



GOVERNMENT OF RIVERS STATE OF NIGERIA
Bureau on Public Procurement

Annexure I

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



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(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 _____



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Annexure II

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

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.



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- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

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.



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Annexure III

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 _____



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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.]



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Annexure IV

HOW AN SME CAN REQUEST FOR DEBRIEF

Section 4 of the Rivers State Public Procurement Law, 2008 provides for the debriefing of unsuccessful bidders on request. The process is highlighted below:

- An unsuccessful supplier/contractor may make a request in writing for a debriefing by the procuring entity who issued the open call for bids within 10 business days after the award of a contract.
- Upon receiving a written request from an unsuccessful vendor, the procuring entity shall debrief the supplier within 10 business days after the request was received. The official responsible for the procurement shall contact the supplier and establish a time and suitable location for the debriefing as well as a list of attendees. A separate debriefing will be held for each supplier who requests one. A debriefing may be held through conference call, video conferencing, in person, or other means acceptable to both parties.
- Once the date, time and location for the debriefing have been established, the official shall prepare all materials required for the session and determine who will attend on behalf of the procuring entity. For an Invitation to Tender, the official responsible for the file should attend and depending on the complexity or technical nature of the file, other officials involved in the evaluation process. For Requests for Proposals, the official responsible for the file as well as a member of the evaluation committee, preferably the Chair of the Committee, should attend. If it is deemed necessary that others are required they shall attend as well. If more than one debriefing is requested on a specific file, the same officials should be present for all debriefings, unless an official is unavailable during the timeframe in which the contractor debriefing is required to take place. If necessary, officials may meet prior to the debriefing to prepare for the session. At the outset of the debriefing the public body official should establish the parameters and indicate that the session:
 - is not an opportunity to repair a bid;
 - will not be a discussion of, nor shall disclose information regarding another supplier's bid, except that the name and bid price of the preferred supplier may be disclosed in a supplier debriefing;
 - is not a challenge to the procurement process (if a supplier is dissatisfied with the outcome of an open call for bids process after the debriefing has taken place, the next step is to file a supplier complaint); and
 - is not an adversarial or legal process.



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The information to be discussed should include:

- The invitation to bid and the evaluation process;
 - The strengths and weaknesses of the supplier's submission relative to the evaluation criteria;
 - The supplier's evaluation score and supplier's evaluation ranking (i.e. 3rd out of 5);
 - Areas where the terms, conditions or specifications were not met;
 - Suggestions on how to improve future submissions;
 - Feedback from the supplier on any aspect of the procurement or the process; and
 - Addressing specific questions and concerns raised by the supplier relative to their submission.
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- At the conclusion of the debriefing, the procuring entity official shall advise the supplier of the contractor **complaint and review process** and the option to pursue this process if they are not satisfied with the information provided at the debriefing. Additionally, a record of the debriefing shall be made and attached to the purchasing file. The information contained in this record shall include the names of all participants, time and date of the debriefing, and details of the discussion. This record is for the procuring entity use and is not distributed to the supplier.



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Annexure V

COMPLAINT HANDLING MECHANISM

Section 51 of the Rivers State Public Procurement Law, 2008 provides the procedure for Administrative Review as follows:

- (1) A bidder may seek administrative review of 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:
 - (a) 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;
 - (b) on reviewing a complaint, the accounting officer shall make a decision in writing within 15 working days 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.
- (3) if the bidder is not satisfied with the decision of the accounting officer or the accounting officer does not make a decision within the period specified in subsection 2(b), 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 or on the expiration of the time within which the accounting officer was expected to act and failed to do so.
- (4) Upon receipt of a complaint, the Bureau shall promptly:
 - (a) give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Bureau has settled the matter;
 - (b) unless it dismisses the complaint;
 - (i) prohibit a procuring or disposing entity from taking any further action;



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- (ii) nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity;
 - (iii) declare the rules or principles that govern the subject matter of the complaint; and
 - (iv) revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.
- (5) Before taking any decision on a complaint, the Bureau shall notify all interested bidders of the complaint and may take into account representations from the bidders and from the respective procuring or disposing entity.
- (6) The Bureau shall make its decision within twenty-one working days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any.
- (7) where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with the decision of the Bureau, the bidder may take the following action;

MEDIATION

- (a) refer such dispute or claim without legal representation to mediation by a single mediator who shall be selected by Agreement between the parties and failing such an agreement, shall be nominated by the president of the professional body of the nature of the project in Rivers State. Where such a dispute concerns a legal matter or a matter relating to the interpretation of the agreement, the mediation shall be conducted by an Advocate practicing as a member of the Nigerian Bar Association (NBA), to be mutually agreed upon between the parties, failing such agreement, to be nominated by the Chairman of the Nigerian Bar Association of any of the branches in Rivers State.

ARBITRATION

- (b) If either party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such a party; may with the consent of the other party, refer the dispute for arbitration by a single arbitrator to be mutually agreed upon by



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both parties. Where the parties fail to agree on such a single arbitrator, one shall be nominated by the president of the professional body of the nature of the project in Rivers State. Should the dispute concern a legal matter or a matter relating to the interpretation of the Agreement, the arbitration shall be conducted by an Advocate practicing as a member of the Nigerian Bar Association (NBA), to be mutually agreed upon between the parties, failing such agreement, to be nominated by the Chairman of the Nigerian Bar Association of any of the branches in Rivers State and such decision of the Arbitrator shall be final.

Conclusion of an Administrative Review by the RSBOPP

- (a) The Arbitrator shall, within twenty-one (21) working days following the receipt of an application, deliver a written decision on the matter. The decision shall indicate:
 - (i) whether the application is upheld in whole or in part or rejected;
 - (ii) the reasons for the decision; and
 - (iii) the corrective measure (s) to be taken.

- (b) The decision of the Arbitrator shall be final in terms of the Public Procurement Law without prejudice to the constitutionally guaranteed right to seek redress in the courts.