

GUIDELINES TO INCREASING SMES PARTICIPATION IN CONTRACTS AWARDED BY OGUN STATE GOVERNMENT

1. INTRODUCTION

In recognition of the vital role of Small and Medium Enterprises (SMEs) in the economic growth of Ogun State, the State Government considers it imperative to encourage and facilitate their participation in public procurement procedures subject to the application of the provisions of the state Public Procurement Law (PPL).

The State Government recognizes that SMEs face a number of challenges that inhibit their ability to effectively participate and win contracts awarded. The purpose of these guidelines is to seek to address those challenges by providing solutions to overcome such challenges/barriers faced by SMEs and thereby enable them to not only participate in such contracts but also to be able to submit responsive bids that will lead to award of contracts in the State.

2. DEFINITION OF SMEs

The classification adopted in the National Policy on Micro, Small and Medium Enterprises is as shown in the table below:

Classification adopted by National Policy on MSMEs:¹

	SIZE CATEGORY	EMPLOYMENT	ASSETS (n MILLION) (excluding land and buildings)
1	Micro enterprises	Less than 10	Less than 5
2	Small enterprises	10-49	5 – less than 50
3	Medium enterprises	50-199	50 – less than 500

For the purpose of these guidelines the employment-based classification for medium enterprises will be adopted. Therefore, SMEs will be defined as enterprises employing less than 200 persons.

3. OBJECTIVES

The guidelines are set out to achieve enhancement of SMEs participation in the Public Procurement activities of the State Government thereby:

- implementing its economic inclusiveness policy
- broadening the scope of SME sub-sector in the State
- promoting competitiveness and flexibility in line with the global best practices

4. OVERCOMING COMMON BARRIERS TO SMES PARTICIPATION IN OGUN STATE PUBLIC CONTRACTS/PROCUREMENT ACTIVITIES

¹ National Policy on Micro, Small and Medium Enterprises issued by Small & Medium Enterprises Development Agency of Nigeria.

- 4.1 Many SMEs lack knowledge of bidding opportunities in the MDAs. To address this, announcement of all proposed Contracts/Procurement bids will be made on major media platforms and via relevant Business Membership Organizations (BMO) e.g. OGUNCCIMA, NASME etc.
- 4.2 To help improve SMEs knowledge of the State's PPL and bidding procedures, training sessions and workshops will be organized for SMEs on the States bidding procedures including the PPL.
- 4.3 To overcome the challenge around value of contracts being too high for SMEs to participate due to inability to meet financial (cashflow, average turnover) and similar experience requirements, Ogun State will:
 - 4.3.1 consider breaking down the contract package in lots in quantitative and qualitative terms
 - 4.3.2 consider relaxing the qualification criteria to such a level as to meet the required conditions for the estimated value of the contract being bided.
 - 4.3.3 Encourage SMEs to participate as joint ventures and/or subcontractors
- 4.4 SMEs should consider carrying out appropriate research and market analysis prior to tendering
- 4.5 To address difficulties faced from tight deadlines for preparation of bids, the State will increase deadlines for submission of bids especially for complex contracts.
- 4.6 To mitigate the high cost of bid preparation including cost of producing paper bids, obtaining the bidding documents and submission of bids to the MDAs, the State will:
 - 4.6.1 Allow free download of bidding documents from a freely available website
 - 4.6.2 Waive the cost of obtaining bidding documents or charge the barest minimum to cover the cost of the preparation of the bidding document
 - 4.6.3 Allow electronic submission of password protected, read-only bids and quotation
- 4.7 To mitigate the high cost and difficulty in obtaining financial instruments; bid security, advance payment and performance guaranties, the State will:
 - 4.7.1 Waive the requirement for the submission of financial instruments for contracts below ₦ 1,000,000.00 (One Million Naira)
 - 4.7.2 Allow for submission of performance bond declaration (See Annexure 1) in place of bank performance guarantee and advance payment declaration form (See Annexure 2) instead of advance payment guarantee.
 - 4.7.3 Allow for submission of Bid Securing Declaration (See Annexure 3) instead of Bid Security
- 4.8 To address the inability of SMEs to raise sufficient funds to implement awarded contracts, the State will increase advance payments up to 40% of contract amount.

5. OVERCOMING COMMON ERRORS OF SMES IN PUBLIC PROCUREMENT PROCEDURES

In addition to obstacles/barriers faced by SMEs in participating in public procurement contracts, SMEs also commit some errors when they participate in public procurement contracts. Some of these errors and how they can be overcome are listed in this section.

- 5.1 Failure to follow up on notices of bidding opportunities, thereby missing out on applying on a timely basis. SMEs should monitor daily, notices on the states, and/or PPAs' website or the eProcurement portal.

- 5.2 Poor understanding of the requirements by not properly studying the bidding documents including the technical specifications. SMEs should pay special attention to reviewing details of the technical specifications and the requirement of the bidding documents
- 5.3 Failure to request for clarification of bidding documents /untimely submission of the request for clarification. SMEs should take advantage of provisions of the PPL which allows bidders to request for clarifications of the bidding document within the time stipulated in the issued bidding document
- 5.4 Late submission of Bids. SMEs should do all that is required to comply with the submission deadline stipulated in the bidding document
- 5.5 Failure to submit with the bids all requested documentary evidence supporting the requirements of the bidding documents. SMEs should ensure that ALL required evidence to support bid submission are included in the bid.

6. TRAINING OF SMEs ON THESE GUIDELINES

The Public Procurement Agency (PPA) will always provide training sessions to SMEs on these guidelines to enable them to participate and win contracts in the state. SMEs are enjoined to always take advantage of this training whenever the training advertisement is published.

7. OUTLINE OF PROCUREMENT PROCESS

The following are the steps that the MDAs must follow in conducting public procurement process:

- (a) Advertise and solicit for bids
- (b) Receive, evaluate and select winning bid
- (c) Invite two credible persons as observers. One from private sector professional organisation and the other from non-governmental organisation working in transparency, accountability and anti-corruption areas
- (d) Obtain approval of the approving authority before making award
- (e) Debrief the bid losers on request (See Annexure 4)
- (f) Resolve complaints and disputes if any (See Annexure 5)
- (g) Obtain and confirm the validity of any performance guarantee;
- (h) Execute all Contract Agreements; and
- (i) Announce and publicize the award

8. MONITORING OF SMEs PARTICIPATION

Each MDA will submit to the PPA the details of contracts awarded by the MDA on monthly basis. The details will be published on the PPA website. The following information will be provided for each contract:

- Description of the contract
- The names of the bidders
- The number of persons employed by the bidders
- The winning bidder and state if the winning bidder, is an SME.

The BPP will also provide training to the MDAs on the application of these guidelines.

A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a horizontal line and a small circle above it.

Signed: Hon Commissioner for Budget & Planning

Date: 14-9-2020

Annexure 1

Performance Bond Declaration

By this Bond *[insert name of Principal]* as Principal (hereinafter called "the Supplier") and *[insert name of Surety]* as Surety (hereinafter called "the Surety"), are held and firmly bound unto *[insert name of Purchaser]* as Obligee (hereinafter called "the Supplier") in the amount of *[insert amount in words and figures]*, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Supplier and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Supplier has entered into a written Agreement with the Purchaser dated the ____ day of ____, 20____, for *[name of contract and brief description of Goods and related Services]* in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Supplier shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Supplier shall be, and declared by the Purchaser to be, in default under the Contract, the Purchaser having performed the Purchaser's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or Bids from qualified Bidders for submission to the Purchaser for completing the Contract in accordance with its terms and conditions, and upon determination by the Purchaser and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Purchaser and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Purchaser to Supplier under the Contract, less the amount properly paid by Purchaser to the Supplier; or
- (3) pay the Purchaser the amount required by Purchaser to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Purchaser named herein or the heirs, executors, administrators, successors, and assigns of the Purchaser.

In testimony whereof, the Supplier has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this _____ day of _____ 20 ____.

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

Annexure 2

Advance Payment Declaration Form

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[insert amount in figures]* () *[insert amount in words]* is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* () *[insert amount in words]*¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- (a) has used the advance payment for purposes other than toward delivery of Goods; or
- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has

¹ *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Purchaser.*

been credited to the Applicant on its account number *[insert number]* at *[insert name and address of Applicant's bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, has been certified for payment, or on the *[insert day]* day of *[insert month]*, 2 *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No.758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

Annexure 3

Bid-Securing Declaration

[The Bidder shall fill in this Form in accordance with the instructions indicated.]

Date: *[date (as day, month and year)]*

Bid No.: *[number of RFB process]*

Alternative No.: *[insert identification No if this is a Bid for an alternative]*

To: *[complete name of Purchaser]*

We, the undersigned, declare that:

We understand that, according to your conditions, Bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding or submitting proposals in any contract with the Purchaser for the period of time of *[number of months or years]* starting on *[date]*, if we are in breach of our obligation(s) under the Bid conditions, because we:

- (a) have withdrawn our Bid during the period of Bid validity specified in the Letter of Bid; or
- (b) having been notified of the acceptance of our Bid by the Purchaser during the period of Bid validity, (i) fail or refuse to sign the Contract; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITB.

We understand this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Name of the Bidder* _____

Name of the person duly authorized to sign the Bid on behalf of the Bidder** _____

Title of the person signing the Bid _____

Signature of the person named above _____

Date signed _____ day of _____, _____

*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

** : Person signing the Bid shall have the power of attorney given by the Bidder attached to the Bid

[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all members to the Joint Venture that submits the Bid.]

Annexure 4

HOW AN SME CAN REQUEST FOR DEBRIEF

Section 22 (c) of the Ogun State Public Procurement Law, 2020 provides for the debriefing of unsuccessful bidders on request.

A bidder may request to be debriefed on a particular procurement process by sending a written request for debrief addressed to the Accounting Officer of the procuring entity.

Annexure 5

COMPLAINT HANDLING MECHANISM

Section 58 of the Ogun State Public Procurement Law 2020 prescribed the procedure for handling complaint in public procurement processes as follows:

58 (1) A bidder may seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of this Act, or any regulations or guidelines made under this Act or the provisions of bidding documents.

(2) A complaint by a bidder against a procuring or disposing entity shall first be submitted in writing to the accounting officer who shall within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint or should have become aware of the circumstances, whichever is earlier;

(3) on reviewing a complaint, the accounting officer shall make a decision in writing within 15 working days indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision

(4) If the bidder is not satisfied with the decision of the accounting officer or the accounting officer does not make a decision within the period specified in sub-Section 3 above, the bidder may make a complaint to the Bureau within 10 working days from the date of communication of the decision of the accounting officer.

(5) Upon receipt of a complaint, the Bureau shall promptly:

(a) Give notice of the complaint to the respective procuring or disposing entity and suspend any further action by the procuring or disposing entity until the Bureau has settled the matter;

(b) unless it dismisses the complaint:

(i) prohibit a procuring or disposing entity from taking any further action;

(ii) nullify in whole or in part an unlawful act or decision made by the procuring or disposing entity;

(iii) declare the rules or principles that govern the subject matter of the

complaint; and

(iv) revise an improper decision by the procuring or disposing entity or substitute its own decision for such a decision.

(6) Before taking any decision on a complaint, the Bureau shall notify parties concerned of the complaint and may take into account representations from the parties.

(7) The Bureau shall make its decision within twenty-one (21) working days after receiving the complaint, stating the reasons for its decisions and remedies granted, if any,

(8) Where the Bureau fails to render its decision within the stipulated time, or the bidder is not satisfied with decision of the Bureau, the bidder may appeal to the High Court within 30 days after the receipt of the decision of the Bureau, or expiration of the time stipulated for the Bureau to deliver a decision.