



GUIDELINES

ON

EMERGENCY PUBLIC PROCUREMENT

AND

**PARTICIPATION OF SMALL AND MEDIUM
SCALE ENTERPRISES IN PUBLIC PROCUREMENT**

BY

KADUNA STATE PUBLIC PROCUREMENT AUTHORITY

(KADPPA)

GUIDELINES ON EMERGENCY PUBLIC PROCUREMENT.

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TABLE OF CONTENTS.

Table of Contents.....2

CHAPTER 1: INTRODUCTION5

1.1.1 Introduction5

1.1.2 Purpose of the guidelines5

1.1.3 Objectives of the Guidelines5

1.1.4 Application and Limitations of Guidelines5

1.1.5 General considerations6

1.2.0 Exceptions to the Guidelines7

1.2.1 Reasons for Exceptions7

1.3.0 Revisions to the Guidelines7

1.3.1 Reasons for Revision7

1.3.2 Request for Revisions by a Procurement Entity8

1.4.0 Use of Standard Procurement Forms8

1.4.1 SPF 1 – Procurement Requisition8

1.4.2 SPF 2 – Submission for Approving Authority's Review8

1.4.3 SPF 3 – Evaluation Report (Goods and Works)9

1.4.4 SPF 4 – Evaluation Report (Services)9

1.4.5 SPF 5 – Monthly Procurement Report9

1.5.0 Procurement Numbering System9

1.5.1 Purpose9

1.5.2 Structure of the Procurement Number9

1.5.3 Use of Procurement Numbers.10

1.6.0 Public Procurement Principles10

CHAPTER 2: PROCUREMENT PLANNING.11

2.1.0 Procurement Planning. 11

2.1.1 Contents of the Procurement Plan11

2.2.0 Guidelines for Determining Completion Timescales	12
2.2.1 Estimated lead times for ICT (Goods)	12
2.2.2 Estimated lead times for NCT (Goods)	12
2.2.3 Estimated lead times for ICT (Works)	13
2.2.4 Estimated lead times for NCT (Works)	13
2.2.5 Estimated lead times - Request for Quotation	13
2.2.6 Estimated lead times – Consultancy Services.	14
2.3.0 Plan Monitoring and Updating.....	14
CHAPTER 3: PROCUREMENT IMPLEMENTATION.	15
3.1.0 Notification of Procurement opportunities	15
3.2.0 Specific Procurement Notice	15
3.3.0 Other Notifications	15
3.4.0 Request for Expressions of Interest	16
3.5.0 Pre-Qualification of Bidders.....	16
3.6.0 Pre-qualification Criteria	17
3.7.0 Pre-qualification evaluation	18
3.8.0 Pre-qualification documents	19
3.9.0 Post qualification of bidders	19
3.10.0 Bidding Procedures	20
3.11.0 Standard Bidding Documents	20
3.12.0 Preparation of Bidding Documents	20
3.13.0 Sale of Bidding Documents for Competitive Bidding	21
3.14.0 Issue of Invitations for Restricted Bid	21
3.15.0 Use of Standard Request for Quotation	21
3.16.0 Issue of Requests for Quotations	22
3.17.0 Opening of Standard Requests for Quotations	22
3.18.0 Evaluation of Contract for Requests for Quotations	23

3.19.0 Invitations to bid (ITB)	23
3.20.0 Bid Clarifications	24
3.21.0 Submission of Bids	25
3.22.0 Validity period for bids; Modification & Withdrawal of bids.	26
3.23.0 Extension of Bid Closing Date	26
3.24.0 Rejection of Bid before Bid Opening.....	26
3.25.0 Bid Opening	27
3.26.0 Examination of Bids	28
3.27.0 Preliminary Bids Examination	29
3.28.0 Bid Security	34
3.29.0 Default on Bid Security Declaration.	35
3.30.0 Bids Evaluation	35
3.31.0 Bids Evaluation Stages	35
3.32.0 General Principles of detailed evaluation and comparison of bids	36
3.33.0 Extension of bid validity period	41
3.34.0 Bid evaluation report.	41
3.35.0 A Successful Bid	42
3.36.0 Contract Performance security	42
3.37.0 Award and Signing of the Contract	43
3.38.0 Execution of Contract agreement	43
3.39.0 Contract administration – payment of value added tax (VAT)	43
3.40.0 Variation of Contracts.	44
3.41.0 Record of procurement proceedings	45
3.42.0 Mobilization Fees	45
3.43.0 Retention Money	45
3.44.0 Publication of Contract Award	45
3.45.0 Confidentiality	46

CHAPTER 1:

1.1.1 INTRODUCTION.

The Kaduna State Public Procurement Authority hereby provides Guidelines on Public Procurement during emergency situations to become effective and operational on September 1st, 2020. The guidelines provide the general rules governing emergency public procurement. These Guidelines provide step-by-step procedures to assist procurement entities to undertake public procurement during emergency situations in accordance with the Kaduna State Public Procurement Authority (KADPPA) law 2016.

1.1.2 Purpose of the Guidelines.

The main purpose of these Guidelines is to regulate emergency procurement of works, goods and services financed through Appropriation Law or any other source in favour of Kaduna State Government. These Guidelines, in accordance with the understanding among stakeholders, attempt to establish a step-by-step and improved mechanism for the emergency procurement of works, goods and services towards enhancing efficient service delivery within specific time frame and budget limits. They incorporate and harmonize acceptable best practices in public procurement at the State and Local Governments levels.

1.1.3 Objectives of the Guidelines.

These Guidelines detail the standards and procedures to be followed in the emergency procurement of goods, works and services within the public sector. These standards, policies and procedures are designed to:

1. provide uniform procedures for the emergency procurement of goods, works and services;
2. ensure transparency and accountability in all operations, and consistency with the Guidelines of development partners where necessary;
3. ensure and promote consistent application of best procurement practices and international standards.

1.1 .4 Application and Limitations of the Guidelines

These Guidelines apply to the emergency procurement operations of all Government

organizations as defined in **section 35 of the Law**. The principles, rules, and procedures outlined in these Guidelines **apply to all (capital / recurrent, expenditure) contracts for works, goods and services** financed in whole or in part by the Kaduna State Government. The Guidelines are to be applied by the following relevant Stakeholders:

- 1) The Executive arm of the Kaduna State Government.
- 2) The Legislative arm of the Kaduna State Government.
- 3) The Judicial arm of the Kaduna State Government.
- 4) All Ministries, Departments and Agencies of the Kaduna State Government.
- 5) All the Local Governments.

In the event that public-linked entities that do not draw any funding from the State Budget have their own emergency procurement regulations and procedures, the implementation of the set regulations and procedures shall be monitored for compliance, their contract price reviewed before award of contract, by Kaduna State Public Procurement Authority(KADPPA). These Guidelines cover the standard procurement cycle from procurement planning and initiation of procurement to final delivery or performance and contract completion. They will help to:

1. remove discretion or minimize the need for making new decisions every time a comparable situation arises;
2. provide a point of reference against which principles and practices can be evaluated; and
3. serves as training Guide for procurement practitioners in the public sector and provide guidance based on best international practices.

Consistent application of the provisions and procedures of the Guidelines throughout the public service is essential to achieve improved efficiency, transparency, uniformity of documents and decisions and reduce cost of emergency procurement for the Government.

It is intended that the Guidelines will be subjected to continuous review by the Public Procurement Authority to reflect amendments in legislation, changing needs, the commercial environment and the adoption of new improved procedures and practices.

1.1.5 General Considerations

Procurement Entities are responsible for implementing their emergency procurement activities at their respective levels.

The emergency procurement plan is time-bound and stakeholders are urged to act expeditiously in exercising their powers and discharging their responsibilities.

These Guidelines are intended to regulate emergency procurement for works, goods and services contracts across the State with the preferred method being Open Competitive bidding and the use of **alternative methods** being **strictly limited** and **subject to the approval of the KADPPA**.

The following principles shall guide the emergency procurement undertaken under these Guidelines: competitiveness, accountability, transparency, fairness and value for money in the procurement process; and the need for economy and efficiency in the implementation of projects.

1.2.0 Exceptions to Guidelines

1.2.1 Reasons for Exceptions.

Exceptions to the provisions of these Guidelines may arise as follows:

1. one-off requirements introduced as special provisions in a loan or credit facility which are not otherwise covered in these Guidelines and do not constitute a revision to the Guidelines;
2. the necessary use of non-standard tender documents for specialist emergency procurements;
3. new legislation or government policy change which causes any part of these Guidelines to be inconsistent with the new provisions until an appropriate revision has been approved.

Exceptions should normally be of a short-term and one-off nature. Where they are recurrent, or become repetitive, then the Authority shall decide whether there is a need to introduce revisions in the Guidelines to reflect the necessary change, in accordance with **section 1.3** of these Guidelines.

Where an exception is considered essential, the Head of the procurement entity may submit a formal request to the KADPPA detailing the circumstance and including a full justification. The KADPPA may approve such request by issue of a specific waiver or reject the request.

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

The KADPPA will review all requests for exceptions to determine whether the relevant provisions in the Guidelines need to be amended.

1.3.0 Revisions to the Guidelines.

1.3.1 Reasons for Revision.

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

1. new legislation;
2. policy changes by government or funding body;
3. introduction of new improved practices, policies or procedures;
4. removal of outdated practices, policies or procedures; and
5. lessons gained from practical experience.

1.3.2 Request for revision by a Procurement Entity.

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

1. The request shall be prepared and approved by the relevant Due Process Committee, and authorized by the Head of procurement entity.
2. The request shall state the purpose of the revision and provide a comprehensive justification, together with the precise changes suggested to the relevant text of the Guidelines.
3. KADPPA will formally consider each request, seek legal and emergency procurement practice advise and may agree to a general modification of the Guidelines, a specific exemption to be granted to the requesting procurement entity or may reject the request giving reasons.

1.4.0 Use of standard procurement forms.

To assist in the adoption and use of standard practices and procedures in public sector emergency procurement, the following standard emergency procurement forms (eSPFs) (see appendices) are introduced within these Guidelines:

1.4.1 SPF 1 – Procurement Requisition.

This form establishes the preliminary specifications, the budget availability and authority for the emergency procurement and requires the allocation of an emergency procurement number to be used for emergency procurement tracking and monitoring.

1.4.2 SPF 2 – Submission for Approving Authority’s Review.

This form has four sections as follows:

1. SPF 2 A – Request for approval of specifications, emergency procurement method and tender documents.
2. SPF 2 B – Request for approval of evaluation report and contract award recommendations
3. SPF 2 C – Request for approval of contract document and contract signature
4. SPF 2 D – Request for contract agreement

The purpose of these forms is to standardize the format of submissions to the approving authority, to act as a checklist of information to be provided to the Authority, and to ensure that

submissions are presented with the approval of an authorized responsible officer.

Use of the form eliminates the need for individual covering letters to be prepared on each application to the KADPPA.

1.4.3 SPF 3 – Evaluation Report (Goods and Works).

Standard evaluation format for the emergency procurement of goods and works.

The purpose of this form is to standardize and improve the content of evaluation reports submitted for approval.

1.4.4 SPF 4 – Evaluation Report (Services).

Standard evaluation format for technical and financial evaluations of consultancy services. This format has two sections for separate technical and financial evaluation to allow for “two-envelope” bidding.

1.4.5 SPF 5 – Monthly procurement report.

Monthly report to be submitted to the Public Procurement Authority by each due process committee.

1.5.0 Procurement numbering system.

1.5.1 Purpose

The purpose of the emergency procurement numbering system is to ensure each requirement is given a unique identification to assist in the tracking, monitoring and audit of procurement and in the tracing and maintenance of records and files.

The emergency procurement number is assigned at the requisition stage and will form the basis for document filing and management information systems.

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

1.5.2 Structure of the procurement number

The procurement number shall identify at a minimum:

1. the procurement entity;
2. the department and project;
3. the financial Year (e.g 2020) and
4. a unique sequence number for each requirement.

KADPPA will issue further Regulations on the derivation of emergency procurement numbers to ensure compatibility with existing numbering system for procurement planning, MTEF and the pre-numbered activity and expenditure initiation (A&EI) standard form.

1.5.3 Use of procurement identification numbers.

The procurement identification number must appear on all correspondences and documents related to the emergency procurement.

1.6.0 Public emergency procurement principles.

The overall objective of the public emergency procurement system is to provide value for money to the government by ensuring that public funds are spent in a transparent, efficient and fair manner.

These Guidelines incorporate provisions and procedures to promote transparency, accountability and ethics in the operation, management and reporting of emergency procurement. All public servants shall consistently apply these policies and procedures, together with professional judgment and good management.

CHAPTER 2: PROCUREMENT PLANNING.

2.1.0 PROCUREMENT PLANNING.

Section 40 of the Law requires Procurement Entities to prepare a procurement plan for each fiscal year, and prepare quarterly updates for approval by the Due Process Committee.

The Guideline requires that the emergency procurement planning process is fully integrated with applicable budget processes and circulars issued by the Public Procurement Authority and the budget preparation and expenditure instructions of the Planning and Budget Commission and Ministry of Finance. Adequate emergency procurement planning and prioritization of needs by each Procurement Entity is an essential prerequisite to effective emergency procurement for the following reasons:

1. Funding for emergency procurement is unlikely to be sufficient to meet all requirements, and scarce financial resources must be channeled to ensure that the priority aims of a Procurement Entity are adequately met before spending on less essential emergency procurements.
2. Effective planning allows requirements to be aggregated into larger purchases at lower unit costs, rather than frequent sourcing of quotations for identical items and issuing many individual contract agreement.
3. Emergency procurement of Common User items may also be aggregated for more than one Procurement Entity into Framework (Call-off) Contracts for at least a year, to permit further economies of bulk purchasing, saving of time wasted by separate emergency procurements, and a reduction of the need to maintain high stock levels.

2.1.1 Contents of the Procurement Plan.

The procurement plan for each Procurement Entity shall include:

1. a detailed breakdown of the goods, works and services required;
2. procurement method;
3. prequalification of bidders when required.
4. a schedule of the delivery, implementation or completion dates for all goods, works and services required;
5. the source of funding;
6. an indication of any items that can be aggregated for procurement as a single package, or for procurement through any applicable arrangements for common use items;
7. an estimate of the value of each package of goods, works and services required;
8. details of any committed or planned procurement expenditure under existing multi-year contracts; and
9. contract approving authority.

In determining the optimum packaging of planned contracts a Procurement Entity shall aggregate procurement requirements, where appropriate, to achieve economies of scale.

In deciding where aggregation is appropriate, the Procurement Entity shall consider all relevant factors, including:

1. which procurements are of a similar nature (Goods or Works or Consulting or Non-consulting services) and likely to attract the same potential bidders;
2. shelf-life and storage constraints;
3. when delivery, implementation or completion is required;
4. the optimum size and type of contract to attract the greatest and most responsive competition, taking into account the market structure for the requirement;
5. which procurements will be subject to the same Bidding requirements and conditions of contract; and the potential to realize savings in time or transaction costs or to facilitate contract administration by the Procurement Entity.

2.2.0 GUIDELINES FOR DETERMINING COMPLETION TIMESCALES.

2.2.1 Estimated lead times for ICB (Goods).

- | | |
|---|-------------------|
| 1. Preparation of Tender Documents | - 1-2 weeks |
| 2. Prior review TEC / KADPPA approval | - 0-1 week |
| 3. Tender Invitation | - 1-2 weeks |
| 4. Bid Close/ Opening | - same date |
| 5. Bid Evaluation and Report Submission | - 0-1 week |
| 6. Approval by C/RDPC | - 0-1 week |
| 7. Contract Award | - 0-1 week |
| 8. Contract Signature | - 0-1 week |
| 9. Letters of Credit (Goods) | - 1-2 weeks |
| 10. Delivery | - As per contract |
| 11. Inspection and Acceptance | - 0- 1 week |

2.2.2 Estimated lead times for NCB (Goods).

- | | |
|---|-------------------|
| 1. Preparation of Tender Document | - 0-1 week |
| 2. Prior Review/TEC / KADPPA approval | - 0-1 week |
| 3. Tender Invitation | - 0-1 week |
| 4. Bid Close/Opening | - same date |
| 6. Bid Evaluation and Report Submission | - 0-1 week |
| 7. Post Review/No objection | - 0-1 week |
| 8. Contract Award | - 0-1 week |
| 9. Contract Signature | - 0-1 week |
| 11. Delivery | - As per contract |
| 12. Inspection and Acceptance | - 0-1 week |

2.2.3 Estimated lead times for ICB (Works).

1. Preparation of Tender Documents	- 1-2weeks
2. Prior Review/TEC / KADPPA approval	- 0-1 week
3. Tender Invitation	- 1-2weeks
4. Bid Close/Opening	- same date
5. Bid Evaluation and Report Submission	- 0-1 week
6. Post Review / TEC/PPA Approval	- 0-1 week
7. Contract Award	- 0-1 Week
8. Contract Signature	- 0-1 Week
10. Completion Period	- As per contract
11. Final Acceptance	- 0-1 week

2.2.4 Estimated lead times for NCB (Works).

1. Preparation of Tender Documents	- 0 -1week
2. Prior Review/TEC/KADPPA	- 0 - 1 week
3. Tender Invitation	- 0 - 1 weeks
4. Bid Close/Opening	- same date
5. Bid Evaluation and Report Submission	- 0-1 week
6. Post Review /TEC/PPB approval	- 0-1 week
7. Contract Award	- 0-1 Week
8. Contract Signature	- 0- 1 Week
10. Completion Period	- As per contract
11. Final Acceptance	- 0 -1 week

2.2.5 Estimated lead times - Request for Quotation

1. Preparation of documents	- Less than 1 week
2. Invitation or Solicitation letter	- 0-1 week
3. Bid Close/Opening	- same date
4. Evaluation and Submission of Report	- Less than 1 week
5. Award of Contract	- Less than 1 week
6. Contract Signature	- Less than 1 week
7. Delivery/Completion period	- As per contract
8. Inspection and Acceptance	- Less than 1 week
9. Final Acceptance (works)	- As per Contract

2.2.6 Estimated Lead times – Consulting Services.

- | | |
|--|--------------------|
| 1. Preparation of Terms of reference (TOR) | - 1- 2 weeks |
| 2. Prior Review/TEC / KADPPA approval | - 0-1 week |
| 3. Preparation of cost estimate | - 0-1 week |
| 4. preparation of short list | - 0-1 week |
| 5. Preparation and issuance of RFP. | - 0-1 week |
| 6. Receipt of proposals | - 0-1 week |
| 7. Opening and Consolidated Evaluation | - 0-1 week |
| 8. Award of Contract | - Less than 1 week |

2.3.0 PROCUREMENT PLAN MONITORING AND UPDATING.

During project execution, the original procurement plan should be regularly monitored and updated. The essence is to see how actual performance compares with the planned activities and to make changes in the plan if necessary. If slippage occurs in the timing of the award or execution of a contract, it may require rescheduling of other related contract awards and deliveries. The purpose of monitoring is to compare the details of what has actually been executed, to note whether there are major discrepancies with what was anticipated, and make adjustments in the plans so as to give a complete picture of procurement performance. A full revision and update of the Procurement Plan must be submitted to the Due Process Committee for review and approval on a Quarterly basis for each Financial Year.

CHAPTER 3

PROCUREMENT IMPLEMENTATION:

3.1.0 Notification of Procurement Opportunities

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

3.2.0 Specific Procurement Notice.

A Specific Procurement Notice (SPN), for each of the major procurement packages in the procurement plan should also be issued. SPNs are issued either as a public Invitation for Prequalification, or in the absence of pre-qualification, as an Invitation for Bids. It is recommended in practice that the invitation also be incorporated in the front of the prequalification or tender documents as appropriate for reference purposes. SPNs should provide adequate notification of specific contract opportunities or Invitation for Bids (IFB) by a procuring entity regardless of what procurement method is used. The SPN should be issued in the following way:

NCB

1. By invitation of pre-qualified vendors registered with KADPPA.
2. By placement on widely used website; State website and KADPPA website with free international access for international tenders.

ICB

1. By invitation of pre-qualified vendors registered with KADPPA.
2. By placement on widely used website; State website and KADPPA website with free international access for international tenders.

The SPN contains information concerning:

1. The name of the procuring entity;
2. The name or nature of the contract;
3. Items to be procured;
4. Contact information for obtaining Bidding documents including State and KADPPA websites;
5. Cost of the Bidding documents;
6. Place and deadline for tender submission including by electronics plat forms;
7. Required Bid security declaration and format;
8. The place, date and time of tender opening; and
9. The minimum qualifications that bidders must meet. An invitation for prequalification includes similar information including the place and deadline for submission of the application to pre-qualify.

3.3.0 Other Notifications.

The procuring entity may also use other means of publishing information on Bidding opportunities including on any procurement websites or other electronic media.

3.4.0 Request for Expressions of Interest.

A Request for Expression of Interest should be an invitation letter sent to pre-qualified selected consultants. Interested consultants (**at least three**) should be requested to provide the relevant information such as:

1. Company profile;
2. availability of required key staff;
3. equipment;
4. technology and,
5. list of similar assignments completed, required to make a judgment on the firm's suitability for being short-listed. Sufficient time (**not more than 7 days**) shall be provided for responses before preparation of the short list.

3.5.0 Prequalification of Bidders.

a) The procurement plan should specify whether prequalification is required and for which categories of contracts. Prequalification is common for large works, civil works, turnkey plants, Build Operate & Transfer, some special goods and complex information technology systems.

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

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

The prequalification documents shall include:

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

d) The procurement entity shall respond to any request by a supplier, contractor or service provider for clarification of the prequalification documents if the request is made at least ten days

before the deadline for the submission of applications to pre-qualify.

e) The response by the procuring entity shall be given within a reasonable time and in any event within a period of at most seven working days so as to enable the supplier, contractor or service provider to make a timely submission of its application to prequalify.

The response to any request that might reasonably be expected to be of interest to one supplier, contractor or service provider shall, without identifying the source of the request, be communicated to all other suppliers or contractors or service providers provided with the prequalification documents by the procuring entity.

f) A procuring entity shall promptly notify each supplier, contractor or service provider which submitted an application to pre-qualify of whether or not it has been prequalified and shall make available to any member of the general public upon request, the names of the suppliers, contractors or service providers who have been prequalified.

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

3.6.0 Pre-qualification Criteria. Pre-qualification is based upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their:

1. experience and past performance on similar contracts;
2. capabilities with respect to personnel, equipment, and construction facilities;
3. Financial position;
4. required licensing and professional registrations; and
5. commercial and financial resources.

Figure 1. Indicative weighting of Technical Evaluation Criteria (Goods and Works).

S / N	ITEMS	SCORE
1.	Evidence of Incorporation or Business Name registration	0
2.	Registration with the Authority and relevant Ministries	0
3.	Company Audited Accounts for Three Years (previous)	0
4.	Evidence of Tax clearance certificate for three years (previous)	0
<p>The zero response means any company that hasn't got any one of these response will be disqualified. Based on the exigency of the moment the MDA may add any other mandatory requirement with zero score in their advert.</p>		
5.	Evidence of Financial capability and Banking Support	15
<p>Financial Capability: Evaluation of this criteria will be from the Annual Turnover of the company which will be seen from the Audited account and Tax clearance certificate Its recommended marks is 12</p> <p>Banking Support: Evaluation of this criteria will be by utilizing a certified Bank reference letter from a reputable bank and its recommended marks is 3</p>		
6.	Experience / Technical qualification of key personnel	25
<p>Technical qualification: This criteria will be evaluated using the educational qualification of key personnel and its recommended marks is 15</p> <p>Experience of key personnel: This criteria will be evaluated using the years of experience of the key professional staff, and Its recommended marks is 10</p>		
7.	Similar Projects executed and evidence of Knowledge of the Industry	20
<p>Similar Projects executed: This criteria will be evaluated using the contract award letters and final completion certification and its recommended marks is 15</p> <p>Evidence of Knowledge of the Industry: This criteria will be evaluated using number of projects successfully completed and its recommended marks is 5</p>		
8.	Equipment's and Technology capacity	20
<p>Equipments: This criteria will be evaluated using certified list of equipment/plants and its recommended marks is 10</p> <p>Technology capacity: This criteria will be evaluated using Evidence of ownership / leased agreement and its recommended marks is 10</p>		
9.	Annual Turner	5
<p>Annual Turner: This criteria will be evaluated using the previous three years audited accounts. Its recommend marks is 5</p>		
10.	VAT Registration and Evidence of past VAT Remittances	5
<p>VAT Registration: This criteria will be evaluated using VAT Registration and its recommended marks is 2</p> <p>VAT Remittances: This criteria will be evaluated using VAT Remittances receipts and its recommended marks is 3</p>		
11.	Evidence of ITF Remittances	5
12.	Evidence of PENCOR Remittances	5

Note: For items 3, 4, 5, 7, & 9 for Small and Medium Scale Enterprises (SMEs) the documentation will be for only one year (previous).

Note:

Best practice in contracting, establishes that the pre-qualification bench mark score with which respondent can be considered to be competent is a score of Seventy (70) and above.

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

1. All contractors who pass the stated qualification criteria should be selected and invited to bid.
2. Inform all applicants of the results of pre-qualification.
3. Applicants who fail to meet the pre-qualification criteria should be briefly advised of the reasons. No further correspondence will be entered into regarding applications.
4. When pre-qualification is completed, issue the Bid Document to all qualified contractors.

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

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

3.9.0 Post Qualification of Bidders.

- a) The procuring entity shall in the bidding documents require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or service provider.
- b) The procuring entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so. The procuring entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or service provider has done so to the satisfaction of the procuring entity.

3.10.0 Bidding procedures.

3.11.0 Standard Bidding Documents. KADPPA shall specify the various Standard Bidding Documents. A Standard Bidding Document is the document issued by a Procurement Entity, which establishes the works / goods required (technical specifications, plans, bill of quantities or activity schedule), the procurement procedures to be followed, and specifies the proposed contract conditions.

It should contain all information necessary to allow the bidder to prepare a responsive bid or quotation. The Standard Tender Document must contain information to:

1. instruct bidders on the procedure for submission of bids;
2. describe the works to be procured;
3. inform bidders of the criteria for evaluation of bids; and
4. define the conditions of any resulting contract. Use of a Standard Bidding Document (SBD) format, as defined is mandatory for all procurement of works funded by Government, unless an alternative format has been specifically approved by KADPPA. Note that procurement of works using development partners funds may be subject to the use of their standard formats if so specified in the loan or credit agreement. The updated versions of each approved SBD, together with an individual User Guide to assist in preparation of the SBD, may be obtained on electronic media from KADPPA, or directly downloaded from KADPPA website.

3.12.0 Preparation of Bidding Documents. The preparation of Bidding documents is the responsibility of the Head of Procurement Entity who may delegate to the Procurement Unit or a consultant. Upon receipt of requisition to procure and notification of availability of funds, the Head of Procurement proceeds with the preparation of the document. The Tender document must be prepared by modifying the appropriate Standard Tender Document (SBD) issued by KADPPA. The SBD as listed in the Law, may be obtained directly from the KADPPA or by downloading it from KADPP A website. The Instructions to Bidders and the General Conditions of Contracts should not be changed. However, modifications can only be made through the Bid Data sheet and Special Conditions of Contract respectively. The key sections that need completion and modifications are;

- a) The Invitation to Bid,
- b) The Bid Data Sheet.
- c) Technical Specification/Drawings
- d) The Bills of Quantities.
- e) The Conditions of Particular Application
- f) Forms of Bid, Bid Security, Forms of Agreement and Performance Guarantee (to be completed by the Contractor).

Responsibilities. The Head of Procurement should:

1. Select the appropriate standard Tender document depending on the type of procurement.
2. Complete the Invitation to bid section with the relevant information which is self - explanatory.
3. Consult with the end-user, regarding finalization of the description of requirements (Specification) for inclusion in the document.

4. Complete the Bid Data Sheet with details of the Bidding process e.g. the bid closing date, the address for submission, the evaluation criteria to be applied, any qualification criteria to be applied etc. The text of the Instructions to Bidders should not be modified. Complete the Conditions of Particular Application with the conditions which will apply to the contract e.g. payment terms, delivery/completion period, warranty, liquidated damages. Note that the Conditions of Particular Application modify the General Conditions of Contract – the text of the General Conditions of Contract must not be modified.
5. Complete the Bill of Quantities section by describing the required unit quantities etc. The Sample Forms provide text and format samples for the various forms which are to be completed by the bidder.

3.13.0 Sale of Bid documents for Competitive Bidding. The sale of Tender documents for competitive bidding will be coordinated by the Procurement Unit or the Technical Department as appropriate. The price charged for the documents must reflect only the cost of printing and provision of the bid documents. The Procurement Entity must ensure that bid documents are available for sale before publication of the invitation. If the stock of bid documents is exhausted, immediate action to print additional copies shall be initiated. It is an offence to deny a prospective bidder the opportunity to purchase a bid document, and failure to provide a bid document for inspection or purchase by a potential bidder may constitute grounds for complaint under the Law. Action:

1. Prospective bidders should be allowed to briefly inspect the Tender Documents, if requested, before committing to purchase of the document.
2. Record the name and address of each purchaser of the Tender Documents in a register.
3. Fees received from the sale of Tender Documents must be recorded and the income deposited in the Consolidated Fund. A formal Receipt must be issued to the purchaser.

3.14.0 Issue of Invitations for Restricted Bid. The Standard Tender Document for a Restricted Bid must be issued to all short-listed contractors simultaneously, either by registered post, or by hand in return for a written receipt. Responsibilities: The Head of Procurement Unit should:

1. Prepare the Tender Documents together with a personalized Letter of Invitation for each short-listed contractor.
2. Send the invitation by registered post to all short-listed contractors, or deliver by hand and obtain a written receipt.

3.15.0 Use of Standard Request for Quotation. A Standard Request for Quotations is required for the Request for Quotations method only. The SRFQ shall be used for the procurement of goods / works of smaller values only. The Standard Request for Quotations is to inform bidders of:

1. the precise description of the Works required;
2. the rules for the procurement process;
3. the evaluation criteria and methodology which will be applied;
4. any qualification criteria which will be applied; and
5. the type and conditions of the proposed contract (contract agreement).

The Head of Procurement Unit is responsible for drafting the Request for Quotations.

Responsibilities: The Head of Procurement Unit should:

1. Consult with the end-user, and technical specialists if required, regarding finalization of the description for inclusion in the document.
2. Complete details of the procurement process e.g. the bid closing date, the address for submission, the evaluation criteria to be applied, any qualification criteria to be applied etc.
3. Complete the Conditions of Contract section with the conditions which will apply to the contract (contract agreement) e.g. payment terms, delivery/completion period, warranty, liquidated damages.

3.16.0 Issue of Request for Quotations. The procedure for issuing of Request for Quotations to short-listed contractors follows the same principles as for Restricted Bid above. The Standard Request for Quotations (SRFQ) will be used for simple requirements wherever practical. For more complex requirements when the normal SRFQ and Contract agreement documents are not appropriate nor provide an appropriate form of contract, the Procurement Entity may utilize appropriate formats from the other Standard Tender Documents such as NCB tender documents.

3.17.0 Opening of Standard Requests for Quotations. There shall be public opening of the quotations submitted. All quotations must be opened on a predetermined date and time by the Procurement Unit to avoid the opportunity for any Contractor to become aware of the prices quoted by other contractors. The recording of quotations and the evaluation procedures followed are similar to those for open competitive Tenders except for the following:

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

Responsibilities: The Bid Opening Committee should:

1. Ensure that the name, organization represented and contact details of all attendees are recorded in an attendance register.
2. Ensure the security of documents at all times during the procedure to prevent any unauthorized interference with the documents.
3. Bring in the unopened quotations and any samples received and check that the writing on each envelope confirms that it is for the correct RFQ.
4. Open the first quotation after confirming that any conditions regarding marking and sealing of the envelope have been met and the envelope has not been tampered with.

Note each quotation with a serial number in sequence as it is opened (e.g. "1 of 4" where the total number of RFQs is 4).

5. Examine the contents of the envelope and identify, stamp and number all originals and copies, and any separate sections and attachments.
6. Read out the following details from each quotation: i. the number allocated to the quotation by the Bid Opening Committee; ii. name of the Contractor; iii. brief description of the goods or works offered if the RFQ is for more than one Lot; vi. the total price quoted; and v. any other appropriate information at the discretion of the Chairman.
7. Any obvious failure to provide a responsive quotation shall be noted in the Minutes. No quotation should be rejected at bid opening.
8. The Chairperson and two Members of the Committee shall initial the quotations and all attachments thereto.
Any corrections to prices or obvious errors and omissions shall be circled in red ink and also initialled.
9. Record the details read out of each quotation in the register of RFQ Opening ensuring that amounts are recorded in words as well as figures, and record all corrections and errors or omissions which are noted in the Minutes of the Meeting.
10. Minutes of the RFQ Opening shall be prepared by the Procurement Unit.

3.18.0 Evaluation of Contract for Requests for Quotations. Evaluation of quotations shall be undertaken by the Procurement Unit. Action:

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

3.19.0 Invitations to Bid.

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

b) Every invitation to an Open Competitive Bid shall:

i) In the case of goods and works under International Competitive Bidding, by way official invitation letter and any official websites of the procuring entity and KADPPA not more than two weeks before the deadline for submission of the bids for the goods and works;

ii) In the case of goods and works under National Competitive Bidding, the invitation for bids shall be by way of official invitation letter, on the notice board of the procuring entity, any official websites of the procuring entity and KADPPA, not more than one week before the deadline for submission of the bids for the goods and works.

c) Every invitation to an Open Competitive Bid shall include:

1. The name and address of the procuring entity;

2. The nature, quantity, category and place of delivery of goods to be procured or the nature, category, and location of the works to be procured;
 3. A statement that submissions must be made only in the English language;
 4. The deadline for delivering or performing the procurement;
 5. Information about the requirements to be met by suppliers and contractors;
 6. A statement of the application of domestic preferences if any;
 7. The instructions for obtaining the documents containing the specifications of the essential provisions of the procurement and the price, if any, for these documents;
 8. The place and deadline for the submission of the bids;
 9. The place, date and time for the opening of the bids.
- d) If the procuring entity had previously conducted pre-qualification for the procurement in question, the tender documents shall be issued only to those suppliers and contractors who had been pre-qualified and paid the necessary fee for the tender documents.
- e) The price to be stipulated for any tender documents must not exceed the reasonable cost of printing, compilation and delivery of the documents plus a commensurate administrative fee.
- f) Any person may after collecting the tender documents, request for clarifications of matters contained in the tender documents. All such requests for clarifications shall be in writing addressed to the procuring entity no later than 10 days before the deadline for the submission of the bids.
- g) The response by the procuring entity shall provide a written response within a reasonable time and in any event not later than 7 working days before the deadline for submission of bids so as to enable the supplier or contractor to make a timely submission of its bid.
- h) The response to any requests for clarifications shall, without identifying the source of the request, be copied to all other prospective suppliers and contractors who had paid for and collected the tender documents.
- i) At any time before the deadline for submission of bids, the procuring entity may modify the tender documents by issuing an addendum either in response to a request for clarification or for any other reason. The addendum shall be sent in writing to all prospective suppliers and contractors who had obtained the tender documents.
- j) A procuring entity if it finds it expedient so to do may convene a pre-tender conference for the suppliers and contractors in order to clarify all matters pertaining to the tender documents. All requests for clarifications and the responses provided during the conference shall be recorded in the minutes of the meeting without identifying the source of the requests and the minutes shall be distributed to all bidders who had obtained the tender documents.
- k) In all such cases where addendums have been issued, the procuring entity shall be obliged to extend the deadline by such a length of time as would be reasonable to allow the suppliers and contractors to consider the clarifications and, or addendums to the tender documents and make the appropriate inputs to their bids. Notice of the extension shall be promptly dispatched to every supplier or contractor who had obtained the Tender documents.

3.20.0 Bid clarification. The period during which Tender clarifications may be requested will be defined in the Tender Document. Requests for clarifications received after this period may be ignored unless they draw attention to a serious flaw in the Tender Documents. In all cases, any response to a Bidder must be communicated to all bidders who received the Tender Documents, but without identifying the bidder who requested the clarification. Responsibilities: The Head of Procurement Unit should;

1. Record each request for clarification and immediately develop a response in consultation with the appropriate Technical Department.
2. The Procurement Unit should also consider if the proposed response to a request for clarification will require bidders to undertake additional work, or make substantial modifications to their bids, which cannot reasonably be completed by the stated date for submission of bids. In this case, the Due Process Committee should be consulted for approval to extend the date for submission of bids.
3. Issue a written response to the bidder and notify details of the query and the response (but without identifying the source of the query) to all other bidders simultaneously.
4. Place copies of all correspondence on bid clarifications in the Procurement record file.

3.21.0 Submission of Bids (manual or electronic) .

a) All bids in response to an invitation to Bid shall be submitted in writing and, or any other format stipulated in the tender documents, signed by an official authorized to bind the bidder to a contract and placed in SEALED envelopes marked 'Original', Duplicate and Control. The Original and Duplicate envelopes shall be dropped into the Procuring Entity's bid-box, while the Control envelope shall be dropped into the KADPPA bid-box for safe keeping.

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

b) A procuring entity or the State Government may:

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

c) Tender documents usually carry provision for the rejection of all bids received.

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

d) However, if following competitive bidding process only one bid has been received and the bid is of good quality, meets the requirements of the Tender documents, is technically and financially responsive compared to market prices, and otherwise in order, the bid can be accepted and following evaluation, awarded to the sole bidder.

3.22.0 Validity Period for Bids; Modification and Withdrawal of Bids.

Tender validity period is the period in course of which the Contractor / Supplier is bound by the Tender, in relation to its content and conditions offered (price, execution time, guarantee etc).

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

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

3.23.0 Extension of bid closing date. The closing date for submission of bids may be extended at the discretion of the Procurement Entity for practical or justifiable reasons. The reasons may include modification to the Tender Documents after issuance and requests for an extension of time by bidders. Responsibilities: The Head of Procurement Unit should:

1. Ensure that there is an adequate practical justification for extending the closing date.
Extensions should not be granted, for example, where a bidder has by his own inactivity failed to purchase the Tender Documents early enough to permit submission of a responsive bid.
2. Issue an addendum notifying all Bidders of the revised date for submission of bids.
3. Place copies of all relevant correspondence in the Procurement record file.

3.24.0 Rejection of Bid before Bid opening. A Bidding process may be cancelled at any time before the deadline for receipt of bids with the approval of the Entity Due Process Committee. Justifications for cancellation of bids are:

1. The procurement need has ceased to exist or changed significantly;
2. Insufficient funding for the procurement;
3. significant change in the required technical details, Tender conditions, conditions of contract or other details, such that the re-commencement of proceedings is necessary;
4. insufficient, or no bids are received;
5. There is evidence of collusion among Bidders; or
6. Rejection is deemed to be in the interest of national security.

Responsibilities: The head of Procurement unit should:

1. Notify all bidders who have purchased or received the Tender Documents of the cancellation, and refund any fees paid for the purchase of Tender Documents.
2. Return any bids submitted to the bidder unopened.
3. Notify all Departments, Units and Projects involved in the cancellation of bid proceedings.

3.25.0 Bid Opening.

All bids shall be submitted before or by the deadline or date specified in the tender documents or any extension of the deadline for submission and the procuring entity shall:

a) Invite three credible persons as observers, one person each representing:

(i) private sector professional organization whose expertise is relevant to the particular goods or service being procured and

(ii) non-governmental organization working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have the right to submit their observation report to the Authority and any other relevant agency including their own organizations or associations and

(iii) the Government House or office of the Secretary to the State Government.

b) Permit attendees to examine the envelopes in which the bids have been submitted to ascertain that the bids have not been tampered with;

c) cause all the bids to be opened in public, in the presence of the bidders or their representatives and any interested member of the public on the same day;

d) ensure that the bid opening takes place immediately after the deadline stipulated for the submission of bids;

e) ensure that a register is taken of the names and addresses of all those present at the bid opening and the organizations they represent which must be recorded by the Secretary of the Bid Opening Committee or his representative and

f) call-over to the hearing of all present, the name and address of each bidder, the total amount of each bid, the bid currency and ensure that these details are recorded by the Secretary of the Bid Opening Committee or his representative;

g) ensure that relevant pages of financial bids are endorsed by all bidders to avoid substitution of documents;

h) ensure that a certified true copy of each bid submitted is sent to the Principal Private Secretary, Government House by the procurement entity immediately after the bid opening.

i) ensure that a copy of the bid results sheet(s) is sent to the Principal Private Secretary, Government House by the procurement entity on the same day of the bid opening.

3.26.0 Examination of Bids.

a) All bids shall be first examined to determine if they :-

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

4. Are generally, otherwise, in order.

b) A procuring entity may ask a supplier or a contractor for clarification of its bid submission in order to assist in the examination, evaluation and comparison of bids.

c) The following shall not be sought, offered or permitted :-

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

d) Notwithstanding the above, the procuring entity may correct purely arithmetical errors that are discovered during the examination of bids.

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

f) The procuring entity shall give prompt notice of the correction to the supplier or contractor that submitted the tender. If bidder does not agree with this notification, its bid shall be rejected.

g) A major deviation shall result in a rejection of bid while a minor deviation shall be subject to clarification.

The following shall be considered as major deviations: With respect to clauses in an offer:

- a. Unacceptable sub-contracting;
- b. Unacceptable time schedule if time is of the essence;
- c. Unacceptable alternative design; and
- d. Unacceptable price adjustment.

With respect to the status of the bidder:

- a. The fact that he is ineligible or not pre-qualified; and
- b. The fact that he is uninvited.

With respect to bid documents:

- a. An unsigned bid;
- b. Non-submission of bid security (if required in the Bidding Documents)

With respect to time, date and location for submission:

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

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

i) On the contrary, the following shall be considered as minor deviations:

- 1- The use of codes;
- 2- The difference in standards;
- 3- The difference in materials;
- 4- Alternative design;

- 5- Alternative workmanship;
- 6- Modified liquidated damages;
- 7- Omission in minor items;
- 8- Discovery of arithmetical errors;
- 9- Sub-contracting that is unclear and questionable;
- 10- Different methods of construction;
- 11- Difference in final delivery date;
- 12- Difference in delivery schedule;
- 13- Completion period where these are not in the condition of the bid;
- 14- Non-compliance with some technical local regulation;
- 15- Payment terms; and
- 16- Any other condition that has little impact on the bid.

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

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

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

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

3.27.0 Preliminary Bid Examination.

a) All the bids received before the scheduled closing time should be considered for preliminary bid examination. The purpose of this examination is to eliminate any bid from further and more complicated consideration if it does not meet the minimum standards of acceptability as set out in the bidding documents and therefore not substantially responsive. However, the Procuring Entity should exercise reasonable judgment in applying these tests and should avoid rejecting bids on trivial procedural grounds. For e.g., if the Tender documents stipulated that each page of the bid should be signed or initialed and a bidder failed to initial one or more pages of supporting information, this should not be a ground for bid disqualification. These can be rectified through the clarification process without giving any benefit to the bidder and without prejudice to the interest of other bidders. Such discrepancies should be noted, however, and decisions about their acceptance or rejection should be recorded in the bid evaluation report.

b) The preliminary examination of bids determines whether the bids meet the general procedural requirements of the bidding documents, in particular the compliance with the following requirements should be examined using the bidding documents as the reference point:

Stage 1: To ascertain whether: The bidder is eligible - Example:

- a) The bidder has not been blacklisted;

b) In case of goods, works and consultancy (except for selection of individual consultants) contracts the domestic bidder should have required CAC registration; Tax Clearance Certificate, Audited Accounts, VAT remittance, comply with Pension Fund and Industrial Training Fund (ITF) contributions, registration with KADPPA(excluding ICB).

c) For foreign funded projects, if so specified by the funding agency:

(i) In the case of works contracts, the bidder shall be from the member country of the funding agency; and

(ii) In the case of goods contracts the goods shall be manufactured in one of the member countries of the funding agency.

d) Bid is signed properly by an authorized party, including the power of attorney if stipulated and generally, in order;

(e) Bid securities submitted are in acceptable format, for required amount and duration;

(f) Bid contains all required critical documents including supporting evidence of bidder eligibility and qualifications;

(g) Bid is complete and includes quotation for all items in the lot or package, if so stipulated in the Tender document.

Stage 2: To ascertain the deviations from the provisions of bidding documents and categorize such deviations into major or minor deviations.

Also, to identify deviations (debatable deviations) which may be categorized as either minor or major deviations depending upon the requirements of the specific provisions in the Tender documents, the criticality of the deviation, the value of the contract in comparison with the value of the deviation and the judgment of the Technical Evaluation Committee. The purpose is to identify substantially responsive Bids with a view to subjecting such Bids for detailed bid evaluation.

Deviation from any provisions of the bidding documents (instruction to bidders, Bid Form, price schedules, Bills of Quantities, condition of contracts and technical specifications, etc.) is a common feature in many Bids. These deviations fall in to two basic categories, Major deviations by the bidder result in a finding of “non-responsiveness” and consequent rejection of the bid. Bids with minor deviations, on the other hand, are considered as “substantially responsive” and are, therefore, evaluated and considered for contract award by determining any financial value of each deviation and adding to the bid price. The sum of the bid price and the total of adjustments made for deviations and other evaluation factors specified in the bidding documents is the “evaluated bid price”. The question is to determine which deviations are to be classified as “major” and which as “minor”. In the absence of clearly defined distinction between major and minor deviations there is room for different interpretations. To facilitate the categorization of deviations the following approach may be used.

A major deviation would be one which either:

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

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

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

(iv) Will limit in any substantial way the Procuring Entity's rights or bidder's obligations or

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

A minor deviation would be one which either:

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

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

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

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

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

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

Ways of treating most frequent deviations:

i. **General:** In establishing the substantial responsiveness of bids, a specific clause in the ICB take precedence over general clauses; for example, if the Tender documents required bids to be submitted for all items and stated that incomplete bids will be rejected, the Procuring Entity should not propose to base the award by accepting a bid which is incomplete, based on a clause in the Tender documents in which it reserved the right to waive irregularities in bids.

ii. **Completeness of Bids:** If the Procuring Entity intends to reject incomplete bids, it shall be clearly stated in the bidding documents. If Procuring Entity intends to consider incomplete bids, the Tender document shall specify the minimum number of items for which prices must be quoted in the bid, or the minimum value of the items to be quoted. Tender documents should also state how incomplete bids meeting the minimum requirements will be evaluated. In such cases, incomplete bids would have to be adjusted (loaded) for missing items to make the bids comparable. If Procuring Entity can estimate the actual cost that will be incurred in procuring the missing items, that cost should be added (loaded) to the bid for purpose of comparison. If such estimate is not available, standard practice is to apply the highest price quoted by other bidders for adjustment (loading) purposes. Items for which no bids were received may be ignored in the comparison. If the Tender documents do not indicate whether incomplete bids will be accepted or rejected, the question whether such bids are “substantially responsive” must be decided during bid evaluation.

iii. **Procedural Deviations in Submission of Bids:** Most deviations in submission of bids (such as the marking of envelopes, sealing of bids) other than the signature to the form of bid are normally considered as minor. Absence of signature on the form of bid and similar deviations are considered as major deviations.

iv. **Bid Securing declaration:** If the bidders are required to furnish a bid securing declaration with his bid, failure to submit it in the prescribed format is considered as a major deviation and sufficient grounds for rejection. The submission of bid securing declaration after the bids are opened should be treated in the same manner as not submitting a bid securing declaration. Similarly, if the period of the bid securing declaration submitted is less than the period stated in the bid it shall be rejected.

If the form of the bid securing declaration is in a different format from that prescribed in the Tender documents, the bid should be rejected.

(v) **Lack of Supporting Documents:** The Tender documents should specify what documentary evidence is required to support the bid. In addition, they should specify whether a bidder's failure to submit any of the requested documentation with the bid will be considered as grounds for rejection of bid. If so specified, the evaluation should be carried out accordingly. Otherwise it may be treated as follows:

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

(a) One kind is intended to substantiate the legitimacy of the bid (i.e., that the bid is not "speculative", "exploratory", "frivolous" or "wait-and-see", and /or the source and reliability of the equipment offered);

(b) The other is to provide additional details on the technical part of the bid e.g. brochures describing the equipment offered.

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

(vi) **Fixed Price against Variable Price:** When bids are required at a firm price, proposal in bids to apply an escalation clause to the bid price should be regarded as major deviation and the bid should be rejected.

(vii) **Technical Specifications:** The variety of possible deviations from technical specifications is infinite, making it impossible to discuss all such deviations in a manual. The basic principles governing the treatment of technical deviations can however, be stated. First, the Tender documents should indicate those parts of the technical specifications which the Procuring Entity considers so important that deviations from them will not be acceptable. If the Procuring Entity is willing to accept deviations on technical specifications not designated as major in the bidding documents, a decision must be made whether the Procuring Entity is prepared to:

(a) Accept such deviations proposed by a bidder, not only for the purpose of evaluating the bid, and;

(b) Consider as a contractual obligation, if the bid is accepted for the contract award. If the deviation is acceptable, the monetary value of the minor deviation should be determined and loaded to the bid price. If on the other hand, the deviation offered is not acceptable for an eventual contract, the deviation should be classified as major and the bid rejected.

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

(ix) **Alternative Bids:** Submission of a bid based on entirely different design, where such had not been permitted is considered as a major deviation. Where alternative bids are permitted, the bidding documents shall state that the alternative bid does not need to conform precisely to the description of requirements, but must:

(a) meet the objectives or performance requirements prescribed in the description of requirements;

(b) be substantially within any delivery or completion schedule, budget and other performance parameters stated in the bidding documents; and

(c) clearly state the benefits of the alternative bid over any solution which conforms precisely to the description of requirements, in terms of technical performance, price, operating costs or any other benefit. Alternative bids shall be evaluated in the same way as other bids, except that the technical evaluation shall take into account only the objectives or performance requirements prescribed in the description of requirements in the bidding document.

(x) **Delivery Period:** If goods are offered outside the delivery period or in the case of works contract; unacceptable time phasing, not conforming to specified key dates or program. This is considered as a major deviation.

(xi) **Conditional bids:** Bids that are submitted subject to a caveat added to the Form of Tender or under a covering letter or alterations to the Form of Tender are considered as nonresponsive.

C - Debatable Deviations:

There may be some deviations which do not appear to consider at first sight as a major departure but at the same time cannot be considered as a minor departure either. In some cases, it may be considered as major whereas in some other cases it may be considered as minor. However, if it is specifically mentioned in the Tender document such deviations are reason for rejection or the applicable procurement Guidelines does not allow to accept such departures, then the bid should be rejected. Otherwise the Procuring Entity may consider such deviation as minor and bid may be considered for further evaluation. In such situation, the bid evaluation report should contain a statement, justifying considering such departures as minor deviation. Some of the examples for debatable deviations are as follows:

(i) Requesting different amount of advance and other payment terms (including liquidated damages and retention): If such proposals are accepted the additional cost that will be incurred by the Procuring Entity should be loaded to the bid price for evaluation; In the case of advances and payment stages the additional cost may be the respective interests and in the case of liquidated damages and retention it may be the maximum amounts specified in the Tender documents for liquidated damages and retention respectively.

(ii) Proposed changes in construction period which is not critical: Similarly, if such proposals are accepted the additional cost (may include additional rentals, supervision cost, effects to liquidated damages) that will be incurred by the Procuring Entity should be loaded to the bid price for evaluation.

(iii) Omissions of minor works or items included in the scope of work; if such omissions are acceptable there cannot be any effect to the balance works or items if the omitted items or works are procured differently.

3.28.0 Bid Securing Declaration (Bid Security).

- a) Subject to the monetary and prior review thresholds as may from time to time be set by the KADPPA, procurements may require a **bid securing declaration** by way of a sworn affidavit issued by a high court to the procuring entity.
- b) KADPPA shall from time to time specify the principal terms and conditions of the required bid securing declaration in the tender documents.
- c) When the procuring entity requires suppliers or contractors submitting Bids to provide a bid securing declaration:
 - (i) The requirement shall apply to each supplier or contractor;
 - (ii) The bid securing declaration shall be submitted in exactly the same format attached in the Standard Bidding Documents or otherwise be rejected by the procuring entity;
 - (iii) Notwithstanding paragraph (ii), a bid securing declaration shall not be rejected by the procuring entity on the grounds that the bid securing declaration was not issued by an issuer in the country, if the bid securing declaration and the issuer otherwise conform to requirements and format prescribed in the Tender documents;
 - (iv) A supplier or contractor may request the procuring entity to confirm the acceptability of a proposed issuer or a proposed confirmer of a bid securing declaration before submitting a bid and the procuring entity shall respond promptly to the request;
 - (v) Confirmation of the acceptability of a proposed issuer or of a proposed confirmer does not preclude the procuring entity from rejecting the bid securing declaration on the ground that the issuer or confirmer has become insolvent or is otherwise not creditworthy.
- d) Any requirement on bid securing declaration that refers directly or indirectly to conduct by the supplier or contractor submitting the bid may only relate to:
 - (i) Withdrawal or modification of the bid after the deadline for submission of bids, or before the deadline if stipulated in the tender documents;
 - (ii) Failure to sign the procurement contract if required by the procuring entity to do so;
 - (iii) Failure to provide a required Guarantee for the performance of the contract after the bid has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the tender documents.
- e) The procuring entity shall not make a claim to the bid securing declaration and shall promptly return or procure the return of the bid securing declaration document after whichever of the following occurs first:
 - (i) The expiry of the bid securing declaration;
 - (ii) The entry into force of a procurement contract and the provision of guarantee for the Performance of the contract, if the guarantee is required by the tender documents;
 - (iii) The termination of the procurement proceedings without the entry into force of a procurement contract; or
 - (iv) The withdrawal of the bid prior to the deadline for the submission of bids.

3.29.0 Default on Bid Securing Declaration.

When a bid securing declaration is requested with the bid and any particular bidder fails to fulfil any of the conditions in the bid security declaration (namely does not accept the arithmetical errors as described in the instruction to bidder, fails to submit a performance guarantee before the time period given or refuses/fails to execute the contract agreement the Procuring Entity shall promptly inform KADPPA of such failure, with relevant details of the supplier or contractor. Summary of the nature of the default (should include copies of all relevant correspondents, and explain the proceedings in chronological order starting from close of bids with dates), for debarment of the contractor / supplier.

3.30.0 Bid Evaluation (manual or virtual).

Time Frame for Bid Evaluation & Extension of Bid Validity:

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

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

(i) Refusing to grant extension of bid validity of their bids: and

(ii) Absorbing any cost increases that might occur during such extensions (bidders are not allowed to increase their bid prices as a condition of extending the validity of their bids).

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

3.31.0 Bid Evaluation Stages.

a) Regardless of how well the other steps in the procurement process are conducted, if bids are not evaluated correctly and fairly, the process will fail. Unfortunately, bid evaluation is the step that is mostly manipulated if one wants to favor a particular bidder. Therefore, it is required that Procurement Planning Committees and Technical Evaluation Sub Committees are familiar with and understand how it should be done and to know how to review and what to look for. Departures from the bidding documents are a common feature of the bids submitted by the bidders. A bid that complies fully with the requirements of the bidding document may be an extremely rare instant. What is important is how critically the departure will affect the outcome of the procurement.

Hence during the bid evaluation, substantially responsive concept is used rather than following fully responsive bids.

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

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

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

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

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

3.32.0 General Principles of Detailed Evaluation and Comparison of Bids.

a) The main objective of detailed bid evaluation is to determine the cost that Procuring Entity will incur if the contract is awarded to the respective bidders which have been determined as substantially responsive. Therefore, only the bids that have been determined to be substantially responsive to the Tender documents, i.e. do not contain material deviation, should be considered for detailed evaluation. Out of the three stages of bid evaluation described in these Guidelines, only during this stage will the bids be comparable with each other. The purpose of comparison is to determine the lowest evaluated cost that will be incurred by the Procuring Entity from the substantially responsive bids received. In order to determine the lowest evaluated bid, the Procuring Entity should only use the evaluation criteria disclosed in the Tender document. No additional evaluation criteria other than those which were disclosed in the Advertisement or Tender documents should be used during the evaluation.

A systematic and logical sequence as described in these Guidelines should be followed during the detailed evaluation and comparison of bids.

b) Detailed Bid Evaluation – Principles and Methodologies.

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

- 1- Exclude VAT, contingencies and provisional sum amounts;
- 2- Correction of arithmetical errors;
- 3- Application of discounts;
- 4- Adjustment to bid prices for omissions;
- 5- Adjustments for acceptable departures;
- 6- Adjustments for delivery/completion period;
- 7- Adjustments for inland transportation;
- 8- Operational costs and life cycle costing;
- 9- Conversion to common currency;
- 10- Domestic preferences if any;
- 11- Reassess ranking order;
- 12- Examine for unbalanced bidding;
- 13- After sales services;
- 14- Clarifications during evaluation;
- 15- Alternate Bids.

EXPLANATORYNOTES:

(a) Exclude VAT, contingencies and provisional sum amounts: Before commencing evaluation of bids under other steps the VAT and the amounts stated as provisional sum and contingencies should be excluded from the bid prices.

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

- (i) Where there is a discrepancy between the amounts in figures and in words, the amount in words will prevail;
- (ii) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern.

Unless in the opinion of the Procuring Entity there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected; and

(iii) If the bid price changes by the above procedure, the amount stated in the Form of Bid shall be adjusted with the concurrence of the bidder and shall be considered as binding upon the bidder. If the price of any bid is adjusted as above, the Technical Evaluation Committee (TEC) shall give a detailed report explaining where and how such adjustments were made rather than merely saying the bid price was adjusted by an amount equal to the arithmetical error;

(c) Application of discount; Discounts offered by the bidders should be considered for evaluation. If conditional discounts are offered, which will create more than one bid price, such discounts should be ignored for the purpose of evaluation. These discounts should be considered in the manner the bidder has offered them:

(i) If discounts are offered to limited items it should be applicable to such items;

(ii) If the discount offered is to the total bid price as a percentage it should be applicable to all the items at the percentage discount offered, excluding for contingencies and provisional sum items;

(iii) If the discount offered is to the total bid price as a lump sum, such lump sum amount should be considered for evaluation and before the award of contract such discount shall be uniformly distributed to all the items, excluding for contingencies and provisional sums.

(d) Adjustment to bid prices for omissions; In many cases, bidders will present their bids without quoting for certain items, accidentally or deliberately. Regardless of the reason(s), such omissions should be quantified in monetary terms whenever possible, to permit direct comparison with other bids, provided such omissions were considered as minor deviations during the preliminary examination of bids. Generally for works contracts, , if a bidder fails to quote for any item in bills of quantities the bidder will not be paid by the Procuring Entity for such items when executed and shall be deemed covered by the rates of other items. In that case, no further adjustment is needed during the bid evaluation. If such provision is not included, in the case of omission of one or more items from the bid, rather than rejecting the bid entirely and if it is already considered as substantially responsive during the preliminary examination, the bid price should be loaded for the comparison purposes. To that effect, surrogate prices for these items may be obtained from printed price lists if available or the highest rate from the other bids for the corresponding items to be used.

(e) Adjustments for acceptable departures; In many cases, bidders will present bids that deviate from bidding document requirements, accidentally or deliberately. Regardless of the reason, such deviations should be quantified in monetary terms whenever possible, to permit fair comparison with other bids, provided such deviations were considered as minor deviations during the preliminary examination. The most common deviations in bids are possible due to different commercial terms offered; i.e., for amounts of advances, changes in payment schedules etc. These can be adjusted by applying an appropriate discount rate (preferably disclosed in the Tender documents) and converting them to their equivalent present values. Another form of bid deviation is to offer a higher capacity or standard performance than is specified in the Tender document: i.e., a larger engine capacity, greater carrying capacity or storage, etc.

No additional advantage should be given to such offers unless the Tender document specifically provides for this and set out how the difference will be evaluated.

(f) Adjustments for delivery / completion periods; In many cases, bidders will present their bids where the delivery / completion periods deviate from bidding document requirements, accidentally or deliberately. Regardless of the reason(s), such deviations should be quantified in money terms whenever possible, to permit fair comparison with other bids, provided that such deviations were considered as minor deviations during the preliminary examination of bids. The adjustments to the bid prices should be done in the manner described in the Tender documents. Generally, no advantage is given to a bid offering early delivery than that specified in the bidding document. Any bid offering a delivery beyond acceptable cut off date specified in the bidding documents should be rejected as nonresponsive.

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

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

- 1- Initial purchase price;
- 2- Adjustments for extras, options, delivery, variations, deviations;
- 3- Estimated operational costs (fuel, labour etc.);
- 4- Estimated cost of spare parts and other consumables;
- 5- Efficiency and productivity;
- 6- Depreciation cost. The follow-on cost such as fuel, spare parts, maintenance and depreciation should be discounted to net present value.

(i) Conversion to common currency; In order to minimize the foreign exchange risk for bidders in certain procurement (especially in ICB procedures) the bidders are allowed to bid in freely convertible foreign currencies. This results in bids being presented in a variety of currencies which must be converted to the Nigerian Naira. These conversions are made using the prevailing Central Bank Nigeria selling rates on the specified date. For works and complex goods contracts, the Naira shall be the currency of bid except where there are foreign components which may be priced in freely convertible foreign currencies.

(j) Domestic preference (applicable under the International Competitive Bidding only); In the procurement of goods and works where foreign bidders are allowed to participate, the applicable domestic preference clauses shall be included in the bidding document.

In the case of goods contracts, if the goods required are manufactured in Nigeria the applicable domestic preference clauses shall be included in the bidding document. When applying domestic preference, the following guidance should be used:

Goods:

- 1- The application of the margin of preference should be used only if it was disclosed in the bidding documents;
- 2- The goods being procured are “manufactured goods” involving assembly, fabrication, processing etc., where a commercially recognized final product is substantially different from the basic characteristics of its components and raw materials;
- 3- Qualifying goods must meet the specifications given in the bidding documents with respect to quality, capacity and performance;
- 4- Satisfied the minimum domestic values added to local content as specified in the bidding documents;
- 5- The price of the foreign bidder is grossed up by the percentage margin of preference after all evaluation criteria have been met, rather than discounting the qualifying domestic bid.

Works:

- 1- The application of the margin of preference should be used only if it was disclosed in the Tender documents;
- 2- Satisfying the minimum domestic value added or local content as specified in the Tender documents;
- 3- The price of the foreign bidder is grossed up by the percentage margin of preference after all evaluation criteria have been met, rather than discounting the qualifying domestic bid.

(k) Comparison with consultant's estimate in the case of works contracts; A bid should not be rejected solely because the bid price exceeds the engineers estimate by predetermined margin; nor should they be rejected solely on the grounds that they are substantially lower than such estimates. The measure of acceptability should rather be the “reasonableness” of a bid price as determined during the evaluation. The reasonableness may be established by considering all factors such as market conditions, special terms specified in the bidding documents, prices of similar items procured in the recent past, any other relevant factors. If great differences between the bid price and consultant's estimate are found, the reasons for the discrepancy must be analysed.

- 1- Review consultant's' estimate to discover whether any unusual provisions are included which may have affected the prices;
- 2- Analyse current market conditions to discover whether they would tend to increase or decrease the bid prices;
- 3- If these reviews would account for the discrepancy three alternative conclusions may be reached viz:

(a) - Bid is reasonable under given circumstances and should be accepted;

(b)- If the bid prices are marginally low the bidder shall be requested to prove to the satisfaction of the Procuring Entity, how the bidder intends to procure such items/performance of the Works/provide the Services as per the quoted rates, for such purposes the bidder may be asked to provide a rate analysis. If the Procuring Entity is of the view that the justification/explanation provided by the bidder is unacceptable, hence the bidder would fail in the performance of his obligations within the quoted rates, a higher performance security may be requested to mitigate such risks. If the bidder refuses to provide such additional performance security, his Bid shall be rejected.

(c)- Aspect of Tender documents are suspected to be the likely cause; all bids may be rejected and initiate re-bidding with modified Tender documents. Rejection of all bids requires the prior approval of the KADPPA.

Formal Peer Review Process.

a. The peer review is intended to provide an oversight and risk management role within the competitive process results. This review is to ensure that the evaluation and contractor selection were conducted in accordance with the solicitation, and to confirm no anomalies or potential issues exist which could impede the principles of fairness, openness and transparency of the procurement process.

b. For procurements of Five Hundred Million naira (N500,000,000:00) and above, a peer review is mandatory.

c. Peer reviewers must initial and date the evaluation report to confirm that such a review has taken place.

d. The accountability of the procurement remains with the contracting officer responsible for the requirement; there is no transfer of responsibility.

e. The decision of who will conduct the peer review is at the discretion of the KADPPA.

f. Should issues arise during the peer review process, the contracting officer and the peer reviewer(s) should make every effort to resolve them. In the event that a resolution cannot be achieved, the matter will be taken to the Public Procurement Board (PPB) for final decision.

g. The time required to conduct a peer review will be determined by KADPPA; however, such review should not exceed two working days.

h. Formal peer reviews for procurements below N500,000,000.00 may also take place at the discretion of the KADPPA.

3.33.0 Extension of Bid Validity Period.

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

b) Where there is a delay in tender evaluation, the Procuring Entity may request bidders to extend the period of validity of their tenders.

Bidders may refuse to grant any extension of validity of their tenders without losing their Bid security, if any. Bidders are not allowed to increase their prices as a condition of extending the validity of their tenders, unless the Bidding documents provide for an adjustment in price.

3.34.0 Bid Evaluation Report.

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

- 1- Key dates and steps in bidding process (copy of the invitation to bid as advertised attached);
 - 2- Bid opening information (copy of the bid opening minutes should be attached);
 - 3- For all bidders: Table showing the bidders compliance with major commercial conditions (e.g. completeness, bid security. Bid validity, delivery or completion period. Payment terms);
 - 4- For all bidders: Table showing bidder's compliance with key provisions of the technical specifications (e.g. capacity, operating characteristics, etc.);
 - 5- For all substantially responsive bids: Table showing arithmetical errors, discounts and currency conversion;
 - 6- For all substantially responsive bids: Table showing additions and adjustments (indicating methods used in computing the adjustments);
 - 7- For all substantially responsive bids: Table showing currency conversion;
 - 8- For all substantially responsive bids: Table showing domestic preference;
 - 9- For all substantially responsive bids: Table showing various steps from bid price announced to evaluated bid price);
 - 10- Record of clarifications made from all bidders;
 - 11- For lowest evaluated responsive bidder: Post qualification verification;
 - 12- Names of bidders rejected and reasons for rejection;
 - 13- The proposed contract award recommendation;
- b) In addition, the evaluation report should include narrative section in which any information not suitable for presentation in the form of tables, together with any supplementary information necessary for a complete understanding of all the factors considered during bid evaluation. c) A certified true copy of the Bid Evaluation Report shall be sent to the Principal Private Secretary, Government House at the same time it is forwarded to the Due Process Committee of the procuring entity.

3.35.0 A successful Bid.

- a) The successful bid shall be that submitted by the lowest cost evaluated bidder from the bidders responding to the bid solicitation, but need not necessarily be the lowest cost bidder.
- b) Notice of the acceptance of the bid shall immediately be given to the successful bidder after due consideration by the approving authority.
- c) Notwithstanding the above, where the procurement proceeding is with regard to a value threshold for which approval should be sought from either the State Executive Council, notice given to a successful bidder shall serve for notification purposes only and shall not howsoever be construed as a procurement award until after all such approvals have been obtained.

d) Where the procurement proceeding is with regard to a value threshold for which the Public Procurement Authority is the approving authority, then subject to the fulfilment by the successful bidder of any special conditions expressed in the bid solicitation documents and the execution of the procurement contract, after all such approvals have been obtained.

3.36.0 Contract Performance Security.

- a) The provision of a Performance security (**physical or scanned**) shall be a precondition for the execution of the contract. The security shall not be less than 10% of the contract value.
- b) Performance security shall be in the form of unconditional bank guarantee issued by a commercial bank or Merchant Bank.
- c) The provision of a Performance security (**physical or scanned**) shall be a precondition for the execution of the contract by the Small and Medium Scale Enterprises (**SMEs**).

3.37.0 Award and Signing of the Contract.

- a) Prior to contract award, the Procuring Entity shall ensure that budgetary provision is confirmed to meet the cost of the contract. Thereafter, the Notification of award shall be issued within the validity period of the bid after obtaining approval from the relevant authorities. The bidder is expected to issue a letter of acceptance within three (3) working days of the receipt of notification of award.
- b) This should essentially state the sum that will be paid to the contractor by the Employer in consideration of the execution and completion of the contract. The issuance of this letter constitutes the formation of the contract.
- c) Once the Procuring Entity has evaluated the tenders and made a determination on the lowest evaluated responsive tender, and a decision has been made about the award, the Procuring Entity should:
 - 1. Request and obtain KADPPA's "No-objection" prior to awarding the contract, if applicable;
 - 2. Negotiate the award with the successful bidder after approval from relevant authorities;
 - 3. Not require the selected bidder to provide performance Guarantee in excess of that specified in the Tender Documents;
 - 4. Send notification of the award of contract to the successful Bidder in a manner and within the time specified in the tender documents;
 - 5. Request the successful Bidder to return the signed contract together with the required performance security within the time specified in the tender documents; and
 - 6. Notify and debrief unsuccessful Bidders as soon as possible after receiving the signed contract and the performance security from the successful bidder.
- d) If the successful Bidder fails to return the signed contract or provide the required performance security, the Procuring Entity shall:
 - 1. Put into effect the Bidder's Bid Securing declaration; and
 - 2. Proceed to offer the contract to the second lowest evaluated responsive Bidder.

3.38.0 Execution of Contract Agreement.

This shall be the actual performance of the contractor / supplier as stated in the contract agreement signed (**manual or electronic**) by both parties to the contract.

3.39.0 Contract Administration – Payment of Value Added Tax (VAT).

- a) In respect to VAT registered contractors or suppliers, the amount of VAT on the value of work done, goods supplied or services provided, should be paid by the Procuring Entity, provided such goods or services are not exempted or not excluded from VAT.
- b) Such payment of VAT will apply in respect of advance payments as well.
- c) When retention money is paid, relevant amount of VAT should also be paid by the Procuring Entity.

3.40.0 Variations of Contracts.

- a) The variations of contracts during the implementation stage cause very high burden on the Procuring Entity and to the Government. If the variation to the final contract sum is high, it will distort the procurement process that was carried out when awarding the contract. Therefore, Procuring Entity must ensure that all efforts are taken to minimize this situation. Variations are mainly due to change of scope and quantity.
- b) To minimize variations due to change of scope, the Procuring Entity shall ensure that the specifications, detailed design and drawings and terms of reference are ready prior to the floating of bids for procurement of goods, works and consulting services.. In case the aggregate variation exceeds the 5% of the contract amount, the Procuring Entity requires approval from the KADPPA for the varied amount.
- c) To minimize variations in works contract due to inaccurate quantities or omissions in the Bill of Quantities (BOQ) / Bill of Engineering Measurement and Evaluation (BEME), it is recommended that before the start of preparation of Tender documents, Procuring Entity should obtain confirmation from the persons who prepared the Bill of Engineering Measurement and Evaluation (BEME) / Bill of Quantities (BOQ) that a second person has checked the BOQ for its accuracy and completeness. It is also highly recommended that when “Prototype” structures or buildings are constructed, to compare the Bill of Quantities (BOQ) with the final measurements made on such “Prototype” structure or building before finalizing the Bill of Quantities (BOQ).
- d) Despite all of the above, if the aggregate amount of the variations (due to quantity changes and extra works orders issued), is within the contingency provision (which should be 10% maximum) the Accounting Officer of the Procuring Entity may approve the variation order with notification to the Authority. Otherwise, it should be referred to the authority responsible for approving the contract be it the Due Process Committee or the KADPPA or the State Executive Council.

3.41.0 Record of Procurement Proceedings.

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

1. Original Request from Originating Officer
2. Correspondence with Originating Officer
3. Correspondence with Suppliers, Contractors and Consultants/ (pre-order only)
4. Internal Correspondence within Procurement Unit
5. Requests for Expressions of Interest
6. Shortlist or Advertisement
7. Tender documents and Specifications/Terms of Reference
8. Correspondence with suppliers relating to Tender
9. Bids, Quotations or Pro -forma invoices received
10. Bid opening records
11. Record of Bid Securities and release
12. Evaluation Report
13. Submission to the relevant authority & Minutes of proceeding
14. Notice of Contract Award and publication
15. Contract/Contract agreement & Acknowledgement of receipt
16. Delivery/Executions Documentation
17. Inspection and Acceptance Reports.
18. After sales warranty and performance claims.
19. Copy of Record of Commitment of Funds (A&EI Form).
20. Copy of Invoices or Certificates.
21. Copy of Payment Vouchers.
22. Record of Retentions and release
23. Performance Guarantee and release.

b) The procuring entity shall be liable to suppliers, contractors or service providers for damages owing solely to failure to maintain a record of the procurement proceedings.

c) Records and documents maintained by procuring entities on procurement shall be made available for inspection by KADPPA, an investigator appointed by KADPPA and the Auditor-General upon request; and where donor funds have been used for the procurement, donor officials shall also have access, upon request, to procurement files for the purpose of audit and review.

3.42.0 Mobilization Fees.

a) In addition to any other regulations as may be prescribed by KADPPA, a mobilization fee of no more than 20% (Local Contractor) and 15% (Foreign Contractor) may be paid to supplier or contractor subject to approval of Advance Payment Guarantee (APG) by the KADPPA, however, in exceptional circumstances and upon the recommendation of KADPPA a mobilization fee of above 20% but not more than 50% may be granted,

b) For Small and Medium Scale Enterprises (**SMEs**) a mobilization fee of no more than **40%** may be paid to supplier or contractor subject to approval of Advance Payment Guarantee (APG) by the KADPPA, supported by the following:

1- An unconditional bank guarantee issued by a Commercial or Merchant Bank;

c) Once a mobilization fee has been paid to any supplier or contractor, no further payment shall be made to the supplier or contractor without an interim payment certificate issued in accordance with the contract agreement.

3.43.0 Retention Money.

a) Retention money on the other hand is a portion of the payments due under the contract which is retained to ensure performance by the supplier/contractor. When used as a guarantee, it should not exceed 10% of the contract value. Instead of the Procuring Entity retaining part of the due payments, the supplier / contractor may also provide a money retention security in form of a bank guarantee or irrevocable Letter of Credit. If the contract provides for both a performance guarantee and retention fees, the total amount of both performance guarantee and retention fee should not exceed 20% of the contract sum.

3.44.0 Publication of Contract Awards.

The award of all contracts should be reported to KADPPA and NCB and ICB for goods and works and consult services above prescribed threshold should be published in a national daily with description of the contract, name of contractor/supplier, bid prices at bid opening, price of each evaluated bid, names of bidders whose bids were rejected with reasons for rejection, duration of the contract and the final contract price clearly stated.

3.45.0 Confidentiality.

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

