

**BAYELSA STATE GOVERNMENT**  
**BAYELSA STATE DUE PROCESS BUREAU**  
**GUIDELINE TO INCREASE SME PARTICIPATION IN CONTRACT AWARD BY**  
**THE BAYELSA STATE GOVERNMENT**

**1. INTRODUCTION**

1.1 Section 5(m) of the Bayelsa State Public Procurement Law 2009 as amended, give the Bureau the mandate to conduct researches and surveys on the impact of government policies on the economy. These guidelines are to address the identified challenges and barriers that hinder SMEs from participating in contract award process with the Bayelsa State Government.

**2. DEFINITION OF SMEs**

2.1 Below as herein listed in a tabular form is a classification of SMEs as adopted in the National Policy on Micro, Small and Medium Enterprises:

Classification adopted by National Policy on MSMEs:

	<b>SIZE CATEGORY</b>	<b>EMPLOYMENT</b>	<b>ASSETS (Excluding land and buildings)</b>
1	Micro enterprises	Less than 10	Less than 10 Million
2	Small enterprises	10-49	10 Million – less than 100 Million
3	Medium enterprises	50-199	100 Million – less than 1Billion

2.2 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. OVERCOMING COMMON BARRIERS TO SMES PARTICIPATION IN BAYELSA STATE PUBLIC CONTRACTS/PROCUREMENT ACTIVITIES**

3.1 Many SMEs lack knowledge of bidding opportunities in the MDAs. To address this, announcement of all proposed Contract/Procurement bids will be made on major media platforms and the website of the Bayelsa State Due Process Bureau at [www.dueprocessbayelsa.gov.ng](http://www.dueprocessbayelsa.gov.ng).

3.2 To help improve SMEs knowledge of the Bayelsa State Public Procurement Law 2019(as amended) and bidding procedures, training sessions and workshops will be organized for SMEs on State Bidding Procedures including the State's Public Procurement Law.

3.3 To overcome the challenge around value of contract being too high for SMEs to participate due to inability to meet financial (cash flow, average turn over) and similar experience requirements, Procuring entity should:

3.3.1 Consider breaking down the contract package in lots in quantitative and qualitative terms

3.3.2 Consider relaxing the qualification criteria to such a level as to meet the required conditions for the estimated value of the contract being bided.

3.3.3 Encourage SMEs to participate as joint ventures and/or subcontractors

3.4 SMEs should consider carrying out appropriate research and market analysis prior to tendering

3.5 To address difficulties faced from tight deadlines for preparation of bids, the Procuring entity should increase deadlines for submission of bids especially for complex contracts.

3.6 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 Procuring Entity should:

3.6.1 Allow free download of bidding documents from a freely available website.

3.6.2 Waive the cost of the preparation of the bidding document

3.6.3 Allow electronic submission of password protected, ready-only bids and quotation.

3.7 To mitigate the high cost and difficulty in obtaining financial instruments; bid security, advance payment and performance guaranties, the Procuring Entity Should:

3.7.1 Waive in the requirement for the submission of financial instruments for contracts below **N50,000,000.00 (Fifty Million Naira)**

3.7.2 Allow for submission Performance bond declaration (**See Annexure A**) in place of bank performance guarantee and advance payment declaration form (**See Annexure B**) Instead of advance payment guarantee

3.7.3 Allow for Submission of Bid Securing Declaration (**See Annexure C**) Instead of Bid Security.

3.8 To address the Inability of SMEs to raise sufficient funds to Implement awarded contracts, the state may increase advance payment up to 40% of contract amount.

#### **4. OVERCOMING COMMON ERRORS OF SMES IN PUBLIC PROCUREMENT PROCEDURES.**

In addition to obstacle/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.

4.1 Failure to follow up on notice of bidding opportunities, thereby missing out on applying on a timely basis, SMEs should follow up on notices of bidding opportunities, monitor daily, notices on the Due Process Bureau website in other not to miss out in applying for contract

4.2 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

4.3 Failure to request for clarification of bidding document/ untimely submission of the request for clarification. SMEs should take advantage of provisions of the Bayelsa state Public Procurement law 2019 (As amended) which allows bidders to request for clarifications of the bidding document within the time stipulated in the issued bidding document.

4.4 Late submission of bids. SMEs should do all that is required to comply with the submission deadline stipulated in the bidding document

4.5 Failure to submit with the bids all requested documentary evidence supporting the requirement of the bidding document. SMEs should ensure that ALL required evidence to support bid submission are included in the bid.

#### **5. TRAINING OF SMES ON THIS GUIDELINE**

5.1 The Due Process Bureau 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.

## **6. OUTLINE OF PROCUREMENT PROCESS**

The following are the steps involved in public procurement process:

- a) Efficient Procurement Plan driven by needs process
- b) Adequate Appropriation
- c) Advertisement
- d) Transparent Prequalification/ Tender
- e) Bid Submission / Opening
- f) Bid Evaluation-Technical & Financial
- g) Tender Board / SEC approval
- h) Debrief (If Requested) **See Annexure D**
- i) Complain (Handle Complain if Any) **See Annexure E**
- j) Contract Award / Execution
- k) Project Implementation

## **7. MONITORING OF SMEs PARTICIPATION**

Each MDA will submit to the Due Process Bureau the details of contract awarded by the MDA on monthly basis. The details will be published on the Due Process Bureau Website. The following information will be provided for each contract

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

The Due Process Bureau will also provide training to the MDAs on application of this guideline.

## 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 Oblige (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 B

### 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]*<sup>1</sup> 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

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

- (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 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.

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*[signature(s)]*

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



## Annexure C

### 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 D**

### **HOW AN SME CAN REQUEST FOR DEBRIEF?**

Section 51 of the Bayelsa State Public Procurement Law, 2019 (As amended) provides for the debriefing of unsuccessful bidders on request. The request for such debriefing must be submitted within 30 days of the publication referred to in section 50(8).

## **Annexure E**

### **COMPLAINT HANDLING MECHANISM**

Section 54 & 55 of the Bayelsa State Public Procurement Law, 2020 provide the procedure for Administrative Review as follows:

#### **54: RIGHT OF CHALLENGE**

- 1) A bidder who claim to have suffered or to be likely to suffer loss or injury due to a breach of a duty imposed one procurement entity by this law shall have the right to challenge the procurement proceedings at any time before the entry into force of the procurement contract
- 2) A complaint by a bidder against a procurement or disposing entity shall first be submitted in writing to the accounting officer of the procurement entity and identify the specific act or omission alleged to contravene this law.
- 3) A challenge shall not be entertained unless it is submitted before the entry into force of the procurement contract.
- 4) Unless the challenge is resolved, the accounting officer of the procurement entity shall suspend the public procurement proceedings and shall within 15 days, issue a written decision stating his reasons and if the challenge is upheld, indicating the corrective measures to be taken.

#### **55: RIGHT OF REVIEW**

- 1) An unsatisfied bidder shall be entitled to ask the Bureau to review the procurement proceedings where-
  - a. The Chief Executive Officer of the MDA does not issue a decision within the time specified in section 54(4)
  - b. He is not satisfied with the decision of the accounting officer or
  - c. Before or after the entity into force of a procurement contract the value of which is above the prescribed threshold, he is not satisfied with the procurement proceedings on a ground specified in section 54(1)
- 2) An application for review under subsection (1) shall-
  - a. Be in writing
  - b. Specify the reasons for making the application, and
  - c. Be made within such time as may prescribed in the law.
- 3) Where an application for review is made in accordance with this section, the procurement proceedings shall, subject to subsection (5) be suspended until the appeal is heard and determined by the Bureau.

- 4) The suspension provision by subsection (3) shall not Apply where the procurement entity certified that urgent public interest the considerations require the procurement proceedings to proceed.
- 5) A certificate issued by a procurement entity (4) shall expressly state the grounds of the urgent public interest considerations and shall be made part of the record of the public procurement proceedings.
- 6) A certificate issued by a procurement entity pursuant to subsection (4) shall be binding on Bureau and the procurement proceedings shall proceed unless an application for leave to seek a judicial review is successful
- 7) The Bureau shall make decision under this section within one month of the date of submission of an application for review under subsection (2).
- 8) Where the procurement proceedings have not been suspended under subsection (4) and the application for review of an unsatisfied bidder is determined in his favor the Bureau shall award him compensation limited to the recovery of the costs of bid preparation and participation in the procurement proceedings.
- 9) The Bureau may dismiss an applicant for review or may, if it determines that there is merit in it, order one or more of the following remedies-
  - a. Prohibit the procurement entity from acting or deciding in an unauthorized manner or from following an incorrect procedure.
  - b. Recommend the annulment in whole or in part of any unauthorized act or decision of the procurement entity;
  - c. Recommend a re-evaluation of the bids or a review of the decision for an award, specifying the grounds for such recommendation.