

Zambia Public Procurement Toolkit

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Public Procurement

Public procurement refers to the purchase by governments and state-owned enterprises (SoEs) of goods, services and works.¹ Public procurement is estimated to account for between 10 and 15 percent of gross domestic product (GDP) and is one of the biggest areas of spending by a government. In Zambia, an estimated 10 percent of GDP is spent on public procurement.²

This document is designed to provide a basic checklist covering the steps in a normal procurement cycle. It aims to simplify the requirements under the law, and build-in a pro-competitive framework for procurement officers to rely upon.

We have drawn from good practices of many countries in drafting this document. Please note that while the specifics of every procurement process will be different, this checklist seeks to give a broad guideline and reminder to facilitate the process.

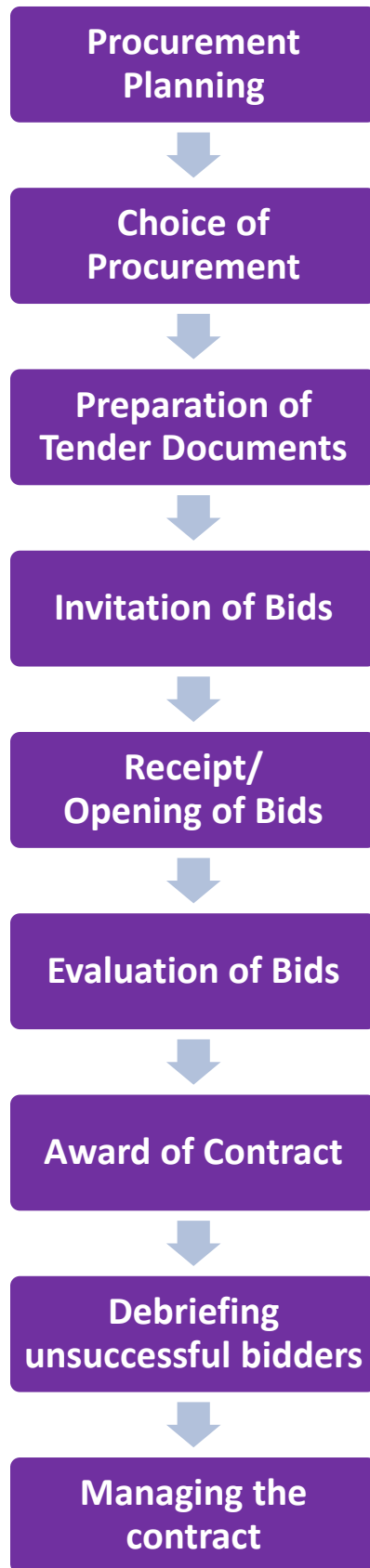
We understand that under the laws of Zambia, there are different modes under which a government agency may initiate procurement, namely, Open Bidding, Open Selection, Limited Bidding, Limited Selection, Simplified Bidding, and Direct Bidding. The conditions to adopt these modes and some of the steps in the procurement cycle differ. This checklist is limited to the procurement of goods under the Open Bidding process.

Further, this checklist must be read in conjunction with the Public Procurement Act of 2008, the Public Procurement Regulations of 2011, and any guidelines or code of conducted so enacted.

A standard procurement cycle has the following features:

¹ <http://www.oecd.org/gov/ethics/public-procurement.htm>

² Public Procurement System in Zambia,
<http://www.csprzambia.org/images/documents/CSOProcurementMonitoring.pdf>



1. Identifying the Need

The first step in the procurement cycle is to determine the need and the purpose to the proposed procurement along with the supporting funding requirements.

- 1.1 Plan annual procurement plan containing detailed breakdown of goods, proposed procurement method, timeline of procurement cycle, estimated value, specifications for execution etc.
- 1.2 Ensure that the procurement is aligned with the annual budget
- 1.3 Aggregate the procurement requirements to achieve economies of scale, but may divide if the award of separate contract may result in best overall value for the procurement entity
- 1.4 Publish the annual procurement plan in at least one newspaper of general circulation in Zambia

Anticompetitive red flags:

- Ensure that the publication is simple to understand and as detailed as possible. This will allow small and medium sized firms to plan and prepare their participation
- Do not aggregate such that it would cause undue burden on small firms

2. Estimating Cost and Securing Approvals

A realistic estimate of the budget needs to be drawn up to ensure that the procurement cycle is completed in a smooth manner.

- 2.1 Ensure that procurement is initiated only after funding has been confirmed and necessary approvals have been secured
- 2.2 Provide for contingencies like exchange rate fluctuations in the cost estimate
- 2.3 Include cost for publications and notice, delivery related costs like freight, inland transport, taxes, installation and maintenance. Contingency amount should also be kept aside for any potential delay in completing the procurement

Anticompetitive red flags:

- Prepare a realistic estimate of all phases of the proposed procurement based on up to date information on economic and market conditions
- Give sufficient time for seeking approvals and account for any potential delays

3. Determining the Best Procurement Strategy

The choice of procurement strategy has a crucial role in determining the most competitive and efficacious method of procurement.

- 3.1 Pick a procurement method by taking into account the estimated value of procurement, whether the procurement is of goods or works or services, any special circumstances and whether the requirement calls for an international competition
- 3.2 For goods procurement over K500 million, National Open Bidding shall be used (and International Open Bidding in case the value is over K5 billion)
- 3.3 Select between one-stage (complete technical and financial bid in the same stage) or two-stage wherein first the solicitation is only for technical evaluation and the bidders who qualify are invited to submit financial bids
- 3.4 Use standard solicitation documents wherever available
- 3.5 May shortlist bidders under pre-qualification and invite all potential applicants to submit applications to pre-qualify

Anticompetitive red flags:

- Choose open bidding for the procurement of goods (where value is above K500 million) to the maximum extent possible
- Plan a procurement well in advance to foster competition as limited bidding is justified where there are only a few sellers or the need is urgent or requirement is specialised
- Ensure that the pre-qualification of bidders does not result in lowering of competition or excluding of potentially new and small suppliers

4. Writing the Specifications/Statement of Requirements

Once the need, budget and method have been identified, the statement of requirements for goods have to be drawn up.

- 4.1 Ensure that statement of requirement covers list of goods, incidentals, completion schedule, specifications, standards and drawings along with details of purpose, performance parameters and any other relevant description
- 4.2 Ensure that the statement does not refer to any particular brand name, trademark, patent etc. and is generic
- 4.3 Ensure that the statement is prepared such that the goods sought are fit for the purpose and are of appropriate quality

Anticompetitive red flags:

- Statement of procurement planning is helpful for internal identification and should be included in solicitation documents and evaluation criteria
- Ensure that the statement presents an optimum combination of cost and quality
- Ensure that the specifications are not so narrowly tailored such that only one or few sellers qualify. For example, there should be no reference to a particular trademark, brand name, manufacturer etc.
- Ensure clarity and completeness
- Elaborate the criteria on which the tender analysis will be done and the relative weight of each criteria to make the process as transparent as possible

5. Bid Notices, Invitation to Bid and Solicitation Document

The issue of tender documents entails ensuring timely and correct issue of documents, proper bid notices, issue of solicitation documents and providing sufficient time for suppliers to respond, and issuing clarifications without any delay. The process for invitation of bids is critical to ensure fair and healthy competition among potential suppliers.

- 5.1 Publish a bid notice, containing the name, address and contact details of the procuring entity; nature of procurement requirement; complete detail about delivery timeline and performance requirements; statement of technical requirements or evaluation criteria; location and deadline of submission
- 5.2 Provide sufficient time for submission, taking into account any potential delays on part of the procuring entity that may prolong the process
- 5.3 Ensure compliance with the minimum bidding periods as follows for Open Bidding: four weeks for Open National Bidding and six weeks for Open International Bidding
- 5.4 Issue solicitation documents for all bidders responding to bid notices or are on the shortlist of pre-qualified bidders. Procuring unit may charge a non-refundable fee to issue solicitation documents
- 5.5 Ensure that solicitation document contains all information necessary for the bid including, requirement of goods; instructions on bid preparation; alternative bids; instructions on sealing, labelling and submission; qualification criteria; timeline; method of evaluation; bid security; any other terms and conditions
- 5.6 Provide clarifications in writing, informing all bidders
- 5.7 If necessary, issue an addendum prior to the deadline of bid submission that is made available to all bidders

Anticompetitive red flags:

- Ensure that bid security amount is high enough to deter frivolous bids, but not high enough to discourage competition

- Ensure clarity and complete information in the bid notices and solicitation documents
- Clarifications must be provided promptly

6. Receipt and Opening of Bids

There must be proper place and procedure to receive bids. Thereafter, opening of bids must be done in a clear and transparent manner.

- 6.1 Ensure that bids are received and kept safely until the deadline for submission, normally by maintaining a bid box
- 6.2 Maintain a record of all bids and samples received and ensure that the identity of bidders is kept confidential
- 6.3 Ensure that no bid is accepted after the deadline and any such late bids must be returned to the bidder unopened
- 6.4 Publicly open all timely bids, generally timing should be the same as or immediately after the deadline for submission and maintain a record of the bid opening
- 6.5 Ensure that this process is completed with minimal delays

Anticompetitive red flags:

- Ensure that all bids received, returned and opened are clearly and accurately recorded
- All bidders should be encouraged to attend the opening of bids and to the extent possible a representative of each bidder must sign the record of all bids opened
- Ensure at least two officials from the procurement unit are present during the opening of bids

7. Evaluating Bids

The evaluation of tenders/ bids and the bid award process must be demonstrably objective and transparent and based on the criteria mentioned at the time of solicitation. All criteria should be applied equally to all bids.

- 7.1 Set up an evaluation committee of at least three members who are appropriate to evaluate the bids and prepare an evaluation report for submission to the approvals authority within 21 days of commencement of evaluation
- 7.2 Ensure that the composition of this committee is diverse and includes one official each from the ZPPA, CCPC and the procuring entity in question
- 7.3 Conduct a preliminary evaluation to check if the bid is complete, in correct form, contains signature, and meets key requirements. At this stage, a bid may be rejected from further evaluation if there is a material deviation
- 7.4 Ensure that the technical evaluation takes into account performance characteristics, conditions and timeline of delivery, staffing, payment schedule, performance and maintenance
- 7.5 Thereafter, ensure that the financial evaluation results in determination of the lowest bid, which becomes the best evaluated bid. Take into account any post-qualification parameter that may have been indicated in the solicitation documents
- 7.6 Reject bids that contains any material deviation (i.e. substantially affects the scope, quality, performance, rights and obligations, or competitive position of other bidders)
- 7.7 Request may be made for clarification but the bidder shall not amend bid price (except arithmetical errors), or change the substance of the bid or substantially alter a material information while providing clarification
- 7.8 Prepare an evaluation report that includes a summary of bids received and opened; results of preliminary evaluation; results of technical and financial examination; details of bid responsiveness and non-material deviations; price of each evaluated bid and details of the best evaluated bid to be submitted to the approvals authority
- 7.9 May hold negotiations with the best evaluated bidder, after the approval of the approvals authority, relating to minor alterations or amendments and minutes must be recorded

Anticompetitive red flags:

- Ensure that the members of the evaluation committee are suitably competent. Should any member or member's close relative have a personal interest in the matter submitted for evaluation, the member must disclose the interest at the earliest and withdraw from taking part in discussions and evaluation
- Ensure that no discount offered by a bidder is taken into account after the deadline for submission and consider only the discount already included in the bid document.
- Select the best evaluated bidder only after a detailed examination
- Evaluation report must be as comprehensive as possible
- Negotiations must not materially alter or substantially change any terms and conditions and should not be in a manner that affects fair competition
- Carefully scrutinise to detect any potential bid rigging. Typical warning signs include same supplier is the often the lowest bidder, regular suppliers have not bid, some suppliers unexpectedly withdraw their bid, a bidder consistently never wins, geographic location of the winners, identical mistakes by more than one bidder in the bid documents, unusual difference in price of winning and losing bids, supplier's price remains same over several years or there is a sudden increase in price in one particular year, any suspicious conduct or coordination among bidders etc.³

³ Refer to the Competition and Consumer Protection Commission's "How to Detect Bid Rigging in Public Procurement: A Guide for Procurement Officials" for additional details

8. Notifying and Awarding the Contract

The decision to award the contract is to be taken by the approvals authority; however, the decision itself does not constitute a contract.

- 8.1 Publish a notice of best evaluated bidder, following the contract award decision by the approvals authority, specifying the name and address of bidder, contract price, description and bidders' right to appeal, on the internet, notice board and send it to all bidders (by postal mail or electronic mail or facsimile)
- 8.2 Ensure that contract is not formally awarded until 10 working days have elapsed after publication of the notice of the best evaluated bidder
- 8.3 Issue a letter of bid acceptance to the recommended bidder containing the name and address of procuring entity, name and address of bidder, date and reference number, any modifications or exclusions from the bid, contract price
- 8.4 Thereafter, prepare a formal written contract, duly signed by the appropriate authority, and send to the supplier who shall be required to send the contract within 14 days from the receipt of the draft. The contract must contain general and special conditions, clear description of goods, price, payment conditions, and other key terms
- 8.5 Ensure that the supplier provides any performance security that was specified in the solicitation document
- 8.6 Publish a public notice for all contracts of value more than K500 million containing all relevant details, on the notice board in the procuring entity and on the internet

Anticompetitive red flags:

- Ensure that the contract contains all relevant terms and conditions and consequences of breach/non-compliance
- Clearly specify the role and responsibilities of each party

9. Debriefing Unsuccessful Tenderers

After concluding a formal contract and receiving the performance security from the selected bidder, it is a good practice to notify all unsuccessful bidders. This will help in fostering a transparent system of procurement and make subsequent procurements more competitive.

- 9.1 Procurement unit must promptly reject bids of all unsuccessful bidders
- 9.2 Provide a debrief as to the reasons for the failure of the bids or applications to prequalify including the stage at which the evaluation of the bid was rejected, details of an material deviation, reservation or omission leading to the rejection or any other matter relating to the bid
- 9.3 The debrief should be in a letter format sent by postal mail or electronic mail or facsimile

Anticompetitive red flags:

- Give due regard to commercial sensitivity and the need to avoid compromising the rights or competitive situation of other tenders
- Provide an objective analysis of the comparative strengths and weaknesses of the unsuccessful tenderers that will enable them to compete more effectively in the future

10. Managing the Contract

A contract needs to be effectively managed by the user, and is not the responsibility of the supplier. Proactive involvement in the management and execution of the contract is essential to maximise the benefits from a contract.

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 10.1 Designate a member of the staff as a contract manager for every contract and a team of staff in case of a large or complex contract, with the appropriate expertise and skill | <input type="checkbox"/> |
| 10.2 Contract manager shall be responsible for monitoring performance and delivery obligations, documentation, payment, cost, quality and time control, recommendations for termination of contract, and statutory compliance | <input type="checkbox"/> |
| 10.3 Ensure that monitoring is effective and that inadequacies or poor performance is timely identified for remedial action | <input type="checkbox"/> |
| 10.4 May make permissible amendments or variations to the contract | <input type="checkbox"/> |
| 10.5 Terminate the contract according to the terms of the contract | <input type="checkbox"/> |

Anticompetitive red flags:

- Maintain a record of supplier performance that will be useful to evaluate the performance of a supplier while considering subsequent tenders
- At the conclusion of the contract, review the entire procurement process, including the effectiveness of preliminary stages. This will be helpful in developing future request for tender and solicitation documents



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