



**ADAMAWA STATE GOVERNMENT
BUREAU OF PUBLIC PROCUREMENT PUBLIC
PROCUREMENT FRAMEWORK AGREEMENT**

GUIDELINES

**(GOODS, WORKS AND NON CONSULTING
SERVICES)**

SEPTEMBER 2014

Public Procurement Regulations

For Goods and Works

Commencement:

In the exercise of powers granted to it under the Public Procurement Law 2013 the Adamawa State Bureau of Public Procurement hereby makes the following Regulations:-

Part I General Provisions

- .1 These Regulations may be cited as the Public Procurement Regulations for Goods and Works 2013. These Regulations shall apply to all Procuring Entities and Participants in Public Contracts and to all public procurements of Goods, Works and Non Consulting Services, except where a waiver is first obtained under the Law. The Regulations for Consulting Services of an intellectual or advisory nature are issued separately.

Citation and application
Section 16
- .2 These Regulations for the procurement of Goods and Works have been prepared by the **Adamawa State Bureau of Public Procurement (ADSBPP)** pursuant to the Public Procurement Law for use by the Procuring Entities and Consultants participating in public financed contracts.
- .3 These Regulations supersede all prior procurement Regulations, directives and or due process guidelines.

Revocation of prior directives
- .4 In these Regulations: -

“*Accounting Officer*” means the person charged with line supervision of the conduct of all procurement processes.;

Interpretation

“Approving Authority” means the person charged with overall responsibility for the functioning of a ministry, extra-ministerial department or corporation;

“Assets” includes tangible and intangible things which have been or may be sold or procured for consideration;

“Bid Security” means a form of security assuring the bidder shall not withdraw a bid within the period specified for acceptance and shall execute a written contract within the time specified in the bid.

“BOO” means Build, Own, Operate contracts;

“BOT” means Build, Operate, Transfer contracts;

“BOOT” means Build, Own, Operate and Transfer contracts

“Debar” means the placing of a firm, company or natural person on a list of person ineligible to participate in any procurement proceedings under this Act;

“Certificate of Compliance” means the document evidencing and authenticating that due process and the letters of this Law have been followed in the conduct of a procurement proceeding and allowing for the procuring entity to enter into contract or effect payments to contractors or suppliers from the Treasury;

“Coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property with intent to influence the manner of their participation in and/or their appropriate conduct of

a procurement process
and/ or the execution
of a contract;

“*Conflict of interest*” means but is
not limited to the
following situations:

- (a) where a person has a direct
or indirect interest in
or relationship with a
Bidder that is or may
be reasonably
perceived to be
unethical due to that
person’s influence or
ability to affect the
procurement process;
- (b) where a person receives or
benefits by taking
personal advantage of
an opportunity that
properly belongs to
the Procuring Entity
he represents or the
Government;
- (c) where a person for his
personal benefit
discloses to
unauthorized persons
confidential
information belonging
to; the Procuring
Entity, the
Government, or a
Bidder;
- (d) where a supplier or
contractor (or the firm
with which it is
affiliated) combines
the functions of
manufacturer or
contractor with those
of consultant;

Provided that a conflict of interest
may not be inferred:

- i. where a supplier/
manufacturer or
contractor’s bid is in
combination with a
firm offering services
as a consultant and in
its bid is included
relevant information
about such
relationship along
with a statement to the
effect that it shall limit
its role to that of
supplier or contractor,
and that neither the
firm nor its associates
and affiliates shall
participate in the

project in any other capacity;

- ii. where two or more firms (suppliers, contractors and consultants) with disclosure to the Procuring Entity combine to bid for and/or execute a Turnkey or Design and Build contract.

“*Contract*” means an agreement entered in writing;

Corrupt,

Fraudulent,
Collusive
or
Coercive
Practices

“*Contractor or supplier*” means any potential party to a procurement contract with the procuring entity and includes any corporation, partnership, individual, sole proprietor, joint stock company, joint venture or any other legal entity through which business is conducted;

“*Collusive practice*” means a scheme or an arrangement between two or more Bidders with or without the knowledge of the Procuring Entity, including non-disclosure of subsidiary relationships, designed to establish bid prices at artificial, non-competitive levels thereby depriving the Procuring Entity of the benefits of free and open competition;

“*Corruption*” or “*corrupt practice*” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution;

“*Domestic firm*” means a business or professional organization:

- (a) incorporated or otherwise organized in Nigeria;

- and
- (b) having its principal place of business located in Nigeria; and
 - (c) having at least 50% of its equity held by nationals of Nigeria; and
 - (d) not having its assets controlled by foreign national or organization incorporated or organized outside Nigerian; and
 - (e) with more than 50% of persons who will perform services under the contract whether employed directly or by a subcontractor being nationals of Nigeria.

“Framework Agreements” Framework Agreement (FA) is a long-term agreement with suppliers, contractors and providers of non-consulting services which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement.

“*Direct Labour Account*” means the procurement of civil works by a procuring entity using its own internal personnel, equipment and resources;

“*Excessive Price*” means a monetary value proposed by a bidder for any procurement which is in the estimation of the Project unreasonable and injudicious after consideration of the actual value of the item in question plus all reasonable imputations of cost and profit.

“*Fraudulent practice*” means anyone or combined misrepresentation or omission of facts that affects the procurement process or contract execution to the detriment of the Procuring Entity;

“*Goods*” means objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form and electricity as well as services incidental to the supply of the goods;

“*Government*” shall mean the Adamawa State Government;

“*Interim Performance Certificates*” means evidence that a contract or supplier has performed its obligations under a procurement contract up to a level stipulated by the contractor but not meaning completion;

“*International Competitive Bidding*” means the solicitation of bids from both domestic and foreign contractors and suppliers;

“*Joint Venture*” means an association where all member firms or persons are jointly and severally liable for the entire contract, and shall designate one party to act as a leader with authority to bind the joint venture and to sign contract with the Procurement Entity.

“*Margin of Preference*” means extra mark up on price allowed any domestic contractor or supplier bidding under International Competitive Bidding without being otherwise disadvantageous to the bid in terms of price;

“*Minor Value*” means a monetary value which is not in excess of the monetary thresholds set for any approving authority by the Bureau;

“*National Competitive Bidding*”

means the solicitation of bids from domestic contractors and suppliers registered or incorporated to carry on business under Nigeria Law;

“*Negotiation*” means discussions to determine the terms and conditions of a contract or procurement;

“*Non Consulting Services*” means any one or a combination of the following: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies.

“*Open Competitive Bidding*” means the offer of prices by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services;

“*Procurement*” means acquisition;

“*Procurement Proceedings*” means the initiation of the process of effecting a procurement up to award of a procurement contract;

“*Procuring Entity*” means any public body engaged in procurement and includes a Ministry, Extra-Ministerial Office, Government Project, Parastatal and Corporation;

“*Relevant Authority*” includes Economic and Financial Crimes Commission and Independent Corrupt Practices Commission;

“*Services*” means the rendering by a contract or supplier of

his time and effort and includes any object of procurement other than goods, works or construction;

“*Solicitation Documents*” means the bid solicitation documents or any other documents for solicitation of offers proposals or quotations;

“*Special Purpose Goods*” means any object of armaments, ammunition, mechanical, electrical equipment or other things as may be determined by the President needed by the Armed Forces or Police Force as well as the services incidental to the supply of the objects.

“*Subcontractor*”, means natural person, a legal person or combination of the above to whom any part of the goods to be supplied or works to be executed is subcontracted by the supplier or contractor,

“*Substantially Responsive*” means the response to bid solicitations which virtually answers to all the needs of a procuring entity as stipulated in the bid solicitation documents;

“*Supplier*” means a real or legal person that provides supply of goods, contracting of works or consultants;

“*Threshold*” refers only to the approving and not the actual process of award;

“*Valid Period*” means the period during which a bidder agrees not to increase the cost of its bid or to remove any components of the bid;

.5 “*Works*” means all works

associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement of contact, where the value of those services does not exceed that of the construction itself.

.6 If these Regulations conflict with the Government's obligations under agreements with other countries or international organizations, the provisions under such international agreements shall prevail.

.7 Where:

- (a) a Procuring Entity establishes the use of corrupt, fraudulent, collusive or coercive practices of any kind in the procurement process, or
- (b) the Project establishes same during prior review or post review of procurement procedures or procurement audits,

the Procuring Entity shall immediately refer the matter to, or the Project shall promptly take up the matter, and will, upon substantiated evidence, direct:

- (i) exclusion of the Bidder from further proceedings in the

- procurement of the contract or reject a proposal for contract award, or
- (ii) Measures to sanction such firm or individual, including declaring it ineligible, either indefinitely or for a stated period of time, to be awarded public financed contracts.

Framework Agreements

3.6 A Framework Agreement (FA) is a long-term agreement with suppliers, contractors and providers of non-consulting services which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement. FAs are generally based on prices that are either pre-agreed, or determined at the call-off stage through competition or a process allowing their revision without further competition.⁶⁵ FAs may be permitted as an alternative to the Shopping and NCB methods for: (a) goods that can be procured off-the-shelf, or are of common use with standard specifications; (b) non-consulting services that are of a simple and non-complex nature and may be required from time to time by the same Project (or multiple agencies) of the Borrower; or (c) small value contracts for works under emergency operations. The Borrower shall submit to the Bank for its no objection the circumstances and justification for the use of an FA, the particular approach and model adopted, the procedures for selection and award, and the terms and conditions of the contracts. FAs shall not restrict foreign competition, and should be limited to a maximum duration of 3 (three) years. FA procedures applicable to the project are those of the Borrowers that have been deemed acceptable by the Bank, and shall be described in the Loan Agreement. Maximum aggregate amounts for the use of an FA shall be set in the procurement plan in accordance with risks and in no case higher than the applicable NCB maximum aggregate amounts, and shall be agreed with the Bank. FAs shall follow all guiding principles and procedures of NCB under paragraphs 3.3 and 3.4, including but not limited to the procedures for advertisement, fair and open competition, an effective and independent protest mechanism, and transparent bid evaluation and selection criteria. Publication of award of the FA shall follow the procedure described in paragraph 7 of Appendix 1.

PART II – GENERAL FRAMEWORK CONTRACTING RULES

8. There shall be three types of indefinite-delivery framework contracts:
 - (i) definite-quantity indefinite-delivery framework contracts,
 - (ii) requirements framework contracts, and
 - (iii) indefinite-quantity framework contracts.
9. The appropriate type of indefinite-delivery framework contract may be used to:-
 - (i) acquire goods, services and/or works when the exact times and/or exact quantities of future deliveries are not known at the time of contract
 - (ii) permit stocks to be maintained at minimum levels; and
 - (iii) acquire goods, services and/or works on a “when-required” basis.
10. A tender document and a contract agreement for an indefinite quantity framework contract must—
 - (i) Specify the period of the contract, including the number of options, if any, and the period for which the procuring entity may extend the contract under each option;
 - (ii) Specify the total minimum and maximum quantity (ceiling amount) of goods, services or works the procuring entity will acquire under the contract (to ensure that the contract is legally binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the quantity that the procuring entity is fairly certain to order);
 - (iii) Include a statement of work, specifications, or other description, that reasonably describes the specific requirements, nature, complexity, and purpose of the goods, services or works the procuring entity will acquire under the contract in a manner that will enable a prospective firm or individual to decide whether to submit a tender; and
 - (iv) State the procedures that the procuring entity will use to issue orders, including the ordering means, e.g. electronically.
11. The value of any performance security for framework contracts must be based on the minimum value of the contract – not the maximum value.
12. For goods, services or works whose prices are expected to be volatile, framework contracts should include an indexing mechanism to adjust prices based on the Market Price Index issued by PPOA

Documents and

Indexing prices

PART III – OPTIONS

13. Consistent with Regulation 20(3) of the Public Procurement and Disposal Regulations, 2006, procuring entities may award multi-year framework contracts, provided that:
- (i) Procuring entities included the multi-year framework contract in their annual procurement plan as provided for by Section 26(3) of the Public Procurement and Disposal Act, 2005;
 - (ii) All options periods are priced, and the price can be indexed as described in paragraph 9 above; and
 - (iii) The framework contract, including all option periods, does not exceed
14. Approval of the procuring entity's tender committee is required for all price changes included in framework contracts.

PART IV – ORDERING

15. (1) Procuring entities are not required to advertise or invite quotations for orders issued under framework contracts.
- (2) Individual orders shall clearly describe all services to be performed or goods to be delivered or works to be done so that the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the specific requirements, issued within the period of performance, and be within the ceiling of the contract.
 - (3) Orders may be placed by using any means, e.g. electronically (faxed, etc), as specified in the contract.
 - (4) The procuring entity must ensure the price for all the orders does not exceed the ceiling amount of the contract.
 - (5) Orders placed under framework contracts must contain the following
 - (i) Date of order;
 - (ii) Contract number and order number.
 - (iii) For goods, services or works, contract item number and description, quantity, and unit price or estimated cost;
 - (iv) Delivery or performance schedule;
 - (v) Place of delivery or performance (including consignee);
 - (vi) Any packaging, packing, and shipping instructions; and

(vii) Method of payment and payment office, if not specified in the

(6) Procuring entities are not exempt from the requirement of Regulation 20 of The Public Procurement and Disposal Regulations, 2006 procurement plans even when ordering under a framework contract.

(7) Performance securities may be required at the discretion of the procuring entity as a basis of the order.

PART IV – DEFINITE QUANTITY FRAMEWORK CONTRACTS

16. A definite-quantity framework contract provides for delivery of a definite quantity of specific goods, services or works within a fixed period, with deliveries or performance to be scheduled at designated locations upon order.
17. A definite-quantity framework contract may be used when it can be determined in advance that —
 - (i) A definite quantity of goods, services or works will be required during the contract period; and
 - (ii) The goods, services or works are regularly available or will be available after a short lead time.

PART VII - REQUIREMENTS FRAMEWORK CONTRACTS

18. A requirements framework contract provides for filling all actual purchase requirements of a procuring entity's activities for goods, services or works during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.
19. A requirements framework contract may be appropriate for acquiring any goods, services or works when a procuring entity anticipates recurring requirements but cannot predetermine the precise quantities of goods, services or works that the procuring entity's activities will need during a definite period.
20. For the information to tenderers and resultant contractors, the procuring entity shall state a realistic estimated total quantity in the tender and resulting contract. This estimate is not a representation to a bidder or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The procuring entity may derive the estimate from records of previous requirements and consumption, or by other means including market research, and should base the estimate on the most current information
21. The contract shall provide that all purchases by the procuring entity for the specified goods, services or works will be made under the contract.
22. The contract shall state, if feasible, the maximum limit of the contractor's obligation to deliver or perform and the procuring entity's obligation to order. The contract may also specify maximum or minimum quantities that the procuring entity may order under each individual order and the maximum that it may order during a specified period of time.

23. When a requirements framework contract is used to acquire work (e.g., modification, or overhaul) on existing public assets, equipment or stores, the procuring entity shall specify in the contract that failure of the procuring entity to furnish such items in the amounts or quantities described in the contract as “estimated” or “maximum” will not entitle the contractor to any equitable adjustment in price.

PART VII - INDEFINITE-QUANTITY FRAMEWORK CONTRACTS

24. Procuring entities may use an indefinite-quantity framework contract when the procuring entity cannot predetermine, above a specified minimum, the precise quantities of goods, services or works that will be required during the contract period, and it is not advisable for the procuring entity to commit itself for more than a minimum quantity. The procuring entity should use an indefinite-quantity framework contract only when a recurring need is anticipated.
25. (1) An indefinite - quantity framework contract shall provide for an indefinite quantity, within stated limits, of goods, services or works during a fixed period. The procuring entity then places orders for individual requirements. Quantity limits may be stated as number of units or value.
- (2) The contract shall require the procuring entity to order and the contractor to furnish at least a stated minimum quantity of goods, services or works. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The procuring entity should establish a reasonable maximum quantity based on market research, trends in recent contracts for similar goods, services or works, survey of potential users, consumption records, or any other rational basis.
- (3) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the procuring entity is fairly certain to order.
- (4) The contract must also specify the maximum and minimum quantities that the procuring entity may order under each task or delivery order.

