

EBONYI STATE BUREAU OF PUBLIC PROCUREMENT

GUIDELINES ON THE CONDUCT OF PUBLIC PROCUREMENT ACTIVITIES BY MINISTRIES, DEPARTMENTS AND AGENCIES AS A RESULT OF THE COVID-19 PANDEMIC LOCKDOWN AND OTHER EMERGENCIES.

1. INTRODUCTION

- 1.1** COVID-19 has brought about associated economic and fiscal shocks to global economies with attendant pressure on fiscal resources. The global pandemic has undermined the credibility of current Government budgets and Ebonyi State of Nigeria is not left out, and this has adversely affected the State's capacity to implement the 2020 Appropriation Law.
- 1.2** It amounts to emphasizing the obvious by asserting that COVID-19 has dealt a great blow when it comes to revenues, expenditures and financing the 2020 budget across all the 36 States in Nigeria including the Federal Capital Territory, Abuja. COVID-19 posed imminent threat to lives and to compliment the efforts of Ebonyi State Government to address this crisis, public spirited individuals and corporate organizations made reasonable financial contributions to support the fight against this pandemic. In addition, Development Partners were handy in providing budgetary support to enhance the implementation of the 2020 Appropriation Law in the face of dwindling monthly FAAC transfer and State Internally Generated Revenue (IGR) especially as it affects the State's response to the COVID-19 pandemic.
- 1.3** In view of the foregoing, there is need for all Procurement entities in the State that will participate in Procurements that respond to the COVID-19 pandemic to ensure transparency, accountability, value for money with integrity in their procurement proceedings. This is because procurements in response to the COVID-19 pandemic generally fall under emergency procurement method instead of the default Open Competitive Bidding method.
- 1.4** The Ebonyi State Bureau of Public Procurement pursuant to the provisions of Section 10 of the Ebonyi State Public Procurement and Related Matters Law, 2020(Law No.016 of 2020) and mindful of its oversight responsibilities as the regulator of public procurement in the State, hereby provides general guidelines to facilitate the necessary changes to the conduct of public procurement

occasioned by the COVID-19 Pandemic/Lockdown which constitutes Emergency Procurement. This Guideline is also applicable to future emergency situations.

- 1.5 These guidelines are specifically on procurement related activities and do not in any way offer general or health-specific guidance. The Ebonyi State Ministry of Health and the Federal Ministry of Health/National Centre for Disease control (NCDC) guidelines on COVID-19 should be strictly observed. A copy of their safety guideline can be found on their website www.ncdc.gov.ng.

2. PREPARATION OF EMERGENCY PROCUREMENT PLAN

- 2.1. All procuring entities in the State have been directed to prepare procurement plans for all projects that specifically respond to the COVID-19 Pandemic. These plans are to be uploaded in the State E-Procurement Platform. In the same vein, procuring entities are warned that any project that is not included in the procurement plans will not be processed for payment no matter the sources of funding of the project.
- 2.2. In preparing the COVID-19 procurement plan, Procurement Entities were advised to ensure that no reduction of values or splitting of procurements is carried out such as to evade the use of the appropriate method or thresholds.
- 2.3. For Public Procurements activities as a result of the COVID-19 Pandemic/lockdown, the requirement of publishing the opportunity on the State e-Procurement Platform alone is enough under the present circumstance. However, where practicable, the advertisement can be published in National Dailies of wide circulation in addition to that of the e-Procurement Platform.

3. PROCUREMENT IMPLEMENTATION

- 3.1 Section 49 of the Ebonyi State Public Procurement and Related Matters Law, 2020 provides for emergency procurement as follows:
 1. Subject to the regulations that may be made by the Bureau, a procuring entity may for the purposes of this Law, carry out an emergency procurement where:

- a) The State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or act of God,
 - b) The condition of quality or goods, equipment, building or publicly-owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness, or
 - c) A public project may be seriously delayed for want of any item or a minor value.
2. In an emergency situation, a procuring entity may engage in direct contracting of goods, works and services.
 3. All procurement made under emergencies shall be handled with expedition but along principles of accountability, due consideration being given to the gravity of each emergency.
 4. The provisions of section 43(3) relating to direct procurement shall also apply to emergency procurement.

It is therefore the responsibility of MDAs involved in responding to the COVID-19 pandemic to identify such procurements.

- 3.2** Without prejudice to section 27 sub section (3) a-b and (4)a-b, of the Ebonyi State Public Procurement and Related Matters Law, 2020, a Due Process “No objection” is not required prior to embarking on an emergency procurement. Rather, whenever an emergency is identified, the procuring entity should proceed immediately to engage in direct contracting (procurement) as provided under section 48 of the Law to expeditiously address the situation. However, this must be done along the principles of accountability, due consideration being given to the gravity of each emergency. Contracts awarded under this circumstance shall be reported to the Bureau promptly but not later than four weeks after award of such contract.
- 3.3** Notwithstanding the above, procuring Entities have the responsibility to ensure that the contractor to be engaged to carry out the emergency work, possess the requisite technical and financial capacities to undertake the project. In addition, procuring Entities should ensure that the procurement is

handled with dispatch but along the principles of accountability, transparency and value for money.

3.4 Having examined the relevant sections of Ebonyi State Law as it affects Emergency procurements in an attempt to respond to COVID-19 pandemic, the Guidelines to be followed are as shown below:

A. Procurement Planning.

- (i) Procuring Entities shall identify the Goods, works and services to be procured.
- (ii) Procuring Entities shall prepare procurement Plan based on the identified needs and forward these plans to the Bureau under normal circumstances. However, in emergency situation like the COVID-19 Pandemic, procurement of essential goods and services that require immediate delivery, the records of such procurement shall be provided not later than four weeks after award of such contracts.

B. Request for Bids/Quotations

- (i) For limited bidding and direct contracting, procuring Entities shall identify firms that possess the requisite technical and financial capacities to carry out the procurement.
- (ii) Bids/Quotation can be sent by email. Every procuring Entity must have and ensure that their email address for submission is working. The email address must be an email address with a domain name of the procuring Entity or Ministry on an email server which the Logs must be audited. Where not available, a dedicated email address with the procurement Department/unit name should be used. Also, the email address for submission should be clearly stated in the request for bids/Quotations.
- (iii) Bidders can also download the bidding documents/Request for Quotation from the State e-Procurement platform.
- (iv) Procuring Entities should consider the extension of bid submission deadline if bid/quotation submission is affected by emergency situation.

C. Submission of Bids/Quotations

- (i) Bidders can submit bids as attachments to email.

- (ii) The bids/quotation must be read only and password protected
- (iii) Procuring Entities must acknowledge receipt of submitted bids via email.

D. Bids/Quotations Opening

- (i) All bids shall be submitted before or by the deadline or date specified in the bid documents or any extension of the deadline for submission.
- (ii) Procuring Entity shall permit attendees to examine the envelopes in which the bids have been submitted.
- (iii) Cause all bids to be opened in public, in the presence of the bidders or their representatives and any interested members of the public.
- (iv) Ensure that the bid opening takes place immediately following the deadline stipulated for the submission of bids or any extension thereof.
- (v) Ensure that a register is taken of the names and addresses of all those present at the bid opening and the organization they represent which is recorded by the secretary of the tender board.
- (vi) 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 Tender Board or his delegate in the minutes of the bid opening.

E. Alternatively, paragraphs c and d above can be processed through the e-Procurement platform.

F. Pre-bid meeting (when included in the Bidding Document)

- (i) Should be held virtually and connection details should be forwarded to all the firms that have obtained the bidding documents and be given sufficient advance notice to enable them plan for their participation.
- (ii) Bidders who intended to attend can also be requested to contact procuring Entities by email and request for the connection details.

G. Bid Security

Subject to the monetary and prior review thresholds as may from time to time be set by the Bureau, all procurements valued in excess of the sums

prescribed under section 31 of the Ebonyi State Public Procurement and Related Matters Law, 2020, must require a Bid Securing Declaration using the template and texts contained therein as provided by the procuring entity (See Annexure 1).

H. Submission of Original Documents.

- (i) Request for submission of certain documents. Bid submission forms, Bid Securing Declarations, Power of Attorney, Manufacturers' Authorizations should include a language stating that copies of these aforementioned documents will be treated as if they are original copies during the COVID-19 emergency.

I. Bids Quotations Evaluation.

- (i) Bids/Quotations Evaluation can be carried out electronically with the members of evaluation committee.
- (ii) For procurement of goods, works and non-consulting services, evaluation can be conducted virtually.

J. Contract Award

- (i) Procuring Entities shall proceed to award the contract at prevailing market prices, specifying quantity/quality with regards to specification requirements and time within which the execution of the Goods, works and services must be completed.
- (ii) Details of the award of all COVID-19 contracts should be forwarded to the Bureau not later than ten (10) working days after award has been made. This information should be transmitted to the Bureau's Official email address support@ebonyieprocure.eb.gov.ng and should be signed by the Accounting Officer. The hard copy shall also be forwarded to the Bureau including such as the name of the contractor, description of the project, contract sum and duration of the contract.
- (iii) All COVID-19 Emergency contracts should be handled with expedition but along the principles of accountability, due consideration being given to the gravity of each emergency.

K. Publication

For all emergency procurement contracts, the Bureau shall on quarterly basis, publish on its e-Procurement portal details of contracts awarded which shall include the names of the contractor, description of the contract, contract sum and duration of the contract.

L. Contract Signing.

- (i) Depending on the restriction on movement, the contract can be executed at a meeting of both representatives. In this case, social distancing and other COVID-19 protocol must be observed.
- (ii) On the other hand, one copy of the pdf contract with the latest Adobe Acrobat Reader (<https://get.adobe.com/reader/otherversions/>) with an option to “signature and initial” could be signed and initialed by both parties and sent by email. The final signed contract must be printed, scanned and shared with the bidder by email or
- iii. The duplicate copies of the contract are signed simultaneously by both parties and pdf copies exchanged by email. The process is as follows:
 - 1. On finalizing the contract, each party prints a copy and signs according to their procedural requirements.
 - 2. Each party scans the signed contract and emails as pdf to the other party.
 - 3. On the receipt of the email, each party downloads the contract, prints a hard copy and signs.
 - 4. Each party then scans the contract (now signed by both parties) and sends, as a pdf, to the other party.
- iv) An exchange of emails with properly executed pdf contracts is evidence of contract execution.

M. Contract implementation.

- i. Activities within the contract that are not affected by restriction of movement or physical gathering of people should continue.

- ii. If otherwise, a force majeure should be declared in accordance with the provisions of the contract.
- iii. For Consultancy Services for the supervision of civil works or similar contracts, the employer should declare a force majeure.
- iv. To avoid double handling and to reduce the logistic value chain, it may be necessary in some instances for store officers and stock verifiers to be deployed to locations where specialized items shall be used or installed instead of the normal practice where such items have to be first physically received in the store and recorded in the store ledger before they are formally issued out for use by the relevant Department.

4. CONCLUSION

- 4.1 Ministries, Departments and Agencies (MDAs) should note that the Bureau is working in collaboration with the Ministry of Finance, Budget and Planning, the Office of the State Accountant-General to ensure that these Guidelines are properly implemented. Consequently, any procurement that does not substantially comply with these guidelines issued by the Bureau shall not be able to access funds from the State Government.
- 4.2. Procuring Entities can contact the State Bureau of Public Procurement for further clarifications via email at support@ebonyieprocure.eb.gov.ng

Mrs Betty I. Uzoma
Executive Secretary
State Bureau of Public Procurement

Annexure 1

Form of Bid-Securing Declaration

[The Bidder shall fill in this Form in accordance with the instructions indicated.]

Date: *[date (as day, month and year)]*

Bid No.: *[number of RFB process]*

Alternative No.: *[insert identification No if this is a Bid for an alternative]*

To: *[complete name of Purchaser]*

We, the undersigned, declare that:

We understand that, according to your conditions, Bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding or submitting proposals in any contract with the Purchaser for the period of time of *[number of months or years]* starting on *[date]*, if we are in breach of our obligation(s) under the Bid conditions, because we:

- (a) have withdrawn our Bid during the period of Bid validity specified in the Letter of Bid; or
- (b) having been notified of the acceptance of our Bid by the Purchaser during the period of Bid validity, (i) fail or refuse to sign the Contract; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITB.

We understand this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Name of the Bidder* _____

Name of the person duly authorized to sign the Bid on behalf of the Bidder** _____

Title of the person signing the Bid _____

Signature of the person named above _____

Date signed _____ day of _____, _____

*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

** : Person signing the Bid shall have the power of attorney given by the Bidder attached to the Bid

[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all members to the Joint Venture that submits the Bid.]