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## **Nigeria: New Guidelines on Procurement and Award of Contracts**

*Nigeria has issued new guidelines on public procurement and contract award procedures. Although they do not have the force of law, they are a step in the right direction. **George Etomi & Partners** looks at the new measures.*

As part of the new democratic government's drive to entrench accountability, efficiency and transparency in the public procurement and contract award procedures, the Minister of Finance has issued guidelines for the procurement and award of contracts. This followed the approval by the Nigerian cabinet of the reform of the public procurement system on 17 January 2001. The cabinet's guidelines also proposed the establishment of a Public Procurement Commission (PPC). However, no legislation has yet been passed establishing the PPC.

It is proposed that the PPC, when established, will be the top policy-making body for all procurement and contract award matters in the Public Service. A Steering Committee and Procurement Reform Implementation Unit has been established by the Federal Ministry of Finance to prepare the ground for the PPC by initiating and supervising the implementation of the new policy. The functions of the Steering Committee will eventually be taken over by the PPC.

### **Summary of the Guidelines**

1. Abolition of the Departmental Tenders Board (DTB) and Federal Tenders Board (FTB): These two boards have been abolished. The Permanent Secretary and a newly created Ministerial Tenders Board have assumed their responsibilities.

2. Powers of the Permanent Secretary: Under the new arrangement, the Permanent Secretary/ Chief Executive can approve, without competitive open tendering, procurements not exceeding US\$8,000 approximately. He must obtain at least three written proposals from suitably qualified contractors/suppliers. Expenditures incurred under the policy are to be documented and reported to the Honourable Minister quarterly.

#### *Newly-Established Boards*

3. A Ministerial Tenders Board (MTB) has been established in each ministry/extra-ministerial department. The Board is made up of a chairman (the Permanent Secretary/ Chief Executive of the ministry or extra-ministerial department) and the Directors/Heads of Department in the ministry or establishment. Each MTB can award contracts of between approximately US\$8,000 -US\$400,000 in value. The Minister is to approve all decisions made by the Board.

4. Armed Forces/ Ministry of Defence Tenders Board: The Board is made up of a chairman (the Permanent Secretary of the Ministry of Defence) and representatives of the

Army, Navy and Air Force and the Director of Finance and Accounts of the Ministry of Defence. Contracts awarded by the Ministry of Defence are subject to confirmation by the Minister of Defence.

5. Nigeria Police Tenders and Purchasing Board: The Board comprises a Chairman (the Permanent Secretary, Police Affairs) and the Deputy Inspector General of Police (Finance and Admin), all the heads of department, and the head of the finance and accounts department. Contracts awarded by the Board are to be confirmed by the Minister of Police Affairs.

With respect to the Armed Forces/ Ministry of Defence Tenders Board and the Nigeria Police Tenders and Purchasing Board, the guidelines do not indicate any upper limits within which contracts can be awarded. Based on the general provisions of the guidelines regarding contracts in excess of US\$400,000, it is assumed that such contracts for the Armed Forces/ Ministry of Defence Tenders Board and the Nigeria Police Tenders and Purchasing Board will be referred to the cabinet for approval.

#### *Board of Corporations and Parastatals:*

##### **Powers of the Boards:**

6. a. Chief Executives of parastatals can make purchases or award contracts where the value is not above US\$6,000 (approximately). However, not fewer than three written quotations should be obtained from suitably qualified contractors/suppliers. All expenses incurred under this policy are to be documented and reported to the chairman of the Board of Corporations and Parastatals on a quarterly basis for information.

b. Contracts above US\$6,000 but not more than US\$170,000 are to be referred to the Board of Corporations/Parastatals.

c. Contracts between US\$170,000 and US\$400,000 are to be referred to the Ministerial Tenders Board of the relevant supervising ministry of the corporation or parastatal for consideration.

d. Federal Executive Council: The Council is to approve all contracts exceeding US\$400,000 approximately.

#### *Offences*

7. Tender-splitting carried out deliberately in order to circumvent the provisions of the guidelines is a serious offence and is subject to disciplinary action.

The nature of the disciplinary action that follows this offence is not stated, however. The guidelines lack the force of law, and the government may find itself unable to enforce the disciplinary measures successfully.

#### *Practices and Procedures to be Followed in the Approval of Tenders*

8. Competitive Tenders: The Ministerial Tenders Board must adopt open, competitive

tendering procedures. Where it is necessary to use selective, limited tender procedures, the Ministerial Tenders Board should carry out the selection of contractors or suppliers.

a. Advertisement of tenders: Contracts above approximately US\$80,000 must be advertised in at least two national dailies and/or in the government gazette. The advertisement is to be made at least six weeks before the deadline for submitting bids for goods. Notices of all other tenders below US\$8,000 must be posted on the notice board of the procuring agencies.

b. Opening of bid envelopes: The opening of bid envelopes must be carried out publicly at a designated date and time, immediately after the close of the bidding period, to avoid the bids being tampered with.

c. Criteria for evaluating the bids: The criteria for evaluating the bids should be clearly spelt out in the bidding document, and all contracts should be awarded on the basis of those criteria.

d. Committee for evaluation of the bids: A committee made up of professionals will be set up to evaluate the bids. All involved in the approval process (members of the Evaluation Committee, Tenders Board and the approval authorities) are to declare any conflict of interest and exempt themselves from the bid evaluation and approval process.

e. Publication of contract details: All awarded contracts with a value of US\$165,000.00 and above should be published in two national dailies, with details of the contract, the name of the contractor and the contract price clearly stated.

f. Contract variations: Contracts should be planned properly so as to avoid/ minimise variations. Contract variations should not be allowed except when absolutely necessary, subject to the approval and/or recommendation of the Ministerial Tenders Board (MTB). The method for determining price variation during contract execution must be incorporated into the contract.

9. Security of Bids: All contracts with an estimated value of US\$80,000 and above attract a bid security of not less than 2% of the bid price.

10. A performance bank guarantee of 10% of the contract price should be obtained for all contracts in the region of US\$80,000 and above.

11. Procurement Plan: A procurement plan is to be drawn up every quarter to determine the requirement of funds for various government offices at different quarters during the fiscal year. Funds will be released on the basis of realistic, approved and updated procurement plans.

12. International Procurement Agents of high repute may be enlisted to assist in medium and large-scale contracting where necessary.

13. Mobilisation fee: Where a mobilisation fee is necessary and appropriate, it shall not exceed 25% of the contract amount. The guidelines provide for the mode of payment of

the fee.

14. Payment of Interest on Delayed Payment: Where the Minister or Head of the Extra Ministerial Department delays payment to the contractor, the payment will be made at the interest rate stipulated in the contract agreement. The interest will only be paid where there is a delay in settling the claim of more than 60 days from the date of submission of the contractors' invoice /valuation certificate and the authentication/ confirmation of the invoice by the relevant ministry.

15. Registration of Contractors/ Suppliers: All eligible contractors/ suppliers are required to be registered with the Federal Ministry of Works and Housing or the respective ministries/extra-ministerial departments and must produce their VAT Registration Certificate before they are registered.

16. Audit Inspection: Certified true copies of all contract agreements are to be sent to the office of the Auditor General of the Federation or its representatives at the various Ministries/extra-ministerial departments. All minutes of the Tenders Board's meetings must be made available for inspection by the office of the Auditor General for the Federation or his representative. The representative will co-sign the certificate releasing final payment.

## **Conclusion**

Whilst the policy guidelines are to be applauded, especially the provisions regarding the tender process, it remains to be seen what steps will be taken to establish the PPC as the top policy-making body with the necessary monitoring and enforcement powers to ensure compliance with the objective of the guidelines. This may be accomplished through a private member's bill from the national legislature or through a bill sponsored by the government itself. Whichever way it is accomplished, the fact remains that these guidelines are certainly a step in the right direction.