authority in setting laws that govern the process, conducting oversight, and/or approving policies and actions.

There are also two **Executive Oversight** bodies that set general policies and procedures and ensure they are followed.

Finally, **Operational** bodies conduct the actual procurement actions. At the most basic level is a variety of types of procurement boards; each of these boards should also include the three elements to the right.



Chapter 5: Procurement Threshold Matrix

The larger a procurement is, the greater the risk it carries. For this reason, extra layers of oversight and approval are provided for as a contract amount increases. The ranges of contract amount for each level of oversight and approval are laid out in the table below.

Since prices fluctuate as a result of inflation, market values, and other reasons, these procurement thresholds may be reviewed from time to time by the State Council on Public Procurement. The amounts listed in the table below come from the Bayelsa State Public Procurement Act, 2009, and are accurate as of **December 2013**.

Amount of procurement	Involved bodies	Special procedures or required documentation
N499,999 and below	- Procurement entity	The procurement entity purchases the item using its own internal procedures. No other bodies are involved.
N500,000 to N49,999,999	- Procurement board of the relevant ministry, department, or agency (MDA) - Due Process Bureau	The MDA procurement board follows the procurement process described later in this manual. A representative of the Due-Process Bureau should sit in the board meetings to ensure proper procedures are followed, but he or she has no voting rights. The Bureau issues a certificate of "No Objection" based on a process review.
N50m to N299,999,999	- MDA procurement board - Central Procurement Board - Due Process Bureau - Governor	The MDA procurement board identifies the procurement need and creates bidding documents. The Central Procurement Board opens the bidding, appoints an evaluation committee, and approves an award. The Due Process Bureau conducts a process compliance review and offers a certificate of "No Objection" to the award. The governor must be informed of all contracts awarded in this range on a weekly basis.
N300m to N499,999,999	- MDA procurement board - Central Procurement Board	The MDA procurement board identifies the procurement need and creates bidding documents. The Central Procurement Board opens the bidding, appoints an evaluation committee, and approves an award.

Amount of procurement	Involved bodies	Special procedures or required documentation
	<ul style="list-style-type: none"> - Due Process Bureau - State Procurement Council - Governor 	<p>The Due Process Bureau must review and certify the award decision.</p> <p>The State Procurement Council must review and approve the award.</p> <p>The governor must review and ratify the award.</p>
N500m or more	<ul style="list-style-type: none"> - MDA procurement board - Central Procurement Board - Due Process Bureau - State Procurement Council - State Executive Council 	<p>The MDA procurement board identifies the procurement need and creates bidding documents.</p> <p>The Central Procurement Board opens the bidding, appoints an evaluation committee, and approves an award.</p> <p>The Due Process Bureau must review and certify the award decision.</p> <p>The State Procurement Council must review and approve the award.</p> <p>The State Executive Council must review and ratify the award.</p>

Chapter 6: Roles and Responsibilities of Government Organs in the Procurement Process

Supreme Bodies

The Governor

Appointments: The governor is responsible for appointing the members of the State Central Procurement Board and the director general and principal officers of the Due Process Bureau.

Ratifying contracts: The governor must ratify contracts as indicated in the threshold matrix.

The State Executive Council

Ratifying contracts: The state executive council must review and ratify contracts as indicated in the threshold matrix.

The Bayelsa State House of Assembly

Legal framework for procurement: The Bayelsa State House of Assembly (BSHA) passes legislation governing public procurement to which all executive bodies must adhere.



Oversight: The BSHA may call on any executive official to question him or her about the implementation of public procurement laws, and that executive official must appear before the assembly and provide truthful and accurate testimony. It may also convene hearings to invite public testimony about procurement processes.

Executive Oversight Bodies

The State Council on Public Procurement

Frequency of meetings: The council must meet at least twice per year, but the chairman can call meetings as necessary.

Setting procurement policies: The council sets the state's guiding procurement policies, including the following:

- **Procurement thresholds:** The council periodically reviews the monetary and prior review thresholds, as laid out in the threshold matrix.
- **New technologies:** The council approves any updates to the procurement procedures to take advantage of new technologies (such as setting policies about email submissions of contracts).
- **General policies:** The council reviews and approves any other policies on public procurement that are necessary to achieve transparent and rigorous procurement practices.

Composition of the State Council on Public Procurement

- The commissioner of finance and budget -- *chairman* of the council
- The permanent secretary (general services) -- *secretary* of the council
- The secretary to the state government -- his or her office serves as the *secretariat* of the council
- The attorney general and commissioner of justice
- The head of the civil service of the state
- Eight part-time members who are nominated by the following professional bodies and private sector groups:
 - The Chartered Institute of Purchasing and Supply Management of Nigeria
 - Nigerian Bar Association
 - The Nigerian Union of Journalists
 - Civil society
 - Women's groups
 - The Nigerian Society of Engineers
 - The State Chapter of the National Union of Local Government Employees

All members are appointed by the governor.

Oversight of procurement bodies: The council should periodically review the procedures of the Due Process Bureau in the areas of certification of procurement awards, contracts, and process compliance. It also reviews and approves the bureau's audited accounts and reviews the functions of the Central Procurement Board.

Approving contracts: The council must review and approve contracts as indicated in the threshold matrix.

Approving new procurement entities: The council approves the creation of any new procurement entities that are proposed by the Due Process Bureau.

The Due Process Bureau

Creating general policy: The bureau formulates the general policies by which procurement entities operate. This includes the creation, periodic review, and dissemination to all relevant stakeholders of regulations, guidelines, directives, instructions, technical notes, and manuals. It sets guidelines related to the composition, functions, powers, and procedures of all procurement boards. The bureau is responsible for harmonizing all government policies and practices on public procurement so that all procurement entities follow the same guidelines.

Composition of the Due Process Bureau

- Director General – *this person is appointed by the governor and confirmed by the BSHA*
- Principal officers of the bureau – *these individuals are appointed by the governor*
- Staff of the bureau – *these officers and employees are appointed by the State Council on Public Procurement*

Creating procurement entities: The bureau can declare any entity to be a procurement entity, subject to approval from the council. A procurement entity is any body that conducts procurement, and it must adhere to the rules in this manual.

Training procurement officers: The bureau should clearly explain the provisions of the procurement law to professionals working in all procurement entities. This should include orientations for staff who are new to procurement in the state and periodic refresher training courses for veteran staff. See Appendix A for training tips.



Pricing: The bureau establishes pricing standards and benchmarks.

Reviewing contracts: The bureau must ensure probity, accountability, and transparency in all procurement processes. Depending on the amount of a contract, this role may take different forms. If a contract is:

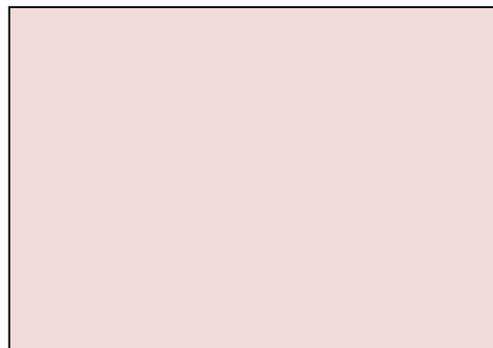


- Over N300m – Before a contract can be signed, the bureau must issue a certificate of "No Objection" for contract award. It can refuse to issue the certification if it finds the process has not been followed or if the price is too excessive. If this is the case, the Due Process Bureau can ask the procurement entity to re-tender the procurement or cancel it altogether.
- Under N300m – The bureau should conduct a review of the procurement entity's compliance with mandated procedures.

Approving payments: Before any payment can be made for contracts with value of over N300 million the Due Process Bureau must issue a certificate of "No Objection" based on whether the supplier has delivered according to the contract terms and provisions.

Keeping records: The bureau should maintain all records related to the procurement process, including:

- A list of all procurement entities in the state
- A database of suppliers, contractors, and service providers, including contact details and relevant information about the areas in which they work
- A list of debarred suppliers
- A standard prices database based on the actual costs of goods and services in the state
- Electronic and paper copies of all editions of the procurement journal that the Due Process Bureau should produce and publish. The journal should include:
 - details of major contracts including proposed procurement notices,
 - notices of invitation to tender,
 - contract award information, and
 - the list of debarred suppliers



- Archives of all procurement plans and information covered by the procurement law

The Due Process Bureau should also set any administrative fee required for member of the public to access the records of a procurement proceeding.

Developing materials: The bureau should create, distribute, and periodically update standard materials and templates for the procurement process, including:

- contract templates
- bidding documents templates
- pre-qualification documents
- sample requests for proposals
- other related documents

**BEST PRACTICE:
SURVEYS**

Surveying beneficiaries of services before undertaking procurement can provide important information into their satisfaction with the current system and their opinions about and needs for the new one.

Research and advice: The bureau undertakes research and surveys to improve procurement practices and assess the socio-economic effects of procurement policies. Using this information and analysis, the bureau advises the governor and the State Council on Public Procurement on reforms or steps that should be adopted to improve the process and its results.

Monitoring: The bureau monitors the activities of all procurement entities, including performing procurement audits. A report on these audits must be submitted every year to the BSHA.

Control and sanction: The bureau should prevent fraudulent and unfair procurement practices wherever possible, and it must act on any complaints received against procurement entities. See Appendix B for information on the process of review and sanction.

Operational Bodies

Every procurement entity must have a procurement board. The specific compositions and tasks of each category of procurement board are described below. However, all procurement boards have the following responsibilities related to awarding contracts:

1. Vetting bid documents and notices submitted to it by the procurement entity
2. Receiving and publicly opening bids
3. Selecting firms or persons to be awarded contracts
4. Awarding procurement contracts
5. Establishing a technical evaluation committee that is chaired by the board secretary to evaluate bids
6. Communicating all decisions to the accounting officer and any other relevant authority
7. Submitting procurement documents to the Due Process Bureau for vetting and certification prior to award of contract

The Central Procurement Board

Meetings and decision-making: The Central Procurement Board may meet as often as necessary; the chairperson plus four members constitutes a quorum (enough people to make a decision). Decisions are made by a simple majority of the present and voting members. If the votes are tied, the officer chairing the meeting can cast the deciding vote.

Reviewing contracts: The Central Procurement Board manages the procurement process for all contracts as indicated in the threshold matrix. The board:

- vets all bidding documents and notices that are submitted by MDAs,
- receives and publicly opens the submitted bids,
- selects the evaluators for the bids,
- oversees the examination and the evaluation process,
- reviews the recommendations of the bid evaluation committee,
- approves the award or requests further evaluation, and
- arbitrates between MDAs and bidders if there are disputes or appeals about the process.

Composition of the Central Procurement Board

Board

- Commissioner of special duties in the governor's office – *chairman*
- Permanent secretary (General Services) – *secretary* (but with no voting rights)
- Commissioner of finance
- Director general of the Due Process Bureau (but with no voting rights)
- Commissioners overseeing the MDAs with the three highest capital budgets in the current financial year
- Three other commissioners appointed by the governor with wide experience in legal, administrative, economic, and financial areas and with relevant experience in public procurement.
- Other expert advisors may be called to attend meetings, but they have no voting rights

Staff

- Any necessary staff are appointed by the board and under the administrative control of the chairman

All board members are appointed by the governor.

Maintaining a list of evaluators: The Central Procurement Board should maintain a list of qualified and independent evaluators so that it can suggest evaluators for bid review.

Authorizing procurement calls: The accounting officer of an MDA seeking to enter into procurement as indicated in the threshold matrix must notify the Central Procurement Board in

writing of this intention. The Central Procurement Board must authorize or decline the MDA to call for bids in an open competitive bidding system, or authorize the MDA to use another appropriate procurement method (see section 16).

Approving contracts: The Central Procurement Board must approve the winner of a contract after the bid examination and evaluation, as indicated in the threshold matrix.



Notifying the governor: The Central Procurement Board must notify the governor once per week about all contracts as indicated in the threshold matrix.

Requesting information and assistance: The Central Procurement Board has the powers to:

- a) Ask for and make copies of information and documents from any MDA
- b) Commission any studies relevant to the determination of the award of contracts
- c) Request technical or professional assistance in its duties from any individual

Reporting irregularities: If the Central Procurement Board identifies any wrongdoing or contravention of the law and the procurement process, it will report this to the appropriate authority – if the individual involved is a civil servant, that person is referred to the head of the civil service; if he or she is a political appointee, the report should be made to the governor.

Ministerial/Extra-Ministerial Procurement Boards

Every MDA must have a procurement board that is responsible for initiating and/or processing procurement, as indicated in the threshold matrix. This board oversees the activities of the committees described below and communicates the process results to the commissioner of the MDA.

Composition of the Ministerial/ Extra-Ministerial Procurement Boards

- Permanent Secretary -- *chairman*
- Head of procurement/ planning, research and statistics: *secretary*
- Directors/heads of departments within the ministry

Local Government Procurement Boards

Local government areas in the state are required to set up their own Procurement Boards in conformity with the state procurement law (Section 16(2)). The functions of the procurement boards shall be to vet bid documents and notices submitted to it by the procuring department; receiving and publicly opening bids; selecting firms or persons to be awarded contracts for the procurement of goods, works, and services; and awarding procurement contracts.

Elements within Each Procurement Board

Accounting Officer

Every procurement entity must have an accounting officer with ultimate responsibility for and supervision over the entity's procurement process, including planning, organization, evaluation of tenders, and execution of all procurement. He or she must ensure the procurement law is followed, approve all procurement board decisions, and is responsible and accountable for any actions that are taken or fail to be taken. In ministries, the accounting officer is the permanent secretary; in all other bodies, he or she is the director general.

The accounting officer must ensure that the procurement entity's annual budget contains all necessary procurement expenditures and that the state's annual budget contains sufficient funding for the needed procurements.

He or she appoints the members of the committees described below.

Procurement Planning Committee

The planning committee prepares a needs assessment and evaluation and identifies the goods, works, or services required. Once the need is identified, the planning committee carries out appropriate market and statistical surveys. Using this research, the committee prepares an analysis of the cost implications of procuring the item.

Coordination: Where possible, planning committees should combine procurements, both within their own entity and between their procurement entity and others, to achieve savings and efficiency.

Procurement Evaluation Committee

A technical evaluation committee should be established by the accounting officer to evaluate bids; the secretary of the procurement board chairs this committee. The Central Procurement Board maintains a list of qualified evaluators that can be tapped for this committee.

Composition of a Procurement Planning Committee

- The accounting officer or his representative -- *chairman*
- A representative of the procurement unit of the procurement entity -- *secretary*
- Representative of the legal unit
- Representative of the planning, research, and statistics department
- Representative of the finance and administration or equivalent department
- A representative of the unit directly in requirement of the procurement
- Technical personnel of the procuring entity with expertise in the subject matter for each particular procurement
- Member of the Due Process Bureau (no voting rights, but sits in deliberations of N20m and below to facilitate the efficient certification of the award)

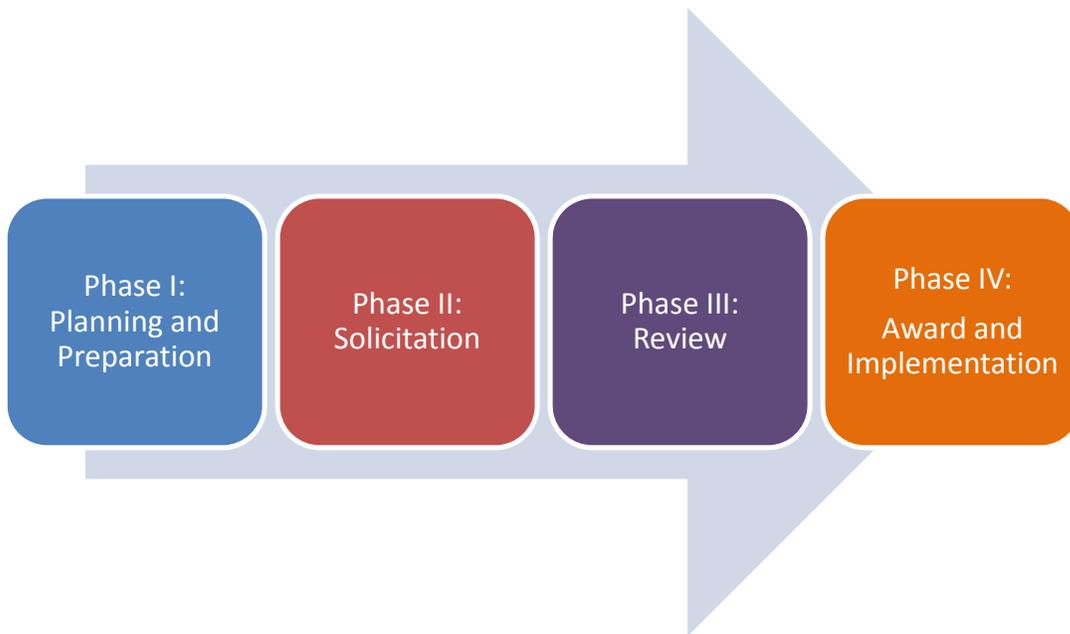
BEST PRACTICE: EVALUATION COMMITTEE COMPOSITION

The evaluation committee should be composed of at least three or four individuals with expertise in procurement and/or the technical area of the good, service, or work being procured.

BEST PRACTICE: NETWORKING

Procurement boards and committees can share best practices by meeting with their counterparts from other procurement entities elsewhere in the state – sometimes informal meetings where conversation can freely develop can yield the best results.

SECTION III: THE PROCUREMENT PROCESS



Chapter 7. Phase I: Planning and Preparation

The planning and preparation phase includes the following steps:



1) Check the Budget

Bodies responsible: *Accounting officer, planning committee*

Any procurement must be backed up by a budget appropriation, and the funds must be available to meet the obligations of the contract.

2) Create a File

Bodies responsible: *Accounting officer, planning committee, evaluation committee*

For each procurement proceeding, a file (both paper and electronic) should be created in which all relevant records are kept. At every step, all communications about the procurement process should be done in writing and included in this file. The record should include all of the following information:

- a) Information identifying the procurement entity and the contractors;
- b) A brief description of the goods, works or services subject of the procurement;
- c) The date of the contract award;
- d) The value of the contract; and
- e) The detailed records of the procurement proceedings.



The records should be filed by the date of the award and organized by calendar year. Copies of all of these records for any given calendar year must be shared with the Due Process Bureau by March 31 of the following year. Any member of the public should be permitted to access the records for only the cost of copying and certifying the records, as well as any administrative fee set by the Due Process Bureau.

3) Invite External Observers

Bodies responsible: *Planning committee*

The procurement entity must invite two credible individuals to observe every step of the procurement process. One of these individuals should represent a recognized private

BEST PRACTICE: OBSERVER INVITATIONS

Observers should be invited in writing at least three days before bid activity begins to enable them to prepare or choose an alternate if necessary.

sector professional organization whose expertise is relevant to the particular goods or service being procured; and a recognized non-governmental organization working on issues of transparency, accountability, and anti-corruption. These observers should not intervene in the procurement process, but can submit their observation report to any relevant agency or body, including their own organizations or associations and the media.

4) Prequalify Bidders (*where applicable*)

Bodies responsible: Planning committee, evaluation committee

A procurement entity may create a list of pre-qualified suppliers, contractors, or services providers. Pre-qualified suppliers, contractors, or service providers may participate further in the procurement proceedings.

Pre-qualification documents should include:

- a) Instructions to prepare and submit the pre-qualification application;
- b) A summary of the main terms and conditions required for the procurement contract to be entered into as a result of the procurement proceedings;
- c) Explanation of specific criteria by which applicants will be judged;
- d) A list of any documents or information that will be used to demonstrate the applicant's qualifications; and
- e) The address for the submission of applications, the date and time of the deadline for submission, and all acceptable modes of submission (such as the postal service, courier, hand delivery, and email).
 - i. The deadline should allow sufficient time for applicants to prepare and submit their applications.

**BEST PRACTICE:
PRE-QUALIFY FOR LARGE
CONTRACTS**

Pre-qualification should be used for large contracts, such as large works, turnkey construction, and complex information technology systems. It is not generally needed for the procurement of ordinary goods or smaller contracts, such as vehicles and computer equipment.

Cost of application: Any entity may request pre-qualification application documents, although they may be charged the cost of printing and providing these documents.

Questions and clarification of documents: An applicant may request clarification of the pre-qualification documents 10 or more days before the deadline. The procurement entity must respond within a reasonable timeframe (no more than seven working days). The responses to any requests that would interest other applicants should be shared with all other applicants, but the name of the original requestor should not be revealed.

Announcement of results: The procurement entity must promptly notify all applicants whether they have been pre-qualified and publish the list of the suppliers, contractors, or consultants that have been pre-qualified. Unsuccessful applicants must be informed of the reasons for disqualification.

Renewal of pre-qualification: At any time, the procurement entity may request that a pre-qualified supplier, contractor, or service provider again demonstrate its qualifications using the same criteria as before. Any supplier, contractor, or service provider not meeting these criteria will be disqualified. The procurement entity must promptly notify the applicant of the success or failure of its renewal application.

5) Establish the Basic Criteria for a Contract

Bodies responsible: Planning committee



In order to ensure a fair, transparent, and systematic procurement process, the first step a procurement entity should take is to define the criteria needed for the procurement to be successful, such as:

- the timeframe for the project's completion
- the qualifications any successful bidders must possess
- the documentary evidence or other information that must be submitted by suppliers, contractors, or service providers to demonstrate their qualifications
- a summary of the main terms and conditions of any likely contract

These criteria will help the procurement entity decide which procurement method is appropriate and will be included in the

bidding documents.

Take Note: A contract should not be artificially split to avoid procurement oversight requirements.

6) Select the Solicitation Method for Procurement

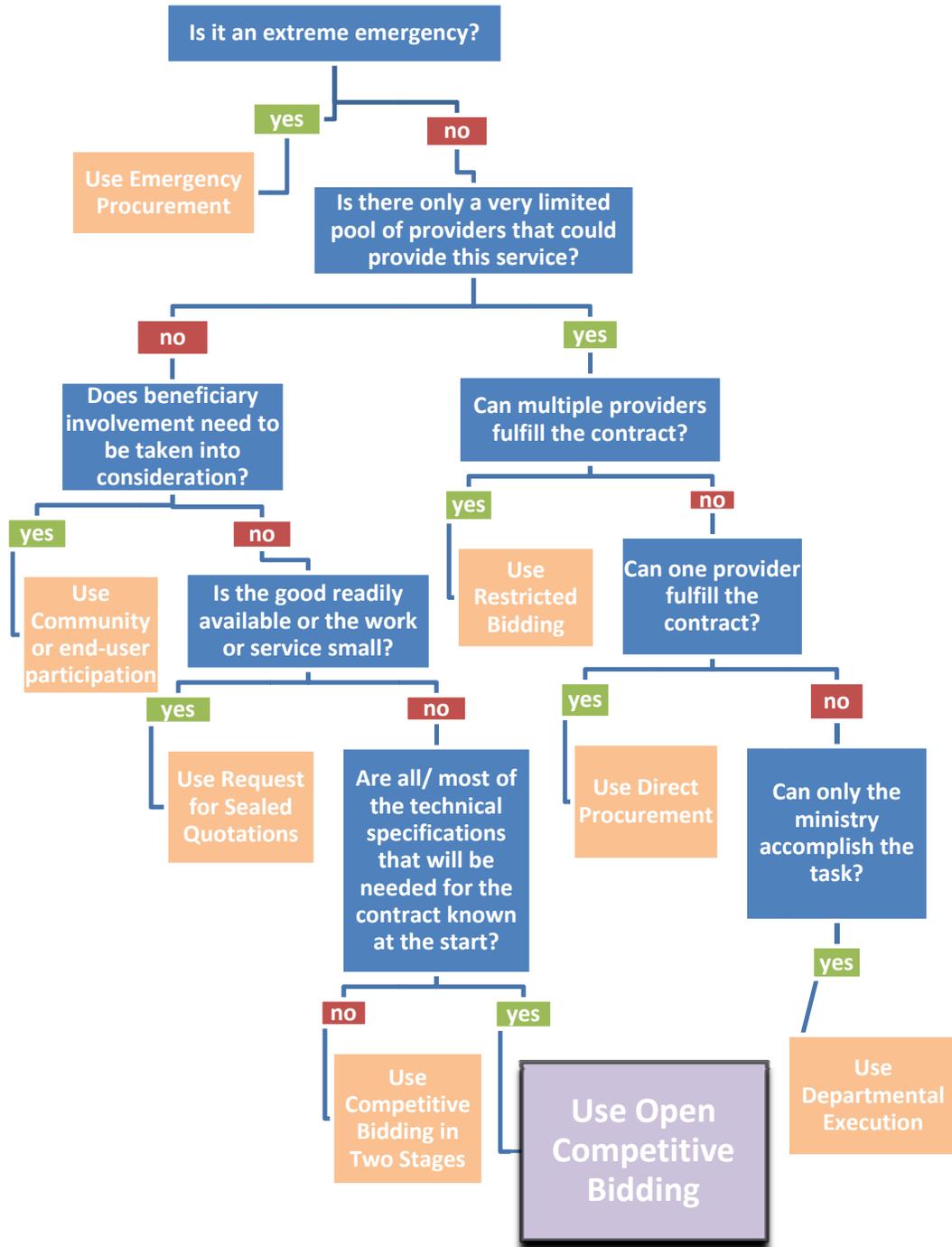
Bodies responsible: Planning committee

Several methods are available to procure goods, services, and works. In most situations, the open competitive bidding method should be used. However, there are certain specific circumstances in which other methods are available to a procurement entity. Once the criteria for a tender have been established, the procurement entity should decide which of the following procurement methods is most appropriate. A written justification for the decision should be included in the procurement proceedings record. Refer to Appendix C for complete details of and instructions for each method and the decision tree on the next page to help decide which method should be used.

- **Open competitive bidding** – An invitation to bid is widely circulated and anyone may apply to pre-qualify or to bid.
- **Open competitive bidding in two stages** – Same as above, but with only a technical proposal submitted in the first round of bidding. This enables the procuring entity to better explore options for the technical approach to a procurement and adjust its bidding documents as needed.
- **Restricted bidding** – Only select bidders can apply because only a limited number of companies/ consultants can provide the specific good, work, or service, or because the competitive process would cause a disproportionate cost.
- **Request for sealed quotations** – If the procurement item can be provided from readily available, standard goods, or if the work or service is of a small value, three or more providers are invited to apply.

- **Direct procurement** -- A procurement from a single source without bids can be used if an item is in the bottom tier of the threshold matrix or only one provider can fulfill the requirements.
- **Emergency procurement** – Limited procurement may be made through a single supplier without competition in cases of extreme urgency.
- **Community or end-user participation** – If the participation of the ultimate beneficiaries of the procurement would enhance the economy, quality, or sustainability of the services being procured, or the objective of the project is to create employment and involvement of the beneficiary community, the beneficiaries may participate in the delivery of services.
- **Departmental execution** – If no external provider can be found, a procurement entity can choose to execute the contract with its own staff labor.

Decision Tree for Procurement Methods



Chapter 8. Phase II: Solicitation

The solicitation phase includes the following steps:



7) Publish or Distribute the Request for Bids/ Bidding Documents

Bodies responsible: *Planning committee*

The procurement entity should publish the request for bids (if open competitive bidding is used) or directly provide pre-qualified bidders with the request (if any other method is used). A list of specific information that should be included in the bidding documents is included as Appendix D. Please visit the resources page of the Due Process Bureau's website to find sample bidding documents for a variety of procurement types.



Communication: No communication may take place between a procurement entity and any supplier or contractor after the publication of a bid solicitation, except where otherwise stated in the manual.

8) Receive Bids

Bodies responsible: *Evaluation committee*

All bids should be submitted in writing, signed by the bidder's appropriate authority, and enclosed in a sealed envelope. The procurement entity should deposit all bids in a secured box.

Modifications: A bidder may modify, substitute, or withdraw its bid after submission if it does so before the deadline for the submission of bids.

Late submissions: Any bid received after the deadline for submission shall be returned unopened to the bidder.

Chapter 9. Phase III: Review

The review phase includes the following steps:



9) Open Bids

Bodies responsible: Evaluation committee

Every bid must be opened at the time and place indicated in the bidding documents. Every bidder or its representative shall be authorized to attend the bid opening.

Process for opening bids: The bid opener shall read out the following information to those present, and a copy of this information should be provided to any bidder requesting it:

- a) The name of the bidder
- b) The total amount of each bid
- c) Any discount or alternative offered
- d) The presence or absence of any bid security, if required

BEST PRACTICE: PUBLIC OPENINGS

It is a good idea to make bid openings open to anyone who would like to attend, including not only the bidders and official observers, but also any other member of the public who wants to attend. This reduces any question about the proceedings and promotes transparency.



Communication: Once the bids have been opened, no information relating to the examination, clarification, and evaluation of bids or recommendations concerning award shall be communicated to bidders or anyone outside of the evaluation process until the successful bidder is notified of the award.

Disclosure of conflict of interest: After the bids have been opened, each member of the procurement board must fill a form indicating whether he or she is related to any of the bidders. If there is a prohibited relationship, the board member must recuse himself or herself. A sample conflict of interest form is included as Appendix E.

10) Examine Bids

Bodies responsible: Evaluation committee

Bids must be examined to determine if they:

- a) meet the minimum eligibility requirements (see Appendix F for the full list of criteria)
- b) have been duly signed
- c) are substantially responsive to the bidding documents
- d) are generally in order

If a bidder is not found to be eligible, the procurement entity should notify that bidder in writing that the bid or tender in question has been excluded and cite the grounds for the exclusion. This letter should be kept in the file pertaining to the procurement proceedings in question.

Clarification: A procurement 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. However, it may not request or allow any change of price or substance in the bid, or otherwise make changes to make a bid responsive when it was not originally responsive.

Correction of errors: The procurement entity may correct purely arithmetical errors in a proposal. It must promptly notify the bidder.



11) Evaluate Bids

Bodies responsible: Evaluation committee

Steps for evaluating bids: The procurement entity should evaluate all remaining, valid bids using the appropriate method and criteria stipulated in the bidding documents. Those criteria cannot change at any time during the procurement process once the bidding documents have been released. This should include the following steps, where applicable:

- a) Check for **deviations** (refer to the deviations sub-section below for details)
 - a. Disqualify bids with major deviations
 - b. Clarify questionable minor deviations with bidders
 - c. Quantify minor deviations in monetary terms
- b) Check for **omissions** and quantify them in monetary terms
- c) Apply any applicable **discounts**
- d) Convert **currency** figures to naira where not already done, using the rate included in the bidding documents
- e) **Monetize any relevant factors** that were stipulated in the solicitation documents in addition to price:
 - a. For goods, this could include the cost of transportation and insurance, payment schedule, delivery time, operating costs, efficiency, compatibility of the equipment, availability of services and spare parts, related training, safety, environmental benefits, or losses by damages.
 - b. For works, the same factors apply, as well as the value of early completion if time was a factor, as long as the conditions of the contract will provide for commensurate penalties in case of late delivery.
- f) Calculate the amount of the **margin of preference** for domestic manufacturing or local origin, where applicable
- g) **Determine the lowest calculated prices**, in order of rank
- h) **Consider all relevant technical factors** in addition to price, as laid out in the bidding documents
- i) If the highest-ranking bidder was pre-qualified, the procurement entity must **verify that it is still qualified** and still has the resources and capability to perform the contract successfully
- j) If the highest-ranking bidder was **not** pre-qualified, the procurement entity should conduct **post-qualification** of bidders
 - a. The qualifications of the best evaluated bidder are checked against the criteria in the bidding documents. If the bidder does not meet the criteria, it should be rejected and the next ranked bid examined against the criteria, and so on.
- k) **List the rejection of bids**, where applicable

- l) **If all bids are rejected**, submit a decision memo for the record and notify all bidders. The following reasons would justify the rejection of all bids:
- a. No bids are responsive to the request,
 - b. The best evaluated bid is substantially above the approved price,
 - c. The procurement is no longer required, or
 - d. There is evidence of collusion among the bidders.
- An invitation to re-bid may be made if either of the first two reasons is used, but the procurement entity should first re-examine the process and make any necessary adjustments to the technical specifications or contract conditions.
- m) **Recommend** that a bidder be awarded the contract
- n) Write a bid evaluation **report**

Deviations from the Bidding Documents Criteria

Major deviations from the criteria in the bidding documents:

A major deviation from the original bid should result in a rejection of the bid. If this occurs, the procurement entity should send a letter containing the reasons for the rejection. The bidder will not be permitted to amend its bid.

Major deviations include:

- a) unacceptable sub-contracting
- b) unacceptable time schedule if time is of the essence
- c) unacceptable alternative design
- d) a deviation that results in a major impact on cost

Minor deviations from the criteria in the bidding documents:

If a minor deviation is found in a bid proposal, the procurement entity may obtain written clarification from the bidder and allow a correction of the deviation where applicable. If a bidder does not accept the correction, the bid shall be rejected. If this occurs, the procurement entity should send a letter containing the reasons for the rejection.

Minor deviations include:*

- a) the uses of codes
- b) the difference in standards
- c) the difference in materials
- d) alternative design
- e) alternative workmanship
- f) modified liquidated damages
- g) omission in minor items
- h) discovery of arithmetical errors
- i) sub-contracting that is unclear and questionable
- j) different methods of construction
- k) difference in final delivery date
- l) difference in delivery schedule
- m) completion period where time is not of the essence
- n) non-compliance with some technical local regulation payment terms
- o) any other condition that has little impact on the bid
- p) a deviation that results in a minor impact on cost

* where not otherwise indicated in the bidding documents

12) Obtain Necessary Approvals

Bodies responsible: Procurement board and approving bodies, as applicable: Central Tenders Board, Due Process Bureau, State Council on Public Procurement, Governor, State Executive Council

The procurement board must obtain all necessary approvals for the contract to be awarded to the provider recommended by the committee. Refer to the procurement threshold matrix; this process may include a certificate of "No Objection" from the Due Process Bureau, approval from the Central Procurement Board and/or State Council on Public Procurement, and ratification by the governor or State Executive Council.



Chapter 10. Phase IV: Award and Implementation

The award and implementation phase includes the following steps:



13) Award the Procurement Contract

Bodies responsible: Accounting officer

A procurement contract shall be awarded to the bidder that submitted the best evaluated substantially responsive bid which meets the qualification criteria.

The contract should include detailed terms and conditions for the work to be performed or the goods to be provided. A list of provisions and items that should appear in the contract is included in Appendix G. Please see the resources page of the Due Process Bureau's website for sample contracts.

Challenges to a decision: Unsuccessful bidders may challenge the result of a procurement decision if they feel it has not been taken in accordance with the guidelines laid out in this manual.

Detailed guidelines for handling challenges to a procurement decision are found in Appendix H.

Contract amendments: Any amendment to the contract that changes the basic nature or scope of work must be agreed to by the parties in writing. Situations that may warrant an amendment might include the non-release or late release of funds, sudden monetary inflation, and a change in the government's funding priorities. If the amendment would increase the contract value by more than 25 percent, fresh procurement proceedings must be undertaken.

Failure to sign or present security: The winning bidder must sign the contract and present its performance security by the dates specified in the bidding documents or else forgo its bid security and lose the contract. If this happens, the procurement entity should select another bidder from the remaining valid bids.

14) Publish the Results

Bodies responsible: Accounting officer

The procurement entity must publish a notice of every completed procurement award. Within 30 days of the announcement, an unsuccessful bidder may request the reasons why its proposal did not win, and the procurement entity must respond promptly.

15) Pay the Winner

Bodies responsible: Accounting officer, procurement entity unit in charge of the project, Due Process Bureau

Payment should be made according to the payment schedule in the contract. If a payment is made more than 60 days late, the award recipient should be compensated for lost interest, either according to the legal rate or a rate defined in the contract.

Throughout the contract period, before any payments can be made, the Due Process Bureau must issue a certificate of "No Objection" indicating that the terms of the contract continue to be fulfilled so that the provider has earned subsequent payments.

16) Monitor Implementation

Bodies responsible: Accounting officer, procurement entity unit in charge of the project

The procurement entity's relevant units should ensure that the contract's terms are being followed and the goods, works, or services are provided as expected. This information should be shared as relevant with the procurement entity's leadership, the state budget office, civil society, and the media.

BEST PRACTICE: EVALUATING THE PROCESS

Once the procurement process is completed, it can be a good idea to examine how it was rolled out to identify things that were done very well and any areas for improvement. These lessons learned should be shared widely with other procurement professionals.

Chapter 11. Procuring Consultancy Services

Consultancy services are services of an intellectual or advisory nature that are not related to the supply of goods or execution of works. A procurement entity can contract a consultant using different methods from the procurement of goods, services, and works.

In most cases, the procurement entity should issue a **request for proposals** (RFP). In certain cases, **direct procurement** can be used. Both of these methods are described in detail below.



Requests for Proposals

- **Create a short list**

For consultancy contracts **up to and including N50 million**, a short list of potential consultants can be created based on the procurement entity's own knowledge and information.

For consultancy contracts over N50 million, the procurement entity must publish a notice seeking expressions of interest from potential consultants. It must be published in at least one national and one local newspaper with wide circulation. All respondents must be included in a short list of potential consultants.

- **Request proposals**

The procurement entity should send a request to each individual on the short list to submit a proposal. The request should clearly lay out the expected elements of the proposal, such as quality, quantity, terms, time of delivery, and other special requirements. The request should also indicate which of the methods laid out below will be used for evaluating proposals.

- **Evaluate proposals**

Methods of evaluation

The selection of the successful proposal shall be based on one of the following methods, as indicated:

- a) **Quality and cost:** The procurement entity should in most cases evaluate the bids based on a combination of the technical quality of the proposal, the consultant's relevant experience, the expertise of his or her key staff, the proposed work methodology, and the price quoted in the proposal.
- b) **Quality and fixed budget:** Where there is a predetermined fixed budget, the procurement entity should evaluate the proposals based on the quality of the technical proposal under the agreed budget threshold.
- c) **Technical quality alone:** Where the services are of an exceptionally complex nature or likely to have considerable impact on future projects or the economy of the state, the procurement entity can decide exclusively on the technical quality of the proposal.

Technical review of proposals

The procurement entity should first conduct a technical review of all proposals using the following criteria:

- a) the consultant's relevant **experience** for the assignment;
- b) the quality of the **methodology** proposed;
- c) the qualifications of the key **staff** proposed;
- d) **transfer of knowledge**, if required in the request for proposals; and
- e) in the case of interstate competition, the extent of **participation by Bayelsan indigenes** among key staff in the performance of the assignment.

The procurement entity will publicly announce the results of this technical evaluation.

Financial review of proposals

The procurement entity will then review the financial proposals of all potential consultants whose technical proposals met the pre-determined minimum standards in the request for proposals.

If the proposals are being reviewed according to considerations of quality and cost, fixed budget, or least cost (as described above): The procurement entity will conduct the evaluation during a public review session, about which all bidders are informed in advance and are permitted to attend.

If the proposals are being reviewed according to quality alone (as described above): The procurement entity will evaluate only the financial proposal of the consultant whose technical proposal was ranked the highest.

- **Negotiate the contract**

Terms: The procurement entity may negotiate the contract with the winning consultant with regard to the terms that had been laid out in the request for proposals, the scope of the proposed services, deliverables, progress reports, facilities to be provided by government, and the financial proposal.

Cost: For all evaluation methods but technical quality alone, the fee for services cannot be reviewed. However, the cost of reimbursable items may be negotiated.

Failure to agree on terms: If the negotiations fail to result in an acceptable contract, the procurement entity must notify the consultant and proceed to the next ranked bidder, and so on.

- **Select an award recipient**

The consultant whose bid attains the highest score, in accordance with the criteria and selection method set forth in the request for proposals, or the one with the least cost in the case of the least cost method of selection, shall be selected for award, subject to satisfactory conclusion of negotiations.

The procurement entity must simultaneously notify the successful consultant of his or her selection for the award and notify all other shortlisted consultants of the decision. If there is no challenge to the decision by one of the other shortlisted consultants within 15 days, the procurement entity should issue the contract.

Direct Procurement

The procurement entity may procure consultancy services from a single source without bids if one of the following situations is true:

- a) A consultant has **unique qualifications** that are required for a particular consultancy service; or
- b) There is an **existing consultancy contract, and it is essential to have continuity** of these services by the same individual to meet the objectives of the assignment.

The procurement entity must submit a statement in the procurement record explaining the reasons and justification for the single source procurement.

Chapter 12. Code of Conduct for Public Procurement Officials

The following code of conduct must be adhered to by all **public officials** involved in procurement:

Every person who is entrusted with public funds should take care to use them wisely and with care.

Where a transaction involves the disposal of assets, the principles of honesty, accountability, transparency, fairness, and equity shall continue to apply to the same extent as where it involves procurement.

These principles shall apply at all times, particularly when:

- a) making requisition for or planning procurements;
- b) preparing solicitation documents;
- c) receiving offers in response to any form of solicitation towards a procurement or disposal;
- d) evaluating and comparing offers confidentially and in complete neutrality;
- e) protecting the interest of all parties without fear or favor; and
- f) avoiding all situations likely to render an officer vulnerable to embarrassment or undue influence.



All public officers shall handle public procurement and disposal of assets by:

- a) ensuring adequate time for preparing officers;
- b) complying with this law and all regulations made under it; and
- c) maintaining strict confidentiality until completion of a contract.

All public officers involved in public procurement and disposal of assets shall maintain the highest standards of ethics in their relationship with persons real or corporate who seek government commerce whether as a bidder, supplier, contractor, or service provider by developing transparent, honest, and professional relationships with such persons.

Every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall:

- a) divest himself or herself of any interest or relationships which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this Law; and
- b) not engage or participate in any commercial transaction involving the state government, its ministries, extra-ministerial departments, or corporations where his or her capacity as public officer.

A conflict of interest exists where a person:

- a) possesses an interest outside his or her official duties that materially encroaches on the time or attention which should otherwise be devoted to the affairs of government;

- b) possess a direct or indirect interest in or relationship with a bidder, supplier, contractor, or service provider that is inherently unethical or that may be implied or constructed so to be, or make possible personal gain due to the person's ability to influence dealings;
- c) entertains relationships which are unethical, rendering his or her attitude partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the person's business judgments;
- d) places by acts or omissions the procurement entity he or she represents or the government in an equivocal, embarrassing, or ethically questionable position;
- e) entertains relationships compromising the reputation or integrity of the procurement entity he or she represents or the government;
- f) receives benefits by taking personal advantage of an opportunity that properly belongs to the procurement entity he or she represents or the government;
- g) create a source of personal revenue or advantage by using public property which comes into his or her hands either in the course of his or her work or otherwise; or
- h) discloses confidential information that belongs to the procurement entity, the government, or to a supplier, contractor, or service provider to unauthorized persons.

A person involved in the disposal of assets shall not either by a third party or by himself be interested in any manner in buying directly or indirectly these assets and shall not have or obtain any type of advantage or revenue from the disposal for a period of three years after the disposal.

Anyone involved in the procurement process must declare his or her assets within 30 days of his or her appointment to a position and when leaving that appointment. He or she must also make a fresh declaration of assets if the amount changes significantly.

These assets will only be disclosed to the appropriate authority and will not be released to the public or anyone else unless the individual concerned gives express consent or by court order, where there is reasonable cause to do so.

Chapter 13. Contractor Code of Conduct and Grounds for Debarment

All **bidders and suppliers** must adhere to the following rules:

1. A bidder or a supplier shall not engage in or abet any corrupt or fraudulent practice, including the offering or giving, directly or indirectly, of improper inducements, in order to influence a procurement process or the execution of a contract, including interference in the ability of competing bidders to participate in procurement proceedings.
2. A bidder or a supplier shall not engage in any coercive practice threatening to harm, directly or indirectly, any person or his property to influence his or her participation in a procurement process, or affect the execution of a contract.
3. A bidder shall not engage in collusion, before or after a bid submission, designed to allocate procurement contracts among bidders, establish bid prices at artificial non-competitive levels, or otherwise deprive a procurement entity of the benefit of free and open competition.
4. Any bidder supplier engaging in any of the activity above will have its bid rejected, and it and related companies cannot further participate in the bidding.

The Due Process Bureau can **suspend or debar** (prevent from participating in any procurement process) any potential bidder or supplier for any of the following grounds:

- a) supplying false information in the process of submitting a bid or prequalification application;
- b) collusion between the bidders or a bidder and a public official concerning the formulation of any part of the bidding documents;
- c) interference by a supplier with the participation of competing bidders;
- d) misconduct relating to the submission of bids, including corruption, price fixing, a pattern of underpricing bids, breach of confidentiality, misconduct relating to execution of procurement contracts, or any other misconduct relating to the responsibilities of the bidder or supplier;
- e) conviction for an offence relating to obtaining or attempting to obtain a procurement contract; or
- f) conviction for an offence related to dishonesty or fraud in his or her professional activity.

Before suspending or debaring a bidder or supplier, the Due Process Bureau reviews and considers the factual record developed by the procurement entity that proposes the action and give reasonable notice to the bidder or supplier involved. They must be allowed a reasonable opportunity to respond to the proposed action before the decision is taken.

A period of debarment can be a maximum of 5 years.

APPENDICES

Appendix A: Tips for Procurement Trainers

PREPARING FOR THE TRAINING

1. Selecting participants

- a. You should **identify the most appropriate individuals** to attend the training. Be sure to include a mix of senior-level and junior staff to ensure that your topics have buy-in at the top levels but are also understood by the implementers.
- b. Include **no more than 20 to 30 people** on your list; smaller groups learn better. An ideal size is approximately 10 people.

2. Securing the Training Venue

- a. **Secure the training venue early.** Where possible, view it yourself.
- b. In selecting the venue, take into consideration its **cleanliness, accessibility, size, safety, and surrounding noise levels.** Ensure that the venue can supply potable water, proper toilet facilities, and adequate lighting.
- c. Ensure that the training venue has all of the **facilities** necessary to meet your requirements e.g. meal services if required, additional rooms for small group work if required, and the chairs, tables and/or desks necessary for the room configuration that you may need.
- d. Ensure that the venue has or can support the **training aids** that you may want to use, such as flip charts, an overhead projector, photocopier, computer projector, computer plug-ins, a radio, VCR, television etc.

3. Inviting the Participants

- a. **Send out your invitations**, by fax, letter, or email, in good time to allow the participants enough time to plan towards attending the training. Telephone can be used for follow up. Work with senior staff where possible.
- b. Ensure that the invitation letter includes a means for the participants to **contact you to confirm** whether they will be attending the training or not. This may be through the supervisor.
- c. **Your invitation should include** all pertinent information about the training. This may include the following: the date and time of the training; the location of the training; a description of the purpose of the training; a training agenda; any materials the participants should read ahead of the training; and materials that participants may need to bring for the training.

4. Inviting Other Trainers or Facilitators

- a. From time to time, trainers may need to **engage assistants or subject-matter experts** to aid them in meeting the participants' needs. It is important to identify this requirement early and invite them in good time.

- b. Send an **invitation letter to your resource person(s)**. This should include a statement of the purpose and objectives the training should meet and the session or sessions that you are assigning to the resource person. You may also send the training agenda and any other document that can assist the resource person in planning for the training.

5. Preparing for the Arrival of Participants

- a. **Set up your registration desk** and ensure that all necessary materials such as sign-in sheets, forms to fill out, nametags, folders, hand-outs, administrative or logistic instructions, etc. are available.
- b. Ensure that **materials** for participants such as folders, pens, and writing pads are available in sufficient quantities.

6. Preparing the Training Hall

- a. Ensure that **tables, chairs, and all training aids are arranged** in a way that will meet your training needs before the arrival of participants, preferably on the eve of the training.
- b. If you are using **electrical appliances** for the training, ensure that they are working properly before the start of the training.

7. Registration

- a. Have the participants sign in when they arrive. Please ensure your **sign-in sheet** asks for name, contact details (email and phone), gender, and any other details you want to capture from them.
- b. Ensure that each participant is provided with a **nametag** and has received the **training materials** referred to under “Preparing for the Arrival of Participants” above.

CONDUCTING THE TRAINING

1. Setting the tone and getting started: Introductions

The manner in which training takes off directly affects the overall success of the program. Therefore, it is important that the training arouse and sustain the interest of participants and inspire a sense of recognition of their worth so that they can participate actively and make contributions. The trainer can use icebreakers or introductions to help set a positive, open, and relaxed tone. However, please be mindful of the time limit of your training, and do not spend more than 20 minutes on the introductions.

Examples of icebreakers and introduction exercises are described below. The number of your participants should dictate which one is most appropriate for the time limit.

- The trainer pairs up participants and gets them to ask each other their names and other questions about themselves. Afterwards, each participant is asked by the trainer to introduce the person he or she paired with and share at least two characteristics about themselves.
- The trainer gets each participant to write their name on a name tag. One participant is called out at a time by the trainer to pick a name tag from a box and call out the name on it and request the owner to come out to receive it. The recipient of the name tag again introduces him or herself and their organization. This goes on until every participant is introduced.
- The trainer gets each participant to write brief bio data of him or herself on a flipchart and paste it on the wall. The trainer invites one participant at a time to come and read the bio data while the participant whose bio data is being read stands to be recognized.
- The trainer gets each participant to write down three facts about him or herself, one of which is not true. The trainer then asks each participant to first of all say his or her name and then read the list of facts about him or herself aloud to the rest of the participants. The trainer then asks the other participants to guess which among the facts is not true. Afterwards, the trainer asks the participant who wrote the facts to say which is not true.

2. Setting the goals for the day

Participants attending a training program may or may not have attended such a training workshop before. No matter how experienced, it is vital for the trainer to get participants to voice their expectations and concerns about the training. The trainer can do this by asking questions such as:

- Why are we here?
- What do we expect from this training?
- What constraints do we envisage?

The answers should be written and posted on a board, wall or flipchart.

When the trainer has taken the views of the participants on the training, the next step is to get everyone to understand the purpose of the training. The trainer should then explain what the training program is for and what participants are expected to gain from it. This means taking participants through the objectives of the training program and how those objectives can be achieved. To do this, the trainer's explanations have to be as clear as possible.

3. Setting the rules for the day

The trainer should get participants to agree on a list of rules or norms which will guide their conduct and behaviour during training. Examples of such rules are:

- Participants must listen and respect each other's views during the training
- Participants must not use foul language
- Participants should switch off their mobile phones and not answer calls in the training room

4. Ensuring participation and understanding

The participation of every attendee during the training is very important, as this facilitates more efficient, comprehensive learning. To achieve this, the trainer should continually strive to get participants to share their views and experiences on the topics being discussed.

Sometimes, a trainer may encounter participants who feel as though they have nothing to contribute or feel too shy to speak. To build the confidence of such participants, the trainer should encourage them to share their experiences, particularly over issues within the context of the topic being discussed, and ensure that their contributions are well noted and even referred to subsequently. For example, some or all participants may have been registered as voters in the past, and may have noticed one or two things about the process. Encouraging them to share their observations and experiences will create room for open and interactive discussion. When some of their examples are used as case studies in the course of the training, it builds their confidence and encourages them to open up.

5. Delivering information

As a trainer, those whom you are training will expect much from you. To be effective, meet these expectations and achieve the objectives of the training program, attention to the following points may help you become a better trainer:

- Know the subject matter very well, but allow others to speak and avoid giving all the information yourself
- Speak very clearly and not too quickly
- Ensure that there is eye contact between you and the participants
- Manage your time properly and efficiently
- Encourage questions and contributions from participants
- Ensure that workshop rules are followed and enforced

- If there are questions or issues you are not too clear about, do not give participants wrong or misleading information; tell them you will need to clarify the answer or ask if any participant has an answer to the question

Training Methods

Training methods can be divided into two major categories: participatory methods and non-participatory methods. The two methods are not mutually exclusive, and can be used in conjunction.

Participatory Methods

When using the participatory approach, the trainer serves as a facilitator of discussion rather than as a repository of information. The assumption is that a large part of the desired knowledge and information resides within the collective wisdom of the group. The trainer's role is to create an environment where participants, through group interaction and discussion, have opportunities to share relevant experiences and examples from their own lives. The trainer must also be prepared to introduce information and assist the participants in drawing a relationship between their own experiences and fulfilling their roles as procurement professionals. Techniques that can be employed to achieve this end are small group discussions, providing opportunities for participants to lead discussions, creating an atmosphere conducive to the sharing of experiences, and asking probing questions designed to elicit responses based on experiences. Ask for examples, personal experiences, and circumstances where culture and gender were important.

Properly employed, participatory methods actively engage participants in the learning process. They are challenged to search their own experience for knowledge and information relevant to the subject. Very often such knowledge is extensive, useful for identifying solutions with a minimum of external support and placed in a cultural context that is easily recognizable and acceptable to participants.

Participatory methods include:

- **Question and answer sessions:** Participants are invited to advance problems based upon the subject matter under discussion and to develop solutions derived from their own life experiences.
- **Structured group discussions:** Participants are divided into smaller groups in which group rules are agreed upon (e.g. only one person can speak at a time, and everyone must contribute). A group chair and secretary/rapporteur are selected and, depending upon the amount of time available, this can be done through election within the group or by voluntary acceptance of the roles. The topic for discussion is assigned to the group, and discussion takes place within a designated period of time. Reports of the discussion from each group are presented to the plenary session using visual aids such as flip charts or overhead projector transparencies.
- **Role Playing:** This involves assigning a scenario or story line that elaborates and clarifies issues associated with the major training subjects. Parts and characters are assigned to the engaged participants, and the group is usually invited to present the dramatized scenario to the plenary session.

Non-participatory Methods

If there are large amounts of subject matter to be presented in a short space of time, the non-participatory method is useful. However, to ensure retention of knowledge imparted, the non-

participatory presentation should always be accompanied by take-away material designed to reinforce and enhance the subject matter presented during a session. The obvious example of a non-participatory method of training is the lecture method. Notes on the subject matter are prepared by the facilitator and the information they contain is presented orally to the participants. The use of audio-visual materials and hand-outs helps participants retain information being presented in a lecture.

6. Content of the training

Please refer to the rest of this manual for the content of the training. You should go through each relevant section and ensure that the participants understand all parts of it.

7. Closing the training

Points to remember

- Just as you should summarize the main points at the end of each session, it is advisable to briefly review the main themes of the course at its conclusion and to offer the participants one final opportunity to ask questions and make comments.
- An evaluation should be carried out at the end of the course. It can be conducted orally or by filling in a questionnaire – you should consider the capacity of your participants to decide which is appropriate. The evaluation should provide the participants with an opportunity to express the degree to which their expectations were met; the effectiveness of the training in terms of both form and content; the degree to which the training achieved its objectives; and give an opportunity for participants to make suggestions for improvement.

In your closing remarks, include a word of thanks to the participants and a summary re-emphasizing the importance of good procurement to themselves, their families, their community and ultimately, their country.

Appendix B: Award Review and Sanction Process

If it has received a complaint or has any other cause to investigate, the Due Process Bureau can take any of the following actions:

- Inspect or review any questionable procurement transaction to ensure it complies with the laws and regulations
- Call for information, documents, records and reports in case of breach, wrongdoing, default, mismanagement, or and collusion
- Require the production of books of account, plans, and documents, and examine persons or parties in connection with any procurement proceeding where there are allegations or proof of wrongdoing
- Set up a committee to monitor the performance of any procurement requirement by any contractor, supplier, or service provider

If a procurement entity or contractors is found guilty of fraudulent and unfair procurement, it can recommend that the council take any of the following actions:

- Suspension of officers
- Replacement of head or member of the procurement entity
- The discipline of the accounting officer of any procurement entity
- The temporary transfer of the procurement function from one entity to another
- Any other sanction considered by the council

The Due Process Bureau can take the following actions without council approval:

- Debar any supplier, contractor, or service provider who contravenes the law or regulations
- Nullify the whole or part of any procurement proceeding or award which is in contravention of the laws or regulations

Appendix C: Types of Procurement Methods

The following provides additional details on the types of procurement process that can be used. Refer to Section III, Chapter 7 for an overview.

- **Open competitive bidding**

When to use: This method should be used for all procurements **except** if the procurement entity decides that:

- a) this method will not be efficient or practical, or
- b) this method will be too costly to apply this method given the overall amount of the procurement.

Procedure: The invitation to bid or to pre-qualify must be published in at least two national newspapers, one local newspaper, and select international media (if the bid is open to international corporations). All should have wide circulation. The publication must be made at least six weeks before the deadline for submission of bids.

If any of the following methods are used instead of open competitive bidding in one phase, justification must be provided in the record of the procurement proceedings.

- **Open competitive bidding in two stages**

When to use: In some instance, open competitive bidding may be held in two stages. This method of bidding is allowed if one of the following situations is true:

- a) The procurement entity is exploring multiple methods of meeting a need, and it is not feasible to formulate detailed specifications for goods or works or to identify all the characteristics of services in an initial request;
- b) Rapid technological advances are likely to impact the character of the goods or works;
- c) The procurement contract is primarily for research, experiment, study, or development (except where the contract includes the production of goods in sufficient quantities to establish their commercial viability or to recover research and development costs);
- d) The procurement is concerned with the security of the State and a two-stage bidding process is deemed the most appropriate; or
- e) The usual procurement process was followed, but it did not result in a successful award, and the procurement entity considers that going through the usual procurement process again will not result in a procurement contract.

Procedure: Instead of submitting a technical and financial proposal together, in the first stage bidders submit only a technical proposal that is subject to review and discussion. In the second stage, qualifying bidders submit both a technical and financial proposal.

- **First stage**

In the first stage, the bidding documents should outline

- a) the purpose;
- b) the expected performance;
- c) the broad specifications of the equipment or work to be procured; and
- d) the qualifications required to perform the contract.

Bidders should be asked to provide technical bids (without a bid price) and make any comments and suggestions on the proposed contract conditions.

The procurement entity and the bidder(s) can engage in discussions to gain a better understanding of the technical proposal or to request changes. The procurement entity may reject any bids that do not, and cannot be changed to meet the basic requirements, minimum

performance, or required completion time or have any other weakness which makes the bid substantially non-responsive to the criteria in the bidding documents.

The procurement entity may also choose to modify the bidding documents, including the technical specifications, evaluation criteria, and contract conditions, in order to maximize competition and articulate appropriate evaluation methodology in order to consider various options put forth by the bidders.

Second Stage

In the second stage, the procurement entity should share revised bidding documents with bidders whose bids were not rejected in the first stage. Bidders should then submit final bids that include prices for consideration.

- **Restricted bidding**

When to use: This method should be used if:

- a) the goods, services, or works are only available from a limited number of vendors; or
- b) the time and cost of open competitive bidding is disproportionate to the cost of the procurement.

Procedure: If reason (a) is provided, the procurement entity should send a direct solicitation to all known vendors capable of fulfilling the procurement. If reason (b) is provided, the procurement entity should solicit bids from **at least five** vendors (where possible and reasonable). The procurement entity should create and maintain a list of pre-approved, eligible suppliers with the technical and financial capacity needed for particular types of procurement to facilitate this type of bidding.

- **Request for sealed quotations**

When to use: This method should be used if:

- a) The particular specifications of the procurement can be met by readily available or commercially standard goods;
- b) The procurement is for small works or services;

Procedure: The procurement entity should request sealed quotations from **at least three** bidders (unless the item/ service is not available from three different suppliers). The request should include all requirements for the procurement, including quality, quantity, terms, time of delivery, and other special requirements. Each bidder may only submit one quotation.

- **Direct procurement**

When to use: The procurement entity may make a procurement from a single source without bids if one of the following situations is true:

- a) The value of the procurement does not exceed the prescribed threshold;
- b) Only one supplier has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured, and no suitable alternative is available;
- c) The procurement is for a partial replacement or extension for existing goods, services, or installations, and only the original supplier is able to meet the requirements for the replacement or extension; or
- d) The procurement entity is seeking to add additional works to an existing contract, and engaging a new supplier would be difficult for technical or economic reasons.

Procedure: The procurement entity can purchase goods, services, or works from a single source without competition, but it must submit a statement in the procurement record explaining the reasons and justification for the single source procurement.

- **Emergency procurement**

When to use: This method may only be used in cases of extreme urgency, including situations where:

- a) The State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, or act of God;
- b) Life or the quality of life or environment may be seriously compromised;
- c) The condition or quality of goods, equipment, buildings, or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; or
- d) An investment project may be seriously delayed for want of an item of a minor value.

Procedure: Procurement may be made through a single supplier without competition, but the scope of the procurement should be limited, as much as possible, to the period of the emergency, so that appropriate competitive procurement methods may be used at the conclusion of the emergency period. Immediately after the urgent situation has concluded, the procurement entity must file a detailed report of the emergency procurement rationale and process with the Due Process Bureau, which shall evaluate the process and if appropriate issue a certificate of "No Objection."

- **Community or end-user participation**

When to use: This method may be used if:

- a) The participation of the ultimate beneficiaries of the procurement would enhance the economy, quality, or sustainability of the services being procured; or
- b) The objective of the project is to create employment and involvement of the beneficiary community.

Procedure: The beneficiaries may participate in the delivery of services as prescribed.

- **Departmental execution**

When to use: The procurement entity may forgo an external bidding process and accept a procurement contract itself if one or more of the following situations are true:

- a) The activity is not likely to attract bidders at a reasonable price as the result of the size, nature, location, scattered location, financing, or high mobilization costs of the activity;
- b) The activity would impose an unacceptable risk to a contractor because the cost cannot be determined in advance;
- c) The risk of unavoidable work interruptions is better borne by the procurement entity than by a contractor;
- d) It has been demonstrated that departmental execution is the only practical method for construction, maintenance, and conservation works under special circumstances;
- e) A contractor could not effectively carry out a pilot project for the development of a technology work method; or
- f) There is an emergency such as a natural disaster which calls for immediate action that the procurement entity is well placed to undertake.

Procedure: This type of procurement can only go forward with the approval of the Due Process Bureau, and it must not disrupt the existing work of the procurement entity's staff.

Appendix D: Information that Must be Included in Bidding Documents

The following information must be included in the bidding documents:

- a) The detailed **specifications** for the goods, works, or services to be procured, as developed in **step 1**;
- b) The **purpose** of the procurement;
- c) The expected **performance**;
- d) The **qualifications** a supplier would need to fulfill the contract;
- e) The **margin of preference** that will be granted to a bidder based in Bayelsa or manufacturing goods inside Bayelsa versus outside of the state;
 - o The limit for and formula for arriving at the margin of preference is set by the Due Process Bureau; the procurement entity should use the official rate at the time of advertisement.
- f) A requirement for **bid security** to be submitted with the proposal (see securities section below);
- g) A **request for an affidavit** disclosing whether or not any officer of the relevant committees of the procurement entity or Due Process Bureau is a former or present director, shareholder, or has any pecuniary interest in the bidder and confirming that all information presented in the bid is true and correct in all particulars.
- h) The **deadline** for the submission of bids;
 - o In the case of open competitive bids, this must be at least six weeks from the date of the request publication.
 - o For other procurement methods, the deadline should allow sufficient time for the preparation and submission of bids to allow for maximum competition. At minimum this should be two weeks, but can be up to 60 days if the contract is large or complicated.
- i) The **date and time set for opening** bids;
 - o This should be the same as the deadline for submission, or as immediately thereafter as is logistically possible.
- j) The **bid validity period** (the time during which a bid will remain active);
 - o This should be no more than 180 days in the original bidding documents; however, a bidder may later agree to an extension. Any such extension should also be accompanied by an extension of the bid security.
- k) The **address** to which bids should be submitted and **directions for submission**; bids may be accepted by hand, mail, courier, and any other method specified by the procurement entity;
- l) The **language** for all submissions (English);
- m) The **currency** for all submissions (naira) and the origin and date of exchange rate that will be used to calculate any non-Nigerian currencies included in a bid; and
- n) The **date by which a contract must be signed**.

The following **cannot** be included in the criteria:

- a) Requirements that a bidder should engage a particular sub-contractor

Appendix E: Conflict of Interest Form

CONFIDENTIALITY AGREEMENT **AND** **CONFLICT OF INTEREST DISCLOSURE**

I, _____, have been appointed by the State of Bayelsa to serve as an evaluator of proposals for the procurement of Request for Proposal (RFP) Number _____ with the Title _____.

I understand that my appointment is governed by and agree to comply with the following conditions and representations regarding the use of any and all information I receive during the procurement process in accordance with the Bayelsa State Public Procurement Law.

1. I understand that all information I receive during the procurement process, including but not limited to the contents of specific proposals, my evaluations and those of other evaluators, rankings and discussions regarding proposals, constitutes “Confidential Information.”
2. I understand that any unauthorized disclosure of Confidential Information will compromise the fairness of the procurement process.
3. I agree:
 - a. to hold all Confidential Information in strictest confidence; and
 - b. not to disclose Confidential Information to any person other than evaluators and Purchasing representatives unless I have prior written permission from the Procurement Authority to make a disclosure; and
 - c. not to have any direct or indirect contact or discussions (outside of meetings that the Procurement Authority’s Department may schedule) with any party who submits a proposal; and
 - d. to notify the Procurement Authority immediately if:
 - i. any person who is not a member of the evaluation team or Procurement Authority contacts or attempts to contact me about this procurement.
 - ii. a conflict of interest occurs (see Conflict of Interest form on next pages).
 - iii. I obtain information outside of this procurement process that could impair or could create the appearance of impairing my ability to evaluate proposals submitted in response to this RFP fairly and impartially.
4. State Employee: Yes No

I understand that, as a state employee, if I violate this agreement, I may be subject to disciplinary action.

Read and accepted by:

Signature of Evaluator

Printed Name of Evaluator

Date

CONFLICT OF INTEREST FORM

NAME:

DATE:

ASSIGNMENT:

*This form must be completed **by each person** that participates in the above-referenced assignment, so that the state may assess whether the proposed staff exhibit a conflict of interest.*

Questions	Yes (Provide Details)	No
<p>1. Personal Relationships</p> <p>(a) Do you currently have or have had any official, professional, financial, or personal relationships with any person or firm associated with this assignment?</p> <p>(b) If yes, describe the type and extent of the relationship.</p> <p>(c) In your opinion, might this affect your judgment or your ability to execute this assignment in a fair and impartial manner?</p>		
<p>2. Stock and Investments</p> <p>(a) Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse, domestic partner, or a dependent own any stock in company likely to be affected by or involved in the Proposed Assignment?</p> <p>(c) Do you hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?</p>		

Questions	Yes (Provide Details)	No
<p>(d) Does your spouse, domestic partner, or a dependent hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is yes to any of the above questions, please provide the name of the company and the amount of the stock or investment.</p>		
<p>3. Employment & Consulting</p> <p>(a) Is your spouse, domestic partner, or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Has your spouse, domestic partner, or dependent been previously employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(c) Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is yes to any of the above questions, please provide name of employer, nature of services provided, and date of employment/retainment .</p>		
<p>4. Payments or Gifts</p> <p>(a) Within the past 12 months, have you received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Within the past 12 months, has your spouse, domestic partner, or a dependent received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is yes, please provide the amount the payment or value of the gift, the name and position of the payor/donor and the date of receipt.</p>		

Questions	Yes (Provide Details)	No
<p>5. Real Estate</p> <p>(a) Do you own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse, domestic partner, or a dependent own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is yes, please provide the location of the property.</p>		
<p>6. Positions</p> <p>(a) Do you currently hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse, domestic partner, or a dependent hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is yes, please provide the name of the entity, and the title of the position held.</p>		
<p>7. Are you aware of any facts or circumstance that might give someone the impression that your participation in this process would create a conflict of interest?</p>		

The undersigned has read and understood the Bayelsa State Code of Conduct for Public Procurement Officials. If during the course of the assignment any personal, external, or organizational impairments occur that may affect the undersigned's ability to perform the work and report findings impartially, the undersigned will notify the respective Procurement Authority of Bayelsa State immediately.

Date

Signature

Appendix F: Eligibility Requirements for Bidders

Any entity (or individual) is eligible to submit a bid for a procurement tender, as long as they meet the following criteria:

- a) **Legal standing:** The bidder is a natural person, a legal person, or a combination of the two with the legal capacity to enter into a contract.
- b) **Qualifications:** Possess the necessary professional and technical qualifications, financial capacity, equipment and other relevant infrastructure, and personnel with sufficient skill and experience to carry out the particular procurement.

With the exception of those that have engaged in any of the following:

- a) **Bribery:** There is evidence that the entity or individual attempted to influence the procurement decision by promising or making a gift of money, materials, services, employment, or any other benefit, item, or service of value.
- b) **Poor past performance:** The entity or individual has within the last five years been awarded a contract but failed to perform or meet the contract's requirements.
- c) **Debt:** The entity or individual is in arrears regarding payment of taxes, charges, pensions, social insurance contribution, etc. (However, the entity is eligible if it has obtained a permit from the government allowing it to defer or pay in installments.)
- d) **Crime:** The entity or individual has been validly convicted for a crime to gain financial profit, whether related to procurement or not.
- e) **Debarment:** The entity or individual has been blacklisted or debarred from participating in public procurement activities in Bayelsa State and/or in Nigeria.
- f) **Insolvency:** The entity is in receivership, subject to insolvency proceedings, is controlled by a person who is undergoing bankruptcy proceedings, or has been declared bankrupt at any time in the two years prior to the procurement process.
- g) **Involvement in procurement process:** No one who was involved in preparing for the procurement or any part of the procurement proceedings can bid, either as main contractor or subcontractor, or in any way cooperate with the bidders while they prepared their tenders.
- h) **Lack of disclosure:** The entity or individual has a relationship with any individual involved in the procurement process on behalf of the procurement entity, and does not disclose this relationship in its bid.

Appendix G: List of Requirements for Writing a Contract

By law, a contract must contain all of the following provisions and information. Additional provisions made be included as warranted by the nature of the contract.

- a) **Scope of work:** This should outline exactly what the contractor is expected to do or provide.
- b) **Terms and conditions:** All terms and conditions must match those laid out in the bidding documents or request for proposals. These can include provisions for slight variations in scope or price that will require no amendment to the contract.
- c) **Currency:** Accounting officers shall ensure that all contracts are denominated in local currencies (except in special circumstances, such as a superior law or international convention requiring a contract in a foreign currency).
- d) **Mobilization fee:** This is money paid to the award recipient to enable them to begin their work. The amount of the fee should be set in the contract; it should amount to at least 25% and no more than 50% of the contract value (if the award is for the procurement of works and services) and no more than 60% (if the award is for the procurement of goods). The bidder must provide an unconditional bank guarantee or insurance bond to back up the mobilization fee, which is forfeited if the contract is not executed.
- e) **Performance security:** This must be included in any procurement contract. (See securities section at right.)
- f) **Performance benchmarks:** The contract should include benchmarks for performance upon which payments will be based. Once a mobilization fee has been paid, no further payment can be made without an interim performance certificate verifying completion of agreed upon activities. If time is a factor, penalties for completing projects late should be stipulated.

Securities in the Procurement Process

Bid security: Bid security is a form of protection that insures the procurement entity against bidders withdrawing their bids or for refusing to sign a contract if awarded one. The bidding documents should set this security at a percentage of the bid price (up to 2%), and the security must be issued by a reputable bank that the procurement entity finds acceptable.

Bid securities should be returned to bidders once they have signed a contract or have been eliminated from the process, unless they have been forfeited for one of the following reasons:

- a) The bidder modifies or withdraws its bid after the deadline for submission of bids and during its period of validity;
- b) The bidder refuses to accept a correction of an error on the bidding documents;
- c) The successful bidder fails to sign a procurement contract in accordance with the terms set forth in the bidding documents; or
- d) The successful bidder fails to provide security for the performance of the procurement contract, if required to do so by the bidding documents.

Performance security: This is a security issued by a reputable bank that the procurement entity finds acceptable that guarantees the award recipient will fulfill a contract. It will be returned to the contractor, supplier, or service provider at the end of the satisfactory completion of the contract.

The award recipient must provide a guarantee equivalent to at least 10% of the contract value or the amount of the mobilization fee paid to the contractor, whichever is higher. The procurement entity should confirm the validity of this security.

- g) **Payment schedule:** This outlines the amounts that the award recipient will be paid, the dates on which each tranche will be disbursed, and the mode of payment (e.g. bank transfer) with all relevant details.
- h) **Quality guarantee:** The award recipient must provide a warrantee for the durability of goods, exercise of requisite skills in service provision, and use of genuine materials and inputs in execution.
- i) **Contact details:** The names, addresses, email addresses, telephone numbers, and fax numbers of the contact persons of the parties to the contract;
- j) The **order of priority** of contract documents;
- k) The **contract price** or its mode of determination;
- l) The **conditions of acceptance**;
- m) The modalities of "**force majeure**";
- n) **Price adjustment mechanisms**;
- o) **Termination clause:** The procurement entity may terminate a contract at any time with approval from the Due Process Bureau if circumstances change such that the contract is no longer in the public interest. If this should occur, the contractor should be reimbursed only the expenses incurred to date.
- p) **Procedures for dispute resolution:** This should include the use of arbitration as the primary method; and
- q) Any **applicable laws:** This includes a copy of the procurement law and any other law that relates to the contract.

Appendix H: Challenges to a Procurement Process or Decision

Challenges to the Procurement Process

An unsuccessful bidder who claims that he or she has suffered or is likely to suffer a loss or injury due to a breach of duty by the procurement entity may challenge the decision at any time before the procurement contract enters into force. The challenger should file a written complaint to the procurement entity's accounting officer detailing the specific act or omission claimed to contravene the public procurement law. If the challenge cannot be resolved, the accounting officer must suspend the procurement proceedings and issue a written decision within 15 days.

Right of Review of a Challenge

Grounds for application for review: Any unsatisfied bidder may ask the Due Process Bureau to review the procurement proceedings where:

- a) the Chief Executive Officer of the MDA does not issue a decision within the specified 15 days;
- b) he or she is not satisfied with the decision of the accounting officer; or
- c) before or after the entry into force of a procurement contract the value of which is above the prescribed threshold, he or she is not satisfied with the procurement proceedings for the claim of suffering indicated in the challenge.

Contents of an application for review: An application for review shall

- a) be in writing;
- b) specify the reasons for making the application; and
- c) be made within such time as may be prescribed in this law.

Suspension of procurement proceedings: If such an application for review is made, the procurement proceedings shall be suspended until the appeal is heard and determined by the Due Process Bureau, with the exception of a situation where an urgent public interest requires the procurement proceeding to proceed. If this is the case, the procurement entity must issue a certificate detailing this situation.

Decision on the review: The Due Process Bureau shall make a decision on the review within one month of the date of the application's submission. If the procurement proceedings were not suspended but the review application is successful, the Due Process Bureau shall award him or her compensation in the amount of the costs of bid preparation and participation in the procurement proceedings. The Due Process Bureau may also take any of the following actions:

- a) prohibit the procurement entity from acting or deciding in an unauthorized manner or from following an incorrect procedure;
- b) recommend the annulment in whole or in part of any unauthorized act or decision of the procurement entity; and/or
- c) recommend a re-evaluation of the bids or a review of the decision for an award, specifying the grounds for such recommendation.