

3.3 Advertisement

Advertisement is the third (3rd) stage of nine (9) essential steps of the procurement after effective procurement planning driven by need assessment and appropriation, **Advertisement** is a notice in a public/private printing medium to promote a service, or publicizing a procurement activity. Advertisement could either be in form of General Procurement Notice (GPN) or Specific Procurement Notice (SPN).

General procurement notice (GPN) contains advance information on the major procurement packages being considered or approved for funding by the procuring entity. The information is intended to alert suppliers and contractors of International Competitive Bidding procurement and consultants of upcoming opportunities *while* Specific Procurement Notice (SPN) is issued either as a public Invitation for Prequalification, or, in the absence of pre-qualification, as an Invitation to Tender. It will clearly specify the closure and the opening **time** of the bid. This is additional requirement to the (GPN)

*Part VI, Section 24(1) of the Act requires that, “all procurements of goods and works by all procuring entities shall be conducted by **open competitive bidding**” However, **open competitive bidding** can be done either by way of national or international competitive bidding.*

Requirement for International and National Competitive Bidding: section 25(2i&ii) stipulate that:

- (i) *“in the case of goods and works under **International Competitive Bidding**, the invitation for bids shall be advertised in at least two national newspapers and one relevant internationally recognised publication, any official websites of the procuring entity and the Bureau as well as the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works”*

and

- (ii) *“in the case of goods and works valued under **National Competitive Bidding**, the invitation for bids shall be advertised on the notice board of the procuring entity, any official web sites of the procuring entity, at least two national newspapers, and in the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works”*

However, in the case of procurement of Services, Part VIII section (44) specifies that:
*“Where a procuring entity wishes to procure **services** for its needs which are*

precise and ascertainable:-

*(a) it shall solicit for **Expressions of Interest** or **Applications to Pre-Qualify** to provide the services by publishing a notice to that effect in at least 2 national newspapers and the procurement journal”*

(b) “where the value of the services to be procured is less than one million naira, or with the approval of the Bureau, of such a low value that only national consultants would be interested, the procuring entity may without placing any notice request at least 3 and not more than 10 consultants or service providers to make proposals for the provision of the services”

3.4 Bid collection, submission and Opening

The date, time and place for receiving offers, including the manner in which they should be marked and sealed, must be clearly stated in the solicitation documents. It is the bidders' responsibility to ensure that their offers are submitted at the correct place, date and time. The entity receiving the bids or proposals, as stipulated in the solicitation documents, must ensure that the package(s) in which the offers are received are dated and time-stamped and placed in a secured area prior to the day of the public opening event. The procuring entity should also keep a list of the offers received by name of bidder, date and time the offer was received, and the number of packages received for each.

The opening of offers should take place immediately after they are received. This should also be stipulated in the solicitation documents. Once the offers are received, those received on time should be publicly opened at the place and time stipulated in the solicitation documents.

Offers received late are usually returned unopened to the respective bidders. When considering the rejection of a late offer, it is important to be guided by the language used in the solicitation documents, because this language will determine if there is any flexibility in accepting late documents. For instance, if it is stated in the solicitation documents that late offers “may” be rejected, then a rejection of late offers would depend on the circumstances that caused the document to be submitted late and on the approving authority's willingness to accept the offer(s) received late. In contrast, if the solicitation documents state that late offers “shall” or “will” be rejected, then offers received late cannot be accepted for evaluation purposes regardless of the reasons why they were received late.

It is important to note that the reason for late reception of offers is not always the result of negligence on the part of the bidder. It could be for reasons beyond their control, so if the solicitation documents permit a decision to be made on the acceptance or rejection of a late offer, then the acceptance of a late submission would be determined only by the approving authority. Preferably, though, such need for decision should be anticipated and regulated in order to avoid arbitrary actions on the part of the approving authority.

As mentioned above, offers should be opened soon after they are received, ideally on the same day. If this is not possible, they should be opened the next day.

The opening of offers process and the details of the event should be recorded in the minutes of the opening event. The opening of offers is also a public event, where bidders are requested to attend, and the public at large should be permitted to witness the event, if they so desire.

At the opening event, offers received are examined to determine if they are compliant with the instructions of the solicitation documents. A checklist is used for this purpose. As a common practice, the names of the firms submitting offers are listed on a board for all present at the opening event to see, and the price of each offer (depending on the procurement method) are also placed on the same list. In cases where the technical proposals are evaluated first, the financial offer is not read out until the results of the technical evaluation are known. Then the respective bidders are invited to attend the public opening of their financial offers.

At the public opening of offers, discussions should be limited to clarifying the names of the bidders, if there are confusions; but bidders should not be permitted to discuss or clarify the content of their offers, because at that stage the offer has already been received and bidders should not be allowed to change their bids after the closing date and time of submission; furthermore, it's up to the evaluation panel to determine the need for clarification and to request the same, through the procuring entity, from the respective bidder(s).

The rejection or acceptance of an offer should not be addressed at the public opening event. It is noteworthy that any bid received after the deadline for the submission shall not be opened and must be returned to the supplier or contractor which submitted it (PPA, 2007, Section 27 (5)).

Although a summary examination of the offer submission package is done at the opening event to determine compliance with the requirements of the solicitation documents, the preliminary and detailed examination of the offers received should be left for the Evaluation Panel to complete during the evaluation process.

3.5 Bid Examination and Evaluation

Before beginning the evaluation of offers (bids/proposals) received, an evaluation panel should be formed and approved. Ideally, procurement practitioners should oversee the evaluation process and assist with the drafting of the evaluation report. Procurement practitioners cannot be expected to be technical experts on all requirements, but to have an in-depth knowledge of the procurement aspect of the requirement; additionally, it is healthy to ensure separation of functions in order to prevent any one entity or individual from exercising control over the entire procurement process.

Membership of the evaluation panel should be determined based on the qualifications of each prospective member. Evaluation panel members should preferably have knowledge and related experience, and at least one member should have participated in the drafting of the terms of reference or technical specifications and/or other technical documents required for inclusion in the solicitation documents. The number of evaluation panel members should be at least three, excluding any observers and technical experts invited as advisors on the technical aspects of the requirement.

Sections 31 and 32 of PPA, 2007 prescribes on what the evaluation committee should do at the bid examination and evaluation. A preliminary examination of the offers is done at the beginning of the evaluation process to determine the responsiveness of the offers to the solicitation documents. After that, a detailed examination is done only of the offers that complied with (were responsive to) the requirements of the solicitation documents.

In the case of solicitations for goods and works procurement, after confirming compliance with the technical requirements, a comparison of the proposed price is made, and the offer that is technically compliant, and with the lowest evaluated bid price, is the one that is recommended for contract award.

When evaluating consultants, individuals or firms, the technical qualifications are also initially assessed. For individual consultant selection, once the technical qualifications are determined, the consultant obtaining the highest technical score above the minimum technical qualifying mark is requested to submit a financial offer and to negotiate a contract.

In the case of consulting firms, depending on the procurement method, the selection could be similar to that of individual consultants (as indicated above) or the final selection could be determined by scoring and assigning weights to both the technical and financial evaluation. The highest ranked consultant resulting from the sum of the combined technical and financial scores would be recommended for invitation to negotiate the contract.

The result of the bid or proposal evaluation process is dependent on the procurement method and the procedures for determining the selected supplier, contractor or service provider that will be recommended for negotiations and/or contract award.

3.6 Award and Approving Authority

Approving authority for a contract can only be determined by the quantum of money involved in the procurement. Hence under the BPP Approved Revised Thresholds for Service-Wide Application, the approving authorities are defined as:

- The accounting officers: Director General/CEO are allowed to approve contract for goods less than N2.50Million, less than N5Million for works and less than N2.5million for both consultancy and non-consultancy services.
- The accounting officers: Permanent Secretary are given the power to approve contract for goods less than N5Million, less than N10Million for works and less than N5million for both consultancy and non-consultancy services.

- Parastatal Tenders Board are authorized to approve contract for goods in excess of N2.5Million and above but less than N50Million, N5.0Million and above but less than N250Million for works and N2.5Million and above but less than N50Million for both consultancy and non-consultancy services.
- Ministerial Tenders Board are empowered to approve contract for goods in excess of 5Million and above but less than N100Million, N10Million and above but less than 1.0Billion for works and N5Million and above but less than N100Million for both consultancy and non-consultancy services.
- BPP issues “No Objection” for award, BPP as a regulatory body is empowered to issue Certificate of “No Objection” for the contract in excess of N100Million and above for goods and service, N1.0Billion and above for works.

3.7 Right to Administrative Review

Section 54 of the PPA, 2007 supports the due process in public procurement. The section states that a bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of the PPA, 2007, or any regulations or guidelines made under the Act or the provisions of bidding documents. The section goes further to require, that a complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer who shall review the complain and make a decision in writing within fifteen working days indicating the corrective measure to be taken if any, these include suspension of the proceedings where he deems it necessary. Where the accounting officer does not make a decision within fifteen working days or the bidder is not satisfied with the decision of the accounting officer, the bidder may take a complaint to the Bureau of Public Procurement within ten working days from the date of communicating the decision of the accounting officer. In Section 54 sub section 4, the Bureau is empowered to give the notice of the complaint to the procuring or disposing entity and suspend further action by the entity until the matter is settled. If the bidder is not satisfied with the decisions of the Bureau or the Bureau fails to make a decision within twenty one working days after receiving the complaint, the bidder is allowed by section 54 (7) to proceed to the Federal High Court within thirty days after receiving the decision of the Bureau or expiration of the time stipulated for the Bureau to deliver its decision.

4.0 Conclusion and Recommendations.

It should be noted that Due process and Procurement reforms has yielded useful dividends to Nigerians, contractors and service providers. It has resulted in a more transparent, efficient and effective procurement system which creates equal access to bidders of public sector contracts. It leads to increase in Government revenue base by minimizing avenues of wastages and leakages in the economy through efficient management of government

resources. It makes it possible for Contractors and Suppliers to have a fair hearing when aggrieved through filing their protests to a statutory contract appeal Board (Ekpenkhio, 2003). Capacity building and training (at home and abroad) workshops, Seminars, and Courses, for new cadre of Procurement and Contracting Officers and all those involved in procurement awards should be a priority by government, contractors and service providers.

The importance of Due Process Mechanism cannot be overemphasized. It is a framework for implementation and it is committed to tackling corruption, promoting transparency and accountability in Nigeria polity.

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NEWS ANALYSIS: WORLD BANK REFORM

World Bank Procurement team to join Governance 'Global Practice'

By Paul Stephens



World Bank President Jim Yong Kim

The World Bank is not just reviewing its contracting policies — it's also integrating its procurement team into a broader “global practice” that will focus on governance issues.

Jim Kim, president of the Washington, D.C.-based institution, highlighted the new direction in an anti-corruption speech on Thursday. “The World Bank Group will be creating a single pool of technical experts in rule of law, public sector, financial and state management, and public procurement,” said Kim. “This global practice on good governance will become a major player in the anti-corruption effort for years to come.” The reorganization reflects the bank's evolving view of procurement, and especially procurement for bank-financed projects, as a key element of wider governance efforts. “Rather than just looking at procurement in isolation, we'll be having those broader discussions with other people in the unit about opportunities for broader public service reforms, and I think it will be a much more integrated service,” Christopher Browne, World Bank chief procurement officer, told Devex.

Those country-level reforms will be critical to the way the institution operates in the future, as it plans to rely more on client country systems for the procurement of bank-financed projects. The World Bank estimates that borrowing countries spend several trillion dollars on public procurement, and government purchases can account for up to 30 percent of a developing country's gross domestic product, according to some estimates. While World Bank funding makes up only a tiny fraction of that money, the bank sees it as a critical entry point for reform. After all, if an agency can learn to spend the

money well — or so the argument goes — perhaps it will spend its own money well, improving government services overall. Browne sees the new global practice as a positive alignment of the bank's ongoing procurement policy review and President Jim Kim's broader reform efforts. The global practices aim to make expertise and knowledge more widely shared across regions and sectors in order to better position the financial institution as a “solutions bank,” in Kim's words.

Specifically, the governance global practice will integrate teams that were previously separate, including the public sector management, governance and anti-corruption, procurement, financial management, social accountability and justice reform teams. “In the past, we kind of competed a little bit with each other, just because of the way the organization was set up,” said Browne. “Putting it all in one unit creates more opportunities for integrated solutions.”

The move suggests that the World Bank — considered the biggest donor worldwide — is embracing the increasingly widespread notion that procurement is more than just the purchase of goods, works and services, but that it plays a key role in efforts to curb corruption and improve governance around the world.

Culled from *The Development Newswire*, 20 December 2013.

PUBLIC PROCUREMENT JOURNAL

NEWS FLASH

Company Reinstated as Contractor Following Complaints to BPP

A contractor, Messrs B.M.A Ventures Nig. Ltd, has commended the Bureau of Public Procurement for entrenching transparency in public procurement in Nigeria.

The commendation is contained in a letter Ref. No. BMA/BPP/F/13/010 addressed to the Director General, Bureau of Public Procurement, Engr. Emeka Ezech.

In the letter dated 18th December, 2013, Messrs B.M.A Ventures Nig. Ltd commended the DG, BPP and the entire staff of the Bureau for the transparent manner in which its case was handled.

Messrs B.M.A Ventures Nig. Ltd had earlier petitioned Federal Polytechnic, Ede, over two contracts – Construction of Architectural Technology Building and Construction of Department of Estate Management – for it sent bids. It then complained of unfair treatment and went ahead to contact the Bureau for intervention.

The Bureau, in accordance with Section 54(4)(a) of the Public Procurement Act, 2007 suspended further action on the procurement and independently reviewed the procurement process. The Bureau's review revealed that Messrs B.M.A Ventures Nig. Ltd was the proper winner in the evaluation being the lowest evaluated bidder. The Bureau therefore directed the Federal Polytechnic, Ede, to award the contracts to Messrs B.M.A Ventures Ltd and not to the contractors earlier recommended by the Polytechnic.

Kaleidoscope of Major BPP Events for the Fourth Quarter of 2013

Workshop held/Activities

- JICA's Procurement Mission members visited to BPP on the 21st October 2013 to familiarize with the nation's public procurement system.
- Official Closing Ceremony of the training of Taraba State Bureau of Public Procurement by BPP Abuja on the 7th November 2013.
- Director-General BPP, Engr. Emeka M. Ezeh, OFR, led a BPP team on a courtesy call to CBN Governor, Dr. Sanusi Lamido Sanusi, on the 8th November 2013.
- UNODC signs Comparative Compacts with Bureau of Public Procurement (BPP) on the 8th November 2013.
- The Ag. Executive Secretary, NHIS paid a courtesy call to the Bureau of Public Procurement (BPP) on the 14th November 2013.
- Procurement personnel from NNPC held a meeting with BPP to share its newly created procurement unit on the 21st November 2013.
- BPP organized a public presentation of the report of the UNDP and World Bank-supported Monitoring and Field Inspection of the Federal Capital Project for FY 2009 – 2011 on the 9th December 2013.
- Head of the Civil Service/DG, BPP met with Procurement Officer in the MDAs on the 11th December 2013 on the implications of the procurement reforms for their careers.
- Documents produced
- The combined publication of the 18th & 19th editions of the Public Procurement Journal.
- Procurement Records for Ministries, Departments and Agencies (MDAs) For Financial Year 2012 (Vol. 1, 2 & 3).
- Public Procurement Research Centre (PPRC) Training Programmes for 2014.
- Monitoring and Field Inspection Final Report-Federal Government Capital Projects for FY 2009 – 2011 (Supported by UNDP & World Bank).

Some of these activities are highlighted in press releases presented on the following pages.

When Procurement Officers Met with HoS and DG of BPP



HoS Buka Goni Aji and DG of BPP, Emeka Ezeh



Participants at the meeting

The New State House Auditorium at the Presidential Villa in Abuja on Wednesday, 11 December 2013 overflowed with human population beyond its capacity when over 400 civil servants with

procurement functions, made up of procurement officers from grade level 7 to 17, gathered for a crucial meeting.

The Head of the Civil Service of the Federation, Alhaji Bukar Goni Aji, OON, and Director General of the Bureau of Public Procurement (BPP), Engr. Emeka M. Ezech, OFR, had headed straight from the Federal Executive Council meeting to officiate the forum, whose objective was to address concerns arising from the recent policy changes relevant to their career aspirations.

The ongoing reform in the nation's public procurement system is generating interest, sometimes anxiety, among the rank and file of procurement operatives, vis-à-vis the central role of BPP in the management of the careers of procurement officers. There have been petitions by aggrieved officers and, notably, sponsored newspaper reports rubbishing the implementation of the reforms.

However, the Public Procurement Act, 2007 is clear on BPP's role. Under Part II, Section 5 (k) of the Act, BPP is required to “organize training and development programmes for procurement professionals.”

The Federal Government has been committed to the implementation of this aspect of the Act. On 19 March 2009, the late President Umar Musa Yar'Adua gave approval for Procurement Officers to be brought under the purview of the BPP.

President Jonathan has also endorsed the ongoing reform of the public procurement system as part of the restructuring of the Office of the Head of Civil Service of the Federation. On 18 July this year, the HoS asked BPP to commence the process of managing and handling the mobility of Procurement Officers.

The 11 December meeting was part of the efforts to assure procurement officers in the mainstream Federal Civil Service that the development is in their interest. Both the HoS and DG, BPP clarified issues resulting from these changes, vis-à-vis their implications for the career management of the affected officers within the cadre.

As the HoS and the BPP DG explained the implications of the reform for their careers, and clarified issues resulting from the unfolding changes, the audience ceaselessly applauded.

Presentation of the Monitoring and Field Inspection Report of Capital Projects for FYs 2009 to 2011

The monitoring and field inspection of some Federal Government Capital Projects for the Financial Years 2009 to 2011 took place from December 2012 to February 2013.

The Bureau of Public Procurement (BPP), in exercise of its monitoring and oversight of public procurement and supervision of the implementation of established procurement policies as stipulated in Section 5(d) of the Public Procurement Act, 2007, secured support from the United Nations Development programme (UNDP) and the World Bank to undertake the exercise, the latter under its Economic Reform and Governance Project (ERGP), supported the exercise.

A total of 12 national consultants were engaged to inspect and monitor selected Federal Government projects. UNDP approved and funded the engagement of eight of the consultants and an international consultant to coordinate the work of the national consultants.