**XXX State**

**Public Procurement (General) Regulations, 20XX**

**CONTENTS**

[Title 3](#_Toc3810059)

[Interpretation 3](#_Toc3810060)

[The structure and contents of the annual procurement plan 3](#_Toc3810061)

[Guidelines for the pre-qualification of bidders 3](#_Toc3810062)

[Bid solicitation documents 4](#_Toc3810063)

[Documents for procurement contracts 4](#_Toc3810064)

[Procurement methods 4](#_Toc3810065)

[Domestic preference 5](#_Toc3810066)

[Prescribed fees 6](#_Toc3810067)

[Advance payment 6](#_Toc3810068)

[Investigations by the Agency 6](#_Toc3810069)

IT is hereby notified that the Minister of XXX, in terms of section 16 of the Public Procurement Law [Chapter 22:23] and after consultation with the XXX State Public Procurement Agency, has made the following Regulations: ‒

|  |
| --- |
| Title |
| 1 | These Regulations may be cited as the Public Procurement and Disposal of Public Assets (General) Regulations, [year]. |
| Interpretation |
| 2 | Terms in these Regulations shall have the meaning ascribed to them in section 75 of the XXX State Public Procurement Law, *[year]* |
| The structure and contents of the annual procurement plan |
| 3 | In pursuit of its obligations under section 26 of the Law, a procuring entity shall form a Procurement Planning Committee with the membership prescribed in section 27 of the Law, to prepare the annual procurement plan. |
| 4 | The annual procurement plan shall:* 1. Identify the PE’s expected procurement needs over the coming financial year, including both regular requirements and new items to meet development plans.
	2. Estimate the cost of each item to be procured and thereby to ensure that procurement expenditure is provided for in the State’s Budget or otherwise that procurement does not proceed unless sufficient funds are available to meet the tendered price.
	3. Determine which items are essential to the continuance of important existing services and development plans and which items may be reduced or deferred having regard to budgetary limitations.
	4. Specify the procurement methods for each project and ensure that no contract is split in order to avoid the appropriate method for that value of procurement.
	5. Identify opportunities for grouping similar requirements in order to make contracts of higher value that achieve economies of scale and reduce administrative costs.
	6. Identify where framework contracts should be used.
	7. Establish the time at which items in the plan are required, estimate the time required to complete the whole procurement process, including the time needed by any provider to manufacture, deliver and install the goods; and
	8. Ensure that the procurement process begins in sufficient time so that the items are available at the time required.
 |
| 5 | The Procurement Planning Committee shall submit the annual procurement plan to the Accounting Officer for approval. |
| 6 | The plan shall be kept under review throughout the financial year and be modified to take account of changes in Budget availability and end-user requirements.  |
| 7 | The annual procurement plan shall be submitted to the Agency as part of reporting activities. |
| Guidelines for the pre-qualification of bidders |
| 8 | When conducting pre-qualification of bidders under section 33 of the Public Procurement Law, a procuring entity shall ensure that:1. Applicants for pre-qualification are legal entities and meet requirements for eligibility in accordance with the eligibility criteria stated in the pre-qualification document.
2. Qualification shall be assessed in relation to the various professional, technical, financial, personnel and other factors related to successful contract performance.
3. Providers of goods shall either be the manufacturer of the goods to be procured or have demonstrated the ability to obtain the goods from reputable sources and to deliver the goods to the locations where they are required.
4. Works contractors shall demonstrate that they:
	* 1. Have sufficient experience of carrying out projects of similar complexity and scope to the one that is the subject of the procurement;
		2. Have adequate financial capacity to meet the financial obligations under the contract;
		3. Are capable of engaging staff with the technical skills to manage the project; and
		4. Can obtain the necessary equipment.
5. Consultants shall demonstrate that they have the necessary expertise to provide authoritative advice on the subject under review both through the experience of the firm in carrying out similar assignments and through their ability to engage individuals who are expert in the subject.
 |
| 9 | In pre-qualification procedures:1. An open invitation shall be issued stating the nature of the procurement requirement and the qualification criteria;
2. Interested providers may then submit proposals without pricing to demonstrate that they would be qualified to perform the contract;
3. The procuring entity shall evaluate these proposals and prepare a short-list of qualified providers;
4. The procuring entity shall issue bidding documents only to providers on the pre-qualified list;
5. Qualified bidders may then submit a priced tender in accordance with the technical specifications and other requirements in the bidding document.
 |
| Bid solicitation documents |
| 10 | The standard bid solicitation documents to be used in each type of procurement shall be prescribed by the Agency. The procuring entity shall modify designated sections of these documents to meet the requirements of the procurement to be made. |
| Documents for procurement contracts |
| 11 | The Agency shall prescribe standard documents to be used for the formation of each type of procurement contract. The procuring entity shall modify designated sections of these documents to meet the requirements of the contract to be made. |
| Procurement methods |
| 12 | The choice of procurement method shall be as stated in the procurement plan, except that the Accounting Officer with the approval of the Agency may determine that a different method shall be used for reasons stated. |
| 13 | Open competitive bidding shall be the default method for procurements above a threshold to be prescribed by the Agency. |
| 14 | Open competitive bidding may be carried out:1. Under a one stage procedure, whereby the procuring entity shall prepare a bidding document which will include, among other things, detailed functional and technical requirements. In response, suppliers submit tenders containing both their technical and financial proposals, which are opened in one single public opening.
2. Under a two-stage procedure, whereby the procuring entity shall prepare at the first stage a document stating in general terms the functions and performance standards that the acquisition is to meet. In response, bidders offer un-priced technical proposals which the procuring entity shall use to establish which would suitably meet its needs and shall then prepare a memorandum of changes for the second stage tendering process. During the second stage tendering process, bidders may offer final tenders containing their final technical proposal and a financial proposal.
 |
| 15 | Open competitive tendering may be national or international. National competitive bidding shall be used when the procuring entity is satisfied that there are adequate sources of the required product within Nigeria. International competitive bidding, under which direct offers are sought from overseas providers as well as Nigerian providers through advertisement or other means, shall normally be used to obtain products or services that are not extensively available in Nigeria.  |
| 16 | When international competitive bidding is used, the interests of national providers may be protected through the use of domestic preference in the evaluation process. |
| 17 | For procurements below the prescribed threshold, alternative procurement methods may be used, provided that the procuring entity is satisfied that value for money can thereby be obtained.  |
| 18 | Procuring entities with the support of the Agency shall compile a standing list of registered suppliers and contractors for use in obtaining their regular purchases of each category of goods, works and services. The opportunity to apply for inclusion on the list shall be advertised at regular intervals. |
| 19 | The restricted bidding method may be used for procurements that are below the value prescribed for open competitive tendering and where it is considered that the goods, works or services are available only from a limited number of suppliers or contractors or where the time and cost required to evaluate a large number of tenders would be disproportionate to the value of the goods works or services. Under restricted bidding, the invitation to bid shall be sent to all or only to a selection of providers on the standing list for that category of requirement. |
| 20 | For very low value items that are below a threshold to be prescribed by the Agency and for which adequate supplies are available in the local market, or for low-value and less complicated works or service contracts, informal purchasing methods such as a Request for Quotations may be used. Under this method, a minimum of three (3) providers on the standing list may be asked to provide a quotation for supplying the required goods. |
| 21 | Regularly purchased items shall be grouped together and be obtained through framework contracts and/or framework arrangements. Procurements that are suitable for framework contracts or framework arrangements should be identified in the annual procurement plan. The Agency shall issue guidelines on the procedures to be used when procuring through framework contracts or framework arrangements. |
| 22 | Direct procurement to a sole source provider shall be used only in certain circumstances, such as:* 1. When buying patented medicines or other patent protected products for which one provider has an exclusive right to supply;
	2. When buying extensions to existing equipment where compatibility is essential;
	3. Where standardisation with existing supplies is essential; and
	4. In cases of extreme emergency.
 |
| Domestic preference |
| 23 | The criteria for entitlement to domestic preference shall be stated in the bidding document and shall be applied by a procuring entity only when it has been established that this would serve national interests and policies for the development of national providers’ capacity. |
| 24 | Whenever domestic preference is applied, it shall be based on the value added within Nigeria in respect of the manufacture and assembly of goods and the use of Nigerian labour, raw materials and components.  |
| 25 | The standards of the goods, works or services to be provided shall be as stated in the technical specifications and shall not be lowered to meet the capabilities of domestic producers.  |
| 26 | Domestic preference shall not be used to give manufacturers in one State an advantage over manufacturers in other States.  |
| 27 | Domestic preference shall be applied during the evaluation process. |
| 28 | The percentage of preference to be given to domestic bidders shall not exceed 15% for contracts for the supply of goods and 7½% for works and services contracts. |
| 29 | The stated percentage of preference shall be added to any foreign company’s price solely for the purpose of establishing whether that offer remains the lowest in price. In the event that the foreign company is the successful bidder, the price and contract terms shall be as provided in its bid, not after the application of domestic preference. |
| Prescribed fees |
| 30 | The Agency shall prescribe fees that a procuring entity may charge for:* 1. The supply of bidding and contracting documents, which shall not exceed the cost of printing and distributing these documents; and
	2. A bidder to challenge the procurement process or a proposed contract award through administrative review under section 68 of the Public Procurement Law. Such a fee shall not exceed five hundred thousand Naira (₦500,000) and shall be returned to the challenger in the event that the challenge is successful.
 |
| Advance payment |
| 31 | Any advance payment shall be made only in such amount as is necessary to help the contractor with the cost of mobilisation, such as recruiting workers and hiring equipment.  |
| 32 | A procuring entity may only provide a higher level of advance payment that the percentage specified in section 63 of the Public Procurement Law with the approval of the Agency, which shall ascertain that such higher payment is necessary for the successful completion of the contract. |
| 33 | Any advance payments shall be covered by an appropriate security, such as a bank guarantee from a bank that is acceptable to the procuring entity.  |
| 34 | The format of an advance payment guarantee shall be as provided in the bidding documents. |
| Investigations by the Agency |
| 35 | When exercising its powers of investigation under section 67 of the Public Procurement Law, the Agency shall appoint certain of its staff to serve as investigators and shall provide such staff with the necessary proof of authority. |
| 36 | All staff of a procuring entity and relevant bidders and contractors shall fully cooperate and assist the Agency in the exercise of its investigatory powers. The withholding of documents or other information from the duly appointed investigators shall constitute an offence. |