

# **PUBLIC PROCUREMENT GUIDELINES**

## **INTRODUCTION**

As you are aware that Yobe State Government in furtherance of its reforms for good governance and entrenchment of transparency and accountability in the Yobe State Public Service, has enacted law establishing Bureau on Public Procurement dated 22<sup>nd</sup> July 2016.

In pursuance of this law, the machineries of implementing it have since been established. The policy making body i.e. the Council of the Bureau which was chaired by the Honourable Commissioner of Finance, has been established. The Bureau is headed by a Director General who is the Chief Executive and Accounting Officer.

The central objective of the Bureau is to ensure that due process is followed in all Public Procurements and existing Rules and Regulations governing Public Procurement have been implemented. These Rules and Regulations are not new; they are there in various public documents and circulars, like Stores Regulations and Financial Instructions etc.

Over the years the implementations of these Rules and Regulations have left much to be desired. Consequently, this led to all sort of anomalies, which may be seen in forms of lack of value for money invested, poor quality of contract's executions, over-invoicing etc.

The purpose of these guidelines is to give all MDA's and Stakeholders an insight of what is expected of them toward implementation of the Law establishing Public Procurement. However, the guidelines should be read in conjunction with the new Public Procurement Law which can be purchased from Government Printing Press.

## **1. SCOPE OF THE APPLICATION**

- i. The provision of the Yobe State Bureau on Public Procurement law, 2016 shall apply to all procurement of goods, works and services carried by;
  - a. The Government of Yobe state and all procurement entities (ministries, Extra-ministerial Departments, Agencies, parastatals or corporations).
  - b. All entities outside sub-section (1) (a) of this section which derive funds appropriated or proposed to be appropriated for any type of procurement described in the law of public fund; and
  - c. Public procurement by local government in the state.

## **2. ESTABLISHMENT OF PROCUREMENT PLANNING COMMITTEE.**

- i. For each financial year, each procuring entity shall establish a procurement planning committee.
- ii. The procurement planning committee shall consist of:
  - a. The accounting officer of the procurement entity or his representative who shall chair the committee.
  - b. A representative of:
    - i. The procurement unit of the procurement entity who shall be the secretary.
    - ii. The unit directly in requirement of the procurement.
    - iii. The financial unit of the procuring entity.
    - iv. The planning, research and statistic unit of the procuring entity.
    - v. Technical personnel of the procuring entity, with expertise in the subject matter for each particular procurement and
    - vi. A legal unit of the procuring entity, a legal officer from Ministry of Justice.

### **3. ESTABLISHMENT OF MINISTERIAL TENDERS BOARD (MTB) AND LOCAL GOVERNMENT TENDERS BOARD (LGTB).**

- a. There shall be established in each Ministry, Extra-ministerial department or Parastatal/Corporation and Local Government a Tenders Board, whose Chairman shall be the Hon. Commissioner of the Ministry or Chief Executive of the extra ministerial department/parastatals or chairmen of local governments.
- b. Other members of the committee shall be the Permanent Secretaries Directors/Heads of Departments of the Ministries, establishments or Local, Governments. Where there is a Department for Planning, Research and Statistics (DPRS), the Director in charge of the Department shall be the secretary. Where there is no DPRS, the Director in charge of administration shall be the Secretary.
- c. There shall be a representative each from BPP, Budget and Economic Planning Directorate, Ministry of Justice and Ministry of Finance (Office of the Accountant General) for each ministry, extra./ ministerial department and parastatals, similarly, for local governments, representative from BPP and ministry for local government and Chieftaincy Affair shall attend all (LGTB) meetings.

### **4. THRESHOLDS AND EXPENDITURE BY THE MDAs AND LOCAL GOVERNMENTS.**

The following benchmark expenditures are to be observed strictly for the purposes of accountability, probity and transparency in the conduct of government business.

- i. Chief Executive of Boards  
Parastatals and Extra ministerial  
Departments - up to ₦500,000  
Head of departments in  
Case of local governments - up to ₦100,000

- |      |  |   |   |
|------|--|---|---|
|      | Directors  | - | up to ₦100,000  |
| ii.  | Governing Boards, Parastatals and Extra Ministerial Department | - | up to ₦1m   |
|      | Local Government Secretary                                     | - | up to ₦500,000  |
| iii. | Hon. Commissioner, SSG, HOS.                                   | - | up to ₦5m   |
|      | Permanent Secretary  | - | up to ₦1m   |
|      | Local Government Chairman                                      | - | up to ₦1m   |
| iv.  | Executive Governor   | - | up to ₦50m  |
|      | Ministerial Tenders Board                                      | - | up to ₦10m  |
|      | LG Executive Council   | - | up to ₦20m  |
|      |  |   | anything above ₦20m shall be referred to the Ex. Governor for approval. |
| v.   | State Executive council  | - | anything above ₦50m.  |

NB: Notwithstanding the above thresholds all recommendations for contract awards as indicated above should be approved by the H.E the Executive Governor. HE can also approve above N50million, in case of necessity but subject to ratification by Executive council.

## **5. BASIC RULES FOR CONTRACT PROCESS.**

Contract awarding agencies shall be guided by the following six basic principles in the contracting process.

### **A. Advertisement as a requirement**

Equal access to information by all participants in the market of public contracts is fundamental to a free and fair competition. This is the major step in ensuring that public procurement system derives the benefit of effectiveness, efficiency and value-for-money through a transparent and fair process, it also provides level playing field for fair competition through an open competitive tender.

A procuring entity shall be responsible for advertising directly, all invitations for pre-qualification or invitations to tender for goods, works and services, while advertising, follow these two guidelines;

i. Adverts for contracts between ₦5 million and ₦100 million.  
Advertisements for contracts of this scope shall be placed on the notice board in a conspicuous layout at the Ministry, Agency or Department or other public institutions/such as state or Local Government Secretariat building etc and the public procurement journal (if available). However, if the tendering is to be based on selective or nominative, there may not be the need for even the notice board advert. The selective or nominative contractors are just to be invited to make their bids.

ii. Advert for contracts above ₦100 million naira for state contracts and ₦20 million for local government contracts.

These requires that an advertisement calling for pre-qualification of contractors or invitation to bid to be placed in at least two national newspaper, when available, government gazette and public procurement journal could also be used in addition to it. All the adverts for pre-qualification of contractors on any contract shall follow this standard format.

- a. Name and address of processing entity;
- b. Introduction: a brief description of the objective of the procurement, including desired time for delivery or completion;
- c. Scope of work;
- d. A summary of the required criteria;
- e. The place and deadline for submission of the applications and pre-qualification; and
- f. The date of availability of the pre-qualification documents.

The time allowed for applicants to prepare their pre-qualification application or bids shall not be less than 14days from the date of placement of the advert.

## **B. Pre-qualification as requirement**

Upon the collation of the submissions of all respondents to an advertisement for pre-qualification, the relevant MDA shall analyze all the submissions made by the respondents to the adverts. The analyses shall be based on an objective set of technical and financial capacity criteria. The aim is to short-list/select competent respondents to the adverts. It is also an opportunity to weed out those who do not qualify to participate in the commercial/financial bid. The criteria shall consist of the following sets of criterion.

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

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

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

- a. Evidence of financial capability and banking support: 15%
- b. Experiences and technical qualifications of key personnel: 20%
- c. Similar project executed and evidence of the knowledge of the industry: 15%
- d. Equipment and technological capacity: 20%
- e. Annual turnover: 5%
- f. VAT registration and evidence of past VAT remittances; 5%
- g. Citizenship (individual/corporate) of Yobe State; 20%

All parameters with zero score are considered responsive. The absence of any one would automatically disqualify an applicant from

pre-qualification. The pre-qualification benchmark score which respondents can be considered to be competent is 70% and above.

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

**i. Invitation to tender/bid**

The tender documents shall follow the format of the standard tender document appropriate to goods, works or service to be procured as may be designed and periodically reviewed by the BPP. It shall contain sufficient information to enable competition among the bidders to take place on the basis on, complete, neutral and objective terms. The tender document shall be in two parts. Technical and financial and shall be submitted not more than four weeks after the bid documents were issued.

**ii. Opening of tender**

Opening of bid/tender shall immediately follow the closing of bidding/tendering period. Present at the opening of bids/tender documents shall be bidders themselves or their representative and any other interested people or group including members of civil society, non-governmental organizations, the press, etc. the technical bid is to be opened and conclusively evaluated before the financial bid can be opened.

**iii. Evaluation of tender**

The tender submission by the pre-qualified bidders having been made in two parts technical and financial-shall be evaluated by the evaluation team of the appropriate procuring entity. The procuring entity shall appoint a tender evaluation committee (TEC) at the appropriate level. The committee is to examine, evaluate and prepare a report with

recommendations for the award of the contract for submission to the appropriate approving authority. At least three of the members shall have knowledge in relevant project.

- a. **The technical bid:** the submission of technical bid by only the pre-qualified firm help to further establish scope and depth of their understanding of the specific assignment under consideration.

A pre-qualified firm could be dropped during evaluation process of the technical bid for showing less than desirable technical competency and capability to deliver the contract.

- b. **Financial bid:**

The evaluation of financial bid of all firms that scaled through the technical bid evaluation is the final stage in a public procurement process. This is the stage where the cost at which the pre-qualified bidders (found competent in all areas) undertake to execute the job is evaluated in comparison with the cost (bills of quantities) estimated by either BPP or consultant to the project.

- c. **Determination of a winner**

The best responsive bidder with the lowest evaluated tender shall be adjudged the right winner.

## **6. IMPORTANT ISSUES TO BE OBSERVED IN ISSUANCE OF CONTRACTS.**

- i. Tenders splitting: it shall be regarded as serious offence for an officer or contract awarding agency to split a contract in order to manipulate the set threshold to their advantage. Such breach shall be subject to disciplinary action as prescribed in the procurement law.
- ii. Bid security: the contracts of ₦20,000,000 (twenty million naira) and above shall attract bid security of an amount of not less than 2% of bid price in form of bank guarantee from a reputable bank,

- iii. All contracts that require mobilization fee shall attract performance Bank Guarantee of not less than 10% of the value of the contract in any case or an amount equivalent to the mobilization fee requested by the supplier or contractor, whichever is higher.
- iv. Mobilization fee: mobilization fee where necessary shall not exceed 30% in case of construction and 35% in case of supply of the contract sum in both cases  
However, payment of mobilization fee shall be considered upon written application and submission of unconditional bank guarantee from reputable bank for equivalent amount of not less than 10% of the contract price valid until all goods are supplied or until level of works reaches percentage of the mobilization fee paid.  
In case of works contracts.

## **7. VETTING OF CONTRACTS DOCUMENTS**

After completing all the process of bidding of contract, project designs (where applicable) bills of quantities, quotations and other tendering document in respect of any construction work, procurement or service contract whose value exceeds ₦5m shall be forwarded to the Bureau for public procurement for vetting and certification before seeking approval for the contract.

## **8. CERTIFICATE OF NO OBJECTION**

Basically there are two types of due process certification.

- i. Due process certificate for the award of contract
- ii. Due process certificate for progress payment,

Due process certificate shall be issued to procuring MDAs and local governments by BPP for complying with due process procedures, this is

issued after careful review of the transparent process that produces the winner and right cost of the contract.

No Ministry, Department or Agency (MDA) or local government shall pay for any capital project without a due process certificate.

Similarly, the Accountant General shall not make payments in respect of any capital project except if the request for such payment is accompanied by due process certificate among other required documentations. Similarly, ministries, extra-ministerial departments, parastatals/corporation and local governments are entitled to spend their monthly recurrent expenditure without seeking any further approval except where a single expenditure that exceeds five million naira (N5,000,000). Where the expenditure is above N5,000,000 the proposed expenditure supported by all necessary documents shall be forwarded to the Bureau for vetting, upon the vetting by the Bureau, it shall then be forwarded to the executive Governor for approval.

## **9. PROFIT MARGIN**

All contract, goods and services shall attract the profit of 25% including 5% VAT.

## **10. DISPOSAL OF PUBLIC PROPERTY**

All agencies desirous of the disposal of public property are to liaise with the Bureau for public procurement before embarking on such exercises.

For the avoidance of any doubts disposable of public property shall include the following:-

- a. Sale and rental
- b. Lease and hire purchase
- c. Licenses and tenancies
- d. Franchise and auction

- e. Transfer from one government department to another with or without financial adjustment.

**11.COMPOSITION OF MDAs AND LOCAL GOVERNMENT BOARD OF SURVEY FOR THE DISPOSAL OF GOVERNMENT PROPERTY.**

- a. The chairman shall be an officer on GL. 14 or above.
- b. The Head of Accounts Division or his Deputy.
- c. A professional/technical officer whose expertise relate to the items being boarded.

NB: The transport officer, store keeper(s) or other stores officials of the MDA/LGA shall not serve on the board.

**12. GUIDELINES FOR THE DISPOSAL OF PLANTS MOTOR VEHICLES AND EQUIPMENT**

- a. For motor vehicle with engine capacity of 2000cc and below and construction vehicles over 7 tonnes: can be depreciated by the following method:-

under 1 year old 20% reduction on original cost

Between 1 and 2 years old 40% reduction an original cost

Between 2 and 3 years old 60% reduction on original cost

Between 3 and 4 years old 80% reduction on original cost

Between 4 and 5 years old 85% reduction on original cost

Between 5 and 6 year old 90% reduction on original cost

Between 6 years and above 95% reduction on original cost.

- b. For motor vehicles with engine of over 2000cc can be depreciated by the following method.

Under 1 year old 30% reduction on original cost

Between 1 and 2 years old 56% reduction on original cost

Between 2 and 3 years old 65% reduction on original cost

Between 3 and 4 years old 75% reduction on original cost

Between 4 and 5 years old 85% reduction on original cost

Between 5 and 6 years old 90% reduction on original cost

Between 6 years and above 95% reduction on original cost.

- c. Accident vehicle, etc: in the cases of a vehicle rendered unserviceable as a result of accident or whose working life has come to premature end for other reasons, arrangement should be made within two months of such accident, etc (or where police investigation is involved, immediately after such investigation) to have the vehicle inspected and certified as such by an engineer or technical expert who should produce a valuation report for the guidance of the board of survey.
- d. For plants and equipment: an engineer's estimated value of the asset at the time of the write-off or disposal shall be obtained.
- e. For general stores, the estimated value shall be furnished by a stock verifier.

The proceeds for the sale of MDAs properties shall be paid into the revenue account domicile in the State Board of Internal Revenue. While, the proceeds for the Local government properties shall be paid into the individual local government account.

However, in both cases 5% of the proceeds on each item shall be paid as commission to the auctioneer after obtaining approval.

NB: please refer to the state financial regulations (FR) for any additional information you require on this.

While counting on your cooperation and understanding in the success of implementation of this Law, please accept the Bureau's highest regard and esteem.

**ISMAILA-MAI ADAMU CNA  
DIRECTOR GENERAL**