

LAMATA PROCUREMENT POLICY

LAGOS URBAN TRANSPORT PROJECT (LUTP)

PROFICIENT PUBLIC PROCUREMENT: WHY DOES IT MATTER?

The principal hallmarks of proficient public procurement are:

- Economy;
- Efficiency;
- Fairness;
- Reliability;
- Transparency; and
- Accountability and Ethical Standards.

Economy: Procurement is a purchasing activity whose purpose is to give the purchaser best value for money. For complex purchases, value may imply more than just price, for example, since quality issues also need to be addressed. Moreover, lowest initial price may not equate to lowest cost over the operating life of the item procured. But the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money.

Efficiency: The best public procurement is simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the purchasing entity and its procurement personnel.

Fairness: Good procurement is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to compete and thereby, directly expands the purchaser's options and opportunities.

Transparency: Good procurement establishes and then maintains rules and procedures that are accessible and unambiguous. It is not only fair, but should be seen to be fair.

Accountability and Ethical Standards: Good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to challenge and to sanction, if appropriate, for neglecting or bending those rules. Accountability is at once a key inducement to individual and institutional probity, a key deterrent to collusion and corruption, and a key prerequisite for procurement credibility.

A sound procurement system is one that combines all the above elements. The desired impact is to inspire the confidence and willingness-to-compete of well-qualified vendors. This directly and concretely benefits the purchasing entity and its constituents, responsive contractors and suppliers, and the donor agency providing the project finance.

Conversely, a procurement system that takes the above elements stimulates hesitation to compete, submission of inflated bids containing risk premia, or submission of deflated bids followed by delayed or defective performance. Other direct results include collusion in bribery by frustrated or unscrupulous vendors and purchasing entities, bad value for those entities and their constituents, and betrayal and abuse of the public trust for personal gain.

In sum, proficient public procurement is not difficult to describe in principle or to distinguish from its antithesis in practice. But it does require varied professional and technical know-how to establish, as well as discipline and determination to administer.

Why Is Proficient Public Procurement So Important?

Public procurement is the process by which LAMATA buy the inputs for vital public-sector investments. Those investments, both in physical infrastructure and in strengthened institutional and human capacities, lay foundations for the State development. In procurement terms, those inputs are generally grouped into three categories:

- civil works - for example, bridges and buildings, and highways;
- goods - typically equipment, materiel and supplies; and
- services - expert advice and training, conventionally labeled Technical Assistance, as well as such things as building maintenance, engineering designs and supervision of civil works, computer programming, etc.

The quality, timeliness, local appropriateness and affordability of those procured inputs can largely determine whether the public investments will succeed or fail. So the beneficial impact and contribution of the input, particularly in the case of technical assistance services, can exceed their direct costs, by several orders of magnitude. Yet procurement costs can be substantial, consuming scarce resources of tightly constrained government budgets. Moreover, the process also consumes scarce skilled public/private-sectors human resources. It takes time, not merely for procurement planning and contracting but also for contract supervision and execution. And much of this process is highly visible, as well as controversial, exposing LAMATA staffs and its Board to scrutiny and second-guessing for procurement choices they made, deferred or discarded.

LAMATA will have four basic concerns that govern its procurement policies:

- to ensure that the goods and services needed to carry out the project are procured with due attention to economy and efficiency;
- to ensure that any external finance/loans/credits, LSG budget and Transport Fund are used to buy only those goods, works and services needed to carry out the project;
- to encourage development of local contractors and manufacturers in Nigeria; and
- to ensure that the procurement process is transparent.

The LAMATA's procurement guidelines and procedures have been designed to promote fairness and equal treatment.

The summary of the proposed procurement arrangement under the LUTP are presented in Table 1 & 2.

Table 1: Project Costs by Procurement Arrangements
(US\$ million equivalent)

Expenditure Category	ICB	Procurement NCB	Method ¹ Other ²	N.B.F.	Total Cost
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1. Works	51.35	41.09	0.00	0.00	92.44
	(41.51)	(33.21)	(0.00)	(0.00)	(74.72)
2. Goods	0.00	1.62	1.08	0.00	2.70
	(0.00)	(1.36)	(0.90)	(0.00)	(2.26)
3. Services	0.00	0.00	30.11	0.00	30.11
	(0.00)	(0.00)	(23.02)	(0.00)	(23.02)
4. Operating costs	0.00	0.00	9.75	0.00	9.75
	(0.00)	(0.00)	(0.00)	(0.00)	(0.00)
Total	51.35	42.71	40.94	0.00	135.00
	(41.51)	(34.57)	(23.92)	(0.00)	(100.00)

1/	Figures in parenthesis are the amounts to be financed by the IDA Credit. All costs include contingencies.
2/	Includes civil works and goods to be procured through national shopping, consulting services, services of contracted staff of the project management office, training, technical assistance services, and incremental operating costs related to (i) managing the project, and (ii) re-lending project funds to local government units.

Table 2: Thresholds for Procurement Methods and Prior Review

Expenditure Category	Contract Value Threshold (US\$)	Procurement Method	Contracts Subject to Prior Review (US\$ millions)
1. Works	US\$1,000,000 and above	ICB	All
	US\$500,000 - 1,000,000	NCB	All
	<US\$500,000	NCB	1st two contracts, then post review.
	US\$1,000,000 and above	Pre-qualification	All
2. Goods	US\$150,000 and above	ICB	All
	US\$30,000- US\$150,000	NCB	1st contracts, then post review
	Less than US\$30,000	Shopping	Post review
	All procurement from UN Agencies	UN Agencies	All
3. Services	US\$100,000 and above	QCBS	All
	Below US\$100,000 (firms)	CQ	Post review
	US\$50,000 and above (individual)	IC	All
	Below US\$50,000 (individual)	IC	Post review
4. Training	US\$15,000 and above	CQ	All
Total value of contracts subject to prior review:			\$88 million

ICB - International Competitive Bidding; NCB - National Competitive Bidding; QCBS - Quality and Cost Based Selection Method; CQ - Selection Based on Consultants' Qualifications; IC - Individual Consultant.

Procurement Arrangements- LAMATA shall use World Bank procurement guidelines

- All goods, works and services financed under the IDA credit shall be procured in accordance with the appropriate IDA Guidelines (*Guidelines: Procurement under IBRD Loans and IDA Credits*, January 1995 and as revised in January and August 1996, September 1997, and January 1999; and *Guidelines: Selection and Employment of Consultants by World Bank Borrowers*, January 1997 and as revised in September 1997 and January 1999);
- World Bank's standard bidding documents for goods and works, and Standard Requests for Proposals for consultants as well as all World Bank's standard evaluation forms shall be used by LAMATA;
- Since National Standard Bidding Documents does not exist in LAMATA, the World Bank's Standard Documents for goods and works shall be adopted (in the form satisfactory to IDA), for use for all NCB procurement packages;
- However, all NCB procedures shall ensure that:
 - (i) bids will be advertised in national newspapers with wide circulation;
 - (ii) the bid document clearly explains the bid evaluation and award criteria;
 - (iii) bidders are given adequate response time (minimum four weeks) to prepare and submit bids;
 - (iv) bids will be awarded to the lowest evaluated bidder and not arbitrarily;
 - (v) eligible bidders, including foreign bidders, will not be precluded from participating; and
 - (vi) no domestic preference margins are applicable to domestic manufacturers or suppliers.

Advertising

- A General Procurement Notice (GPN) is mandatory and shall be published in the UN Development Business and in a national newspaper as provided under the Guidelines;
- The GPN shall be updated on a yearly basis and will show all outstanding International Competitive Bidding (ICB) for goods and works contracts and all International consulting services;
- A Specific Procurement Notice (SPN) is required for all goods and works to be procured under ICB and Expressions of Interest (EOI) for all consulting services with a value in excess of US\$100,000;
- All NCB procurement packages for goods and works shall be advertised in the national dailies and sufficient time (not less than 4 weeks) will be allowed to obtain the bidding documents.

Procurement Methods

The following procurement methods shall apply to procurement of goods, works and services and training under LAMATA.

Goods

- Items such as vehicles, computers and accessories, communication equipment and other supplies shall be procured under goods;
- To the extent possible and practicable, goods and equipment to be purchased by LAMATA shall be grouped into bid packages to take advantage of bulk purchase;
- Each goods contract estimated to cost the equivalent of US\$150,000 or more will be procured under ICB procedures using IDA Standard Bidding Documents;
- Each contract for goods estimated to cost less than US\$150,000 up to an aggregate of US\$1,620,000 shall be procured through National Competitive Bidding (NCB) using procedures acceptable to IDA;
- Procurement for readily available off-the-shelf goods that cannot be grouped or standard specification commodities for individual contracts of less than US\$30,000, up to an aggregate of US\$1,080,000 will be procured using shopping procedures as detailed in paragraph 3.5 and 3.6 of the World Bank's Procurement Guidelines; and
- Procurement of goods and hiring of facilities for training purposes, such as workshops, will also be carried out using Bank shopping procedures.

Procurement from United Nations Agencies:

- Notwithstanding the above provisions, vehicles and equipment up to an aggregate amount not exceeding US\$1,000,000 may be procured from IAPSO

Civil Works

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- Civil Works contracts shall include road works for routine, recurrent and periodic maintenance, rehabilitation, bridge repair and traffic system management measures, the construction of jetties for small boats and ferries and the construction and furnishing of the LAMATA building;
 - Pre-qualification shall be required for contracts estimated to cost US\$1,000,000 equivalent and more;
 - The pre-qualification exercise shall be conducted yearly and transparently based on the procurement plan;
 - Each civil works contract, estimated to cost equivalent of US\$1,000,000 or more, shall be procured under ICB procedures using IDA Standard Bidding Documents;
 - Each contract for civil works, estimated to cost less than equivalent of US\$1,000,000 up to a total aggregate of US\$45 million, will be procured through National Competitive Bidding (NCB) using procedures acceptable to IDA;
 - Under NCB, the procedures should ensure that:
 - (i) evaluation criteria to be used for award of contracts are made known to all the bidders and not be applied arbitrarily;
 - (ii) all bidders are given adequate response time (minimum of four weeks) for preparation and submission of bids;
 - (iii) bid evaluation and bidder qualification are clearly specified in the bidding documents;
 - (iv) no preference margin is granted;
 - (v) interested eligible foreign firms are not precluded from participation;
 - (vi) award of contract will be made to the lowest evaluated responsive bidder;
 - (vii) the bid evaluation reports will clearly state the reasons to reject any non-responsive bid; and
 - (viii) prior to issuing the first call for bids, the draft standard bidding documents prepared by LAMATA shall be submitted to IDA for review and no objection.

Consulting Services and Training

- Consultants Services shall be procured using the *Selection and Employment of Consultants by World Bank Borrowers*, January 1997 and as revised in September 1997 and January 1999 shall include the following:
 - (i) engineering services for the preparation of feasibility studies, detailed design, tender documents, supervision of works, and data collection;
 - (ii) technical assistance for advisory services in procurement, audit, accounting, and financial management;
 - (iii) strengthening institutional capacity through the establishment of adequate policy regulatory and institutional framework;
 - (iv) resettlement and land acquisition studies; and

- (v) short-term consultant services on specific technical matters including road safety audits, TSM measures to improve traffic flow, structural investigations for bridges; road and bridge management system, and GIS.
- All consultancy assignments estimated to cost US\$100,000 or more shall be procured through QCBS and will be advertised in Development Business and in at least two national newspapers. In addition, the scope of the service may be advertised in an international newspaper or magazine seeking "expressions of interest."
- Consultancy assignments estimated to cost less than US\$100,000, the assignment may be advertised nationally and the shortlist may be made up entirely of national consultants in accordance with section 2.7 of the Consultant Guidelines (ie that at least three qualified national firms are available in the country and foreign consultants who wish to participate are not excluded from consideration);
- Consultant services estimated to cost less than the equivalent of US\$100,000 may be contracted by comparing the qualifications of consultants, who have expressed an interest in the job or who have been identified;
- All consulting services of individual consultants will be procured under individual contracts in accordance with the provisions of paragraphs 5.1 to 5.3 of the World Bank' Procurement Guidelines;
- Consultants for assignments of a standard routine nature such as audits, short term assignments and engineering design of simple works that are smaller than \$100,000 may be selected on the basis of least-cost method;
- LAMATA may use single source selection method consistent with the provisions of paragraph 3.8 to 3.11 of the guidelines.

Qualification of Bidders

Prequalification of Bidders

Prequalification shall be required for works contracts of US\$ 1 million or more. In initiating the procurement process, whether or not there is prequalification of bidders LAMATA's PU shall carry out the following processes, to initiate and manage the bidding process:

- distribute the Invitation for Prequalification to potential suppliers/contractors;
- distribute any necessary addendum to the prequalification documents within the allotted time specified in the Particular Instructions to Applicants (PITA);
- distribute all amendments to the prequalification documents to all firms which have expressed interest in the prequalification process after receiving the Invitation for Prequalification;
- organize and prepare the prequalification evaluation teams and facilities; and
- properly manage and evaluate submitted prequalification documents.

The time allowed for these activities are specified in the Particular Instructions to Applicants (PITA) and must allow time for potential suppliers to prepare responsive their prequalification applications for the specific procurement.

Use of Prequalification

Prequalification is aimed at ensuring that only contractors and suppliers who have the required experience, technical and financial resources bid for a contract. Prequalification screens potential bidders and is designed to provide the following benefits:

- Unqualified bidders save the cost of bid preparation which results in lower overhead costs to them and, therefore presumably lower bid prices in the long run, to the benefit of the LAMATA.
- Leading contractors and suppliers, particularly the international ones, are more likely to bid knowing that competition is confined to only those qualified. This is also to the benefit of the LAMATA.
- The scale of interest by potential bidders can be measured, affording the opportunity to revise bidding conditions as necessary to develop adequate competition.
- The evaluation of only bids from qualified bidders may result in time and cost savings to LAMATA, as well as a reduction (or elimination) of the threat of pressure being applied by marginally or unqualified bidders for their low prices to be considered.
- A preliminary indication of a contractor's eligibility for domestic preference in civil works contracts is given, where this is allowed.
- The creation of appropriate joint ventures is encouraged. and
- Providing assistance in locating financing.

Where government agencies or civil works contractors are likely bidders, prequalification may be used to determine that they are not only capable of supplying the items to be procured, but also that they are commercially-oriented and do not enjoy direct or hidden subsidies from the government. This ensures that a fair competitive bidding situation exists and thus, eligible private sector domestic and foreign suppliers and contractors, do not refrain from bidding.

Prequalification should not be used to limit competition to a predetermined number of potential bidders. All applicants who have the qualifications to perform the proposed contract should be prequalified and bidding documents made available to all those who prequalified. No upper limit should be imposed on the number of prequalified potential bidders, but, if the prequalified applicants are too few to ensure competition, a reassessment of the situation can be carried out. This includes:

- further advertising for prequalification submission;
- extension of the deadline for applications;
- review of the proposed contract conditions to reduce contractors' risks; and
- improvement of advance mobilization payments. LAMATA may also review prequalification requirements but should not lower them merely to increase competition. Setting of standards/requirements at different well defined levels may be justified when a contract is divided into several smaller, less complex contracts, and bidding is on a slice or package basis.

After prequalification, prequalified bidders are invited to submit bids which are eventually evaluated. LAMATA is required to award the contract to the bidder offering the lowest evaluated responsive bid. LAMATA should ask bidders to confirm and update essential prequalification information at the time of bid submission. The lowest apparent evaluated responsive bidder may be denied the contract if evaluation of the updated information indicates that the bidder, no longer possesses the necessary capabilities. This could occur because of changed financial situation, loss of equipment or key personnel, or lack of capacity because of new contract commitments on the bidder's part.

Advertising for Prequalification

Advertisements and invitations for prequalification should conform to the provisions of the World Bank's Procurement Guidelines and have the following information:

- a brief description of the goods and works to be procured;
- the contract conditions;
- who is financing the project;
- eligibility requirements for potential bidders, suppliers and contractors; and
- the time and place where prequalification documents can be obtained.

Prequalification documents should enlarge on the information provided in the notification advertisement and contain a description of:

- the proposed procurement;
- the estimated value of the contract and major quantities of work;
- location of the work;
- eligibility requirements including, eligibility requirements for domestic preference;
- procurement scheduling of goods or works to be procured;

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- abbreviated specifications and conditions of contract;
 - main quantities to be procured;
 - delivery or implementation schedules;
 - requirements for bid and performance securities;
 - how the project is to be financed;
 - payment terms;
 - price adjustment provisions;
 - the language and governing law of the contract;
 - other information in sufficient detail to enable bidders, suppliers or contractors to assess their interest and respond appropriately; and
 - the name and address of LAMATA and of LAMATA's official in charge of the procurement with a statement of their roles.

For purposes of evaluating the applicants, the prequalification documents should include a questionnaire, requiring applicants to respond to direct questions as well as to complete a series of forms. The information solicited and the number of forms to be filled should be the minimum essential required to make an objective decision as to the bidder's capabilities. LAMATA must avoid requesting excessive form-filling, testimonials, affidavits from bidder's former or current clients, notarized documents and any other non-essential documents and information which will deter some of the qualified firms from applying. Properly designed and completed, the questionnaire should provide LAMATA with a good framework for evaluation, while encouraging applicants to provide full pertinent details on their capabilities.

CHECKLIST FOR PREQUALIFICATION SUBMISSION

1. Applicants should be required to submit the following in respect of their organization and legal status:
 - (a) name, postal and street addresses, telephone, fax and telex numbers;
 - (b) for corporations, copies of original documents defining legal status, place of incorporation and principal place of business;
 - (c) for partnerships and individually owned firms, copies of original documents defining legal status, place of registration, principal place of business and nationality of owners;
 - (d) designation of the individual(s) authorized to act for the organization;

- (e) information on the nature and results (where applicable) of any litigation in which the applicant was involved in the last five years, including any current litigation;
- (f) authorization for LAMATA to seek detailed references with regard to financial standing or experience; and
- (g) if a joint venture or other form of association, a document of intent to form a joint venture or association should be submitted. The document should define the capital contributions of the partners and sharing of profit and losses among them; the participation of the firms in the contract and the division of work, including the responsibility for overall management and coordination and the representation of the joint venture for purposes of prequalification, bidding and contract. Each member firm should respond individually and fully to all prequalification questions.

2. The following financial information should be required from the applicants:

- (a) annual financial statements for the last five years, including an interim statement not over six months old. These should be supported by audit statements or tax returns;
- (b) financial projections for the next two years, including the effect of known commitments;
- (c) name and address of the applicant's banker, identification of individuals familiar with the applicant's standing,
- (d) names and addresses of the applicant's insurers, identification of individuals familiar with the applicant's standing and a statement from the applicant's insurer that it is prepared to insure the applicant as described in the prequalification document;
- (e) statement from the applicant's bank, insurer or other surety that it is prepared to issue bid guarantee or bond (as required by the prospective bid documents); and
- (f) documents to demonstrate availability of lines of credit, overdraft facilities, supplier's credit, unencumbered assets, or other proof of capability to comply with the financial requirements of the prequalification document.

3. The following technical information should be required from the applicants:

- (a) Details of the experience and past performance of the applicant on works of similar

nature within the past five years, including projects under way and contracts awarded but not started. These details should include:

- name of project and location;
- owner of sponsoring organization;

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- brief description of contract, cost, details of the principal quantities involved, methods and type of equipment used (where relevant to the project for which the contractor is applying for prequalification), whether liquidated damages were applied and the dates of commencement and (initial planned and effective) completion. For contracts recently awarded, the dates will be those estimated or written into the relevant contract;
 - extent of the applicant's participation in the contract, degree of responsibility and the names of associated companies and/or main subcontractors (if any); and
 - names and addresses of responsible officials, entities and consultants familiar with the project undertaken.
- (b) For contracts where specialized or major equipment which cannot easily be purchased, hired or leased is necessary: availability of items of construction equipment (and fabrication facilities, if appropriate) essential for carrying out the prospective contract. Descriptions should include type, capacity, age, condition and ownership status (presently owned, leased, to be purchased, liens thereon, etc.);
- (c) Types and amounts of work of the contract likely to be subcontracted, with names and addresses of major subcontractors to be used, if known. For those proposed to undertake more than 10 % of the contract value, it is recommended that the subcontractor(s) reply individually and fully to all prequalification questions; and
- (d) applicant's staff from whom the proposed key personnel will be drawn, including their role in contract implementation, their present positions, years of experience with the applicant and in construction in general, major previous responsibilities including the type and value of contracts worked on, and pertinent language abilities and experience in the region.

TYPICAL PARAMETERS FOR PREQUALIFICATION EVALUATION

1. Experience

The prequalification document should specify the minimum experience in key elements of the work, necessary for an applicant to prequalify.

Where the qualifying parameter is an annual volume of construction or production, the applicant should have carried that out in at least two of the last five years.

2. Financial Resources

The prequalification document should specify a certain monetary amount that the applicant must demonstrate he can finance, to cover cash flows for the contract over a given period. Cash requirements for other known commitments over the same period should also be added to this amount.

The period of time should be calculated by adding the time realistically necessary for LAMATA to pay the contractor, from the time of presentation of monthly statements. The time necessary for the Engineer/Supervision Consultant to issue a certificate, and the time taken by LAMATA's Accounting section to issue payment, after obtaining all the necessary approvals is taken into account in this regard. Two months are then added as a safety measure.

Cash requirements for the project itself should be calculated from the Engineer's estimate of the total cost and completion time, on a straight line basis, neglecting the effect of any advance payments and retentions.

The working capital necessary for "other known commitments" can be determined for each applicant from his submission of information on current commitments. Applicants should present evidence of having available the necessary working capital, from sources available to them including, lines of credit, overdraft facilities, cash in hand, unencumbered assets, shares and bonds, etc. They are also required to produce evidence to this effect.

All other financial information -- balance sheets, letters from insurers and sureties, should confirm all the above submissions, by way of demonstrating the general financial capability of the applicant. Lack of any of the documents in paragraph (d) above, should not be a cause for automatic disqualification, but rather, for making further inquiries from the applicant.

3. Personal Resources

The prequalification document should specify **key** positions for which the applicant must demonstrate having sufficient staff resources available. For example, for a road rehabilitation contract:

- Project manager, with a minimum of 15 years experience of which at least 10 in similar works, and no less than 4 as a project manager;
- Equipment manager, minimum 15 years experience;

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- Asphalt Plant Operator, minimum 10 years experience;
 - Site manager, minimum 10 years experience, at least 5 in similar works;
 - Pavement Works Superintendent (or Senior Foreman) with no less than 15 years experience.

Applicants should not be bound to appoint specific staff to the Contract, but should demonstrate having in their own staff sufficient experienced personnel for the contract and for other known commitments. Experience and not academic qualifications should be the key requirement.

4. Equipment Resources

The applicant should demonstrate having available (or access to) highly specialized, large or complex equipment. For instance, in a roads contract involving work in the urban area, the following equipment characteristics could be specified:

- Bulldozers;
- Paving machine;
- Asphalt Plant and the minimum hourly production volume, to suit estimated rate of progress of the work; and
- Tipper Trucks, etc

Postqualification of Bidders

In the absence of prequalification, LAMATA shall undertake postqualification of bidders who tender for procurement contracts. Postqualification involves determination by the evaluation Committee of LAMATA that the bidder, supplier or contractor submitting the lowest responsive evaluated bid, has the capability and the capacity to perform the contract. If this bidder fails to demonstrate the necessary experience and capability to carry out the contract, the bid is rejected and the next lowest evaluated bidder is subject to postqualification. Post qualification is suitable for use in the procurement of goods of small value of between US\$30,000 and US\$150,000 and small works contracts of less than US\$1,000, 000.

Postqualification requirements are in principle similar to those for prequalification, but bear mainly on the technical and financial resources available for fulfilling the contract. Qualifications of the lowest evaluated bidder are scrutinized using data submitted by the bidder as well as information gathered by the PU.

To ease evaluation during the process of postqualification, the bid documents should contain a questionnaire on qualifications similar to that which used in a prequalification document. The criteria for postqualification should be clearly set out in the bid documents. When practical and appropriate, the minimum qualification requirements should be listed in the Invitation for Bids, to provide guidance to potential bidders as to whether in their own judgment they are qualified to submit bids. It should also indicate the pertinent factors that will be analyzed by the evaluation committee in arriving at the determination whether or not the bidder is qualified.

Financial data that bidders should provide with their bids may include:

- (a) a banker's statement, statements of business accounts and statement of overall business turnover in three previous financial years
- (b) Performance data for goods may include: (i) information on similar deliveries in the last three years; (ii) description of competence of the bidder's technical personnel; and (iii) certification by official quality control institutes.
- (c) For works contracts, performance data may include information on similar works undertaken in the last five years; whether the bidder has the necessary equipment or access to the equipment needed for the works contract; whether he/she has the personnel and manpower to undertake the works and if he/she is aware of the testing procedures to ensure that the works can perform the purpose for which they were procured.

After postqualification the evaluation committee of LAMATA prepares and submits to the MD or CMT for approval depending on the if the estimated contract cost is below US\$100, 000 or above, a detailed Standard Bid Evaluation report, indicating how the recommendation for award was arrived at.

Evaluation and Comparison of Bids for Goods and Works

General

Regardless of how well the other steps in the procurement process are conducted, if bids are not evaluated correctly and fairly, the process has failed. Unfortunately, bid evaluation is the step that is most easily manipulated if one wants to favor a particular bidder.

The basic sequence for bid evaluation is the same for all goods and works, and consists of the following steps:

- Preliminary examination;

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- Determination of bid responsiveness;
 - Correction of arithmetic errors;
 - Conversion to common currency;
 - Quantification of omissions and deviations;
 - Application of evaluation criteria;
 - Comparison of bids; and
 - Preparation of evaluation report.

Bid Evaluation Committee

In order to examine and evaluate bids, LAMATA shall appoint a Bid Evaluation Committee on adhoc basis and a member of the PU will be its secretary. The committee shall be composed of three qualified members preferably persons who participated in the preparation of bidding documents and shall include a member of the Unit or Department that goods, consulting services or works is being procured for, must be in the committee

The Bid Evaluation Committee is responsible for the evaluation and comparison of the bids received and for the preparation of the Bid Evaluation Report, which shall be submitted to the MD of LAMATA after the process is complete. Above a threshold of US\$200,000 equivalent, the CMT of LAMATA will meet and review the evaluation reports and approve the evaluation report prior to signing the agreement by the MD. The following sections describe in detail the steps set out in the above, that shall be followed by the Bid Evaluation Committee carrying out the evaluation.

Preliminary Examination

The bid examination phase begins during the public bid opening with a preliminary examination of the bids. Except for decisions about rejecting bids received after the closing time, which is mandatory for all late bids, other decisions about whether a bid is compliant with bid document requirements should not be made during the bid opening. Errors may be made based on an incomplete reading or wrong interpretation of a bid, and a mistaken decision taken hastily in the presence of the bidders is awkward to correct later. Instead, after the bid opening has been completed, as its first step in the evaluation, the committee should make a thorough examination of all bids received before the deadline for submission.

The preliminary examination of bids determines whether the bids meet the general procedural requirements of the bidding documents. In particular, the Committee should examine bids for compliance with the following requirements, using the bidding documents as the reference point:

- The Bid should be signed properly by an authorized party, including the Power of Attorney if stipulated and are generally in order;
- Bid securities should be in acceptable format, for suitable amount and duration;
- Bid packages should contain all required documents including supporting evidence of bidder eligibility and qualifications;
- Changes should be initialed;
- The mathematical calculations should be properly computed - if not, corrections should be made; and
- Bids should be complete and quote prices for all items in the lot or package if so stipulated in the bidding document.

The purpose of this examination is to eliminate any bids from further and more complicated consideration if they do not meet the minimum standards of acceptability as set out in the bidding documents and are therefore not substantially responsive. However, LAMATA should exercise reasonable judgment in applying these tests and should avoid rejecting bids on trivial procedural grounds. For example, if the bidding documents stipulate that each page of the bid should be signed or initialed and a bidder failed to initial one or more pages of supporting information, this should not be a ground for bid disqualification. Furnishing one more or one less than the required number of bid copies, or not using the form supplied in the bid document, but providing bid prices on a similar form on the bidder's own letterhead would also be minor discrepancies. These can be rectified through the clarification process without giving any benefit to the bidder and without prejudice to the interests of other bidders and need not be causes for rejection. Such discrepancies should be noted, however, and decisions about their acceptance or rejection should be recorded in the bid evaluation report.

Correction of Arithmetic Errors

Bids should be checked carefully by the evaluation committee for arithmetic errors in the bid form to ensure that stated quantities and prices are consistent. The quantities should be the same as stated in the bidding document. The total bid price for each item should be the product of the quantity and the quoted unit price. If there is a discrepancy, the quoted unit price shall govern in the recalculation. Prices spelled out in words shall take precedence over numeric quotations in case of differences. The PU should correct all arithmetic errors and notify each bidder of the detailed changes. The Bidder must accept such arithmetic corrections or its bid will be rejected.

Application of Evaluation Criteria

The preliminary examination stage of bid evaluation described above is aimed at making sure that the bids received are substantially responsive. A substantially responsive bid is one that conforms to all the terms, conditions and specifications in the bidding documents without material deviations, reservation or omission. After the preliminary bid evaluation stage, the bids are taken through a detailed evaluation in order to select the bidder whose bid not only complies with the technical requirements in bidding documents, but also offers LAMATA the lowest price for the goods, works and/or services to be procured. During the bid evaluation period, LAMATA will adhere to the following principles of the World Bank policy:

- Ensure that the bid evaluation process is strictly confidential;
- Reject any attempts or pressure to distort the outcome of the evaluation;
- Reject any proposed action likely to lead to fraud and corruption;
- Comply with the Bank's prior review requirements; and
- Strictly apply only the evaluation and qualification criteria specified in the bidding documents.

Conversion to Common Currency

In order to minimize the foreign exchange risk for bidders in ICB, the Guidelines allow every bidder to express its bid price in the currency or currencies of any member country (up to a maximum of three currencies in most cases) or in EURO. This provision effectively causes the Borrower to carry the exchange risk rather than bidders and eliminates disadvantages some bidders would otherwise experience because of differences in strengths of bidders' currencies. However, it results in bids being presented in a wide variety of currencies which must be converted to a single common currency before they can be compared.

In order to compare bids for goods contracts, the most common practice is to convert all bid prices in the Nigeria Naira currency at the selling rate established for similar transactions by the Central Bank of Nigeria. LAMATA will also convert the bid prices into a currency widely used in international trade such as the US dollar, at the selling rate of exchange published in the international press. For works contracts, LAMATA will specify that the entire bid must be priced in the Nigeria Naira, even though specified percentages of the total payment may be made in several other foreign currencies. In those cases, it will be more convenient to convert everything into national currency units for comparison purposes. The process and results are the same in either case.

The Bid Data Sheet in the bidding document will specify a calendar date which may be anywhere from 30 days before bid submission until the final date of the original bid validity period as the reference date for currency conversions. It will also indicate the source to

be used for obtaining exchange rate information for that date, usually the Central Bank of Nigeria official rates. These published rates for each currency of bid are applied to the quoted prices of each bidder to calculate the equivalent common currency figures for bid comparison purposes.

Evaluation of Bids on the Basis of Price Only

In the procurement of simple commodities, semi-finished raw materials and goods, where all offers are of identical and comparable material, price alone is an appropriate deciding factor. For purposes of comparing local and foreign bids for goods contracts, the Bid Evaluation Committee compares the EXW price of goods offered from within Nigeria with the CIF (named port of destination) price of goods offered from outside Nigeria. The bidder with the lowest priced bid is then awarded the contract. The EXW price of local bids and the CIF price of foreign bids are calculated in the following way:

Foreign Bids

Where bidders offer goods procured from abroad, the price for their bids shall be on cost, insurance and freight (CIF), Port of Entry. The CIF price includes all costs, taxes, duties etc., in Nigeria. If CIF “liner terms” are specified, the freight shall also include the cost of unloading the goods on the wharf at the port of discharge. In the case of procurement of bulk commodities such as fertilizer, iron ore, etc., bids may be invited and compared on CIF (Free Out) Port of Entry, in which case, the unloading from the vessel at the Port of Entry shall be carried out by LAMATA at its expense.

Local Bids

- Bidders offering goods manufactured or assembled within the Federal Republic of Nigeria are quoted EXW (ex-factory, ex-works, ex-showroom, or of-the-shelf, as applicable). The EXW price should include all costs, taxes, duties, custom duties and other levies incurred in the acquisition of components and raw materials, domestic and foreign which go into the manufacture of the goods.
- If there is a sales tax or similar tax which is payable only if the sale of the finished goods offered in the bid takes place, such sales tax and other similar taxes are excluded from the ex-factory price and quoted separately.
- Where local bidders offer goods which are imported, the ex-warehouse price or off-the-shelf price shall include the customs duties paid on the imported goods by the importer, stockist or agent. The price shall thus represent the total price payable by the purchaser except for any sales tax.
- Where there is no provision for the application of domestic preference margins, the LAMATA should evaluate bids offering goods manufactured abroad on a CIF or CIP basis. However, if LAMATA wishes to use national shipping lines for transportation, these

goods will be evaluated on an FOB basis. On the other hand bids offering goods manufactured in Nigeria are evaluated on an EXW basis.

Evaluation of Bids for Works Contracts

Evaluation of bids for works contracts is more complex than the evaluation of bids for goods. To make the evaluation process easier and transparent, LAMATA will set out in the bidding documents, well defined evaluation criteria and carry out the evaluation process in a transparent manner. If the evaluation criteria is not well defined, Bidders may be reluctant to submit bids. The evaluation of works contracts involves price and nonprice factors, depending on the form of works contract being procured. The selection of bids for a works contract involves two steps after the preliminary examination to determine responsiveness. The first being the selection to determine whether Bidders demonstrate relevant experience in the undertaking the works being procured and the second step is based on price.

As in the case of evaluation of bids for procurement of goods, evaluation of works contracts begins with a determination of the following basic issues:

- was the bid received by the due date required in the bidding documents;
- is the bid accompanied by the prescribed fees and bid security;
- is it submitted in the required form, where necessary; and
- does it comply with all the specific mandatory requirements of the bidding documents.

Once a bid has been determined as responsive, the Bid Evaluation Committee will assess the technical feasibility of the bids and compliance of such bids with specifications required in bidding documents. Evaluation also involves the examination of the Bidder's key staff in order to make a determination of whether they possess the qualifications and experience to undertake the works contract. LAMATA will also take into consideration similar works procurements that the Bidder has engaged in within the last five or so years, and whether they have been successful. Apart from these the Bid Evaluation Committee also evaluates the Bidders financial capabilities using the documentary evidence of the Bidder's financial viability to carry out the contract. LAMATA requires bidders to submit with their bids financial statements for a number of years specified in the bidding documents. These fall under the nonprice factors that need to be evaluated.

After evaluating the nonprice factors, the Bid Evaluation Committee, proceeds to evaluate the prices offered for the contract. Depending on the kind of works contract being procured, the lowest evaluated bidder is determined and awarded the contract. In a

contract for the building of roads, the lowest evaluated bidder is the one offering the lowest price to LAMATA to build the roads. On the other hand where the works contract is in the form of a concession, then the lowest bidder should be the Bidder charging the lowest tariffs for the services to be provided by the works, this is usually the case where the Bidder undertakes the construction and operates it for a while before handing it over to LAMATA.

Evaluation of Deviations in Bids for Works Contracts.

Bidders for works contracts often qualify or condition their bids in some way, creating problems for LAMATA staff who must decide whether a bid is substantially responsive to the bidding documents and, if so, how deviations from the bidding conditions should be handled in the evaluation of bids. Clear unambiguous bidding documents prepared by experienced staff of LAMATA may result in fewer qualifications by bidders. Pre-bid conferences during the bidding period should also be convened to clarify any serious ambiguities and discrepancies in the documents.

Deviations may include exceptions, exclusions, qualifications, conditions, stated assumptions, alternative proposals (when not specifically solicited) and other changes to the requirements of bidding documents. Their degree of acceptability and impact on bid comparison will vary; some may be clearly unacceptable; some that are acceptable may be quantifiable in monetary terms; others may not be quantifiable but may still affect the competitive position of other bidders.

The first stage in evaluation is to decide whether the deviations in a bid are so material as to be unacceptable, and therefore are grounds for rejecting the bid. Fairness to the other bidders is a prime consideration. A bidder's deviation which, in itself or by its withdrawal or rectification, would seriously affect the competitive position of other bidders unless they were given the same opportunity, would normally constitute grounds for rejection of the entire bid. The following deviations (or some combination thereof) may result in rejection of bids in LAMATA contracts:

- bid submission by a legal entity or joint venture different from that which was prequalified (excepting when all members of the new joint venture were prequalified initially);
- the submission of a base bid subject to price adjustment when fixed price bids were called for;
- the submission of a bid based on an entirely different alternative design where such had not been requested nor expressly permitted;
- an inflexible time phasing of contract construction or performance not conforming to prescribed critical key dates or "milestones" in a broader construction program; and
- sub-contracting in a substantially different amount and manner than specified.

Deviations from the bidding requirements which do not appear at first sight so serious as to provide immediate grounds for bid rejection may be considered further in the evaluation process. The following are examples of such deviations in contracts:

- an amount of advance payment and other payment terms (including retention money, guarantees, the details of price adjustment provision) differing from the prescribed conditions;
- non-compliance with local regulations relating to labor, imports taxes, duties, notarization, etc.;
- changes in specified methods of construction or execution (temporary works, shift work by labor, etc.);
- subcontractors not meeting pre-specified requirements;
- omission (deliberate or unintentional) of minor works or items included in the scope of work;
- non-acceptance of full liabilities (e.g. risks to third parties, nearby structures, etc.);
- modification of, or a limit to the amount specified for liquidated damages; and
- proposed changes in standards or codes relating to materials, workmanship or design.

The details and implications of any deviations which are not explicit should be clarified by the LAMATA in discussion with respective bidders without change in the substance or price of the bids. (After clarification the implication of a deviation may be such as to justify rejection of the bid as non-responsive.) Each deviation having financial or economic implications should be quantified independently by LAMATA and expressed in its expected monetary cost. In this respect, the submissions by bidders during clarification and pricing of similar items from the next lowest (and other) responsive bidders may prove useful.⁷ The current monetary costs of deviations with timing implications (e.g., modification payment terms, amortization of advances, limits on liquidated damages, varied construction or delivery periods, etc.) should be discounted to present values for evaluation purposes.⁸

Deviations or offers which are better than the requirements of the bid specifications (e.g. higher quality materials and workmanship, modified designs, shorter construction periods, etc.) should only be regarded as benefits to LAMATA and included in the evaluation if specifically solicited in the bidding documents.

Deviations which are minor or non-quantifiable (e.g., changes in subcontractors, access to site, land acquisition, sources of materials, etc.) should be assessed in terms of their reasonableness for acceptance or rejection taking into account fairness to other bidders and their impact on the implementation of the contract.

The ranking order of bids should be determined using the most probable monetary costs (or benefits) to the Employer of all quantifiable deviations. The contract should be proposed for award to the bidder submitting the lowest ranked evaluated bid.⁹ Before the award is made the Managing Director and the Board of LAMATA has to review the evaluation and approve the proposed award.

After selecting the lowest ranked evaluated bidder in the manner described above, LAMATA may accept the qualified bid or, after consultation with the World Bank and other donors, negotiate with the bidder for the complete or partial withdrawal of individual deviations, using the respective quantified monetary values assessed by LAMATA as upper limits for any negotiated adjustments to the original bid price. Non-quantifiable deviations may be accepted or rejected according to their reasonableness.

Local bidding regulations or custom may preclude LAMATA from considering bids which deviate substantially from prescribed conditions.

If the majority of low bids are heavily qualified, the reasons for the deviations should be determined by LAMATA in discussions with bidders, and consideration should be given to rebidding amongst the same group of bidders with conditions and specifications amended to remove the probable causes. A series of addenda to the original bidding documents may suffice for this purpose and a relatively short period (30-45 days) may be sufficient for rebidding under such circumstances.

Application of Domestic Preferences in the Evaluation of Bids

Application of Domestic Preference for Goods

- The provisions of paragraphs 2.54 and 2.55 of the guidelines and Appendix 2 thereto shall apply to goods manufactured in Nigeria.
 - The goods being-procured are “manufactured goods” involving assembly, fabrication, processing etc., where a commercially-recognized final product is substantially different in basic characteristics of its components and raw materials.
 - The goods offered by foreign and domestic bidders are identical or compatible in respect of quality, size, capacity and performance.
 - There is a qualified domestic bid which, irrespective of the nationality of the bidder, has offered goods assembled or manufactured in Nigeria, which has domestic value in the manufacturing cost not less than 30 percent of the ex-factory price of the product offered.
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- The margin of preference is added to the CIF price of foreign bids and not subtracted from the domestic bid.

The preference is applicable even when the goods are imported by LAMATA, if exempt from paying import duties on imported raw materials or components used in the manufacture of the offered finished product. The nationality of the bidder is immaterial, but the domestic manufactured goods offered in the bid must meet the minimum domestic value added criterion. Domestic value added comprises domestic labor, the domestic content of material, domestic overheads and profits, from mining until final assembly. (*See Appendix 2 of the Procurement Guidelines for further instructions on the application of domestic preference margins*)

Application of Domestic Preference in Works Contracts

- As per the credit agreement, no domestic preference for the works contracts shall be allowed.

Extension of Bid Validity

- In ICB, bidders are required to keep their offers valid for a specified period to allow LAMATA to examine and evaluate offers, select the lowest evaluated bid, obtain the necessary approvals from the competent authorities and obtain a no objection from the World Bank, for the proposed award of the contract.
- Bids shall remain valid for the period stated in bidding documents, usually until the final award of the contract to the lowest evaluated bidder is made.
- A bid that is valid for a shorter period than required by the bidding documents should be rejected by the LAMATA as non-responsive.
- Where there is a delay in bid evaluation, LAMATA may request bidders to extend the period of validity of their bids.
- In cases of fixed price contracts if the award is delayed for more than sixty (60) days, beyond the expiry date of the initial bid validity, the contract price should be adjusted by a factor stated in the LAMATA's request for extension.
- The adjustment provision is aimed at protecting bidders from the risk of change (usually increases) in the price of the works offered if LAMATA takes longer than the original bid validity period to award the contract.

In the case of fixed-price bids, however, bidders have to choose between:

- refusing to grant any extension of validity of their bids; and

- absorbing any cost increases that might occur during such extensions (bidders are not allowed to increase their prices as a condition of extending the validity of their bids).

To simplify the application of the price adjustment, two standard correction factors should be used:

- One for all foreign currency components, and the other for the local currency component.
- The foreign currency component should be consistent with the annual increases in international prices indicated in the Index acceptable to LAMATA is updated semi-annually; and the local currency component with the local inflation for Nigeria as projected the Federal Office of Statistics.
- The PU of LAMATA shall provide both indexes and in drafting the relevant provision to be introduced in the bidding documents.
- LAMATA shall avoid chronic delays in bid evaluation and award as competition may suffer since bidders may include a speculative cushion in their bid prices to absorb potential costs of delay.

Confidentiality

The World Bank's Procurement Guidelines stress the confidential nature of the evaluation process. (*See para 2.46 of the Procurement Guidelines*) After suppliers, contractors and consultants have submitted their bids to the Borrower by the required deadline, the bid evaluation process outlined above begins on the date indicated in the bidding documents for bid opening. It is important for LAMATA staff to note that after the deadline for receipt of bids for goods or works, confidentiality is imposed and is maintained throughout the evaluation process until announcement of the award of contract. (*See Paragraph 2.46 of the Procurement Guidelines*)

Rejection of All Bids

In some situations LAMATA will reject all bids submitted in response to an invitation for bids. However, this has to be provided for in the bidding documents and the approval of the LAMATA Board. LAMATA may reject all bids under the following circumstances:

- Where the price in the lowest evaluated bid exceeds the LAMATA's bid cost estimates by a substantial margin;
- When all the bids received are not responsive to the requirements in the bid documents; and
- Where LAMATA after receiving bids reasonably concludes that there is lack of competition.

Where all the bids are rejected, LAMATA will review the bidding documents and make any appropriate revisions. If substantial changes are made to the bidding documents, LAMATA will then invite new bids on the basis of the new bidding documents.

The Standard Bid Evaluation Report

After the completion of the evaluation process LAMATA, presents to the World Bank, a bid evaluation report setting out the process by which the Bid Evaluation Committee evaluated the bids received in response to the procurement process. A Standard Bid Evaluation Report format prepared by the Bank will be used by LAMATA in presenting the report. This report covers among other things:

- key dates and steps in the bidding process;
- bid prices, corrections, discounts and currency conversions;
- additions, adjustments and price deviations;
- domestic preference if any;
- technical evaluations if any;
- postqualification results;
- names of bidders rejected and reasons for rejection of bids; and
- the proposed contract award.

Award and Signing of the Contract

Once LAMATA has evaluated the bids and made a determination on the lowest evaluated responsive bid, and a decision has been made about the award, LAMATA shall:

- request and obtain the World Bank's "no – objection" prior to awarding the contract;
- **not** negotiate the award with the successful bidder;
- **not** require the selected bidder to provide performance in excess of that specified in the Bidding Documents;
- send notification of the award, a contract form, and a performance security form (indicating the amount of security) to the successful Bidder in a manner and within the time specified in the bidding documents;
- request the supplier to return the signed contract together with the required performance security within the time specified in the bidding documents; and
- notify unsuccessful Bidders as soon as possible after receiving the signed contract and the performance security.

If the successful Bidder fails to return the signed contract or provide the required performance security, LAMATA may:

- require forfeiture of the Bidder's Bid Security; and
- proceed to offer the contract to the second lowest evaluated Bidder, provided that he is capable of performing satisfactorily.

Payment Guidelines

Goods and Works

Payment terms shall be in accordance with the international commercial practices applicable to the specific goods and works. Any advance payment for mobilisation and similar expenses, made upon signature of a contract for goods or works, shall be related to the estimated amount of these expenses and be specified in the bidding documents

- (a) Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the payment may be made after the Supplier has complied with all its obligations under the contract.
- (b) Contracts for works shall provide in appropriate cases for mobilisation advances, advances on contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under contract.

Consultancy

Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts). Payments for advances (e.g mobilisation costs) exceeding 10 percent of the contract amount should normally be backed by advance payment securities.