

EBONYI STATE BUREAU OF PUBLIC PROCUREMENT

PARTICIPATIONS OF SMEs AS JOINT VENTURES OR SUB-CONTRACTORS IN PUBLIC PROCUREMENT IN EBONYI STATE

1. INTRODUCTION

- 1.1 The purpose of this guideline is to address the challenges that Small and Medium Enterprises (SMEs) face in participating and winning contracts awarded by Ebonyi State Government by providing solutions to how such challenges/barriers can be overcome by SMEs not only to participate in such contracts but also to be able to submit responsive bids that will lead to award of contracts in the State.
- 1.2 SMEs represent an increasingly important sector of any economy and can be key drivers of its economic growth and employment. As a result of this, it is necessary to encourage and facilitate their participation in public procurement procedures subject to the application of the provisions of the Ebonyi State Public Procurement and Related Matters Law, 2020.

2. SMEs DEFINITION

- 2.1 *For the purpose of this guideline the employment-based classification is adopted. Therefore, SMEs are defined as enterprises employing less than 200 persons.*

3. HOW SMEs SHOULD BE CONSIDERED FOR PARTICIPATION

- 3.1 According to Section 30(1) of the Ebonyi State Public Procurement and Related Matters Law, 2020, invitation to bid may be either by way of State competitive bidding or International competitive bidding and the Bureau shall from time to time set the monetary thresholds for which procurements shall fall under either system.

- 3.2 In cases when value of contracts advertised by MDAs (contracts valued above ₦10 million, but not more than ₦100 million) are too high for SMEs to participate due to inability of SMEs to meet financial (cash flow, average turnover) and similar experience requirements, the MDA will make the following arrangement to allow SMEs bid for the project:
- i. Breakdown the package in lots in quantitative and qualitative terms.
 - ii. SMEs will be encouraged to participate as joint ventures and subcontractors.
 - iii. The qualification criteria will be assessed by summing up technical qualifications of all SMEs bidding as a joint venture.
 - iv. SMEs that are not submitting as joint ventures can also be allowed to submit bid for a particular Lot that their company experience and financial capability meets the tender requirement for that Lot.
 - v. The qualification criteria (e.g. financial – cashflow, average turnover – and similar experience requirements) may also be slightly relaxed for SMEs participating as single entities. However, this will not fall below the minimum requirement for such a contract being bidden.
 - vi. For complex contracts, deadlines for submission of bids will be increased to allow SMEs come up with quality technical proposals.
 - vii. Waive cost of obtaining bidding documents, except where the cost is placed at the barest minimum level for covering the cost of preparation and production of such bidding documents.
 - viii. Waive the requirement for the submission of financial instruments for contracts below N50 million.
 - ix. Allow for the submission of Performance Bond Declaration (see Annexure SM1) in place of Bank Performance Guarantee
 - x. Allow for the submission of Advance Payment Declaration Form (see Annexure SM2) in place of Advance Payment Guarantee.
 - xi. Allow for the submission of Bid Securing Declaration (see Annexure SM3) in place of Bid Security.

4. STEP REQUIRED FOR SMEs TO PARTICIPATE AS JOINT VENTURES IN EBONYI GOVERNMENT CONTRACTS

4.1 Register your company with Contractors Registration Board in Ministry of works.

- i.** After registration with the board, visit www.ebonyieprocurement.eb.gov.ng to register your company in the Ebonyi e-procurement system and upload all company documents required during registration and wait for approval of your registration.
- ii.** Visit the Tender Advertisement section on the website to search for latest tenders from different MDAs.
- iii.** Carefully read through the tender requirements required to participate in the tender.
- iv.** If the project is split into smaller Lots, you can proceed to tender as an entity (SME) by bidding for a particular Lot that your company meets the requirements specified in the advert or form a joint venture with other SMEs and submit your bid through the e-Procurement system.
- v.** Make payment for tender fee online with your ATM card through the Ebonyi e-procurement system.
- vi.** Download tender documents after payment.
- vii.** Submit your technical bid and respond to questionnaire through your dashboard.
- viii.** Provide rates to the Bill of Quantities on your dashboard and submit.
- ix.** You can also ask for clarifications from the procuring entity through the e-Procurement portal or send a message using the messaging tool in your dashboard.
- x.** Bid opening will be done after the opening date specified and evaluation will follow.
- xi.** Contract award notice will be sent to most responsive bidder(s) and others will be de-briefed (See Annexure SM4).
- xii.** Bidders may send in complaint on procurement process to the procuring entity (See Annexure SM5)

5.1 It is important to understand what the law states about contract thresholds in Ebonyi state.

5.2 Section 27(3) & (4) of the Ebonyi State public procurement and related matters law, 2020, law states that, The Tenders' Board shall be responsible for the award of procurements of goods, works and services within the threshold set in the regulations or whose value are:

(a) Above Fifty Million Naira (₦50,000,000.00) but not more than One Hundred Million Naira (₦100,000,000.00) for Ministerial Tenders' Board and such shall be approved by the Commissioner with the written consent and/or authority of the Governor first sought and obtained”;

(b) Not above Fifty Million Naira (₦50,000,000.00) for Agencies and Parastatal's Tenders' Board with the written consent and/or authority of the Governor first sought and obtained”.

(4)(a) Commissioners or Chief Executives of Ministries shall be responsible for or have power to make procurements the value of which do not exceed Fifty Million Naira (₦50,000,000.00) for a single and/or particular transaction with the written consent and/or authority of the Governor first sought and obtained”;

(b) Chief Executives or Heads of Agencies or Parastatals shall be responsible for or have power to make procurements the value of which do not exceed Twenty Million Naira (₦20,000,000.00) for a single and/or particular transaction with the written consent and/or authority of the Governor first sought and obtained”.

Visit: [https://www.ebonyieprocure.eb.gov.ng/bidding .php?id=law#](https://www.ebonyieprocure.eb.gov.ng/bidding.php?id=law#) for more documents and resources as regards Ebonyi State Procurement Laws.

6. The e-procurement processes are:

6.1 Procurement plan and current procurement law publication on the website

1. Need assessment by MDA

2. Threshold and procurement method identification
3. Preparation of bid documents
4. Creation of tender
5. Publication of tender notice/advertisement on the e-Procurement portal
6. E-Registration of all Economic operators (Only registered & approved contractor, consultant and service providers can tender)
7. E-Tendering (Bid purchase, download of tender documents, BOQ pricing & submission of bids will be done online)
8. Online opening of bids
9. E-Evaluation and scoring of all bidders in the e-GP system
10. Approval from Ebonyi State Council on Public Procurement
11. Award of contract.

6.2 The current e-procurement processes can be grouped into five modules



Annexure SM1

Performance Bond Declaration

By this Bond *[insert name of Principal]* as Principal (hereinafter called “the Supplier”) and *[insert name of Surety]* as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[insert name of Purchaser]* as Obligee (hereinafter called “the Supplier”) in the amount of *[insert amount in words and figures]*, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Supplier and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Supplier has entered into a written Agreement with the Purchaser dated the ____ day of ____, 20 _____, for *[name of contract and brief description of Goods and related Services]* in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Supplier shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Supplier shall be, and declared by the Purchaser to be, in default under the Contract, the Purchaser having performed the Purchaser’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or Bids from qualified Bidders for submission to the Purchaser for completing the Contract in accordance with its terms and conditions, and upon determination by the Purchaser and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Purchaser and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Purchaser to Supplier under the Contract, less the amount properly paid by Purchaser to the Supplier; or
- (3) pay the Purchaser the amount required by Purchaser to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Purchaser named herein or the heirs, executors, administrators, successors, and assigns of the Purchaser.

In testimony whereof, the Supplier has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this _____ day of _____ 20 ____.

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

Annexure SM2

Advance Payment Declaration Form

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[insert amount in figures]* () *[insert amount in words]* is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* () *[insert amount in words]*¹ upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- (a) has used the advance payment for purposes other than toward delivery of Goods; or
- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

¹ *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Purchaser.*

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number *[insert number]* at *[insert name and address of Applicant's bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, has been certified for payment, or on the *[insert day]* day of *[insert month]*, 2 *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No.758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

Annexure SM3

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.]

Annexure SM4

HOW AN SME CAN REQUEST FOR DEBRIEF

Section 25 (e) of the Ebonyi State Public Procurement and related matters law, 2020 provides for the debriefing of unsuccessful bidders on request.

For e-procurement Process

After completion of a bid process and contract has been awarded to the most responsive bidder as recommended by the e-procurement system and confirmed by the bid evaluation committee.

Upon request, using the inbuilt messaging tool in the e-procurement system, an SME can request for debrief from his/her dashboard and he/she will be furnished with the following details;

- a) Number of Bids purchased
- b) Number of Bids submitted with Bidders' names
- c) Tender amount (contract amount) submitted by each Bidder
- d) Financial and technical scores of each Bidder
- e) Reason why the Bureau awarded the contract to the selected bidder; usually the bidder with least cost and highest technical score.

After award of contract and acceptance, the debriefing information (a) to (e) listed above, will be automatically sent to all Bidders who participated in the bid process by purchasing tender documents and they can view all the details from their dashboard.

For Manual Procurement Process

Similar to the above and in line with Section 25 (e) of the Ebonyi State Public Procurement and related matters law, 2020, a bidder may request to be debriefed on a particular procurement process by sending a written request for debrief addressed to the Accounting Officer of the procuring entity.

Annexure SM5

COMPLAINT HANDLING MECHANISM

For Manual Procurement Process

Section 61 (1 to 4) of the Ebonyi State Public Procurement and related matters law, 2020 provides the procedure for Administrative Review as follows:

“(1) A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this Law, or any regulations or guidelines made under this Law or the provisions of bidding documents.

(2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the Accounting Officer within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier.

(3) On reviewing a complaint, the Accounting Officer shall make a decision in writing within a reasonable time indicating the corrective measures to be taken, if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision.

(4) If the bidder is not satisfied with the decision of the Accounting Officer, the bidder may make a complaint to the Bureau within 10 working days from the date of communication of the decision of the Accounting Officer for possible consideration.”

For e-procurement Process

Economic operators (EOs) and the general public can register their complaints and questions through the “CONTACT US” page in the e-Procurement system. The link to the page is at the top menu on the e-Procurement website or via;

<https://www.ebonyieprocure.eb.gov.ng/contactus.php>

The complainer's email will be collected during the process and the Bureau will provide timely response to the complaint or questions registered. Economic Operators can also use the in-built messaging tool from their dashboard to register their complaints or questions and they will be replied through the same means.