



THE PLATEAU STATE PUBLIC PROCUREMENT LAW 2016.

FREQUENTLY ASKED QUESTIONS

A publication of the
Plateau State Bureau of Public Procurement
J. D. Gomwalk Secretariat Complex,
Jos, Plateau State.

PREFACE

This booklet on Frequently Asked Questions (FAQ) is a compilation of questions raised during interactions with Stakeholders at the Sensitization Programmes on the objectives of the Plateau State Bureau of Public Procurement Law, 2016.

The questions have been addressed with relevant and useful contributions from the Public Service Office, Ministry of Establishment and Training, and the Civil Service Commission. The intention is to further publicize the provisions of the Procurement Law by educating readers and clarifying issues which are not directly addressed by the Law.

The FAQs will be uploaded on the Plateau State Government's website and will be updated from time to time as fresh questions are raised.

For further enquiries, the Agency may be contacted through the following e-mail:

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Signed

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QUESTION 1

What is Public Procurement and how does it differ from the familiar 'Purchasing and Supply Management'

Response/Answer

Bureau Public Procurement is the process whereby public sector organizations acquire goods, services and works from third parties. The process should be efficient, transparent, and competitive as much as feasible, in order to attain best value for public expenditure and inspire public confidence, considering the fact that the public are the major stakeholders of Government.

Private sector Procurement (generally called Purchasing and Supply) also seeks to obtain goods and services at best value but, unlike a public sector organization, is not obliged to provide equal treatment to all its citizens in the business community. Accordingly, it is common in the private sector to construct longer-term relationships with a key group of suppliers and contractors and to seek efficiencies throughout the supply chain.

Question 2

What does the Bureau of Public Procurement Law seeks to achieve?

Response/Answer

The Plateau State Bureau of Public Procurement Law is based on the UNCITRAL model which is a properly regulated Procurement system benchmark on international best practice. The model draws from different legal cultures; balances the interest of foreign and domestic bidders; promotes transparency and allows great flexibility in the use of the provisions of the Law. The Law also established the Plateau State Public Procurement Agency and its Governing Board to formulate policies and guidelines for the application of the Law and ensure compliance by all public bodies.

QUESTION 3

What is the difference between the old system of Bureau of Procurement and the new system?

Response/Answer

In the old system, Procurement is centralized with contract award decisions taken by a central Tenders Board. Operations are guided by Financial Regulations / Treasury Circulars on public expenditure as issued by the Ministry of Finance. Over time and as Procurement expanded the FR/TC became grossly inadequate, giving room to discretionary application and promoting corruption.

In the new system, Procurement is decentralized but with a central regulation through a Procurement Law. Responsibility for compliance rests with the Accounting Officer of the MDA and enforcement through a specialized Regulatory Agency (BPP). The new system is robust and effective and gives a step by step approach for each category of Procurement through the use of various standard documents and manuals.

QUESTION 4

The Law came into effect on 1st February, 2015, but no full implementation yet. Why?

Response/Answer

The Law recognize the need to put adequate and efficient structures in place in order to ensure a seamless implementation. This would include sensitization programs for all Stakeholders, capacity building for about 60 Procurement Officers services-wide (including the LGAs) and the setting up of the Regulatory Agency (PLSBPP). Accordingly, the Law provides for up to 6months for a gradual wind-down and transitioning between the outgoing and emerging systems of Procurement. During this transitioning, partial implementation is expected to commence in 2016 and full implementation by 2017. Before then, necessary regulations to guide implementation would have been released.

QUESTION 5

What are the roles of a Procurement Officer?

Response/Answer

The Procurement Officer primarily assists the Accounting Officer to drive and facilitate the Procurement process in accordance with the provisions of the Law. In summary and by virtue of his/her training, he/she ensures that each stage of the Procurement process from initiation to contract award is carried out according to the requirements of the law.

QUESTION 6

What are the roles of the Accounting Officers (i.e. P.S/DG/GM etc) under the new Procurement regime?

Response/Answer

The Accounting Officer is charged with line supervision of the conduct of all Procurement processes. He/she has overall responsibility for the planning and organization of tenders, evaluation of tenders and execution of all Procurement, as well as certain specific responsibilities that are set out in the Law.

QUESTION 7

How is the whole system expected to function under the new Procurement regime?

Response/Answer

It is expected that the new Procurement System will make for more efficient conduct of tendering managed by a professional Procurement cadre, with fewer opportunities for corruption and malpractices, so that contracts are awarded to the supplier offering best value.

QUESTION 8

What is the synergy between the Procurement Office and State Tenders Board?

Response/Answer

For a six months transitional period, the State Tenders Board will continue to be the approving authority for the award of contracts within a benchmark to be set by the Plateau State Bureau of Public Procurement, after which each Ministry, Extra-Ministerial entity, Government Agency, Parastatals or Corporation will be expected to have set up its own Tenders Board including the Local Government Councils.

QUESTION 9

What is the relationship between Public Procurement Department and other Departments like Planning, Research and Statistics Unit During Budget preparation especially costing of Programmes/Projects?

Response/Answer

The Planning, Research and Statistics Unit will be one of the offices represented on the Procurement Planning Committee, to which the Procurement Officer will be the Secretary.

QUESTION 10

Who will be responsible for checks and balances of the Bureau?

Response/Answer

The appointment of the Governing Board will provide oversight of the actions of the Bureau staff to ensure that they carry out their responsibilities impartially and in accordance with the Law.

QUESTION 11

Based on the criteria for selection of bidders especially on years of experience; what is the place for newly established firms?

Response/Answer

The principle is that contractors should be qualified and capable of carrying out their responsibilities under the contract. Large contracts should therefore only be awarded to bidders with the financial, equipment and staff resources to carry out the work but there are smaller contracts which would be suitable for newly established firms and small and medium sized enterprises to compete.

QUESTION 12

What are the steps involved in contract dispute resolution?

Response/Answer

The first step should be to seek amicable settlement, without compromising important requirements under the contract or allowing the contractor to reduce the quality of the goods, works or services provided. Contracts should also include an arbitration clause. Legal action may sometimes be necessary but should be taken only as a last resort when other steps have failed. Contractors who fail to execute contracts satisfactorily and to meet contractual obligations may be blacklisted by the BPP.

QUESTION 13

What are the roles of Civil Society in the Bureau of Public Procurement Regime?

Response/Answer

Civil society has a role in monitoring performances to ensure that it is fair and transparent and carried out in accordance with the Law. It is intended that one member of the Governing Board of the Agency should be from a Civil Society Organisation. CSOs and other interested members of the public may attend bid openings.

QUESTION 14

In case you want to purchase outright good such as motor vehicle, do we need to go through bidding system by inviting tender from the public?

Response/Answer

Open competitive bidding must be used when the value of the Procurement exceeds the amount set in threshold. There are separate procedures for lower-value Procurements but these should be carried out fairly according to rules.

QUESTION 15

What are the specific roles of the Bureau of Public Procurement in the award of contracts?

Response/Answer

PLSBPP oversees the Procurement system and issues a Certificate of No Objections prior to the award of contract above a threshold.

QUESTION 16

Can the Plateau State Bureau of Public Procurement cancel a contract that has been awarded by an MDA?

Response/Answer

The PLSBPP may conduct an investigation to prevent or detect a contravention of the Plateau State Public Procurement Law and may cancel a Procurement contract if it is satisfied that there has been a contravention of the provisions of the Law or its Regulations.

QUESTION 17

How can a Contractor that defaulted on contract terms be penalized by Plateau State Bureau of Public Procurement Agency?

Response/Answer

The PLSBPP is empowered to blacklist or debar any Supplier, Contractor or Consultant that contravenes any provision of the Plateau State Public Procurement Law and Regulations made pursuant to the Law. There are also offences relating to contraventions of the Law that may lead to firms being barred from all Public Procurement for a period of not less than 10 years and further punishment for the individual Directors and Partners.

QUESTION 18

What will be the role of Ministerial Tenders Board (MTB) in this new Public Procurement Regime?

Response/Answer

Ministerial Tenders Boards will be the approving authority for contracts awarded by that Ministry, though contracts above the threshold set by the Bureau, will also require a Certificate of No Objection to be issued by PLSBPP.

QUESTION 19

How do you intend to ensure that the Procurement process does not delay the implementation of Projects at MDA level.

Response/Answer

The PLSBPP shall encourage procuring entities through proper planning of their requirements to begin the Procurement process in sufficient time for goods, works and services to be made available by the time required. The law also provides that the period between the opening of bids and the award of contract shall not exceed 3 months.

QUESTION 20

Will MDAs have a Procurement limit or will all Procurements be done by the new BPP?

Response/Answer

The MDAs will carry out all their own Procurements in line with the rules and regulations set by the bureau and once the prior – review threshold limit is exceeded, it shall be subject to a Certificate of No Objections being issued by PLSBPP.

QUESTION 21

How do we ensure that there is value for Money under the new Bureau of Public Procurement regime?

Response/Answer?

The fair and transparent procedures in the Law are designed to encourage competition among suppliers who are qualified to perform the contract and who put in a responsive bid. Greater competition should lead to value for money.

QUESTION 22

How does the Law take care of Emergencies?

Response/Answer

There is provision for emergency Procurement where the State is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or an Act of God or where the condition or quality of goods, equipment, building or publicly-owned capital goods may seriously deteriorate unless urgent action is taken. In this circumstance a procuring entity may initiate direct contracting method under the emergency procurement.

QUESTION 23

Is it only Procurement Officer that would be purchasing all Ministries' items needed? If so, what would be left for Administrative Officers in the Finance & Administration Dept.

Response/Answer

It is the function of the Procurement Officer to carry out the Procurement processes. Finance & Administration Dept has other administrative duties to perform. Procurement Planning Committee must be put in place in all MDAs, composition of which, should include a representative from the Finance & Administration Dept.

QUESTION 24

How will the Law be implemented in the Hospital Environment where most supplies are on emergency basis eg. Drugs for specific epidemics, Oxygen, Medical Materials or equipment

Response/Answer

Genuine medical emergencies will be covered by the emergency provisions mentioned above. Most medical supplies are required for regular medical services and should be procured through normal arrangements.

QUESTION 25

How can the BPP ensure that there is no conflict of interest in the award of contracts by the MDAs?

Response/Answer

Conflict of interest is carefully defined in the Law and is made a serious offence. The PLSBPP is empowered to investigate offences and offenders may be prosecuted.

QUESTION 26

What is the relationship between the Office of Public – Private Partnership and Plateau State Bureau of Public Procurement Agency?

Response/Answer

The two offices are separate and perform different functions. However, the Office of PPP as a procuring entity is expected to comply with the Procurement Law where it applies to its functions because, most PPP assignments are done through the procurement principles.

QUESTION 27

Does the Law still have room for Direct Labour in the System?

Response/Answer

The Regulations will provide for direct labour to be used in appropriate circumstances.

QUESTION 28

What is the role of the Plateau State Bureau of Statistics (as an authority on fair pricing) vis a vis PLSBPP's functions?

Response/Answer

Procuring entities can make use of the assistance of the Plateau State Bureau of Statistics in estimating costs and determining whether a tender price is fair but not compulsory.

QUESTION 29

What happens where the lowest cost evaluated bid from the bidders who respond to the bid solicitation is higher than the established in-house estimate by the MDA in view of the fact that the Procurement Law does not allow for negotiations?

Response/Answer

The procuring entity may reject any bid and cancel Procurement proceedings without incurring any liability to bidders if the lowest evaluated bid does not offer value for money. Moreover, the BPP may refuse to endorse the award of a contract on the grounds that the price is manifestly excessive. In these circumstances the procuring entity should begin the Procurement process again with amended specifications that are more in line with what the market can provide and its budgetary limitations. If there has been reasonable competition, the procuring entity should consider whether the in-house estimate is realistic.

QUESTION 30

Which Department determines prices of works, goods and services to be procured in an establishment out of the following:

- *Procurement Office assisted by the Works and Services Department during the period of evaluation of Bids for Works*

Response/ Answer

The Procurement Department is responsible for conducting market survey for all items to be procured under Goods category but may be supported by the User Department if the item is highly specialized or technical in nature. For procurement of Works, the Engineering Dept/Ministry of Works will assist in the price determination through the content of Bill of Quantities while the estimated fee for Consultancy Services is built up from the Terms of Reference (TOR) drafted by the User Department. Estimated prices should be set out in the Procurement plan which is endorsed by the Procurement Planning Committee made up of broad representation within the MDA. Final approval with respect to the operation feasibility of the procurement plan shall be given by the BPP.

QUESTION 31

Explain what you mean by Lowest Evaluated Responsive Bidder.

Response/Answer

The Bidder who offers the lowest prices bid among bidders who are qualified to perform the contract and whose bid meets the technical specifications in the bid document is the lowest evaluated responsive bidder

QUESTION 32

What is the structure of Procurement Department in MDAs?

Response/Answer

The size and structure depends on the category of the MDA in terms of budget size and nature. Key spend MDAs like Ministries of Works and infrastructure, Health and Environment, Education, Housing, Agriculture etc will have full-fledge Departments while smaller MDAs could operate a Procurement Unit. In any case, the Head of Procurement Unit reports directly to the Accounting Officer.

QUESTION 33

Is the Procurement Department under the Finance and Administrative Department?

Response/Answer

The Accounting Officer is charged with line supervision of all Procurement processes through the MDA's Procurement Department or Unit under the Plateau State Public Procurement Law. The Procurement Department/Unit is directly under the line supervision of the Accounting Officer and not the Finance and Administrative Department.

QUESTION 34

How does the Public Procurement Law affects the Local Governments and the Local Council Development Areas in the State?

Response/Answer

The Law applies to Local Government/ Local Councils Development Areas.

QUESTION 35

Are the Procurement officers under the Civil Service Commission?

Response/Answer

Yes, except those employed directly by Government Agencies or Parastatals and not through the Civil Service Commission

QUESTION 36

What are the requirements and qualification for conversion into the Procurement Officers' Cadre?

Response/Answer

Presently, any basic University degree or HND in relevant discipline and the final professional qualification of the Chartered Institute of Purchasing and Supply Management of Nigeria.

QUESTION 37

Which MDA is responsible for the promotion and Discipline of the Procurement Officers?

Response/Answer

The State Civil Services Commission but will delegate the process and power to the Plateau State Bureau of Public Procurement.

QUESTION 38

Can an officer converted into the Procurement Officers' Cadre and subsequently request for re-deployment out of the Cadre?

Response/Answer

An officer can opt to return to his original cadre, provided the request is made within the transitional period of six months (2016).

QUESTION 39

Is there a special scale and allowance for Procurement Officers?

Response/Answer

No, but a performance management system to incentivize the Procurement Officers shall be put in place.

QUESTION 40

What is the relationship between the Procurement Officers, Auditors, Budget Officers and Store Officers?

Response/Answer

Each cadre has its own responsibility and job description and are to work together as a team. Each should have representative in the Procurement Planning Committee of the MDA

QUESTION 41

On conversion to Procurement Cadre, what will be the effective date for promotion purposes, will the officer retain the former level and step after conversion?

Response/Answer

Yes, depending on the date of conversion, it shall be either 1st of January, or 1st of July of the promotion year. Re- designation will be without prejudice to date of present appointment within the transitional period.

QUESTION 42

How do you intend to fill the gaps at the Directors Level.

Response/Answer

Through internal and external advertisement where necessary. This is expected to be carried out later in the year 2017.

QUESTION 43

Explain what is Lateral Conversion

Response/Answer

Movement from one cadre to another without being stepped down to a lower grade. However, this grace does not confer any other privilege or right that is not in accordance with the Schemes of Services to the affected Staff.

After the transition period (2016), the normal rules and procedure for conversion shall apply to any application for conversion to Procurement Cadre

QUESTION 44

Who is responsible for registration of contractors?

Response/Answer

The Plateau State Bureau of Public Procurement is empowered by law to maintain a database of contractors and services providers and to prescribe their classifications and categorizations. However, each Procuring Entity is expected to maintain a registered supplier list drawn from the Bureau's master list for their regular procurement and from which 'Request for Quotations (RfQ) should be invited.

QUESTION 45

How will the Procurement Law encourage participation of local contractors?

Response/Answer

All contracts to be procured through National Competitive Bidding (NCB) and contracts below specified thresholds are reserved for local contractors. However, where a foreign bidder indicates interest in NCB, it shall not be excluded but its bid shall be subjected to the application of margin of preference in favour of local bidders. Margin of preference may also apply to tenders under all International Competitive Bidding (ICB). In all situations, the limit and formulae for computation of margins of preference to be set by the Procurement Agency, shall be indicated in the Bid Document.

QUESTION 46

As a contractor interested in participating in provision of services/procurement process, how will I be aware of the opportunities when they arise?

Response/Answer

All Procurement shall be advertised as follows:

- (i) Invitation to Bid: For all contracts under ICB – use of two national newspaper, one relevant internationally recognized newspaper, official websites of the Procuring Entity and the Bureau as well as the State Procurement Journal.
For all contracts under NCB – advertisement in one local Newspaper and one National Newspaper in addition to the Notice Board of the Procuring Entity and the State Procurement Journal.

- (ii) Request for Quotations – Through direct invitation of at least three quotations from suppliers list. This shall be conducted on rotational basis to ensure equal opportunities. All statements of requirements shall be distributed to suppliers in writing and all quotations from suppliers shall be submitted in writing.