



SMEs TRAINING ON IMPROVED PARTICIPATION IN PUBLIC PROCUREMENT PROCESSES



ORGANIZED BY

EBONYI STATE COUNCIL ON PUBLIC PROCUREMENT

Competition, Transparency, Efficiency & Value for Public Fund

Date: 17th - 18th September, 2020

Venue: Abakaliki, Ebonyi State

SME TRAINING FOCUS/HEADLINES

1. Introduction
 - Aims and objectives of the training
 - Training/Learning outcomes
2. SMEs Definition.
3. Common barriers/obstacles to the participation of SMEs in public procurement and solutions.
4. Common errors faced by SMEs and how to overcome the errors.
5. Where and how SMEs can find Bidding opportunities from MDAs on the e-Procurement portal.
6. The provisions of the Ebonyi State Public Procurement Law.
7. Bidding procedures.
8. Preparation of responsive bids.
9. How SMEs can request for a de-brief.
10. Complaint handling mechanism.

COMMON ABBREVIATIONS

- I. SMEs: Small and Medium Enterprises
- II. MDAs: Ministries, Departments and Agencies under Ebonyi State Government
- III. E-GP: Electronic Government Procurement
- IV. E-Procurement: Electronic Procurement
- V. PPL: Public Procurement Law

INTRODUCTION

1.1 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.

1.2 Aim of the training

1.2.1 The aim of this training 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.

1.2.2 Training Outcomes

After completion of the training, participants (SMEs) will be able to prepare responsive bids and:

- i. understand how to overcome common barriers preventing them from participating in Ebonyi State Government Procurement processes.
- ii. understand how to overcome common barriers to the participation of SMES in public procurement.
- iii. understand where and how SMEs can find bidding opportunities from different MDAs on the e-Procurement portal.
- iv. understand the provisions of the Ebonyi State Public Procurement Law.
- v. understand the bidding procedures using the Ebonyi e-Procurement System.
- vi. learn how to prepare responsive bids
- vii. learn how SMEs can request for a de-brief.
- viii. understand the complaint handling mechanism with the Ebonyi State Council on Public Procurement.

2.0 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.

3.0 COMMON BARRIERS/OBSTACLES TO THE PARTICIPATION OF SMES IN PUBLIC PROCUREMENT AND SOLUTIONS

OBSTACLES AND PROBLEMS	SOLUTIONS OFFERED BY EBONYI STATE GOVERNMENT MDAs
Value of contracts too high for SMEs to participate due to inability of SMEs to meet financial (cashflow, average turnover) and similar experience requirements	<ul style="list-style-type: none">• Breakdown the package in lots in quantitative and qualitative terms.• 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.• In cases when value of contracts advertised by MDAs (say, above N10 million, but not more than N100 million), SMEs are allowed to participate as joint ventures and subcontractors.
Tight deadlines for preparation of bids	<ul style="list-style-type: none">• For complex contracts, deadlines for submission of bids will be increased to allow SMEs come up with quality technical proposals.
Lack of necessary knowledge of the Public Procurement Law (PPL) and bidding procedures of the state	<ul style="list-style-type: none">• Training and workshops will be organized for the SMEs on the bidding procedures for the state including the PPL.

<p>Lack of knowledge of bidding opportunities in the MDAs</p>	<ul style="list-style-type: none"> • Bidding opportunities for all MDAs are published on the Ebonyi e-Procurement website. • The links will be shared in social media platforms of relevant trade groups in the state, for example, the Nigeria Association of Small and Medium Enterprises or similar bodies.
<p>High cost of bid preparation including cost of producing paper bids for submissions.</p>	<ul style="list-style-type: none"> • Ebonyi e-Procurement System provides online access to tender documents, thereby reducing transportation and other related costs. • Ebonyi e-Procurement allows electronic submissions of bids.
<p>High cost and difficulty in obtaining financial instruments; bid security, advance payment and performance guaranties,</p>	<ul style="list-style-type: none"> • Waive the requirement for the submission of financial instruments for contracts below ₦50 million. • Allow for submission of performance bond declaration in place of bank performance guarantee and advance payment declaration form instead of advance payment guarantee. • Allow for submission of Bid Securing Declaration instead of Bid Security
<p>Insufficient cash flow to implement awarded contracts</p>	<ul style="list-style-type: none"> • Increase advance payment up to 40% of contract amount.

4.0 COMMON ERRORS OF SMES IN PUBLIC PROCUREMENT PROCEDURES AND HOW TO OVERCOME THEM

In addition to obstacles/barriers faced by SMEs in participating in public procurement contracts, SMEs also commit some errors when they participate in public procurement contracts. Some of these errors and how they can be overcome are listed in the table below:

Common Errors of SMEs	How to Overcome Errors
Failure to follow up on notices of bidding opportunities	Daily monitoring of tender notices/adverts on Ebonyi e-Procurement Portal; www.ebonyieprocure.eb.gov.ng/tender.php
Not properly studying the bidding documents requirements including the technical specifications	Special attention should be paid to studying the technical specifications and the requirement of the bidding documents.
Failure to request for clarification of bidding documents /untimely submission of the request for clarification	SMEs should take advantage of the PPL which allows bidders to request for clarifications of the bidding document within the time stipulated in the issued bidding document
Late submission of Bids	The submission deadline stipulated in the bidding document should be complied with. The e-Procurement system does now allow tender fee payment and submission of bids after submission deadline and time.
Failure to submit with the bids all requested documentary evidence supporting the requirements of the bidding documents.	Ensure all required evidences to support bid submission are included in the bid.

5.0 WHERE AND HOW SMES CAN FIND BIDDING OPPORTUNITIES FROM MDAS ON THE E-PROCUREMENT PORTAL

SMEs can find bidding opportunities from different MDAs on the Ebonyi E-Procurement Portal. The e-Procurement Portal can be accessed through any internet connected device (smart phones, laptops, tabs, etc.).

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

The above link will direct you to the tender advertisement page for all MDAs in Ebonyi State. The page shows basic tender information for each tender such as; Tender title, Tender No, Procuring entity, Bid submission deadline, Bid Opening date, downloadable PDF copy of the notice, etc.

Click on any interested Tender title to view full advertisement details of that project.

6.0 THE PROVISIONS OF THE EBONYI STATE PUBLIC PROCUREMENT LAW

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

- 6.1 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.
- 6.2 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:
- (3)(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# for more documents and resources as regards Ebonyi State Procurement Laws.

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]

7.0 BIDDING PROCEDURE

7.1.0 The e-procurement processes are:

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

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



E-REGISTRATION (www.ebonyieprocure.eb.gov.ng)

- Economic operators (Suppliers, Contractors & Consultants): Any Economic operator that wants to participate in any tender in Ebonyi state must first register their company on the system and upload all requested documents during the e-registration.
- To register, Visit: <https://www.ebonyieprocure.eb.gov.ng/admin/register.php>

(Video Tutorials on e-Registration will be provided)

E-PROCUREMENT PLAN

- All MDAs now publish their procurement plan on the e-procurement portal at: [https://www.ebonyieprocure.eb.gov.ng/bidding .php?id=procurement#](https://www.ebonyieprocure.eb.gov.ng/bidding.php?id=procurement#)
and the general public can view/download to help them in preparing for contracts in their areas of specialization or interests.

E-NOTIFICATION/E-PUBLISHING

- Publication of tender notices/advertisement to notify the general public of new contracts. View notifications at: <https://www.ebonyieprocure.eb.gov.ng/tender.php>

E-TENDERING

- ✓ Preparation of Bid documents
- ✓ Creation of tender
 - Advert creation
 - Set evaluation criteria (Technical & Financial)
 - Uploading of tender documents
 - Publication of tender advertisement notice
- ✓ Clarifications
- ✓ Online tender fee payment by only registered and approved Economic operators
- ✓ Download of tender documents, preparation of technical & financial bids
- ✓ Submission of bids

E-EVALUATION/E-AWARD

- Opening of bids after bid opening date and time
- Evaluation & scoring

- Tender evaluation report generated by the system
- Award of contract
- De-briefing
- Publication of awarded contract details in the OCDS Portal

NOTE: Economic operators can register their companies and participate in tendering on Ebonyi E-Procurement System from the comfort of their homes/offices or visit any cybercafé recommended by the Ebonyi State Council on Public Procurement to get technical guidance.

8.0 PREPARATION OF RESPONSIVE BIDS

8.1 Special attention should be paid to studying the technical specifications and the requirement of the bidding documents.

8.2 How to request for clarifications on the bidding documents.

Economic Operators can also use the inbuilt messaging tool from their dashboard to request for clarification from any Procuring Entity and they will be replied through the same means, if the response will be useful to other bidders, the response will be sent to all participating bidders in the project.

8.3 Bid preparation and submission including ensuring that bids are responsive to the technical specifications, other requirements of the issued bidding document, and ensuring that all required evidences to support bid submission are included in the bids

8.4 Take note of submission deadline date and time

8.5 Common mistakes in bid preparations

- Not thoroughly examining the instructions to bidders in the bidding documents
- Qualification and experience of the contractor/ consultant's personnel given but their position in the proposed project not stated.
- Not stating the work method the contractor/ consultants intends to use in the execution of project
- Offering unfavorable payment terms while ignoring what is provided for in the bidding document
- Offering unrealistically high prices
- Not submitting all the required information at bid submission time
- Requesting for clarifications late
- Concentrating on the price factor at the expense of other requirements in the tender
- Not submitting auditors' reports with the contractor's financial statements.
- Missing deadline for submission of bids (late bids)
- Poor presentation of bid documents

9.0. HOW AN SME CAN REQUEST FOR DEBRIEF

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 Normal Procurement Process

Section 25 (e) provides for the debriefing of unsuccessful bidders on request, section 61 (2) stipulated that:

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

10. COMPLAINT HANDLING MECHANISM

For e-procurement Process

Economic operators 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 inbuilt messaging tool from their dashboard to register their complains or questions and they will be replied through the same means.

For Normal Procurement Process

Under Section 61 on administrative review, while Sub-Section 3 stipulates that on reviewing a compliant, 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 proceeding where he deems it necessary and giving reasons for his decision, Sub-Section 4 provides that if the bidder is not satisfied with the decision of the Accounting Officer, the bidder may make a compliant to the Bureau within 10 working days from the date of communication of time decision of the Accounting Officer for possible consideration.