



GOVERNMENT OF RIVERS STATE OF NIGERIA

PUBLIC PROCUREMENT LAW, 2008
(Law No. 4 of 2008)

Monetary & Prior Review Thresholds and Procurement Methods Regulations
[RSBoPP Reg. No. 1 of 2010]

Commencement: August 1, 2010

In the exercise of powers granted to it under the Public Procurement Law 2008, the Rivers State Bureau on Public Procurement hereby makes the following Regulations:

1. These Regulations on monetary and prior review thresholds and procurement methods have been made by the Rivers State Bureau on Public Procurement (RSBoPP) pursuant to the Public Procurement Law, 2008.
2. These Regulations shall apply to all procurements by all procuring entities in the State except where an exemption is granted by the Law. *Application*
3. These Regulations may be cited as the ***Monetary & Prior Review Thresholds and Procurement Methods Regulations, 2010*** [RSBoPP Reg. No. 1 of 2010]. *Citation*
4. In these Regulations: *Interpretations*
 - “Accounting Officer” means the administrative head of a procuring entity by whatever title called or the person charged with line supervision of the conduct of all procurement processes in the procuring entity;
 - “Bidder” (“Tenderer”) refers to a participant in a procurement proceeding, a potential party to a procurement contract with a procuring entity, and it must be a legal entity – artificial or natural person;
 - “Certificate of No Objection” means the document evidencing and authenticating that the provisions of the Law and the implementing regulations have been followed in the conduct of a procurement proceeding, and allowing the procuring entity to enter into a contract with, or effect payment to, a contractor, service provider or supplier from funds appropriated by the State House of Assembly or a Local Government Council;
 - “Certification” means the approval by the RSBoPP of the process and conduct of public procurement by any procuring entity at any stage;
 - “Coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property with intent to influence the manner of their participation in or their appropriate conduct of a procurement process or the execution of a contract;

“Conflict of interest” means but is not limited to the following situations:

- (a) where a person has a direct or indirect interest in or relationship with a Bidder that is or may be reasonably perceived to be unethical due to that person’s influence or ability to affect the procurement process;
- (b) where a person receives or benefits by taking personal advantage of an opportunity that properly belongs to the procuring entity he represents or the Government;
- (c) where a person for his personal benefit discloses to unauthorized persons confidential information belonging to the procuring entity, the Government, or a Bidder;
- (d) where a firm (or the contractor or supplier with which it is affiliated) combines the functions of consultant with that of manufacturer or contractor;
Provided that conflict of interest shall not be inferred:
 - (i) where a firm’s bid offering consultancy services is in combination with a supplier/ manufacturer or contractor. In this respect, the bid shall include relevant information about such relationship along with a statement to the effect that it shall limit its role to that of consultant and that neither the supplier or contractor, shall participate in the project in any other capacity; and
 - (ii) where two or more firms (suppliers, contractors and consultants) with full disclosure to the Procuring Entity combine to bid for or execute a Turnkey or Design and Build contract;

“Collusive practice” means a scheme or an arrangement between two or more Bidders with or without the knowledge of the procuring entity, including non-disclosure of subsidiary relationships, designed to establish bid prices at artificial, non-competitive levels thereby depriving the procuring entity of the benefits of free and open competition;

“Consultant Qualification Selection” refers to a method of procurement of consultancy services of minor value for which the need for preparing and evaluating competitive proposals is not justified and thus relies on the most appropriate qualifications and references;

“Consultancy” or Consulting Services” means any one or a combination of the following:

- (a) advisory and review services;
- (b) pre-investment or feasibility studies;
- (c) design;
- (d) construction supervision;
- (e) management and related services; or
- (f) other technical services or special studies;

“Contract” refers to an agreement whose essential terms are reduced to writing;

“Contractor” means a party to a procurement contract with a procuring entity and must be a legal entity – artificial or natural person;

“Corruption” or “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution;

“Direct Labour” (“Forced Account”) means the procurement of civil works by a procuring entity using its own internal personnel or staff, equipment and resources;

“Domestic firm” means a business or professional organization:

- (a) incorporated or otherwise organized in Nigeria having its principal place of business in Rivers State; or
- (b) having at least 50% of its equity held by nationals of Nigeria resident in Rivers State; or
- (c) not having its assets controlled by foreign nationals or organizations incorporated or organized outside Nigerian; or
- (d) with more than 50% of the persons who will perform services under the contract, whether employed directly or by a subcontractor, being nationals of Nigeria resident in Rivers State.

“Fixed Budget Selection” refers to a method of procurement of consultancy services when the assignment is simple and can be precisely defined

“Forced Account” (“Direct Labour”) means the procurement of civil works by a procuring entity using its own internal personnel or staff, equipment and resources;

“Fraudulent practice” means anyone or combination of concealment, misrepresentation or omission of facts that affect the procurement process or contract execution to the detriment of the Procuring Entity;

“Goods” include objects of every kind and description including raw materials, products and equipment and objects in solid, liquid or gaseous form and electricity as well as services incidental to the supply of the goods;

“Government” shall mean the Government of Rivers State of Nigeria or a Local Government Council within Rivers State;

“International Competitive Bidding” means the solicitation of bids from both domestic and foreign bidders;

“Law” means the Public Procurement Law No. 4 of 2008;

“Least Cost Selection” refers to a method of procurement of consultancy services where the assignment is routine or standard in nature, and where well-established practices and standards exist such as audits and engineering design of non-complex works;

“Minor Value” means monetary value which is not in excess of the monetary threshold set for any approving body by the RSBOPP from time to time;

“Monetary threshold” means the value limit in Naira set by the RSBOPP outside of which a procuring entity may not award a procurement contract without prior certification by the Bureau;

“National Competitive Bidding” means the solicitation of bids from domestic bidders incorporated to carry on business under Nigerian Law;

“Open Competitive Bidding” (“Open Competitive Tendering”) means the offer of prices by Bidders competing for a contract or right to supply specified goods or execute works, construction or provide services;

“Pre-Qualification” refers to the process of identifying the most suitable suppliers, contractors or service providers based on precise criteria as to qualification who will be invited to bid or tender for contracts;

“Procurement” means the acquisition by any means of goods, works or services;

“Procuring Entity” means any public body engaged in procurement, and includes a Ministry, Extra-Ministerial Office, Government Agency, Parastatal, Statutory Corporation, the Legislature or the Judiciary, where the funding is derived from the State Appropriation Law or a Local Government Council within Rivers State;

“Post Review Threshold” means the value limit in Naira set by the RSBOPP within which a procuring entity can enter into, and award, a procurement contract without a prior certification by the Bureau;

“Prior Review Threshold” means the value limit in Naira set by the RSBOPP within which a procuring entity can only enter into, and award, a procurement contract with a prior certification by the Bureau;

“Public Procurement” means procurement by Procuring Entities using public funds;

“Quality-Based Selection” refers to a method of procurement of consultancy services based only on the quality of the technical proposals;

“Quality and Cost Based Selection” refers to a method of procurement of consultancy services based on both quality of the technical proposal and the cost as shown in the financial proposal;

“Restricted Tendering” (“Restricted Bidding”) refers to an exceptional method of procurement used where:

- (a) the goods, works or services are available only from a limited number of suppliers or contractors; or
- (b) the time and cost required to evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured; or
- (c) necessary to implement a legitimate affirmative action supported by a documented government policy.

“RSBoPP” means the Rivers State Bureau on Public Procurement established by section 1(1) of the Rivers State Public Procurement Law, 2008;

“Services” means the rendering by a Contractor of his time, expertise and efforts and includes any object of procurement other than goods, works or construction;

“Single Sourcing” (Direct Contracting”) refers to a method of procurement of Goods, Works or Services from a single supplier or contractor. It entails no competition and therefore should be used on exceptional circumstances;

“Shopping” refers to a method of procurement for procuring frequently used and readily available off the shelf goods, commodities, works or services not exceeding the threshold set by the RSBOPP from time to time;

“State” means Rivers State of Nigeria;

“Subcontracting Arrangement”, includes an arrangement where any part of the contract is assigned to a natural or legal person or combination of the two.

“Subcontractor” means any legal entity – artificial or natural person to whom any part of the goods to be supplied or works to be executed is assigned to by the Contractor;

“Validity Period” means the period of time during which a Bidder agrees not to increase the cost of its bid or to remove any component of the bid;

“Works” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigation and similar services provided pursuant to the procurement contract, where the value of those services does not exceed that of the construction itself;

5. If any of the provisions of these Regulations conflict with the obligations of Government under any agreement or arrangement with a Donor Agency, International Organization or the Federal Government, the provisions of such agreement or arrangement shall prevail. *Conflict with Obligations*
6. (1) Where:
- (a) a procuring entity identifies the use of corrupt, fraudulent, collusive or coercive practices of any kind in the procurement process, or
 - (b) the RSBOPP identifies the use of corrupt, fraudulent, collusive or coercive practices of any kind in the procurement process during the prior review of a procurement proceeding or in the course of a procurement audit,
- In the case of (a), the procuring entity shall immediately refer the matter to the RSBOPP who shall promptly investigate the matter, and will, upon substantiated evidence -
- (i) direct the exclusion of the Bidder concerned from further participation in the particular procurement proceeding or reject a proposal for contract award, or
 - (ii) recommend an appropriate sanction against such firm or individual, including declaring it ineligible, either indefinitely or for a stated period of time, to be awarded contracts financed with funds derived from the Appropriation Law of the State or funds of a Local Government Council in the State.
- In the case of (b), RSBOPP shall cause an investigation into the matter and upon substantiated evidence take either or both steps in (i) and (ii) above.
- (2) Corrupt, fraudulent, collusive or coercive practices with respect to public procurement in the State are hereby prohibited, and in furtherance of the prohibition, every Bidder is required to comply with the requirements of the Anti-Bribery Policy contained in the First Schedule to these Regulations. *First Schedule*
7. (1) All procurements shall be undertaken within the approved budget of the procuring entity and be based on a procurement plan approved by the Accounting Officer and agreed with the Bureau. *Procurement Planning Section 14(1)(b) of the Law*
- (2) The procurement plan should:
- (a) be coordinated by the department responsible for budget in the Procuring Entity to ensure that the procurement expenditure is provided for in the budget;
 - (b) indicate the appropriate procurement methods for each project to the extent identified and ensure that no contract splitting is carried out;
 - (c) detail the procurement steps and associated expenditure outlays for not less than the first 18 months thereof for projects sufficiently developed and evaluated;
 - (d) provide for grouping of contracts to obtain economies of scale and

- reduce procurement costs; and
- (e) be continuously updated as procurement progresses or new projects are developed in accordance with budgetary provisions.
- (3) For the purposes of paragraph 7 (2) (b) of these Regulations, procurement methods and the monetary thresholds for their application are provided in the Second Schedule to these Regulations. *Second Schedule*
8. (1) The RSBOPP hereby sets the monetary thresholds for procurement transactions as follows: *Monetary Thresholds Section 2(a)*
- (a) all procurements of monetary value up to Fifty Million Naira (~~₦~~50, 000,000.00) only including less than this amount shall be subject to post review, **PROVIDED** that where a project has significant preliminary works that are integrated or dependent on each other or where there is high process intensity in the project, the threshold shall be One Hundred Million Naira (~~₦~~100, 000, 000.00) only; and
- (b) any procurement where the monetary value exceeds Fifty Million Naira (~~₦~~50, 000, 000.00) only, shall be subject to prior review and certification by the RSBOPP.
- (2) For the purposes of paragraph 8 (1) of these Regulations, the approving bodies for the respective monetary thresholds are provided in the Third Schedule to these Regulations. *Third Schedule*
9. In all cases, where the procurement is below the prior review monetary threshold as may, from time to time, be set by the RSBOPP, the Tenders Board of the procuring entity shall process and implement the procurement, and furnish the RSBOPP with the documents stipulated in Section 14(12) of the Public Procurement Law and any implementing regulations within thirty (30) days of the implementation of the procurement. *Procurement below prior review threshold to be approved and implemented by the Tenders Board of the Procuring Entity*
10. (1) Where procurement is subject to prior review, the procuring entity must obtain the Certificate of No Objection to award the contract from the RSBOPP before the Letter of Award can be issued to the Contractor, Supplier or Service Provider. *Certificate of No Objection to Award Contract*
- (2) In all cases of prior review, a procuring entity shall submit its application for a Certificate of No Objection with necessary documents to evidence compliance with the provisions of the Law and implementing regulations to the State Tenders Board, and send copies of the application and documents to the RSBOPP, **PROVIDED** that the Tenders Board or Committee of the State House of Assembly, the State Judiciary or a Local Government Council in the State shall submit its application to the RSBOPP without recourse to the State Tenders Board. *Application to State Tenders Board excluding legislature, judiciary and local government councils*
- (3) The State Tenders Board shall review an application from a procuring entity and make recommendations to the RSBOPP. On the basis of the recommendations, the RSBOPP may issue a Certificate to a procuring entity.
- (4) Notwithstanding, the provisions of paragraphs 10(2) and (3) of these Regulations, and particularly, the recommendations of the State Tenders Board, the RSBOPP shall ensure that a procurement complies with the provisions of the Law and implementing regulations before certification.

11. The prior review of a procurement for the purposes of issuing a Certificate of No Objection to award a contract shall involve:
 - (a) an assessment of compliance with the processes for procurement stipulated in the Law and any implementing regulation for the time being in force;
 - (b) a confirmation of the capacity of the proposed contractor to perform the contract with respect to technical competence of personnel and availability of equipment;
 - (c) an assessment of the fitness for purpose of the project, where applicable;
 - (d) an ascertainment of the reasonableness of the price; and
 - (e) a confirmation of value for money from the proposed procurement.

12. For procurement below the prior review threshold, the Tenders Board of a procuring entity must undertake a review of the procurement in a manner similar to paragraph 11 before approving it.

13. (1) Subject to monetary thresholds as may, from time to time, be set by the RSBOPP, the RSBOPP shall review the process and conduct of all public procurements to ensure that the process from bid solicitation to contract award and execution is carried out in accordance with the provisions of the Law and the implementing regulations. *Reviews and audits*

- (2) The RSBOPP shall conduct periodic review of procurements below the prior review monetary thresholds **PROVIDED** that it may elect to conduct spot checks or sample review of this category of procurements in any Procuring Entity at any time.

- (3) The RSBOPP shall undertake periodic procurement audit to assess the level of compliance with the Law and the implementing regulations.

- (4) Following the conclusion of any review or audit, the RSBOPP shall transmit the report of such review or audit to the Governor and the House of Assembly. It may also communicate the findings of the review or audit with other agencies or officers of the Government including the Commissioner for Budget & Economic Planning, the Commissioner for Finance, the Auditor-General of the State, the Accountant-General of the State, and in the case of Local Government Councils, with the Commissioner in charge of Local Governments and the Auditor-General for Local Government.

14. From the commencement date of these Regulations, every circular, guideline or instruction issued in connection with matters covered by the provisions of these Regulations is hereby repealed. *Consequential Repeals*

15. The provisions of these Regulations shall not have retroactive application. Any procurement commenced prior to the commencement date of the Regulations shall not be governed by the provision of these Regulations. *No retroactive application*

FIRST SCHEDULE

ANTI-BRIBERY POLICY & COMPLIANCE PROGRAMME

See paragraph 6(2) of the Regulations

The following procedure shall apply to public procurements and government contracting in Rivers State from the commencement of these Regulations in addition to the standard legal and projects specific procedures. These are administrative requirements, and will form part of the terms and conditions of each contract and will be actionable, in the event of breach.

(1) Each Bidder must submit a Statutory Declaration or Affidavit, as part of the tender documents, with the following words, [*paragraph A is mandatory while paragraphs B and C are alternatives*]:

(A)

"This company acknowledges and agrees with competitive tendering that takes place on a basis that is free, fair, competitive and not open to abuse. It is pleased to confirm that it will not offer or facilitate, directly or indirectly, any improper inducement or reward to any public officer, their relations or business associates, in connection with its tender, or in the subsequent performance of the contract if it is successful. It further confirms that it has not given or promised to give and will not give anything of value to any person connected with either the Procuring Entity or the Rivers State Bureau on Public Procurement, their relations or business associates".

(B)

This company has an Anti-Bribery Policy/Code of Conduct and a Compliance Programme which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its directors, managers and employees as well as by all third parties working with this company on the public sector projects, or contract including agents, consultants, consortium partners, sub-contractors and suppliers. Copies of our Anti-Bribery Policy/Code of Conduct and compliance Programme are attached"

(C)

This company has issued, for the purposes of this tender, a Compliance Programme, copy attached -which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects or contract including agents, consultants, consortium partners, subcontractors and suppliers'.

- (2) (a) This statement must be signed personally by the Chief Executive Officer or other appropriate Senior Corporate Officer of the bidding company and, where relevant, of its subsidiary in the Federal Republic of Nigeria. If a tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate Senior Corporate Officer; and
- (b) Bidders will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners, the bidder may cover the subcontractors and consortium partners in its own statement, provided the bidder assumes full responsibility.
- (3) (a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services;
- (b) Each bidder will make full disclosure in the tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the tender and, if successful, the implementation of the contract;
- (c) The successful bidder will also make full disclosure [quarterly or semi- annually] of all payments to agents and other third parties during the execution of the contract;

- (d) Within six months of the completion or performance of the contract, the successful bidder will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that are sufficient to establish the legitimacy of the payments made.
 - (e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified under Oath by the company's Chief Executive Officer, or other appropriate Senior Corporate Officer.
- (4) Tenders which do not conform to these requirements shall not be considered.
 - (5) If the successful bidder fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
 - (a) cancellation of the contract;
 - (b) liability for damages to the RSBOPP or the unsuccessful competitors in the tendering possibly or both in the form of a lump sum representing a pre-set percentage of the contract value (liquidated damages);
 - (c) forfeiture of the tender security,
 - (d) debarment by the RSBOPP from tendering for further public contracts for a period up to ten years, as the RSBOPP may deem appropriate; or
 - (e) prosecution.
 - (6) Bidders shall make available, as part of their tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their - general or project - specific - Compliance Programme.
 - (7) The Government of Rivers State has made arrangements for the regulation and oversight of the procurement process and the execution of the contract through the RSBOPP. The RSBOPP may invite civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have access to such documentation submitted by Bidders for a contract, and to which in turn all bidders and other parties involved or affected by the project shall have full access (provided, however that no proprietary information concerning a bidder may be disclosed to another bidder or to the public).

SECOND SCHEDULE

PROCUREMENT METHODS AND THRESHOLDS OF APPLICATION

See paragraph 7(3) of the Regulations

Procurement or Selection Method	Goods	Works	Non-Consultancy Services	Consultancy Services
International/National Competitive Bidding	₦150 Million and above	₦1 Billion and above	₦150 Million and above	Not Applicable
International/National Restricted Tendering	₦150 Million and above	₦1 Billion and above	₦150 Million and above	Not Applicable
National Competitive Bidding	₦10 Million and above but less than ₦150 Million	₦10 Million and above but less than ₦1 Billion	₦10 Million and above but less than ₦150 Million	Not Applicable
Forced Account/Direct Labour	Not Applicable	₦100 Million	Not Applicable	Not Applicable
Shopping (Market Survey)	Less than ₦20 Million	Less than ₦20 Million	Less than ₦20 Million	Less than ₦25 Million
Single Sourcing/Direct Contracting	Less than ₦10 Million	Less than ₦10 Million	Less than ₦10 Million	Less than ₦10 Million
Pre-Qualification	₦150 Million and above	₦300 Million and above	₦150 Million and above	Not Applicable
Quality Based	Not Applicable	Not Applicable	Not Applicable	₦25 Million and above
Quality & Cost Based	Not Applicable	Not Applicable	Not Applicable	₦50 Million and above
Consultant Qualification	Not Applicable	Not Applicable	Not Applicable	Less than ₦20 Million
Fixed Budget	Not Applicable	Not Applicable	Not Applicable	Less than ₦50 Million
Least Cost	Not Applicable	Not Applicable	Not Applicable	Less than ₦25 Million

THIRD SCHEDULE

MONETARY THRESHOLDS

See paragraph 8(2) of the Regulations

Approving Body	Goods	Works	Non-Consultancy Services	Consultancy Services
Tenders Board of the Procuring Entity	Up to ₦50 Million	Up to ₦50 Million	Up to ₦50 Million	Up to ₦50 Million
State Tenders Board	Above ₦50 Million	Above ₦50 Million	Above ₦50 Million	Above ₦50 Million


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