

**DUE PROCESS GUIDELINES AND
RULES FOR PROCUREMENT OF GOODS, WORKS AND
SERVICES**

IN

CROSS RIVER STATE

ISSUED BY THE

**DUE PROCESS AND PRICE INTELLIGENCE BUREAU
(DPPIB)**

**GOVERNOR'S OFFICE,
CALABAR, NIGERIA**

NOVEMBER 2007

REVISED 2020

1.1 INTRODUCTION TO DUE PROCESS RULES

Due Process is a Mechanism for ensuring strict compliance with openness, competition and cost accuracy rules and procedures that should guide contract award in Cross River State. This mechanism has become the popularly adopted short form for Due Process and Price Intelligence Bureau (DPPIB). This is the Bureau charged with the responsibility of implementing public procurement reform program in the state.

The Due Process and Price Intelligence Bureau (DPPIB) was established by Governor Liyel Imoke in June 2007 in fulfillment of his commitment to ensuring transparency and accountability in the management of public funds in the State.

At the Federal level, this reform policy came to life in 2001 as a result of a Diagnostic study conducted into the State and Federal Government Public Procurement Systems. This study revealed that Nigeria lost several hundred billions of naira as a result of flagrant abuse of procedures for award of public contracts, inflation of contract cost, lack of transparency and lack of merit as the fundamental criteria for award of public contracts.

The findings of this study made it imperative that a reform policy be put in place to reduce and check large scale corruption and waste that has reduced the efficiency of the Nigerian public sector.

THE VISION

The Vision of the Due Process and Price Intelligence Bureau is to help move Cross River State to a pedestal where Public Procurement is governed by transparency, integrity and value for public funds.

THE MISSION

The mission of the Due Process and Price Intelligence Bureau is to use the mechanism of Due Process to re-establish and sustain an open, transparent and competitive procurement in Cross River State that is integrity driven, upholds spending within approved appropriation and ensures speedy implementation of projects in order to achieve value-for-money without compromising quality and standards.

1.3 THE RESIDENT DUE PROCESS TEAM (RDPT)

This concept was conceived as an effective Management strategy to limit the number of projects coming to the Due Process and Price Intelligence Bureau. It also gives the procuring entity the opportunity to review in-house, all contracts below N25million provided that they follow Due Process. Above all it helps to internalize and breed ownership of the Due Process reform mechanism.

The RDPT in the procuring entity as reflected in the circular is comprised of:

- a. The Permanent Secretary/Director of Administration – Member
- b. Director of Finance/Head of Accounts – Member
- c. Director of Planning Research and Statistics – Member
- d. Director, Procurement/Head Procurement.) – Member/Secretary

The membership of the DPPIB in the RDPT is an institutional one, i.e. there is no designated permanent DPPIB nominee for procuring entity. Any official of the DPPIB can be sent to represent the Department in such meetings.

All invitations from the procuring entity to the DPPIB for institutional representation at the RDPT meetings must reach the Department at least 3 working days before the date of the meeting. Such invitations must contain the following:- (a) Date of the meeting (b) Venue (c) Time and (d) Agenda. It should also include a brief background of the projects to be discussed. All such invitations should be addressed to the Director General, DPPIB Governor's office.

A procurement decision taken at any RDPT meeting convened by a procuring entity without proper invitation of the DPPIB will be regarded as a nullity

1.4 RULES FOR PROCUREMENT (TENDER, EVALUATION AND AWARD) OF CONTRACTS BY THE GOVERNMENT OF CROSS RIVER STATE

The Rules establish procedures designed for application by the three arms of the Government of Cross River State ("the Government"). They are designed to be strictly adhered to in the procurement of contracts for goods, works and services by the Government. They help to ensure that suitably qualified contractors, suppliers and consultants are chosen without bias and that the best value for money is obtained with the full transparency appropriate to the use of public funds.

The meanings of words in the Public Procurement Law, also apply to these rules. The recommended procedures for procurement and contract awards is as follows:

1. The project must have budgetary provision;
2. The project must be properly prioritized;
3. There must be the Governor/Executive council's (EXCO) approval for the contract to be procured as appropriate
4. Advertisement
5. Pre-qualification
6. Invitation to tender/Solicitation for Quotation/Request for Proposal (The technical and financial bid/proposal)
7. Submission and receipt of tenders.

8. Opening of tenders
9. The bid evaluation process
10. Determination of the winning bid/proposal
11. Obtaining “Certificate of No Objection” from DPPIB
12. Award of contract (letter of award)
13. Performance Bond
14. Draw up agreement.
15. Mobilization/ Supervision

1.4.1 The project must be in the budget;

Whatever project contract to be embarked upon must be properly captured in the budget for the current year.

1.4.2 The project must be properly prioritized;

The project must also be properly prioritized amongst other projects budgeted for in the budget year.

1.4.3 There must be the Governor/State Exco approval for the contract to be awarded

Procurement request must be presented to the Governor for approval within the threshold or the EXCO within its approval threshold as captured in the year’s budget.

1.4.4 Advertisement (Vetting and Approval for Publication)

Equal access to information by all possible participants in the market of public contracts is fundamental to a free and fair competition. This is a major step in ensuring that any public procurement system derives the benefits of effectiveness, efficiency and value-for-money.

All intended advert must be vetted and approved for publication by DPPIB, failure to present draft advert leads to cancellation of the process. Note that procuring entities are responsible for advertisement.

There are four categories of advertisement guidelines

- a) **Advert guideline for all contracts below N20million naira.**
Advertisement of such projects must be placed in the notice board of the Procuring entity, Nigerian Chronicles, Cross River State Government electronic procurement portal and in the State Tenders Journal.
- b) **Advert guidelines for all contracts below N50million naira.**
Such advert must be placed in at least one local newspaper, Cross River State Government electronic procurement portal and/or Government Gazette/State Tenders Journal.
- c) **Advert guidelines for all contracts above N50million naira**
Adverts for such procurement must be placed in the case of:
 - (i) National Competitive Bidding (NCB) – in atleast two National Newspapers, Nigerian Chronicles, Cross River State Government electronic procurement portal and State Tenders Journal.

- (ii) International Competitive Bidding (ICB) – in atleast two National Newspapers, One international publication, Cross River State Government electronic procurement portal and State Tenders Journal.

d) **Advert guidelines for Pre-Qualification:**

All State Government adverts for Pre-qualification shall follow a standard format with the following:

1.4.4.1 The Standard of Format for Adverts on Public contracts

1. The name and address of the Procuring Entity.
2. Introduction, i.e. a brief description of the object of the procurement, including desired time for delivery or completion.
3. Scope of work
4. A summary of the required qualification criteria.
5. The place and deadline for submission of the applications for pre-qualification should be clearly stated.
6. Where the pre-qualification documents are standardized, the date of availability must be stated.

The time allowed for applicants to prepare and submit their pre-qualification applications shall **not be less than 14** days from the date of placement of the advert.

N/B There shall be a technical Bid and Financial Bid. If the technical bid is not acceptable, the financial bid will not be considered.

1.4.5 Pre-Qualification Requirement

The pre-qualification exercise should be done as part of the technical evaluation using a period of not more than 14 days. Upon the collation of the submissions of all respondents an advertisement for bid, the PROCURING ENTITY shall analyze all submissions made by the respondents to the advert.

The analysis shall be weighted on an objective set of technical and financial capacity criteria. The aim is to shortlist and select competent respondents to the advert.

The considerations are listed below:

General Requirements:

1. Evidence of incorporation or business name registration – 0%
2. Registration with Due Process and Price Intelligence Bureau in the relevant category – 0%
3. Company Audited Account for three years - 0%
4. Evidence of tax clearance certificate for the past three years - 0%

Specific Requirements:

1. Evidence of Financial capability and banking support - 20%
2. Evidence/technical qualification and experience of key personnel - 15%
3. Similar projects executed and evidence of knowledge of the industry - 15%
4. Equipments and technological capacity - 20%
5. Annual turnover - 5%
6. VAT registration and evidence of past VAT remittance - 5%

7. Indegenous Contractors (Cross River State Origin) - 20%

These scored conditions might be varied according to the nature of the requirement. The pre-qualification benchmark score which respondents can be considered to be competent is 70% and above.

The next stage is to draw up a **List of Pre-qualified Bidders (the competent bidders)** which shall include all respondents with at least 70% score each of whom is to be issued with an **invitation to tender or bid**.

1.4.5.1 Post Qualification of Bidders

1 . The Procuring Entity may require a supplier, contractor or service provider who has been pre-qualified to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify the supplier, contractor or service provider.

2 . The Procuring Entity shall disqualify any supplier, contractor or service provider who fails to demonstrate its qualification again if requested to do so. The Procuring Entity shall promptly notify each supplier, contractor or service provider requested to demonstrate its qualifications again whether or not the supplier, contractor or service provider has done so to the satisfaction of the Procuring Entity.

All comprehensive submissions are considered **Responsive**. The absence of any one would automatically disqualify an applicant for pre-qualification.

The next stage is to draw up a list of all the respondents above the acceptable pre-qualification bidders” or “competent bidders” and al of who are issued an invitation required to pay the requisite tender fees before obtaining the tender documents.

It is to be noted, however, that in some cases it would be appropriate to skip the pre-qualification stage and accept tenders for goods or services in response to an invitation, (see Para. 6 immediate below). In such cases, there would still be a pre-qualification stage but would be conducted by first opening and evaluating all duly submitted technical bids. Those bids that score at or above the benchmark would proceed to have their financial bids opened and evaluated and weighted along with the technical bids to produce a final score; while those that score below the benchmark would have their financial bids returned unopened.

1.4.6 Invitation to tender/Solicitation of Quotation/Request for Proposal

“Tender” and “Bid” means the same thing and may be used as preferred. However, it is not advisable to use them interchangeably in the same document. Invitations to tender/bid may be placed in two categories, namely:

1.4.6.1 Open invitation:

When contracts to be executed or supplied are considered to be within the capacity/capability of many contractors, invitations shall be open.

Each procuring entity employing open invitations shall ensure that:

- Call for tenders shall be open and given adequate publicity as in 4 above.
- The tender documents shall follow the approved format developed by the procuring entity and approved by the DPPIB
- Documents appropriate to goods, work or services to be procured should contain sufficient information to enable objective competition among the bidders
- The tender document shall be in two parts:
Technical and Financial and shall be submitted **not more than six weeks** after the bid documents were issued. (N/B This varies depending on the nature of the procurement to be made.)
- Validity of bids must be specified by contractors for the guideline of the tender evaluation committee
- Bidders may sometimes require clarification of certain issues. Bid instructions must require bidders to submit all questions within a specified period, after which no question will be entertained. Where clarifications are sought for, each question and appropriate response must be sent to all the bidders without disclosing who asked the questions.
- All answers should be sent within three working days of receiving the questions. If answers are delayed, it may become necessary to extend the bid submission period. This should be avoided where possible but may be done after the Chief Executive of the procuring entity consults with the Resident Due Process Team (RDPT) and the Director-General of the DPPIB.

1.4.6.2 Selective Invitation:

This applies when such a scope of work is of very specialized nature with only few capable contractors available to handle them. This may also be applied when items to be procured are highly technical in nature or an emergency may warrant selective tendering. In all cases there must be at least three contractors tendering for the job.

It is expected that all tenders will be by open invitation; any preference for selective tendering by any procuring entity must be discussed by the Resident Due Process Team and thereafter justified, along with any required exceptions to these rules, to the Governor and approved by him in writing. A maximum of three (3) applicants should be considered for selective tenders.

1.4.6.3 CONSULTANCY SERVICES

As it obtains in all Government contracts/procurements, consultancy services necessarily follow the same procedure as outlined in the general guidelines.

When engaging the service(s) of consultants, particular attention should be paid to the Terms of Reference (TOR). Issues to be clearly spelt out here include the following:

- (i) The qualification and experience of the consultant, cost/payments, activities/times lines among others. All these are to be captured in the advertisement.
- (ii) The expression of interest to the advert as appropriate would result to the evaluation, negotiation and engagement of the preferred consultant leading to the eventual signing of contract agreement.

- (iii) It is important to note that the Terms of Reference depends on the specific consultancy services required. In this case there is no specific TOR to be used as a benchmark for all consulting services.

1.4.6.4 FORCE ACCOUNT/EMERGENCY PROCUREMENT

The concept of force account in a contract or procurement process is that in which the overall bidding processes are not strictly followed as a result of lack of time, the cost implementation and other similar considerations. The application of force account mechanism may be justified where such works involved are small in nature and spread or scattered in remote locations for which firms may be unwilling to bid at reasonable prices. This may equally apply where the cost of a competitive bidding process may be high compared to the work involved. Force account may also be applied where contractors identified may be unwilling to carry out jobs in such locations or similar factors.

In addition to the above, emergency situations like natural disasters and other crisis situations may warrant the application of force account to immediately handle such without necessarily requesting contractors to go through the normal bidding procedures.

1.4.6.5 SINGLE OR SOLE SOURCING

This is the procedure that involves the procurement of goods works and services from one single source. This mechanism may apply where equipment or services can be procured from one source. However, to apply this method, there must be evidence to show and back the claim that the service(s) can only be sourced from one source. It may also be used where a contractor/consultant for a specialized process design requires the purchase of vital items from a particular supplier as a condition of performance guarantee.

The standardization of spare parts which is to be compatible with existing ones may require additional purchases from the original supplier. Sole sourcing may be applied here, but for this to be justified, the original equipment shall be suitable, the number of new items shall generally be less than the old ones, and the price shall also be comparatively reasonable. In addition, the advantage(s) of another branch/source of equipment shall have been considered rejected on grounds accepted to Government.

The extension of a contract process for goods or works of a similar nature may in similar way justify the application of single sourcing. Here there may be no advantage for further competition and the extended contract should be seen to be comparatively reasonable. Such provision for extension is considered in advance may however be included in the original contract.

1.4.7 Submission and Receipt of Tenders

Tenders are received under the following guidelines:

- a) The tender envelopes is well sealed
- b) The title of the tender is clearly written on the envelope as indicated on the tender notice for easy identification
- c) The tender is listed in the tenders receipt register which is by both the tenderer and the receiving officer
- d) The register should include the serial number of the contractor, name and address of contractor, category of contractor, signature of contractor, name of receiving officer, and date of receiving, time of receiving and signature of receiving officer.
- e) The tender is dropped in the tenders' box by the tender himself led by an officer of the procuring entity.

- f) Any tender not properly sealed or labelled should not be accepted.

Note: Each procuring entity should fabricate a good sized box for use as a tender box. The following are applicable to tender box.

2 The Tender Box

- i) The tender box shall be kept in the custody of the Permanent Secretary or any other officer so authorized by the Chief Executive of each procuring entity
- ii) The tender box should be reasonably large with opening for dropping of tenders which should be done when the box is securely locked
- iii) The box should have two keys each different from each other
- iv) One of the keys is to be held by the officer designated in custody of the box
- v) The two keys are produced by the two officers only when tenders are to be brought out for opening and locked back immediately after the particular tenders to be opened are correctly identified and laid out.

1.4.8 Opening of Tenders

Opening of bids/tenders must take place not more than a week after the close of bid/tender submission. Bidders or their representatives and interested members of the civil society are expected to witness any bid/tender opening. Technical bids must be opened immediately and conclusively evaluated by a previously designated evaluation team of not less than three (3) senior officers that may be drawn from within and/or outside the procuring entity before the financial bids are opened.

1.4.9 Evaluation of Tenders

- 2. The Evaluation team of the procuring entity shall evaluate the technical and financial tender submissions as contained in the standard bidding document.
- 3. The procuring entity the Chairman of the Resident Due Process Team (RDPT) shall appoint a tender evaluation committee (TEC) to examine, evaluate and prepare a report with recommendations for award to the approving authority
- 4. The (TEC) shall consist of an odd number of persons of whom at least three, shall be experienced in procurement
- 5. The Chief Executive of the client procuring entity shall not participate in the evaluations, but may mediate only where there is a misunderstanding or inconclusive result in the evaluation of tenders
- 6. The TEC must be given specific guidelines as contained in the standard bidding documents. The guidelines must include specific factor to weigh, the numerical weight to accord each factor, the distribution of weight as between technical and financial bids and the formula to be used in determining the final aggregate of both the technical and financial scores.
- 7. Where the RDPT approves, it gives the go ahead for the award of the contract
- 8. The TEC should have a form where the members would sign declaring confidentiality and impartially
- 9. The evaluation result and minute of the committee's sittings signed by the TEC chairman must be sent to the resident due process team for ratification, along with a standard form signed by all members of the TEC declaring their individual confidentiality and impartiality. Where the

RDPT approves the result, it recommends same to the DPPIB for certification and award of contract.

1.4.10 Determination of the Winning Bid/Proposal

Contract is awarded after a close study of the expert appraisal and the details on the list of tenders. There should be no preferential treatment given to any company in determining the winning bid. Companies that did not pay tax as at when due corporate citizens or are established to have been found guilty of breach of rules of professional ethics.

Equally, no retroactive award of contracts shall be allowed. The best tender which may not necessarily be the lowest should be approved for award.

Award of contracts shall be communicated to the winner inviting him to enter into a formal agreement with the client procuring entity on behalf of the Government. Tender fees are only payable after a winner of the bidding exercise has emerged.

1.4.11 Obtaining Certificate of No Objection from DPPIB

In the event that the DPPIB has to review any procurement process, it will review the above steps taken by the client procuring entity to ensure that the rules governing pre-procurement planning, advertisement and pre-qualification. Technical and Financial evaluations as stated above were followed in an open, free, fair, transparent and competitive manner before Certificate of No Objection is obtained.

1.4.12 Contract Agreement

Every contract for the provision of goods, works or services to the state government must be evidenced by an appropriately worded agreement drafted by the office of the Attorney General and Commissioner for Justice.

1.4.13 Performance Bond/Bank Bond/Insurance Bond

A performance bond/bank bond/insurance bond must be presented by the contractor before the mobilization fee is paid, preferably a bankers' bond for contracts values at N5 million and above, or an insurance bond for contracts valued below N5 million. The performance bond should represent 30% of the contract value; i.e. mobilization funds. There should be a standard format for performance.

1.4.14 Mobilization/Supervision

Payment of mobilization to contractors on any contract should be made as follows:

- (a) 30% contract sum - for works
- (b) 70% contract sum - for goods

1.4.15 Payments:

Ideally payments subsequent to mobilization should be stated in the contract to commensurate the value of work completed. Payments shall be made by the Government Treasury upon vouchers supported by Due Process Certification required or the first payment only and subsequently by completion certificates issued by an expert supervisor of the contract.

The payment schedule is as follows:

1. 50% contract sum - for work in progress
2. 15% contract sum - on completion
3. 5% contract sum - as retention fee

2.1 CONTRACT EXECUTION

This covers all such acts and activities from the signing of the contract agreement to the issuance of the final certificate. It is divided into four (4) phases:

- 1) Commencement of work
- 2) Procedure during course of work, - site meeting, inspections, measuring of work and progress report.
- 3) Issuance of interim payment certificates – (I.P. C's)
- 4) Completion of work, final payment and retention sum.

2.1.1 Commencement of Work

Before issuing the contractor the order to commence work i.e. (commencement order) it must ensure that:

- i. Both the contractor and the supervising officer have copies of all relevant contract documents
- ii. The site of the project is ready for handing over to the contractor and that the contractor will have immediate and ready access to the site when order is issued. The date of completion of work is calculated from the date this order is to commence.

2.1.2 Procedure During Course of Work

The general supervision of work by the site agent or project officer should include holding of site meetings to resolve issues or problems. It should also include measuring of work done and issuing of progress reports.

2.1.3 Interim Payment Certificates

This is the responsibility of the site agent or project officer or supervisor. Interim payment certificates should have relevance with amount of work done and payment terms as provided in the contract agreement.

2.1.4 Completion of work and Payment of Final Installments and Retention Sum

This issuance of final I.P.C and retention sum should take cognizance of the mobilization advance, if any. Retention sum should fall within 5% of the total contract sum. Not more than 4 installments should be allowed in any contract and the period for retention should vary from 12 months to 24 months as the case may be.

3.0 GENERAL MATTERS:

3.1 General Policy Guidelines on Award of Contracts.

3.1.1 Clearance Certificates

- 1) Engagement of consultants should be limited and should receive the prior approval of the Governor. Generally, experts in Government should be used.

- 2) Contractors, no matter how competent, should not be loaded with contracts at any given time particularly where there are other contractors just as capable and qualified.
- 3) Project for which contracts are to be awarded must be approved and included in the current budget of Government.
- 4) Mobilization funds, if paid, must be covered by performance bonds and should be cleared by installment deductions in the interim payment certificates. (I.P.C's)

3.1.2 Official Estimates

In order to avert the likelihood of breaching official secrets, the use of official or consultant's estimates is to be avoided; while placing reliance on the outcome of the tender evaluation process in determining the price for delivering required goods, works and services.

The consultant and the Government expert owe it as their professional code of conduct to conceal their estimate until such a time that they are required to submit them, i.e. after the tenders have been submitted by interested contractors.

3.1.3 Signing of Contract

Before any contract is signed, the procuring entity must make sure that the agreement carries adequate safeguards for the protection of Government interest. In particular, the following must be clearly provided for and explicitly stated in the agreement.

- a. Value of Contract
- b. Date of completion
- c. Amount of performance bond to be lodged by the contractor for the due performance of the contract. This is an imperative condition which must be fulfilled where a mobilization advance is payable. In such a case the performance bond shall not be released to the contractor until complete recovery of the amount is made.
- d. Amount or level of liquidated and ascertained damages.
- e. Period of interim payment certificate
- f. Percentage of certified work to be retained as security and held against remediable constructional defects (Warranty).

Whenever a procuring entity is in any doubt about what provision to be included in the contract agreement such doubts should be referred to the Attorney General for advice. After everything has been provided for as above, the contracts will then be signed by the procuring entity that awarded the contract on behalf of the Government.

The contractor will sign the required number of copies of the contract agreement, two of which must bear appropriate stamp duty in accordance with the Stamp Duty Law. Signed copies of the agreement will be distributed within one week of the signing as follows:

- a. Commissioner, Ministry of Finance (2 copies)
- b. The Accountant-General Treasury Headquarters.
- c. Contractors
- d. Procuring entity
- e. Director General, Due Process and Price Intelligence Bureau
- f. The Auditor General

Note: Copies of the contract agreement for contracts valued N20 million and above are to be forwarded to:

1. His Excellency, The Governor
2. The Attorney General and Commissioner for Justice

Each Procurement Department in the procuring entity would be expected to keep proper documentation of contract awards in their respective procuring entities.

4.0 APPROVAL THRESHOLDS AND RESIDENT DUE PROCESS TEAMS

There shall be three thresholds for the approval of award of State Government Contracts.

- a. Contracts of N25million and below
- b. Contracts above N25million but below N50million
- c. Contracts above N50million but below N100million
- d. Contracts of above N100million.

A) CONTRACTS OF N25 MILLION AND BELOW.

This can be handled by the RDPT but with a representative of the DPPIB in attendance. A Chief Executive of a procuring entity can approve and award this threshold of contract provided that Due Process is observed. Such awards must be transparent and files sent to the Due Process and Price Intelligence Bureau for information.

B) CONTRACTS OF ABOVE N25 MILLION BUT BELOW N50 MILLION

A “Resident Due Process Team” established by the procuring entity handles the Due Process Compliance Review of all such Contracts and has power to approve the award of the contracts provided that compliance with Due Process is unanimously established by all the members. The procuring entity must forward all procurement details to the DPPIB for certification. However, the Secretary, Resident Due Process Team (Procurement Officer) must endorse to confirm that Due Process was strictly observed. Note that the budget office must confirm allocation of funds. This is within the Deputy Governor’s approval threshold.

C) CONTRACTS OF ABOVE N50 MILLION BUT NOT ABOVE N100 MILLION

A “Resident Due Process Team” established by the procuring entity handles the Due Process Compliance Review of all such Contracts and has power to approve the award of the contracts provided that compliance with Due Process is unanimously established by all the members. The procuring entity must forward all procurement details to the DPPIB for certification. However, the Secretary, Resident Due Process Team (Procurement Officer) must endorse to confirm that Due Process was strictly observed. Note that the budget office must confirm allocation of funds. This is within the Governor’s approval threshold.

D) CONTRACTS OF ABOVE N100 MILLION

These set of contracts are to be processed by the relevant procuring entity. the procuring entity must follow the published rules/guidelines upon conclusion of this procedure; the RDPT shall then forward their conclusion of this procedure; the RDPT shall then forward their conclusions and all supporting documents

to the DPPIB for Due Process Review Compliance Certification. The Certification should be done within 10 working days.

It is only after the Due Process Certificate is obtained that the procuring entity can forward the project to the Governor for contracts above N25million and the State Executive Council for Contracts above N100million final approval to award the contract.

DUE PROCESS COMPLAINE REVIEW AND CERTIFICATION

Documents Required for DPPIB Review and Certification

A procuring entity is expected to forward relevant documents (as specified in the template) to the DPPIB along with the letter of request (LOR) for Due Process compliance review and certification.

The Review and Issuance of Certificates

The aim of the review and issuance of certificate before award of contract is to determine the degree of compliance by the procuring entity with the provisions of the due process checklist as guiding rules of the process.

The Compliance Review Process is a three-pronged transparent exercise. The DPPIB must establish from the submissions of the procuring entity carrying out the contracting responsibility, in line with the procurement rules to ensure that:-

The process was right

The winner was right

The cost of award was right

The compliance, review and certification process places premium on team consensus by review specialists. This approach shows that there is no single member of the team that can guarantee the outcome of the review process.

DRAFT DUE PROCESS REVIEW (DDPRR)

The compliance review process for every contract above N25 million threshold results in a Draft Due Process Review Report (DDPRR).

If the review report does not support the issuance of a Due Process certificate, the attention of the procuring entity is immediately drawn to the findings and recommendations contained in the Draft Due Process Review Report. When this happens, after exhaustive communication, a right of reply meeting is immediately convened. This is to create a forum for the DPPIB and the procuring entity involved to discuss and jointly resolve and conclude on all contentious issues.

The meeting usually involves some selected officers from such procuring entity and all members of the reviewing DPPIB Team sitting at an open forum to discuss the content of the report of the review process.

During Right of Reply meetings, if additional information is provided and supported with superior arguments and documentations that can make the DPPIB change its position, then the DPPIB would then approve and issue a Due Process Certificate for award for the consideration of the State Executive Council in favour of the procuring entity.

RESULTS OF COMPLAINT REVIEW

There are two possible outcomes at the end of a compliance review exercise by the DPPIB. These outcomes are categorized as follows:

RESULT A (POSITIVE)

Due Process Certificate Granted

This shows that the contract award process followed by the procuring entity was right, the recommended winner was right and the cost was right.

RESULT B (NEGATIVE)

Due Process Certificate Denied

If the contract process does not conform to the standard defined as right contract award process, the DPPIB is compelled to withhold Due Process Certification.

The DPPIB will also advise the procuring entity to re-procure. This is because the process is fundamental in public procurement, and in determining the right cost and the right winner.

DUE PROCESS CERTIFICATE FOR CONTRACT AWARD

The Due Process Certificate for award of contract is issued when the review of the submissions made by a procuring entity to DPPIB, conforms to the three Tests of Due process review.

The DPPIB issues a Due Process Certificate for award of contract as a pre-requisite for the Governor or State Executive Council (EXCO) to grant final approval for award of all contracts that are N25 million and above as applicable to these two approving authorities. (See Approval Threshold above).

This is usually backed by submission of a Performance Bank Guarantee issued by a reputable bank. This measure is to avoid cases where contractors collect advance payment and later abandon the project, and sometimes even abscond with such payment.

CATEGORIES OF CONTRACTS AND THE ROLE OF BUREAU ON LOCAL GOVERNMENT PROJECTS

Introduction

The Bureau is empowered to review and certify Local Governments Contracts which are categorized into six, according to the approval thresholds. This is to ensure compliance with the principles of transparency, competition and merit, and to ensure that the prices used in Government contracts for goods, works and services are reasonable and based on thorough analysis. The supervisory and certification role of the Bureau will ensure contract execution in accordance with the terms of the contracts from the award stage through to their successful execution and completion, avoiding cumbersomeness, delay and other bottlenecks in projects execution.

In pursuance of Government's determination to ensure accountability, efficiency, probity and transparency in the conduct of Government business, approval to incur expenditures and award of contracts by Local Governments shall be based on the appropriate category and the laid down guidelines, as described below.

Contract categories: Threshold for Contract Awards by Approving Authorities

The relevant threshold category for a planned procurement shall be based on the anticipated value of the contract in the procurement plan.

Category One: Head of Department

A Head of Department, on following all the applicable due process procedures, can award contract for purchase of goods, construction work or engagement of service of an amount not exceeding ₦100,000.00 monthly. Any contract whose value exceeds ₦100,000.00 shall be referred to the Local Government Secretary.

Category Two: Local Government Secretary

The Secretary can approve the award of contract of an amount above ₦100,000.00 but not exceeding ₦500,000.00 monthly. Any amount exceeding ₦500,000.00 shall be referred to the Chairman of the Local Government. In any case the applicable laid down rule must be complied with.

Category Three: Executive Chairman

The Executive Chairman of a Local Government can approve the award of a contract of an amount not exceeding Five Million Naira (₦5,000,000.00) monthly. All expenditures authorized by the Chairman shall be reported to the Local Government Executive Council, at the next meeting, for information.

Category Four: The Local Government Tenders Committee.

The Local Government Tender Board can approve the award of contract for amount between ₦5,000,000.00 to ₦10,000,000.00 after fulfilment of Due Process requirements.

Category Five: Local Government Executive Council.

The Local Government Executive Council shall endorse the award of contract for any amount exceeding ₦10,000,000.00 but to the maximum of ₦20,000,000.00

Category Six: The Executive Governor

The Local Government Councils shall seek the consent of the Governor before awarding all contracts above ₦20,000,000.00 on presentation of Due Process Certificate of No Objection.

Guidelines for the Award of Contracts

All arms of the Local Government shall observe the following guidelines in the award of contracts:

Local Government Tenders Committee (LGTC)

- a) There shall be established in each Local Government a Tenders Committee; its Chairman shall be the Chief Executive of the Local Government or his representative.
- b) Other members of the Tenders Committee shall be the Directors/Heads of Departments of the Local Government, while the Director /Head of Procurement shall serve as the Secretary.
- c) There shall be a representative each from Bureau and Ministry for Local Government in all LGTCs. Such representation is not an institutional membership, as such, any competent officer of these Agencies could be sent as a representative during any meeting of the LGTC. Local Government Executive Council

Any contract the value of which exceeds ₦20,000,000.00 (Twenty Million Naira) shall be referred to the Local Government Executive Council (LGEC) for consideration and approval after being satisfied that all applicable Due process procedures were followed and having obtained the consent of the Governor.

Tender Types and Procedures

In order to give room for speedy and timely execution of government projects, three types of tendering and their procedures in the award of contracts are to be adopted, depending on the situation. They are as follows.

- a) **Open Competitive Tendering:** This type of tender demands wide advertisement to invite prospective contractors to show interest in executing the project under consideration. The procedure starts with advert and concludes with the determination of the “winner”. When a Local Government contract is valued at ₦20,000,000.00 and above, this tendering procedure shall be used. The contract is to be advertised in the Government Gazette and in at least two national dailies. The proposed tender method and the relevant documents shall be forwarded to the Bureau and then to the Executive Council for approval. Where the planned contract is below ₦20,000,000.00, but the Bureau considers that better value for money is likely to be obtained through open tendering than through the alternative methods, it may make such recommendation to the Executive Council.

- b) **Selective Competitive Tendering (Restricted Tendering):** This type of tender shall apply to procurements of Five Million Naira (₦5,000,000.00) to Twenty Million Naira (₦20,000,000.00). It provides for competition, for the contract to be awarded, to be restricted to the registered or pre-qualified contractors in the State/Local Government, who have the required technical and financial capacities and that are well experienced in the type of project under consideration. The procedure starts with notification of the existence of the contract opportunity to at least two, but not more than five, such contractors selected to bid for the contract. It is important to ensure fairness in the selection of contractors, and to have regard to resources, experience and performance record. A list of qualified contractors should be prepared for each category of supply and be reviewed regularly, with new contractors being given opportunity to be included in the list when a procurement opportunity arises. Where more than five contractors would be capable of performing the contract successfully, selection should be by rotation, to ensure equal opportunity to contractors on the pre-qualified list. Where there is inadequate capacity among contractors within the State, consideration should be given to inviting capable contractors from outside the State. The submissions made by the competing contractors shall be critically evaluated by the relevant procurement approving authorities before taking decision on the next line of action (approval or recommendation to a higher authority, as the case may be).

- c) **Nominated Tendering Procedure (Single Sourcing/ Direct Procurement):**
This type of tender shall apply to procurements below Five Million Naira (₦5,000,000.00). Here a single contractor is to be nominated by the appropriate Procuring Entity, judging from the reliability, experience and competence of the contractor, to bid for the contract. This type of tendering procedure shall be restricted to categories 1, 2 and 3 contracts. Again, in line with the principles of checks and balances,

the Bureau has to certify the nominated contractor. Therefore, it can recommend the rejection of any nominated contractor whose reliability or competence is in doubt.

Transparency in the Award of Contracts

The following practices shall be complied with in the award of contracts, to show transparency, competitiveness and equity.

- a) In cases where Open Competitive Tendering Procedure is adopted, the opening of the tender must be done in public, at a designated date and time. Moreover, opening shall immediately follow the closing of the bidding period to minimize the risks of bid tampering. Late bids shall not be accepted. The bidders or their representatives shall be invited and members of civil society or the press shall not be excluded, if they wish to attend the tender opening.
- b) Bid evaluation criteria shall be clearly defined in the bidding documents. Award of all contracts shall be based on the criteria so defined.
- c) There shall be a Tender Evaluation Committee (TEC) made up of relevant professionals for the evaluation of bids. The Secretary of the Tenders Committee shall be the Secretary of the TEC. Members of the Evaluation Committee, Members of Tenders Committees and the approval authorities shall declare any conflict of interest and exclude themselves from bid evaluation and approval process.
- d) The Local Government Tenders Committee can award any contract whose value does not exceed ₦10,000,000.00 (Ten Million Naira) without open competitive tendering. However, market surveys shall be conducted to obtain at least three relevant written quotations from suitable contractors/suppliers or service providers.
- e) The award of all major contracts of ₦20,000,000.00 (Twenty Million Naira) and above shall be made public with description of the contract/project and its beneficiaries, name of winning contractor, and the contract price clearly stated;
- f) A contract variation or change order is a change to the price, completion date or statement of requirements of a contract, which is provided for in the contract to facilitate adaptations to unanticipated events or changes in requirements. Careful planning and prior assessment of ground conditions should be made in order to reduce contract variations. Contract variations should not normally arise in contracts for the supply of goods or standard services, unless the service is for a period of two years or longer, during which there may be substantial changes in the cost of labour and related materials. Admeasurement contracts for construction works provide for quantities to vary from what was provided for in the drawings. Such variations of quantities are based on an assessment by quantity surveyors and agreement between the parties, following the detailed assessment of ground

conditions. An addendum to a contract for additional quantities of the same items should use the same or lower unit prices as the original contract. Although the unit rates remain as was provided for in the contract, an increase in quantities may lead to a consequential price adjustment. Any additional funding required for a variation or change order should first be committed. A contract may be varied in accordance with a compensation event or the issue of a variation, change order or similar document, as provided in the contract. A variation or change order shall be in accordance with the terms and conditions of the contract and shall be authorised by the Bureau. The method for determining price variation during contract execution must be incorporated into the contract agreement.

Vetting of Contracts Documents by the Bureau

Project Designs (where applicable), Bills of Quantities, Quotations and other tendering documents in respect of any construction work, procurement or service contract whose value is Five Million Naira (₦5,000,000.00) and above shall be vetted by the Due Process and Price Intelligence Bureau (Bureau). Accordingly, the Local Government shall forward all documents in respect of contracts whose values exceed Five Million Naira (₦5,000,000.00) to the Bureau for vetting to ensure compliance with laid down rules and regulations and issuance of a Due Process Certificate. This Certificate must be presented to the relevant approving authority (or LEC) before approval is given for the award of the contract. The Bureau reserves the right to reject any submission made to it which does not include all required/necessary documents.

The vetting process by the Bureau shall be done as far as possible within the following timeframe:

- a) Contracts whose values are between ₦5,000,000.00 to ₦10,000,000.00: a maximum of 5 working days.
- b) Contracts whose values are between ₦10,000,000.00 to ₦50,000,000.00: a maximum of 2 weeks.
- c) Contracts whose values are between ₦50,000,000.00 to ₦100,000,000.00: a maximum of 4 weeks.
- d) Contracts whose values are ₦100,000,000.00 or above: a maximum of 6 weeks.

Further procurement actions shall not be taken by the Procuring Entity until the Bureau has concluded its vetting, notwithstanding that it exceeds the maximum stipulated time. However, the Bureau shall notify the Procuring Entity of any delay and the reason for the delay in completing the vetting exercise.

Contracts must not be entered into until the Due Process Certificate has been received from the Bureau. The Bureau can use its permanent staff, staff on secondment from any public service, or consultants for the vetting exercise, depending on the situation.

MONITORING AND EVALUATION OF PUBLIC PROCUREMENT

This is one of the main functions of the Due Process and Price Intelligence Bureau. It is so because a contract could follow the Due Process leading to the eventual award, but if proper monitoring is not carried out, it may result to an incomplete process, hence defeating the aim of the process. Monitoring is therefore the analysis and reporting of project performance, as compared to an articulated plan.

TYPES OF MONITORING

1. **Physical Monitoring**
This involves physical inspection of on-going projects or those completed.
2. **Financial Monitoring**
Evaluation of records of payments made on projects
3. **Time Frame**
To ensure that projects can and will be completed within the agreed period.

ELEMENTS OF MONITORING AND EVALUATION

Quality Control.

Here projects are monitored to determine if they comply with the relevant quality standard and the identification of ways to eliminate unsatisfactory performance.

Quality Assurance

This is to ensure that all the planned activities implanted within the system are followed to provide confidence that the project will satisfy the relevant quality standards. This should be performed throughout the duration of the project.

OUTPUT FROM QUALITY CONTROL

1. Quality improvement includes actions to be taken to increase the effectiveness and efficiency of the project and provision of added benefits to the project.
2. Acceptance Decision: The project or items procured will be inspected and either be accepted or rejected.
3. Rework: This involves action taken to bring a defective or non-conforming project of item into compliance with the requirements or specifications.

Performance Reporting

This entails collecting and documentation of performance information by appropriate officers in the procurement process.

DUE PROCESS AND PRICE INTELLIGENCE BUREAU

- i. Projects will be inspected once the financial progress approaches the 80% mark.
- ii. Large civil capital projects may be inspected more than once and before 80% marks to limit the risk of non-performance
- iii. Smaller projects will be monitored randomly.
- iv. Completion audits will be performed on all large and randomly on smaller projects.

Monitoring Strategy

- i. Limited notice is given to the PROCURING ENTITY's and contractors.

- ii. Interview of all parties to the contract is used to ascertain knowledge and involvement in the defined scope of work.

The Monitoring Teams

- i. Civil Engineers
- ii. Quantity Surveyor
- iii. Mechanical/Electrical Engineers
- iv. Architects
- v. Information Technologist
- vi. Officials of the DPPIB

RESPONSIBILITIES OF THE MONITORING TEAM.

- i. The team confirms the level of progress submitted by the PROCURING ENTITY's
- ii. The team confirms the receipt of payments released for the execution of the projects.
- iii. Ascertain outstanding liabilities on individual projects.
- iv. Ensures adherence to contract specification
- v. Notes problems hindering progress and advice appropriate authorities accordingly.

SITE CHECKLIST

The following are the areas of concentration on each site to be visited

- i. Assess the quality of work generally
- ii. Record progress made on site and confirms whether it conforms with the progress and valuation report.
- iii. Check planned and actual progress made and seeks the explanation if actual progress is lagging behind the planned report.
- iv. Level of mobilization to site e.g. materials, plants, and human resources.
- v. Enquire about the expected date of completion and assess whether it is feasible or not.
- vi. Note the suggestions made by the Contractor or Supervising officers regarding the project
- vii. Obtain status report

SITE VISIT REPORT

The Monitoring Team prepares a report after each site visit. The report centers mainly on the following.

1. Project details
2. Progress made
3. Findings
4. Recommendations/Suggestions.

NON-REFUNDABLE TENDER FEES AND FEES FOR REGISTRATION AS A CONTRACTOR WITH THE STATE.

The above Tender fees were reviewed in the year 2000 when the Tender Rules were last amended, and further reviewed upwards again in 2004.

There is a dire need to further review the fees upwards again in view of the new spending thresholds which have been proposed and approved. The proposed upwards review is hereto attached as **Form D**

Also reviewed upwards is the cost of the application form to be registered as a Contractor with the State. Formerly, the cost of the form was N200.00. the upward review now takes it to 1,000.00 per form.

The cost of Contract Certification has been reviewed upwards in the view of the new thresholds now put in place.

The proposed upward review is attached hereto as **Form E**

The cost for renewal of certificates has not been reviewed and left as it is presently. See **Form F**

FORM "A"

**GOVERNMENT OF CROSS RIVER STATE
OF NIGERIA
DUE PROCESS AND PRICE INTELLIGENCE BUREAU
OFFICE OF THE GOVERNOR
CALABAR**

Our Ref:

Date:

NOTICE OF TENDERS/BIDDING FOR EXECUTION OF PROJECTS

TENDERS are invited from suitably qualified contractors registered with the Government of Cross River State for execution of the following projects:

1. PAYMENT FOR COLLECTION AND COMPLETION OF TENDER DOCUMENT

Prospective Contractors/Bidders who wish to tender shall pay the prescribed non-refundable Tender fees, information on the amount payable for each, can be obtained at the Calabar, for collection of the Tender document after payment.

Tenders shall be made, using the prescribed Tender documents. All Tender forms and accompanying documents shall be completed and signed by the contractor/tendered without any alternation in the drawings, bill of quantities, etc.

2. ACCOMPANYING DOCUMENT

Tenders submitted shall be accompanied with the following documents:

- a. Evidence of Current Registration as a major Contractor with the Cross River State Government.
- b. Certificate of Incorporation of the Company with Corporate Affairs Commission, Abuja.
- c. Current Tax clearance certificate, covering three consecutive years.
- d. Receipt for payment of non-refundable Tender fee
- e. Details of work experience in similar projects
- f. Staff profile of the Company

3. VISIT TO SITE:

Contractors are advised to visit the site to assess the scope of work before submission of their completed Tender document.

4. SCOPE OF WORK:

.....
.....

5. INTERPRETATION OF TERMS

Should any Contractor/Bidder have any doubt about any item on the Tender document, such doubts should be referred to the Consultant in the Ministry of

..... who would issue written interpretation, failing of which the Contractor is to submit his/her Tender with a covering Letter of the Bidder's interpretation of the matter in question.

6. BOARD'S DECISION ON THE TENDER:

The Board is not bound to accept the lowest or any tender and its decision on the contract shall be final.

7. SUBMISSION OF COMPLETED TENDER DOCUMENTS

Duly completed and signed Tenders should be returned with SEALED Envelope and marked "CONFIDENTIAL" Tender for the execution of Cross River State Government PROJECTS (mention particular Name of Project) and addressed to:

.....
.....

So as to reach him or her not later than 14 days (fourteen days) from the date of this Notice

Dated at Calabar this day of200.....

NOTATION

- Notwithstanding the submission of the pre-qualification document, the Government of Cross River State is neither committed nor obliged to include your company and associates on any list of potential bidders or award any form of contract to your company and/or associated companies and agents.
- Only short-listed companies having similar past experience and financial capability, shall be qualified and invited to submit their respective tenders.
- The Cross River State Government will deal with only authorized officers of pre-qualifying companies and not through individual on why a company was short listed or not.
- This advertisement or invitation to Tender or Pre-qualify shall not be construed as a commitment on the part of the Cross River State Government, nor shall it entitle respondents to make any claim whatsoever and/or seek any compensation from the Cross River State Government by virtue of having responded to this advertisement.

FORM "B"
DUE PROCESS AND PRICE INTELLIGENCE BUREAU
PROJECT EVALUATION AND MONITORING SHEET

Client:	Date of Visit:
Contractor:	Location:
Project Title:	
A. Project Details:	
1. Date of Award	
2. Date of Commencement	
3. Completion Period	
4. Initial Contract Sum	
5. Revised Contract Sum	
6. Expected Completion Date	
B. Work Progress:	
1. Work Done to Date	
2. Time Elapsed (Months)	
C. Financial Progress:	
1. Total Expenditure Certified to Date	
2. Advance payment Made	
3. Advance Payment Recovered	
4. Balance to be Recovered	
5. Actual Payment Received to Date	
6. Outstanding Payments (Certificates)	
D. General Remarks:	

Project Monitoring Officer (DPPIB)

Contractor

 Procuring entity

FORM “C”

LIST OF DOCUMENTS FOR DUE PROCESS REVIEW, CERTIFICATION

DUE PROCESS AND PRICE INTELLIGENCE BUREAU

Check-List of Documents Required for Due Process Review/Certification

Project Name:.....

Project Cost:.....

Implementing Agency/Ministry:.....

A	Governors' /EXCO Approval for implementation of Project
1	Evidence of Alignment of Project with State Budget
2	Technical and Financial Appraisal of the Project
3	Project Costs and Consultant/Engineers
4	Project Designs/Specifications (if applicable)
5	Financing, Procurement and Implementation Plans
6	Evidence of appropriate packaging
B	Certification of Procurement
1	Evidence of Advertisement – Invitation for Pre-qualification
2	Pre- Qualification Documents, CAC registration, 3 years Tax Clearance, VAT Registration with the State Government, company profile, etc.
3	Letter of Invitation to bid
4	Bid Returns Sheet (duly signed by all bidders)
5	Project Designs and Drawings (if applicable)

FORM “D”

FEEES FOR APPLICATION FORM FOR REGISTRATION: (N2,000.00)

CONTRACT LIMIT	CONTRACT CERTIFICATE	CATEGORY D-L
1,000 – 100,000.00	10,200.00	D
100,001 - 1,000,000.00	15,300.00	E
1,000,001 – 10,000,000.00	25,500.00	F
10,000,001 - 20,000,000.00	51,000.00	G
20,000,001 - 50,000,000.00	102,000.00	H
50,000,001 - 200,000,000.00	153,000.00	I
200,000,001 – 500,000,000.00	255,000.00	J
500,000,001 - 1,000,000,000.00	382,500.00	K
1,000,000,001 AND ABOVE	510,000.00	L

FORM “E

CONTRACT VALUE FEE	NON-REFUNDABLE TENDERS’
₦	₦
1,000.00 -	100,000.00 12,750.00
100,001.00 -	1,000,000.00 25,500.00
1,000,001.00 -	10,000,000.00 51,000.00
10,000,001.00 -	20,000,000.00 127,500.00
20,000,001.00 -	50,000,000.00 178.500.00
50,000,001.00 -	200,000,000.00 255,000.00
200,000,001.00 -	500,000,000.00 382,500.00
500,000,001.00 -	1,000,000,000.00 1,275,000.00
1,000,000,001.00 AND ABOVE	1,785,000.00

FORM "F"
DUE PROCESS PROCESSING FEE

CATEGORY	FEE
D-L	₱
D	5,000.00
E	5,000.00
F	5,000.00
G	5,000.00
H	10,000.00
I	10,000.00
J	10,000.00
K	10,000.00
L	10,000.00

CONTRACT CERTIFICATE RENEWAL

CATEGORY	FEE
D-L	₱
D	5,100.00
E	7,650.00
F	12,750.00
G	25,500.00
H	51,000.00
I	76,500.00
J	127,500.00
K	190,750.00
L	255,000.00

FORM “G”
REGISTRATION REQUIREMENTS

- A. Certificate of registration of Business name or certificate of incorporation and a copy of memorandum of incorporation in case of limited liability companies.
- B. Evidence of previous registration as contractors in any part of the federation.
- C. Evidence of financial standing (if any) or bank statement.
- D. Documents of previous contract jobs executed.
- E. Company’s tax clearance for three years.
- F. VAT Clearance
- G. Company profile
- H. Any other documentary evidence which will determine your suitability as a major contractor
- I. Director’s tax clearance certificate