

compliance with the following requirements should be examined using the bidding documents as the reference point:

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**Procurement Implementation:
Bid Evaluation Stages**

- **Stage 1:**
- To ascertain whether the bidder is eligible:-
 - is the bidder blacklisted?
 - In case of works contracts, does the bidder have required registration?
 - for foreign funded projects, if so specified by the funding agency:- in the case of works contracts, is the bidder from a member country of the funding agency and in the case of goods contracts the goods, are they manufactured in one of the member countries of the funding agency?
 - is the bid signed properly, including the power of attorney if stipulated and generally in order?
 - are the bid securities in acceptable format, for required amount and duration?
 - is bid containing all required critical documents including supporting evidence of bidder eligibility and qualifications?
 - is bid complete and quote for all items in the lot or packages, if so stipulated in the bidding document?

Speaker Notes

Stage 1: To ascertain whether the bidder is eligible:- the bidder is blacklisted; In case of works contracts, the domestic bidder should have required Entity's registration; for foreign funded projects, if so specified by the funding agency:- in the case of works contracts, the bidder shall be from the member country of the funding agency and in the case of goods contracts the goods shall be manufactured in one of the member countries of the funding agency; bid is signed properly by an authorized party, including the power of attorney if stipulated and generally in order; bid securities submitted are in acceptable format, for required amount and duration; bid is containing all required critical documents including supporting evidence of bidder eligibility and qualifications; and bid is complete and quote for all items in the lot or packages, if so stipulated in the bidding document.

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Procurement Implementation: Bid Evaluation Stages

- *Stage 2:*
- Ascertain deviations in bids and categorize deviations into major, minor or debatable deviations.
- Debatable deviations may be categorized as either minor or major deviations depending on their cost and the judgment of the Technical Evaluation Committee.
- These deviations fall in to two basic categories, Major deviations by the bidder result in a finding of "non responsiveness" and consequent rejection of the bid. Bids with minor deviations, on the other hand, are considered as "substantially responsive" and are, therefore, evaluated and considered for contract award by determining any financial value of each deviation and adding to the bid price.
- The question is which deviations are "major" and which as "minor". To facilitate the categorization of deviations the following approach may be used.

Speaker Notes

Stage 2: To ascertain the deviations from the provisions of bidding documents and categorize such deviations into major or minor deviations. Also, to identify debatable deviations which may be categorized as either minor or major deviations depending upon the requirements of the specific provisions in the bidding document, the criticality of the deviation, the value of the contract in comparison to the value of the deviation and the judgment of the Technical Evaluation Committee.

The sum of the bid price and the total of adjustments made for deviations and other evaluation factors specified in the bidding documents is the "evaluated bid price".

The question is to determine which deviations are to be classified as "major" and which as "minor". In the absence of clearly defined distinction between major and minor deviations there is room for different interpretations. To facilitate the categorization of deviations the following approach may be used.

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Procurement Implementation: Bid Evaluation Stages

- A major deviation would be one which either -
 - has an effect on the validity of the bid; or
 - has been specified as grounds for rejection of the bid ; or
 - has a substantial effect to the scope, quality, functionality, etc; or
 - will limit in any substantial way the PE's rights or bidders obligations or
 - is a deviation from the terms or the technical specifications whose effect on the bid price is substantial but cannot be given a monetary value.

- A minor deviation would be one which either:-
 - has no effect on the validity of the bid; or
 - has no substantial effect to the scope, quality, functionality, etc; or
 - has no effect on the price, quality or delivery; or
 - will not limit in any major way the PE's rights or bidders obligations; or
 - has such effect but the difference from the commercial terms or technical specifications is such that it can be given a monetary value; or
 - has not been specified as grounds for rejection of the bid, provided that the total amount of adjustments for such deviations does not exceed a previously determined percentage of the bid price.

Speaker Notes

A major deviation would be one which either:- has an effect on the validity of the bid; or has been specified in the bidding documents as grounds for rejection of the bid ; or has an effect in substantial way to the scope, quality, functionality or performance ; or will limit in any substantial way the Procuring Entity's rights or bidders obligations or is a deviation from the terms or the technical specifications in the bidding documents whose effect on the bid price is substantial but cannot be given a monetary value.

A minor deviation would be one which either:- has no effect on the validity of the bid; or has no effect in substantial way to the scope, quality, functionality or performance; or has no effect on the price, quality or delivery of the goods or services offered; or will not limit in any substantial way the Procuring Entity's rights or bidders obligations; or has such effect but the difference from the commercial terms or technical specifications in the bidding documents is such that it can be given a monetary value; or has not been specified in the bidding documents as grounds for rejection of the bid, provided that the total amount of adjustments for such deviations does not exceed a previously determined percentage of the bid price.

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Procurement Implementation: Bid Evaluation Stages

Ways of treating most frequent deviations:

- **General:** In establishing the substantial responsiveness of bids, a specific clause in the ICB take precedence over general clauses
- **Completeness of bids:** If the Procuring Entity intends to reject incomplete bids, it should be clearly stated in the bidding documents. If Procuring Entity intends to consider incomplete bids, the bidding document should specify the minimum number of items for which prices must be quoted in the bid, or the minimum value of the items to be quoted.

Speaker Notes

Ways of treating most frequent deviations:

- **General:** In establishing the substantial responsiveness of bids, a specific clause in the ICB take precedence over general clauses; for example, if the bidding documents required bids to be submitted for all items and stated that incomplete bids will be rejected, the PE should not propose to base the award by accepting a bid which is incomplete, based on a clause in the bidding documents in which it reserved the right to waive irregularities in bids.
- **Completeness of bids:** If the PE intends to reject incomplete bids, it should be clearly stated in the bidding documents. If PE intends to consider incomplete bids, the bidding document should specify the minimum number of items for which prices must be quoted in the bid, or the minimum value of the items to be quoted. Bidding documents should also state how incomplete bids meeting the minimum requirements will be evaluated. In such cases incomplete bids would have to be adjusted (loaded) for missing items to make the bids comparable.

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Procurement Implementation: Bid Evaluation Stages

- **Procedural Deviations in submission of bids:** Most deviations in submission of bids (such as the marking of envelopes, sealing of bids) other than the signature to the form of bid are normally considered as minor.
- **Bid Security:** If the bidders are required to furnish a bid security with his bid, failure to submit it is considered as a major deviation. Late submission of bid security, insufficient amount, insufficient period and non-compliance of wording of bid security are all considered as major deviations.
- **Lack of supporting Documents:**
 - There are two kinds of documentation which may be required to be submitted with bids.
 - One kind is intended to substantiate the legitimacy of the bid (i.e., that the bid is not "speculative", "exploratory", etc;
 - The other is to provide additional details on the technical part of the bid (e.g. brochures describing the equipment offered.
 - Lack of documentation of the first kind is a major deviation and, grounds for rejection. Lack of the second kind is a minor deviation which can be remedied by subsequent submissions.

Speaker Notes

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Procurement Implementation: Bid Evaluation Stages

- **Fixed price against variable price:**
- **Technical Specifications:** The variety of possible deviations from technical specifications is infinite, making it impossible to discuss all such deviations even in a manual. The basic principles governing the treatment of technical deviations can, however, be stated. First, the bidding documents should indicate those parts of the technical specifications which the Procuring Entity considers so important that deviations from them will not be accepted.

Speaker Notes

Fixed price against variable price: When bids are required at a firm price, proposal in bids to apply an escalation clause to the bid price should be regarded as a major deviation and the bid should be rejected.

Technical Specifications: The basic principles governing the treatment of technical deviations are firstly, the bidding documents should indicate those parts of the technical specifications which the PE considers so important that deviations from them will not be accepted and secondly if the PE is willing to accept deviations on technical specifications not designated as major in the bidding documents, a decision must be made whether the PE is prepared to: accept such deviations, not only for the purpose of evaluating the bid; and consider as a contractual obligation, if the bid is accepted for the contract award and thirdly if the deviation is acceptable, the monetary value of the minor deviation should be determined and loaded to the bid price, if on the other hand, the deviation offered is not acceptable for an eventual contract, the deviation should be classified as major and the bid rejected.

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Procurement Implementation: Bid Evaluation Stages

- **Subcontracting:** The bidding document is to indicate to what extent subcontracting is permitted. Any bid not complying with this stated requirement may be considered as non responsive.
- **Alternative bids:** Submission of a bid based on entirely different design, where such had not been permitted is considered as a major deviation.
- **Delivery Period:** If goods are offered outside the delivery period or in the case of works contract unacceptable time phasing, not conforming to specified program is considered as a major deviation.
- **Conditional bids:** Bids that are offered with conditions such as prior sale of the equipment offered, availability of material in the market are considered as non responsive.
- **Debatable Deviations:** There may be some deviations which do not appear as a major departure but at the same time cannot be considered as a minor departure either.

Speaker Notes

Subcontracting: The bidding document for works contract should indicate to what extent subcontracting is permitted and whether the proposed subcontractor has to be named in the bid. Any bid not complying with this stated requirement may be considered as non-responsive and grounds for rejection.

Alternative bids: Submission of a bid based on entirely different design, where such had not been permitted is considered as a major departure.

Delivery Period: If goods are offered outside the delivery period or in the case of works contract unacceptable time phasing, not conforming to specified key dates or program is considered as a major deviation.

Conditional bids: Bids that are offered with conditions such as prior sale of the equipment offered, availability of material in the market are considered as non responsive.

Debatable Deviations: There may be some deviations which do not appear to consider at first sight as a major departure but at the same time cannot be considered as a minor departure either.

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Procurement Implementation: Bid Evaluation Stages

In such situation the bid evaluation report should contain a statement, justifying considering such departures as minor deviation. Some of the examples for debatable deviations are as follows:-

- Requesting different amount of advance and other payment terms (including liquidated damages and retention)
- Proposed changes in construction period which is not critical
- Omissions of minor works or items included in the scope of work

In considering the bids with above deviations, the cost of the deviation is to be added to the bid price to arrive at their evaluated bid price.

Speaker Notes

In such situation the bid evaluation report should contain a statement, justifying considering such departures as minor deviation. Some of the examples for debatable deviations are as follows:-

Requesting different amount of advance and other payment terms (including liquidated damages and retention): If such proposals are accepted the additional cost that will be incurred by the Procuring Entity should be loaded to the bid price for evaluation; In the case of advances and payment stages the additional cost may be the respective interests and in the case of liquidated damages and retention it may be the maximum amounts specified in the bidding documents for liquidated damages and retention respectively.

Proposed changes in construction period which is not critical: Similarly if such proposals are accepted the additional cost that will be incurred by the Procuring Entity should be loaded to the bid price for evaluation.

Omissions of minor works or items included in the scope of work; if such omissions are acceptable there cannot be any effect to the balance works or items if the omitted items or works are procured differently.

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Procurement Implementation: Bid General Principles of Detailed Bid Evaluation and Comparison of Bids

- Out of the three stages of bid evaluation described, only during this stage are the bids compared with each other.
- The purpose of comparison is to determine the lowest evaluated cost that will be incurred by the Procuring Entity from the substantially responsive bids received. **The lowest evaluated bid may or may not necessarily be the lowest quoted bid.**
- A systematic and logical sequence should be followed during the detailed evaluation and comparison of bids.
- **Detailed Bid Evaluation – Principles and Methodologies**
 - The most frequently used evaluation criteria are given below:

Speaker Notes

The main objective of detailed bid evaluation is to determine the cost that the PE will incur if the contract is awarded to each of the bid which was determined as a substantial responsive bid. Therefore only the bids that have been determined to be substantially responsive should be considered for detailed evaluation.

Out of the three stages of bid evaluation described, only during this stage are the bids are compared with each other. The purpose of comparison is to determine the lowest evaluated cost that will be incurred by the Procuring Entity from the substantially responsive bids received. The lowest evaluated bid may or may not necessarily be the lowest quoted bid.

A systematic and logical sequence should be followed during the detailed evaluation and comparison of bids.

Detailed Bid Evaluation Principles and Methodologies

The most frequently used evaluation criteria are given below. The PE may use other appropriate criteria for a particular procurement and disclose such factors together with the evaluation methodology in the bidding document:

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**Procurement Implementation:
Bid General Principles of Detailed Bid
Evaluation and Comparison of Bids**

- Before commencing evaluation of bids, exclude VAT, contingencies and provisional sum amounts;
- Correction of arithmetical errors: Bids should be checked carefully for arithmetical errors in the bid to ensure the stated quantities and prices are consistent. If there is a discrepancy a correction has to be done and the corrected price is considered as the bid price. **If the bidder refuses to accept its bid shall be rejected** and action is taken against the bid security submitted.
- The correction of arithmetical errors should be done as follows:-
 - where there is a discrepancy between the amounts in figures and in words, the amount in words will prevail;
 - where there is a discrepancy between the unit rate and the line item total, the unit rate as quoted will govern, unless in the opinion of the Procuring Entity that there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected; and

If the bid price changes by the above procedure, the amount stated in the Form of Bid shall be adjusted with the concurrence of the bidder and shall be considered as binding upon the bidder.

Speaker Notes

Before commencing evaluation of bids, exclude VAT, contingencies and provisional sum amounts;

Correction of arithmetical errors: Bids should be checked carefully for arithmetical errors in the bid to ensure the stated quantities and prices are consistent. The quantities should be same as that stated in the bidding documents. The total bid price should be the total of all line items.

The line item total should be the product of quantity and unit rate quoted or, when a lump sum is quoted the lump sum amount. If there is a discrepancy a correction has to be done and the corrected price is considered as the bid price. After the correction of arithmetical errors the PE should notify in writing, each bidder of the detailed changes. A bidder shall agree for such arithmetical corrections made to his bid. If the bidder refuses to accept its bid shall be rejected and action is taken against the bid security submitted.

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**Procurement Implementation:
Bid General Principles of Detailed Bid
Evaluation and Comparison of Bids**

- If a bid price of any bid is adjusted as above, the Technical Evaluation Committee (TEC) shall give a detailed report explaining where and how such adjustments were made rather than merely saying the bid price was adjusted due to arithmetical error by an amount equal to
- Application of applicable discount. Discounts offered which are valid for the entire bid validity period should be considered. Conditional discounts are to be ignored. These discounts should be considered in the manner the bidder has offered them:
- If discounts are offered to limited items it should be applicable to such items;
- If the discount offered is to the total bid price as a percentage it should be applicable to all the items at the percentage discount offered, excluding for contingencies and provisional sum items;
- If the discount offered is to the total bid price as a lump sum, such lump sum amount should be considered for evaluation and before the award of contract such lump sum amount shall be uniformly distributed to all the items, excluding for contingencies and provisional sums.

Speaker Notes

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Application of applicable discount. Discounts offered by the bidders which are valid for the entire bid validity period should be considered for evaluation. Conditional discounts are to be ignored during evaluation.

If discounts are offered to limited items it should be applicable to such items;

If the discount offered is to the total bid price as a percentage it should be applicable to all the items at the percentage discount offered, excluding for contingencies and provisional sum items;

If the discount offered is to the total bid price as a lump sum, such lump sum amount should be considered for evaluation and before the award of contract such lump sum amount shall be uniformly distributed to all the items, excluding for contingencies and provisional sums.

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Procurement Implementation: Bid General Principles of Detailed Bid Evaluation and Comparison of Bids

- **Adjustment to bid prices for omissions:-**
- Omissions are to be quantified in money terms whenever possible, to permit direct comparison with other bids, provided such omissions were considered as minor deviations.
- Generally for works contracts, if a bidder fails to quote for any item the bidder will not be paid for such items when executed and shall be deemed covered by the rates of other items. In that case no further adjustment is needed during the bid evaluation.
- If such provision is not included, rather than rejecting the bid entirely and if it is already considered as substantially responsive during bid examination, the bid price should be loaded for comparison purposes. To that effect surrogate prices for these items may be obtained from printed price lists if available or the average of several other bids for the corresponding items should be used rather than the lowest and highest figures.

Speaker Notes

Adjustment to bid prices for omissions :- In many cases, bidders will present their bids without quoting for certain items, accidentally or deliberately. Regardless of the reason such omissions should be quantified in money terms whenever possible, to permit direct comparison with other bids, provided such omissions were considered as minor deviations during the preliminary examination of bids. Generally for works contracts, instructions to bidders will include clauses, if a bidder fails to quote for any item in bills of quantities the bidder will not be paid by the Procuring Entity for such items when executed and shall be deemed covered by the rates of other items and prices in the bills of quantities.

In that case no further adjustment is needed during the bid evaluation. If such provision is not included, in the case of omission of one or more items from the bid, rather than rejecting the bid entirely and if it is already considered as substantially responsive during the preliminary examination, the bid price should be loaded for the comparison purposes. To that effect surrogate prices for these items may be obtained from printed price lists if available or the average of several other bids for the corresponding items should be used rather than the lowest and highest figures.

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**Procurement Implementation:
Bid General Principles of Detailed Bid
Evaluation and Comparison of Bids**

- **Adjustments for acceptable departures:-**
- Regardless of the reason such deviations should be quantified in money terms whenever possible, to permit fair comparison with other bids, provided such deviations were considered as minor deviations during bid examination.
- The most common deviations in bids are possible due to different commercial terms offered; i.e., for amounts of advances, changes in payment schedules etc. These can be adjusted by applying a discount rate and converting them to their present values.
- Another form of bid deviation is to offer a higher capacity or standard performance than is specified: i.e., a larger engine capacity, greater carrying capacity or storage, etc. No additional advantage should be given to such offers unless the bid document specifically provides for this and set out how the difference will be evaluated.

Speaker Notes

Adjustments for acceptable departures:-

Regardless of the reason such deviations should be quantified in money terms whenever possible, to permit fair comparison with other bids, provided such deviations were considered as minor deviations during bid examination.

The most common deviations in bids are possible due to different commercial terms offered; i.e., for amounts of advances, changes in payment schedules etc. These can usually be adjusted by applying an appropriate discount rate (preferably disclosed in the bidding documents) and converting them to their equivalent present values.

Another form of bid deviation is to offer a higher capacity or standard performance than is specified in the bidding document: i.e., a larger engine capacity, greater carrying capacity or storage, etc. No additional advantage should be given to such offers unless the bid document specifically provides for this and set out how the difference will be evaluated.

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Procurement Implementation: Bid General Principles of Detailed Bid Evaluation and Comparison of Bids

- › **Adjustments for delivery periods:-**
 - › Regardless of the reason such deviations should be quantified in money terms whenever possible, to permit fair comparison with other bids, provided such deviations were considered as minor deviations during bid examination.
 - › Generally no advantage is given to a bid offering early delivery than that is specified in the bidding document.
 - › Any bid offering a delivery beyond a finally acceptable cut off date specified in the bidding documents should be rejected as non-responsive bid.
- › **Adjustments for inland transportation:-**
 - › For supply contracts, an adjustment may be needed if the price offered are based on FOB or CIF basis for goods to be imported and supply and Ex works basis for goods already imported or that will be supplied within the country, and the bidder's were not requested to include such inland transportation costs within the bid price.

Speaker Notes

Adjustments for delivery periods:-

In many cases, bidders will present their bids where the delivery periods deviate from bidding document requirements, accidentally or deliberately. Regardless of the reason such deviations should be quantified in money terms whenever possible, to permit fair comparison with other bids, provided such deviations were considered as minor deviations during the preliminary examination of bids. Generally no advantage is given to a bid offering early delivery than that is specified in the bidding document. Any bid offering a delivery beyond a finally acceptable cut-off date specified in the bidding documents should be rejected as non-responsive bid.

Adjustments for inland transportation:-

For supply contracts, an adjustment may be needed if the price offered are based on FOB or CIF basis for goods to be imported and supply and Ex works basis for goods already imported or that will be supplied within the country, and the bidder's were not requested to include such inland transportation costs within the bid price.

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Procurement Implementation: Bid General Principles of Detailed Bid Evaluation and Comparison of Bids

- **Operational costs and life cycle costing:** –
- Life cycle cost is the assessment of the initial acquisition cost plus the follow-on ownership cost to determine the total cost during the life of a plant or equipment.
- In the procurement of equipment, it is appropriate for the PE to evaluate bids on the basis of life cycle cost. The following would generally comprise a typical life cycle assessment:
 - Initial purchase price;
 - Adjustments for extras, options, delivery, variations, deviations;
 - Estimated operational costs (fuel, labour etc.);
 - Estimated cost of spare parts and other consumables;
 - Efficiency and productivity;
 - Depreciation cost.
- The follow-on cost such as fuel, spare parts, maintenance cost and depreciation costs are to be discounted to net present values.

Speaker Notes

Operational costs and life cycle costing:-

Life cycle cost is the assessment of the initial acquisition cost plus the follow-on ownership cost to determine the total cost during the life of a plant or equipment. In the procurement of equipment in which the follow-on cost of operation and maintenance are substantial, a minor difference in the initial purchase price between two competing bids can easily be overcome by the difference in follow-on cost. In these cases, it is most appropriate for the Procuring Entity to evaluate bids on the basis of life cycle cost.

The following elements (but not limited) would generally comprise a typical life cycle assessment:- Initial purchase price; Adjustments for extras, options, delivery, variations, deviations; Estimated operational costs (fuel, labour etc.); Estimated cost of spare parts and other consumables; Efficiency and productivity; Depreciation cost.

The follow-on cost such as fuel, spare parts, maintenance cost and depreciation costs should be discounted to net present value.

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Procurement Implementation: Bid General Principles of Detailed Bid Evaluation and Comparison of Bids

- **Conversion to common currency:-**
- In the case where bidders are permitted to bid in various currencies, the bids are converted to Naira - **these conversions are made using the mean selling rates established for similar transactions by the Central Bank of Nigeria on the specified date.**
- In works contracts usually all the bidders are required to price the bid in Naira and to specify the percentages of different currencies.
- **Domestic preference:-**
When applying domestic preference the following guidance should be used.

Speaker Notes

Conversion to common currency:- In order to minimize the foreign exchange risk for bidders in certain procurement (especially in ICB procedures) the bidders are allowed to bid in foreign currencies. This results in bids being presented in a wide variety of currencies which must be converted to Nigerian Naira. These conversions are made using the mean selling rates established for similar transactions by the Central Bank of Nigeria on the specified date. In works contracts mostly used method is to specify that all the bidders should price the bid in Naira and to specify the percentages in different currencies.

Domestic preference:- In the case of goods or works contracts, when procurement is carried out using public funds where foreign bidders are allowed to participate in bidding the applicable domestic preference clauses shall be included in the bidding document. In the case of goods contracts, if the goods required are manufactured in Nigeria the applicable domestic preference clauses shall be included in the bidding document. When applying domestic preference the following guidance should be used.

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Procurement Implementation: Bid General Principles of Detailed Bid Evaluation and Comparison of Bids

- **Goods:** The application of the applicable preference should be used only if it was disclosed in the bidding documents. The margin of price is added to the bid price of foreign product rather than subtracting from the domestic product.
- **Works:** Where specified in the bidding documents, the margin of price is added to the bid price of foreign bidders rather than subtracting from the domestic bids.

Speaker Notes

- **Goods:** The application of the applicable preference should be used only if it was disclosed in the bidding documents. The goods being procured are “manufactured goods” involving assembly, fabrication, processing etc., where a commercially recognized final product is substantially different from in basic characteristics of its components and raw materials. The goods qualified for domestic preference are identical or comparable to requirements given in the bidding documents with respect to quality, capacity and performance. Satisfying the minimum domestic values as specified in the bidding documents. The margin of price is added to the bid price of foreign product rather than subtracting from the domestic product.
- **Works:** The application of the applicable preference should be used only if it was disclosed in the bidding documents. Satisfying the minimum domestic values as specified in the bidding documents. The margin of price is added to the bid price of foreign bidders rather than subtracting from the domestic bids.

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**Procurement Implementation:
Bid General Principles of Detailed Bid
Evaluation and Comparison of Bids**

- **Comparison with engineers estimate in the case of work contracts:-**
- A bid should not be rejected because the bid price exceeds or is lower by some predetermined margin of the engineers estimate;
- The measure of acceptability should rather be the "reasonableness" of a bid price;
- The reasonableness may be established by considering all factors such as market conditions, special terms, **prices of similar items procured in the recent past any other relevant factors**. If great differences between bid and engineers estimate are found, the reasons for the discrepancy must be analyzed.
- Review engineers estimate to discover whether any unusual provisions are included which may have affected the prices. Analyze current market conditions to discover whether they would tend to increase or decrease the bid prices. If these reviews would account for the discrepancy three alternative conclusions may be reached.
 - Bid is reasonable under given circumstances and should be accepted;
 - If the bid prices are marginally low the bidder shall be requested to prove to the satisfaction of the Procuring Entity, for such purposes the bidder may be asked to provide a rate analysis. A higher performance security may be requested to mitigate such risks; if the bidder refuses to provide such additional performance security, his Bid shall be rejected.
 - Aspect of bidding documents are suspected to be the likely cause; all bids may be rejected and initiate re-bidding with modified bidding documents.

Speaker Notes

Comparison with engineers estimate in the case of work contracts:-

A bid should not be rejected because the bid price exceeds or is lower by some predetermined margin of the engineers estimate; The measure of acceptability should rather be the "reasonableness" of a bid price as determined during the evaluation.

The reasonableness may be established by considering all factors such as market conditions, special terms specified in the bidding documents, prices of similar items procured in the recent past any other relevant factors. If great differences between bid and engineers estimate are found, the reasons for the discrepancy must be analyzed.

Review engineers estimate to discover whether any unusual provisions are included which may have affected the prices. Analyze current market conditions to discover whether they would tend to increase or decrease the bid prices. If these reviews would account for the discrepancy three alternative conclusions may be reached as shown in slide above..

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Procurement Implementation: Extension of Tender Validity

- › Bidders are required to keep their offers valid for a specified period to allow the Procuring Entity to examine and evaluate offers, select the lowest evaluated tender, obtain the necessary approvals from the competent authorities and also obtain a no objection from the Bureau for the proposed award of the contract, if above the prior review threshold.
- › Tenders should thus remain valid for the period stated in tendering documents. A tender that is valid for a shorter period than required by the tendering documents should be rejected by the Procuring Entity as non-responsive.
- › Where there is a delay in tender evaluation, the Procuring Entity may request bidders to extend the period of validity of their tenders.
- › Bidders may refuse to grant any extension of validity of their tenders without losing their tender security, if any.
- › Bidders are not allowed to increase their prices as a condition of extending the validity of their tenders, unless the tendering documents provide for an adjustment in price.

Speaker Notes

Bidders are required to keep their offers valid for a specified period to allow the PE to examine and evaluate offers, select the lowest evaluated tender, obtain the necessary approvals from the competent authorities and also obtain a no objection from the BPP for the proposed award of the contract, if above the prior review threshold.

Bids should thus remain valid for the period stated in bid documents. A bid that is valid for a shorter period than required by the bid documents should be rejected by the PE as non-responsive.

Where there is a delay in tender evaluation, the Procuring Entity may request bidders to extend the period of validity of their bids.

Bidders may refuse to grant any extension of validity of their tenders without losing their tender security, if any.

Bidders are not allowed to increase their prices as a condition of extending the validity of their tenders, unless the tendering documents provide for an adjustment in price.

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Procurement Implementation: Bid Evaluation Report

- The report covers among the other things:
 - Key dates and steps in bidding process (copy of the invitation as advertised attached);
 - Bid opening information (copy of the bid opening minutes should be attached);
 - For all bidders: Table showing the bidders compliance with commercial conditions
 - For all bidders: Table showing bidder's compliance with the technical specifications
 - For all substantial responsive bids: Table showing arithmetical errors, discounts and currency conversion;
 - For all substantial responsive bids: Table showing additions and adjustments
 - For all substantial responsive bids: Table showing domestic preference;
 - For all substantial responsive bids: Table showing steps from bid price read to evaluated bid price;
 - Record of clarifications made from all bidders;
 - For lowest evaluated bidder: **Post qualification verification and due diligence**;
 - Names of bidder's rejected and reasons for rejection;
 - **Applicable Appropriation in the current Budget**;
 - The proposed contract award recommendation;
- In addition, the evaluation report should include narrative section in which any information not suitable for presentation in the form of tables, together with any supplementary information.

Speaker Notes

After the completion of the evaluation process the PE should prepare a bid evaluation report setting out the process of evaluation. The PE shall use standard forms available for the purpose. These report covers among the other things: (see list in slide above)

In addition, the evaluation report should include narrative section in which any information not suitable for presentation in the form of tables, together with any supplementary information necessary for a complete understanding of all the factors considered during bid evaluation.

There should be an Appendix to the report containing copies of originals such as the bid return sheets and the attendance list.

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Procurement Implementation: Acceptance of Bids

- The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive
- Notice of the acceptance of the bid shall immediately be given to the successful bidder, after due consideration and approval by the procuring entity's Tenders Board, if within the N50m threshold.
- Where the procurement proceeding is with regard to a value which the Tenders Board is the approving authority, the notice shall serve as notice of a procurement award.

Speaker Notes

The successful bid shall be that submitted by the lowest cost bidder from the bidders responsive as to the bid solicitation, but need not necessarily be the lowest cost bidder.

Notice of the acceptance of the bid shall immediately be given to the successful bidder, after due consideration and approval by the procuring entity's Tenders Board, if within the below N50m threshold. Notwithstanding the above, where the procurement proceeding is with regard to a value for which approval should be sought from either the Minister or Federal Executive Council, notice given to a successful bidder shall serve for notification purposes only and shall not howsoever be construed as a procurement award until after all such approvals have been obtained.

Where the procurement proceeding is with regard to a value which the Tenders Board is the approving authority, then subject to the fulfillment by the successful bidder of any special conditions expressed in the bid solicitation document and the execution of the procurement contract, the notice shall serve as notice of a procurement award.

Slide 34

Procurement Implementation: Contract Performance Guarantee and Award and Signing of Contract

- **Contract Performance Guarantee-**
- The successful bidder is required to provide a Performance Guarantee of not less than 10% of the contract sum as a precondition for the award of any procurement contract **upon which any mobilization fee is to be paid.**
- **Execution of the Contract Agreement-**
- Prior to contract award, the Procuring Entity should ensure that **budgetary provision is confirmed to meet the cost of contract.** Thereafter, the Letter of Acceptance shall be issued, and no sooner the final decision of contract award is completed.

Speaker Notes

Contract Performance Guarantee:- The provision of a Performance Guarantee shall be a precondition for the award of any procurement contract upon which any mobilization fee is to be paid, provided however it shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilization fee requested by the supplier or contractor whichever is higher.

Execution of the Contract Agreement:- Prior to contract award, the Procuring Entity should ensure that budgetary provision is confirmed to meet the cost of contract. Thereafter, the Letter of Acceptance shall be issued within the validity period of the bid, and no sooner the final decision of contract award is completed. This Letter of acceptance should be free from any new conditions. This should essentially state the sum that will be paid to the contractor by the Employer in consideration of the execution and completion of construction as prescribed in the contract. The issuance of this letter constitutes the formation of the contract. The Letter of Acceptance should be sent to the successful bidder only after evaluation of Bids and after obtaining approval from the relevant authorities.

Slide 35

Procurement Implementation: Award and Signing of Contract

- After Bid Evaluation and decision of Contract Award, the PE should:-
 - request and obtain the BPP's "no-objection", if applicable;
 - **not** negotiate the award with the successful bidder;
 - **not** require the selected bidder to provide performance in excess of that specified in the Bid Documents;
 - send notification of the award to the successful Bidder;
 - request the Bidder to return the signed contract with the performance security; and,
 - notify unsuccessful Bidders after receiving the signed contract and the performance security from the successful bidder.
- If the successful Bidder fails to return the signed contract or provide the required performance security, the PE 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.

Speaker Notes

Once the PE has evaluated the tenders and made a determination on the lowest evaluated responsive tender, and a decision has been made about the award, the PE should:- request and obtain the Bureau's "no-objection" prior to awarding the contract, if applicable; not negotiate the award with the successful bidder; not require the selected bidder to provide performance in excess of that specified in the Bid Documents; send notification of the award, and a contract form to the successful Bidder in a manner and within the time specified in the bid documents; request the Bidder to return the signed contract together with the required performance security within the time specified in the bid documents; and, notify unsuccessful Bidders after receiving the signed contract and the performance security from the successful bidder.

If the successful Bidder fails to return the signed contract or provide the required performance security, the Procuring Entity may:- require forfeiture of the Bidder's Tender Security; and proceed to offer the contract to the second lowest evaluated Bidder, provided that he is capable of performing satisfactorily.

Slide 36

Procurement Implementation:
Execution of the Contract Agreement and Default on bid security

- ▶ **Execution of the Contract Agreement:-**
- ▶ A formal letter of acceptance shall be issued to the bidder after acceptance of the bid, followed by the execution of a formal contract.
- ▶ **Default on bid security:-**
- ▶ When there is a default in the form of failure to fulfill conditions in the bid security or failure to submit performance security, **the Procuring Entity shall promptly inform the BPP of such failure, with relevant details of the supplier or contractor.**

Speaker Notes

Execution of the Contract Agreement:- Following the acceptance of a bid submitted by a bidder, a formal letter of acceptance shall be issued forthwith to the bidder by the Procuring Entity. This shall be followed by the execution of a formal contract.

Default on bid security:- When a bid security declaration is requested with the bid and any particular bidder fails to fulfill any of the conditions in the bid security

declaration (namely does not accept the arithmetical errors as described in the instruction to bidders, fail to submit a performance security before the time period given or refuse/fails to execute the contract agreement) the Procuring Entity shall promptly inform the Bureau of such failure, with relevant details of the supplier or contractor. Summary of the nature of the default (should include copies of all relevant correspondents, and explained the proceedings in chronological order starting from close of bids with dates.

Slide 37



Speaker Notes

No Comments

7.0 Module VII: Complaints and Recourse Mechanism

7.1 Module Objectives

7.1.1 Rationale

A sound procurement system uses the participation of bidders, public officials and other stakeholders as part of the control system by establishing a clear regulated process for facilitating the exposure of wrongdoing in the procurement procedure, as well as enabling the fair and timely resolution of bidders' complaints.

In the case of officials, the mechanism will be by 'whistle-blowing' which provides a tool for finding and tackling large scale wrong-doing in public procurement systems.

In the case of bidders, an effective complaint and recourse mechanism that provides timely access, independence of complaint and review system, effectiveness of the complaints systems and availability of adequate remedies

7.1.2 Objective

The objective of this module is that participants should gain a sound and crisp understanding of the complaints and recourse mechanism provided within the PPA 2007, the general principles of complaints and recourse mechanisms as part of best practice for an effective procurement system.

This knowledge will provide them a deeper understanding of the public procurement system in Nigeria they may observe during the monitoring of various MDAs as they undertake their annual procurement activities.

7.2 Module Programme

The module programme covers the following Introduction to the complaints and recourse mechanism in the act, the nine steps as detailed by the BPP

7.3 Module Reading

7.3.1 Essential reading

- 1) Public Procurement Act 2007
- 2) Complaints Procedure under the Public Procurement Act by the BPP

7.3.2 Further reading

Procurement Procedures Manual for Public Procurement in Nigeria issued by the BPP

7.4 Module Content

Slide 1

COMPLAINTS AND RECOURSE MECHANISM

Speaker Notes: Complaints and Recourse Mechanism

The presenter starts by stating that a sound procurement system uses the participation of bidders, public officials and other stakeholders as part of the control system by establishing a clear regulated process for facilitating the exposure of wrongdoing in the procurement procedure, as well as enabling the fair and timely resolution of bidders' complaints.

The reporting mechanism for officials is usually 'whistle-blowing' which can be defined as a means to promote accountability by encouraging the disclosure of information about misconduct and possibly corruption while protecting the whistleblower against retaliation.

This paper however will be about the complaints, recourse and reporting mechanism for bidders as provided by the PPA 2007.

Slide 2

COMPLAINTS PROCEDURE UNDER THE PUBLIC PROCUREMENT ACT PART IX SECTION 54	
<ul style="list-style-type: none"> • The Public Procurement Act 2007 recognizes the possibility of complaints after every procurement process. It has therefore gone ahead to specifically provide a Recourse Mechanism for the complainants. • The Bureau has in the exercise of its functions gone further to highlight the Nine (9) Steps for easy reference by all Contractors/Consultants/MDAs. 	

Speaker Notes: Complaints Procedure under the Public Procurement Act

The Complaints and Recourse Mechanism under the Act fundamentally serve a procurement oversight function. They provide a means of monitoring the activities of government procurement officials, enforcing their compliance with procurement laws and regulations, and correcting improper actions. Furthermore, they provide an opportunity for bidders and other stakeholders to contest the process and verify the integrity of the award.

The common theme of an effective complaints and recourse systems for challenging procurement decisions is that it should provide 1) timely access, 2) independent review, 3) efficient and timely resolution of complaints and 4) adequate remedies. We shall see how these have been adequately addressed in the Act and the nine steps in the BPP publication “Complaints Procedure under the Public Procurement Act”.

Slide 3

- Where any **contractor/Consultant/MDA** is not pleased with the outcome of any procurement proceedings either because of a **perceived breach or omission** of the provisions of the Public Procurement Act 2007, he shall:
- **Step 1:** Make a formal and written complaint to the Accounting Officer of the procuring/disposing entity **within fifteen (15) working days from when he became aware of the breach or omission or should have been aware of it whichever is earlier.**

Speaker Notes

The PPA 2007 provides that a bidder may seek administrative review for any omission or breach by a procuring entity under the provisions of the Act or any regulations guiding a particular procurement.

Under the Act, the first step for such a complainant will be to make a formal and written complaint to the Accounting Officer of the procuring entity within 15 working days from when the complainant became aware of the of the breach or omission of should have been aware of the breach or omission.

Note that this is carefully phrased to ensure that complaints have to be timely made and negligence on the part of the complainant in noting the breach/omission would not delay the procurement process.

Slide 4

- Note: Working days excludes Saturdays, Sundays and public holidays. And the issue of actual and constructive notice.
- **Step2:** The Accounting Officer shall review the complaint and communicate his decision on the matter to the complainant **within fifteen (15) working days. He shall give reasons for his decision and the corrective measures to be taken where necessary.**

Speaker Notes

The Act provides that the Accounting Officer shall within 15 days review the complaint and make decision in writing indicating corrective measure if any, including suspension of procurement proceeding if necessary.

Suspension of procurement may be necessary to avoid reaching a situation that will be difficult to reverse or damage already done that may not be easily redeemed.

Slide 5

- But this submission for a decision by an accounting officer raises issues of fairness and the rules of natural justice since the accounting officer is actually in charge of the process sought to be impugned by the appeal. However, this procedure offers the accounting officer who is already seized of the facts of the case to correct any errors or wrongs before it gets to the BPP. Since there is a channel of appeal after the AO, it is still within reason.

Speaker Notes

Making the complaint to the accounting officer of the Procuring Entity is to allow the PE correct a genuine mistake or error if there was one.

Slide 6

- The AO may decide to suspend the pp if he so thinks it expedient.
- **Step 3:** If the Accounting Officer **fails** to make a decision within the given period or the complainant is not satisfied with his decision, the Act **allows the complainant to forward his complaint to the Bureau within ten (10) working days from the date that decision was communicated to him.**

Speaker Notes

The complainant if not satisfied or has not received the decision of the Accounting Officer within the 15 working days, may within another 10 working days after receiving the Accounting Officer's decision or at the expiration of the period allowed for the Accounting Officer decision, make a complaint to the BPP.

Example here is that if the Accounting Officer' decision was made at 5 days after the complaint, the complainant's 10 days period would start counting from the day the decision was made.

Slide 7

- **Step 4:** Upon receiving the complaint, the **Bureau** shall:
- **Notify** the procuring entity of the complaint and
- **Suspend** any further action by the procuring or disposing entity until the matter is settled.
- This is necessary for fair hearing and in a bid to maintain the status quo and preserve the res.

Speaker Notes

Upon BPP receiving the complaint, the BPP is to notify the Procuring Entity immediately of the complaint and direct suspension of action on the procurement until the matter is resolved.

This is important to protect the status quo and a way of avoiding confrontation that may ensue.

Slide 8

- **Step 5:** Unless the Bureau dismisses the complaint, it shall further
- **Prohibit** the procuring/dispersing entity from taking further action,
- **Nullify** part or all of the unlawful act or decision of the procuring or dispersing entity,
- **Declare** or make know the rules and principles governing the subject matter of the complaint, and
- **Reverse** any improper decision by the procuring or dispersing entity or substitute its own decision for the improper one.

Speaker Notes

Unless the BPP dismisses the complaint, it shall:

- Prohibit the PE from taking further action
- Nullify part or all of the unlawful act or decision of the PE
- Declare of make known the rules and principles on the subject matter of the complaint
- Reverse any improper decision and substitute with the proper one

Slide 9

- **Step 6:** The Bureau shall **notify all interested bidders** of the complaint before taking any decision on the matter and may consider representations from the bidders and the respective procuring or dispersing entity.
- **Step 7:** The Bureau shall make its own decision **within twenty one (21) working days after receiving the complaint** and shall give the reasons for its decision and the remedies granted if any.

Speaker Notes

In line with the Act, the BPP shall notify all bidders of the complaint before any decision is taken on the matter and may provide for representations from other bidders and the PE and then make its decisions within 21 working days giving reasons and remedies if any.

Slide 10

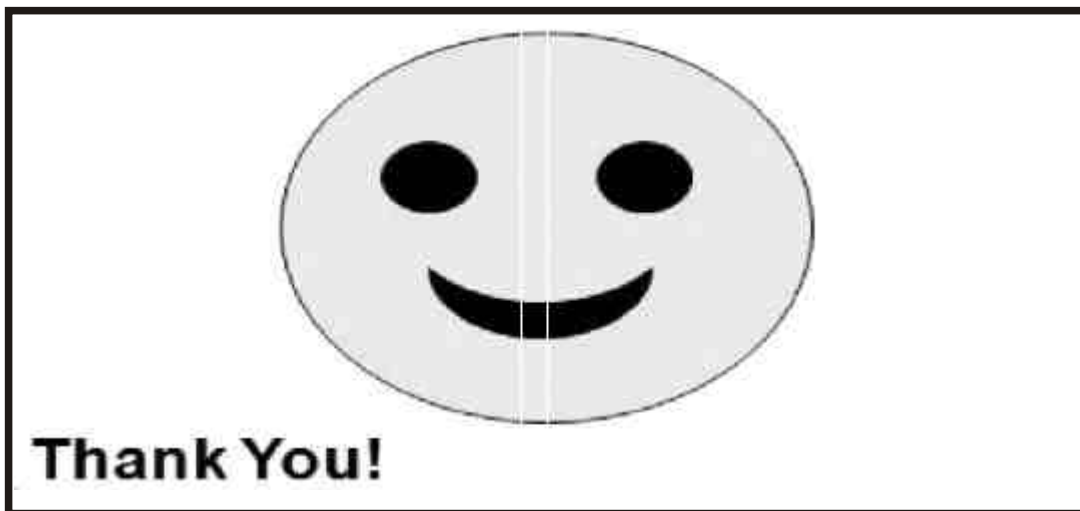
- **Step 8:** If the Bureau fails to make its decision within the given time or if the complainant is not satisfied with the Bureau's decision, **the complainant may appeal to the Federal High Court within 30 days** after receipt of the Bureau's decision or the expiration of the time specified for the Bureau to make a decision.
- **Step 9:** The **decision of the Federal High Court shall be final** on the matter and no further appeals shall lie.

Speaker Notes

If the complainant is not satisfied with BPP decision or lack of decision on the matter at the end of the period provided, he/she may appeal to the Federal High Court within 30 days.

The decision of the Federal High Court shall be final and no appeals shall be permitted.

Slide 11



8.0 Module VIII: Evaluating Public Procurement Process

8.1 Module Objectives

8.1.1 Rationale

The PPA2007 provides for observers to evaluate every stage of the procurement processes to ascertain their compliance with the provisions of the Act itself, the rationale being to ensure that unbiased stakeholders participate in ensuring compliance in the public procurement.

8.1.2 Objective

The objective of this module is that participants will at the end of the paper be able to determine the extent to which a public procurement process complies with the rules, ascertain when and how to commence and complete the evaluation of a procurement process, know what to look out for in evaluating each stage of the public procurement process and apply the principles, tools, approaches and models of evaluating a public procurement process.

This knowledge will provide them a deeper understanding of the public procurement system in Nigeria they may observe during the monitoring of various MDAs as they undertake their annual procurement activities.

8.2 Module Programme

The module programme covers the evaluation of various stages of procurement such as the advertisement, solicitation, bid submission, bid closing and opening and bid examination, evaluation and recommendation for contract award.

8.3 Module Reading

8.3.1 Essential reading

- 1) Public Procurement Act 2007
- 2) User Guide to Public Procurement Observation Checklist

8.3.2 Further reading

Procurement Procedures Manual for Public Procurement in Nigeria issued by the BPP

8.4 Module Content

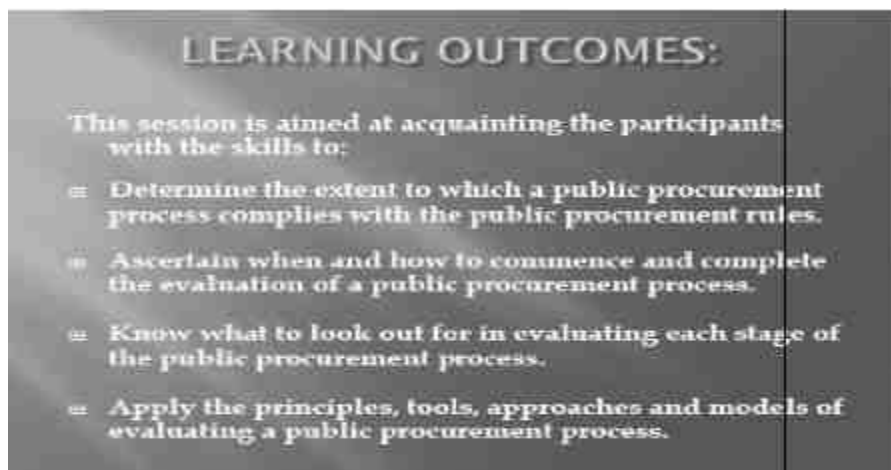
Slide 1



Speaker Notes

The speaker introduces self and the topic which is about evaluating public procurement process for compliance with the PPA2007 and extant rules and regulations guiding public procurement in Nigeria.

Slide 2



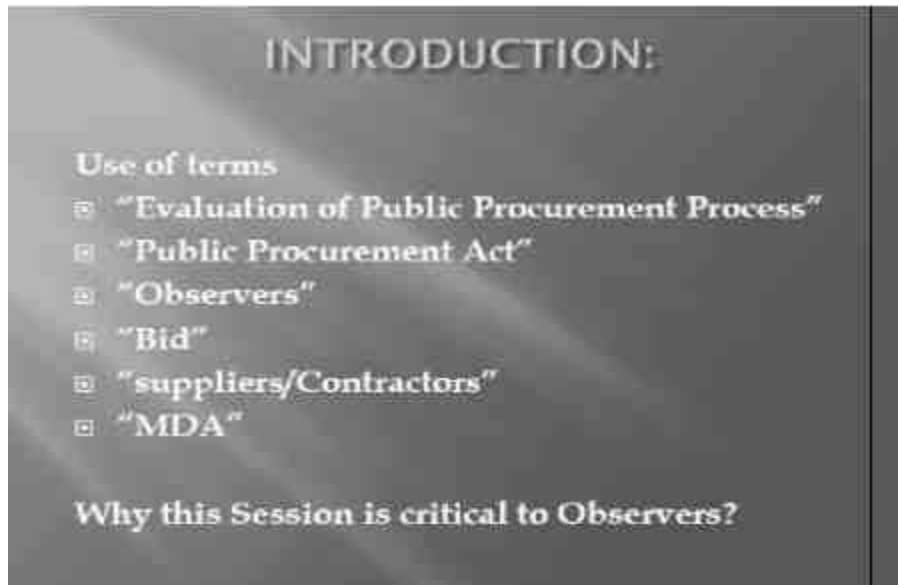
Speaker Notes

The learning outcomes:

Participants will at the end of the paper be able to:

- Determine the extent to which a public procurement process complies with the rules
- Ascertain when and how to commence and complete the evaluation of a procurement process
- Know what to look out for in evaluating each stage of the public procurement process
- Apply the principles, tools, approaches and models of evaluating a public procurement process.

Slide 3



Speaker Notes: Use of Terms

Evaluation of Public Procurement Process Evaluation is to ascertain the level of compliance of public procurement processes to the extant rules and it is not only about the actions of PE officials but also extends to the actions of the bidders.

Public Procurement Act The Act passed into law in 2007 to establish the National Council on Public Procurement and the Bureau of Public Procurement as the regulatory authorities' responsible public procurement in Nigeria and developing the legal framework for public procurement in Nigeria.

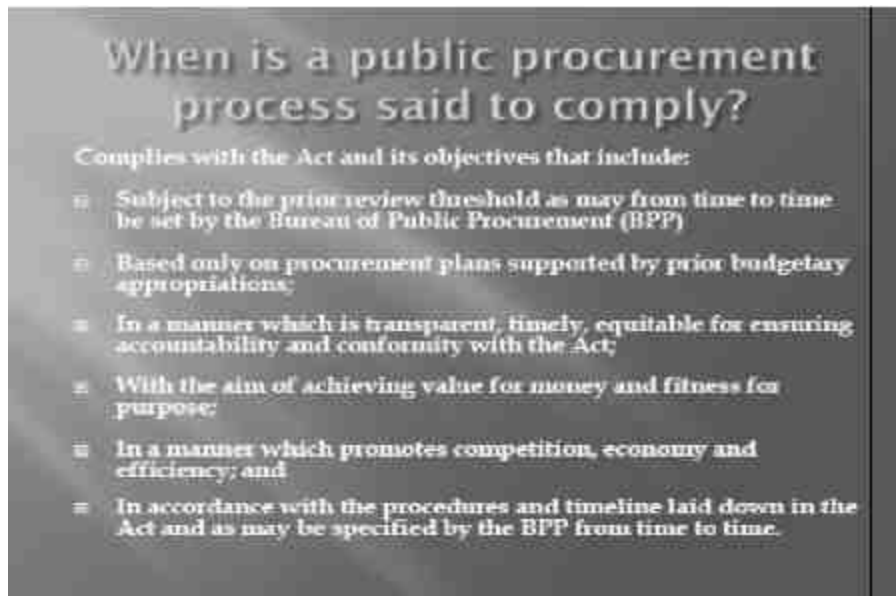
Observers - representatives of Private sector professional organization whose expertise is relevant to the particular goods or service being procured or Non-governmental organization working in transparency, accountability and anti-corruption areas.

Bid a supplier/contractor's submission in response to a bid solicitation offering to provide goods, works or services at their bid price.

Suppliers/Contractors a provider of contract or supply service

MDA Ministries, Department and Agencies

Slide 4

*Speaker Notes: When a Public Procurement Process is said to Comply*

The speaker relates the fundamental principles of for procurements provided in Part IV Section 16 of the PPA 2007 i.e. all public procurement subject to exemption allowed by the Act shall be conducted:

- Subject to prior review threshold as may from time to time be set by the BPP;
- Based only on prior procurement plans and budgetary provisions to ensure efficiency and effectiveness
- Procurement must not be formalized until funds are available to ensure that there are no abandoned projects and for fairness to the contractors
- Ensure open competitive bidding unless where inappropriate like in emergency or national security situations open competition leads to best prices and value for money
- Transparency and accountability clear rules and practitioners to be held accountable for the success of the procurement
- In accordance with the procedures and timelines in the Act and as may be specified by the BPP

Slide 5

*Speaker Notes: What is Observers Monitoring/Evaluating*

The speaker asks:

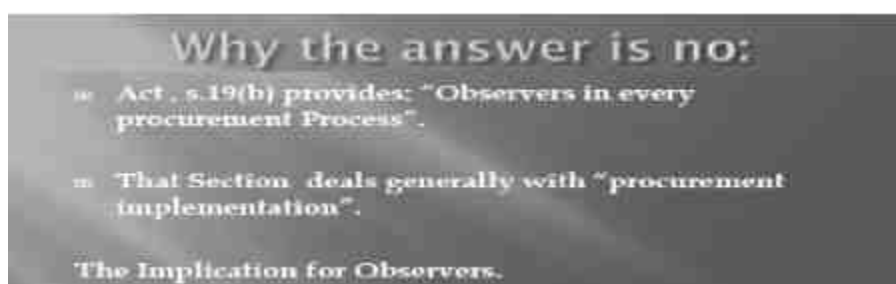
“What is observers monitoring/evaluating?”

- Answer: this is the observation and monitoring of public procurement processes by CSOs and Professional bodies in Nigeria as conceived by the PPA 2007;
And asks the question

“Is the role of Procurement Observers limited to observing bid opening?”

- Answer : NO

Slide 6

*Speaker Notes*

The speaker explains why the answer to the previous question is no:

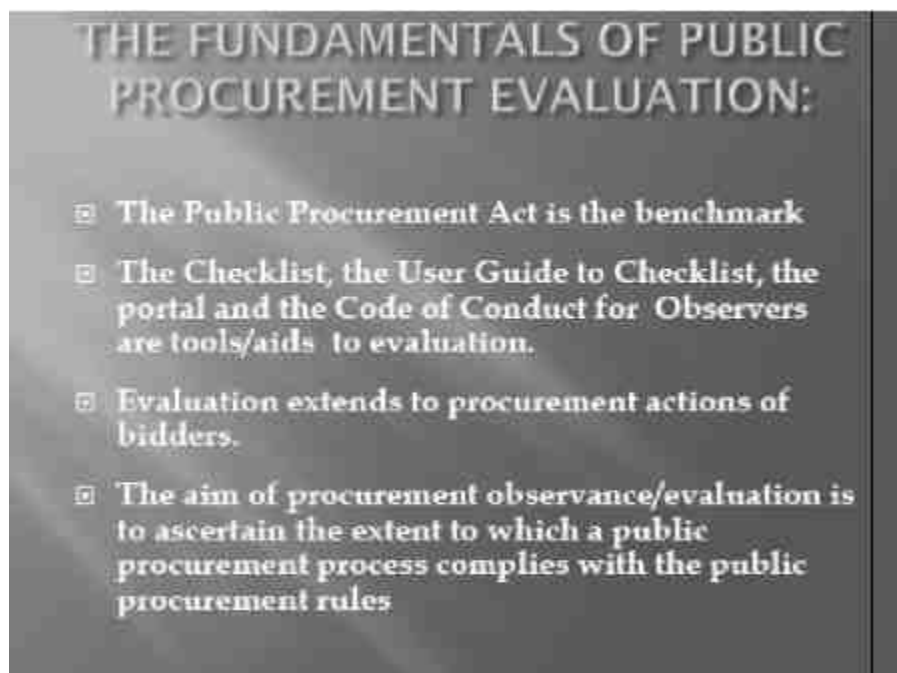
The provisions of Section 19(b) of PPA2007 on Procurement Implementation provides for the invitation of two credible persons as observers in every procurement process, one person each representing a recognised:

- Private sector professional organization whose expertise is relevant to the particular goods or service being procured; and
- Non-governmental organization working in transparency, accountability and anti-corruption areas,

And the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organizations or associations.

Note that even though a minimum of one representative each of the two groups must be invited, the law does not preclude increased number of monitors.

Slide 7

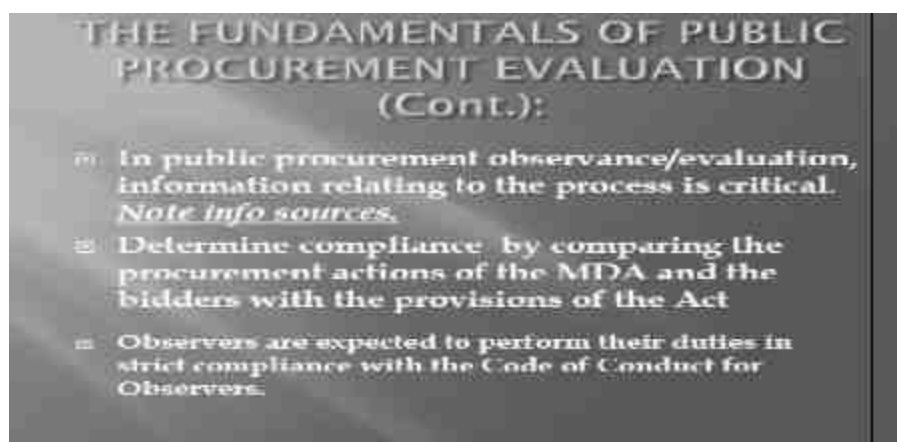


Speaker Notes: Fundamentals of Public Procurement Evaluation

The speaker explains the fundamentals of public procurement evaluation:

- The PPA2007 is the benchmark providing the general framework;
- The Checklist, the User's Guide to Checklist, the Portal and the Code of Conduct for Observers are tools/aid to evaluation (all covered in separate presentations)
- Evaluation is not only about the actions of PE officials but also extends to the actions of the bidders;
- The aim of procurement observation/evaluation is to ascertain the level of compliance of public procurement processes to the extant rules.

Slide 8

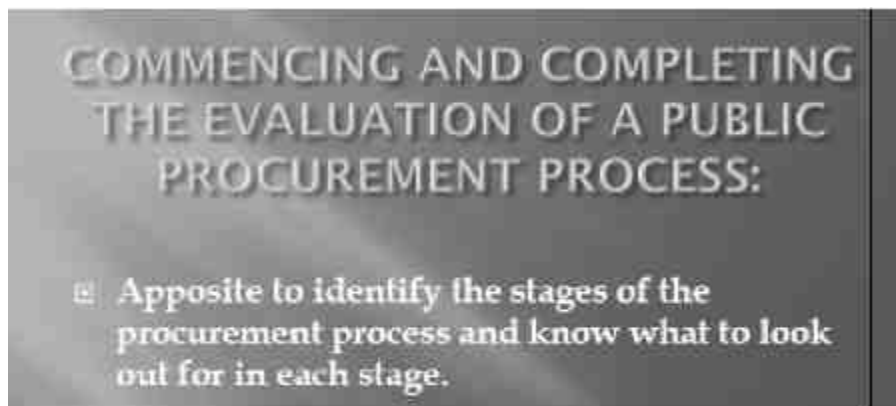


Speaker Notes

The speaker continues to explain the fundamentals of public procurement evaluation:

- Apart from actions, information relating to the process is critical i.e. the advertisement, bidding documents, instruction to bidders, etc;
- Compliance is determined by comparing the actions of the MDA and the bidders with the requirements of the PPA2007 and other rules and regulations guiding public procurement; and
- Observers are to perform their duties in strict compliance with the PPA2007.

Slide 9



Speaker Notes: Commencing and Completing the Evaluation of a Public Procurement Process

The speaker explains that work of evaluating a public procurement process is a step by step assignment and proceeds to detail in subsequent slides each aspect from commencing to completion of the evaluation process including what observers are to look out for and how to deal with them.

Slide 10

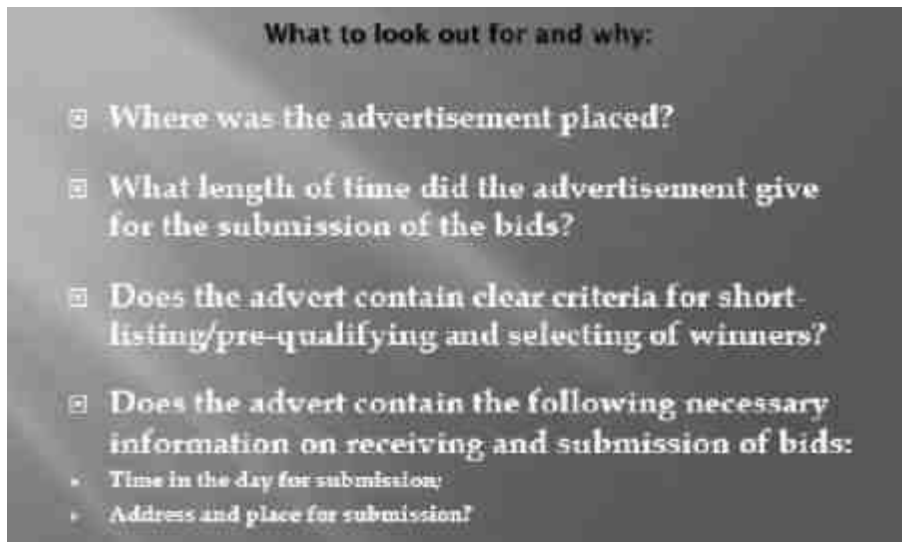


Speaker Notes: Stages in Procurement Observation

The first stage is the advertisement or invitation to bid or prequalify:

- This is where the procurement observers are invited and the role of the observer is activated;
- Procurement planning should have been done at this stage.

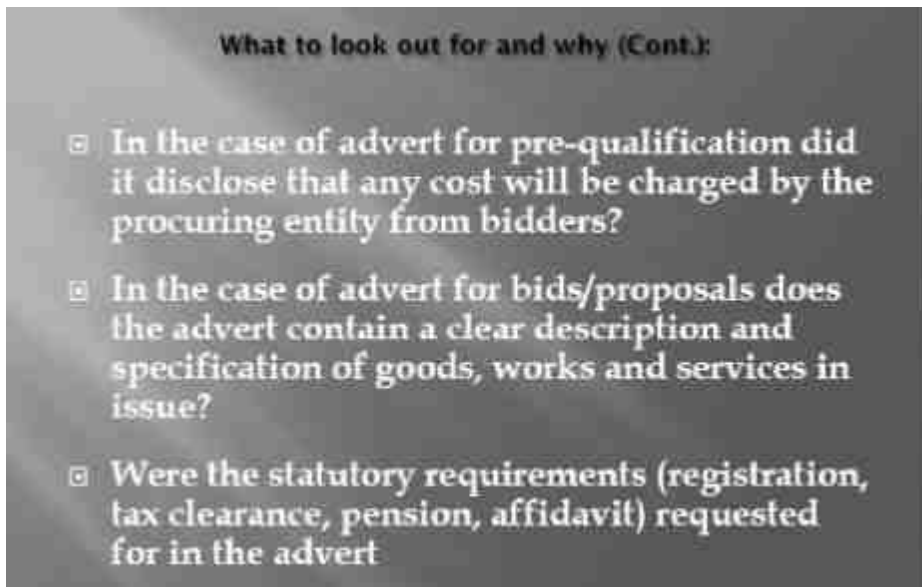
Slide 11

*Speaker Notes: What to look for in Procurement observation*

The speaker explains what the observers are to look out for at the advert/invitation stage:

- Where was the advert placed? The Act specifies that adverts be placed in two national dailies and tenders journal.
- What length of time did the advertisement give for bid submission? Note that the Act specifies a minimum of 6 weeks.
- Does the advert contain clear unambiguous criteria for short-listing/prequalifying and selecting winners? The Act specifies that the criteria for selection must be clear and unambiguous and cannot be changed after the process has commenced.
- Does the advert contain information on receiving and submission of bids such as the time of the day for the submission and the address and place for submission? This is required for consistency and transparency.

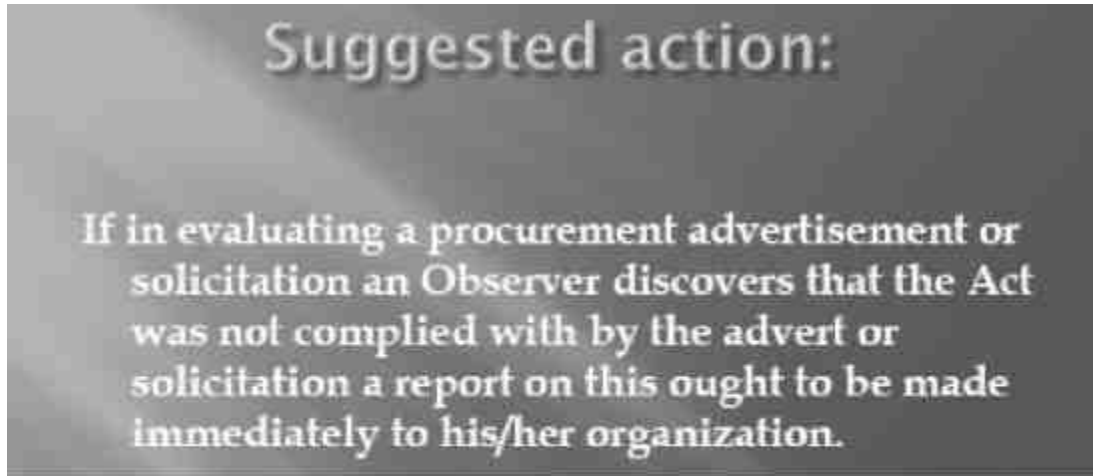
Slide 12

*Speaker Notes: The rationale for Procurement Observation*

The speaker continues to explain what the observers are to look out for at the advert/invitation stage:

- In the case of pre-qualification, did the PE disclose that any cost will be charged from bidders? The Act prohibits PE from charging pre-qualification fees but permits them to charge tender fees that are just enough to cover the cost of documentation and administration relating to the tender.
- In the case of advert for bids/proposals, does the advert contain a clear description and specification of goods, works and services in issue? This is necessary so that bids may be compared on a like for like basis.
- Were the statutory requirements (registration, tax clearance, pension, affidavit) requested for in the advert? This is important as these requirements will form basis for the disqualification of some bidders so the PEs must specifically ask for them in the adverts.

Slide 13

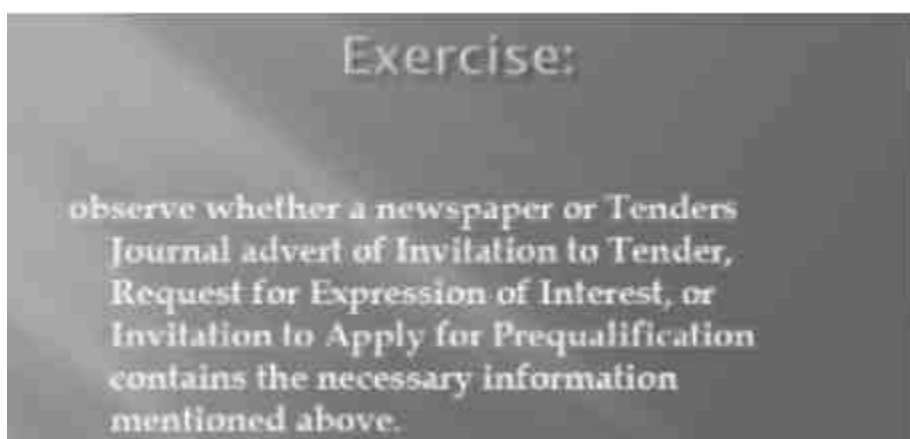


Speaker Notes: Suggested Action where breach is Observed

The speaker suggests action to be taken by observer upon discovering that the advert does not comply fully with the Act:

- The observer is to make a good record of the non-compliance of partial compliance.
- ? The observer should immediately make a report to his or her organization and then to the BPP.
- ? There is guidance provided on the website www.procurementmonitor.org which is a portal for peer review and assistance for CSOs.

Slide 14

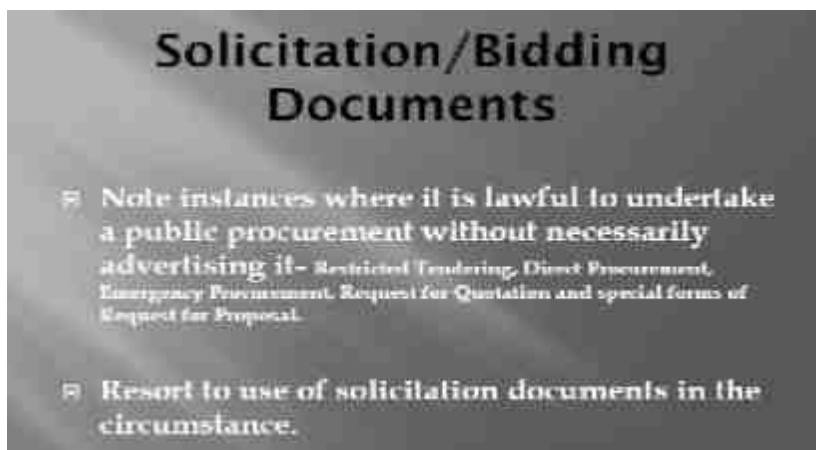


Speaker Notes: Exercise on Procurement Observation

The speaker should display on the screen or have copies of an advert passed to the participants as a case study and ask the participants to answer the following questions:

- Where was the advert placed? Did the advert comply with requirement of placement?
- What length of time did the advertisement give for bid submission?
- Does the advert contain clear unambiguous criteria for short-listing/prequalifying and selecting winners?
- Does the advert contain information on receiving and submission of bids such as the time of the day for the submission and the address and place for submission?
- Is the advert for pre-qualification? If so did the PE disclose that any cost will be charged from bidders?
- Is the advert for bids/proposals? If so does the advert contain a clear description and specification of goods, works and services in issue?.
- Were the statutory requirements (registration, tax clearance, pension, affidavit) requested for in the advert?

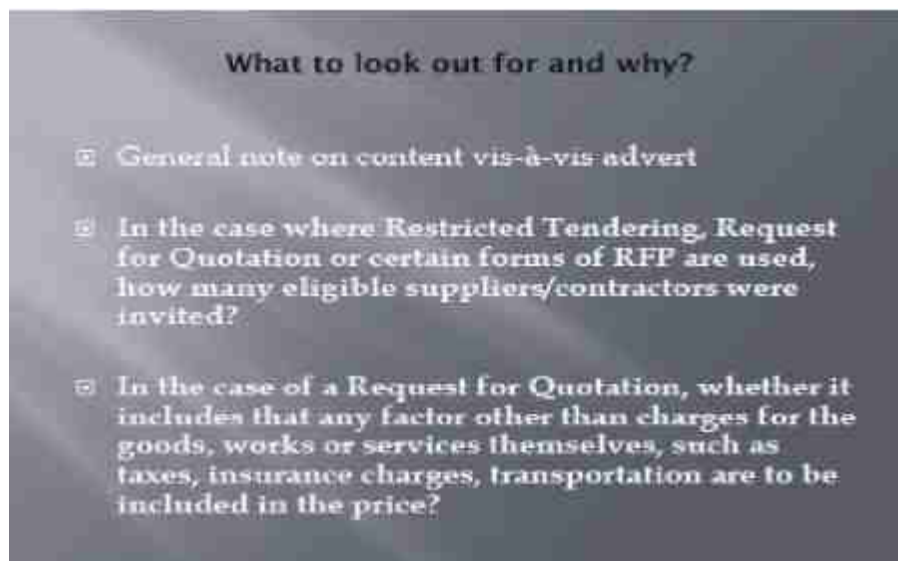
Slide 15

*Speaker Notes: Solicitation/Bidding documents*

The speaker moves the second stage which is the solicitation or bidding documents. The speaker note instances where it is lawful to undertake a public procurement without necessarily advertising to include Restricted Tendering, Direct Procurement, Emergency Procurement, Request for Quotation, and special forms of Request for Proposal.

But in all cases use of standard solicitation documents are required.

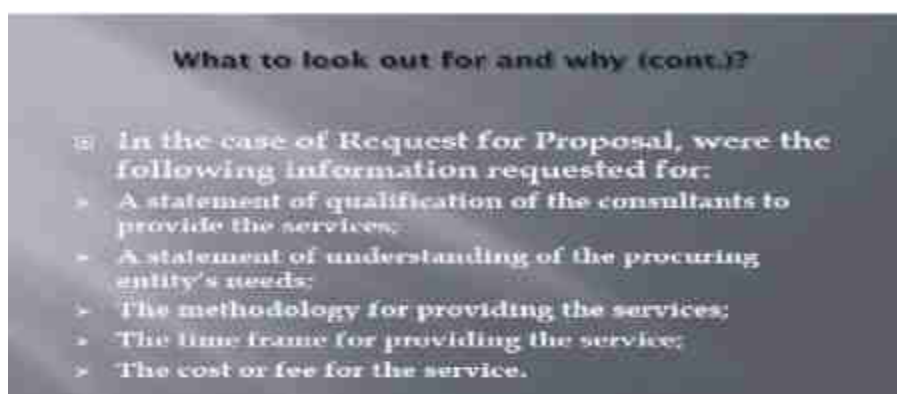
Slide 16

*Speaker Notes: What to look for in Solicitation Documents*

The speaker explains what observers should look out for in solicitation documents and why:

- Is the content in the documents in agreement with the advert? The Act stipulates consistency and transparency.
- In the case of Restricted Tendering, Request for Quotation and special RFPs, how many eligible suppliers/contractors were invited? The number of invited suppliers/contractors should be enough to create competition and obtain value for money.
- In the case of Request for Quotation, whether it includes any factor other than charges for the goods, works or services themselves, such as taxes, insurance charges, transportation are to be included in the price? This is necessary to compare all quotations on a like for like basis.

Slide 17



Speaker Notes

The speaker explains what observers should look out for in RFP documents and why:

- Was a statement of qualification of the consultants to provide the services requested for? This is required to analyse the consultants qualifications for the assignment.
- Was a statement of the understanding of the procuring entity's needs requested for? This is required to analyse the consultants understanding of the needs of the PE.
- Was there a request for the consultant's methodology for providing the services? This is required to analyse the consultants understanding of the procedure and steps for undertaking the assignment.
- Was there a request for the consultants time frame for the assignment? This is needed to evaluate whether the assignment will be delivered on time.
Was there a request for the consultants fee proposal? This is required to properly evaluate the proposals.

Slide 18

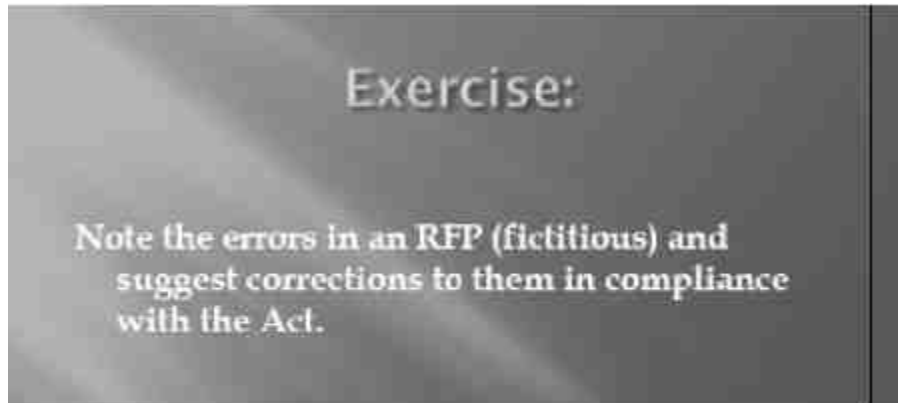


Speaker Notes: Suggested Action

The speaker gives suggested actions for observers when they observe non-compliance:

The observers are to report the deviations immediately to their organization without waiting for the procurement process to proceed to another stage.

Slide 19

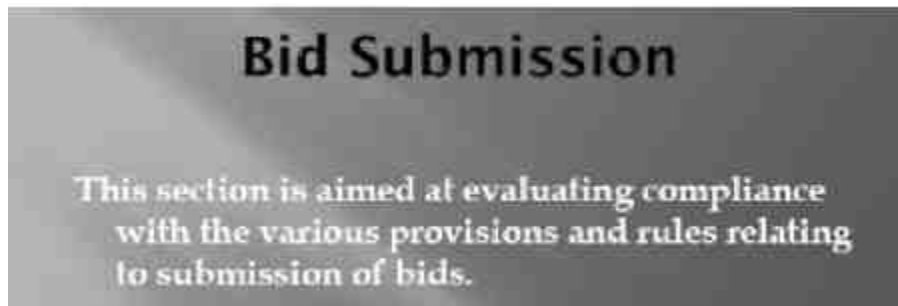


Speaker Notes: Observation of Errors in RFP

The speaker should present a sample RFP:

Ask participants to note the errors therein and suggest corrections to them in compliance with the Act.

Slide 20



Speaker Notes

The speaker introduces the third stage of the evaluation, i.e. bid submission stage:

- The aim of evaluation of this stage is to determine compliance with the various provisions and rules relating to submission of bids.

Slide 21

What to look out for and why?

- ☐ Was there a Bid register at the MDA for Bid submission?
- ☐ Was each bidder issued a receipt of bid submission containing the following:
 - Description of the bid;
 - Name of the bidder;
 - Name of the MDA;
 - Date of submission of bid;
 - Time of submission of bid?
- ☐ Was the bid deposited in a secured tamper-proof bid-box by the bidder after registering the bid?

Speaker Notes: What to look for in Bid Submission Process

The speaker discusses what to look out for at the bid submission stage and why:

- Was there a bid register at the MDA for bid submission? The Act stipulates that a bid register must be kept for all bid submissions.
- Was each bidder issued a receipt of bid submission? The Act stipulates that all bidders as they are submitting their bids should be issued a receipt containing the description of the bid, the name of the bidder, the name of the MDA, the date of submission and the time of submission.
- Was the bid deposited in a secured tamper-proof bid box by the bidder after registering the bid? The Act says this must be done.

Slide 22

Suggested actions

Visit the MDA in issue during bid submission and on the last day of submission of bid and observe for compliance. Deviations observed in relation to bid submission should be reported without waiting for the procurement process to proceed to another stage.

Speaker Notes: Suggested Action

The speaker discusses suggested actions when observers note non-compliance in bid submission:

- Observers are to visit the PE during the bid submission and on the last day of bid submission and observe for compliance.
- All deviation observed should be reported without waiting for the procurement process to proceed to another stage.

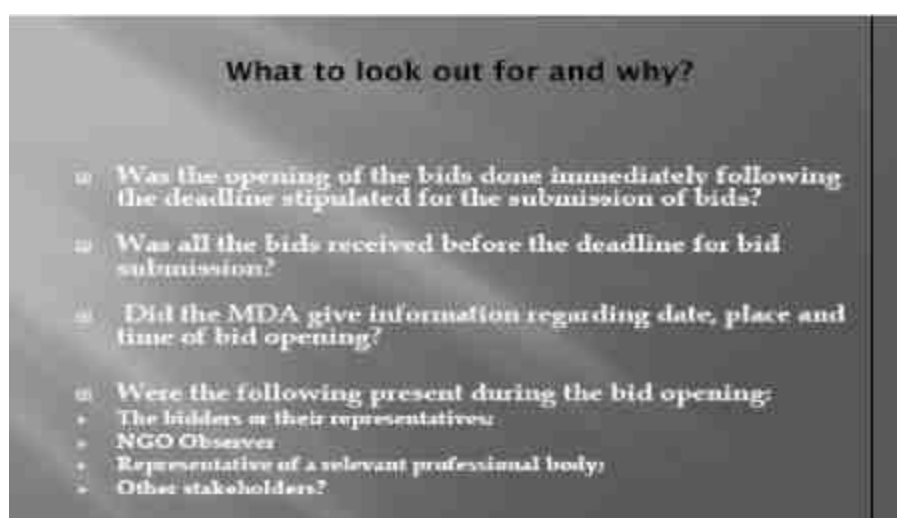
Slide 23

*Speaker Notes: Bid Opening Observation*

The speaker discusses evaluation of the bid opening stage:

- The discussion under this stage applies to opening of bids, pre-qualification and EOI alike.

Slide 24

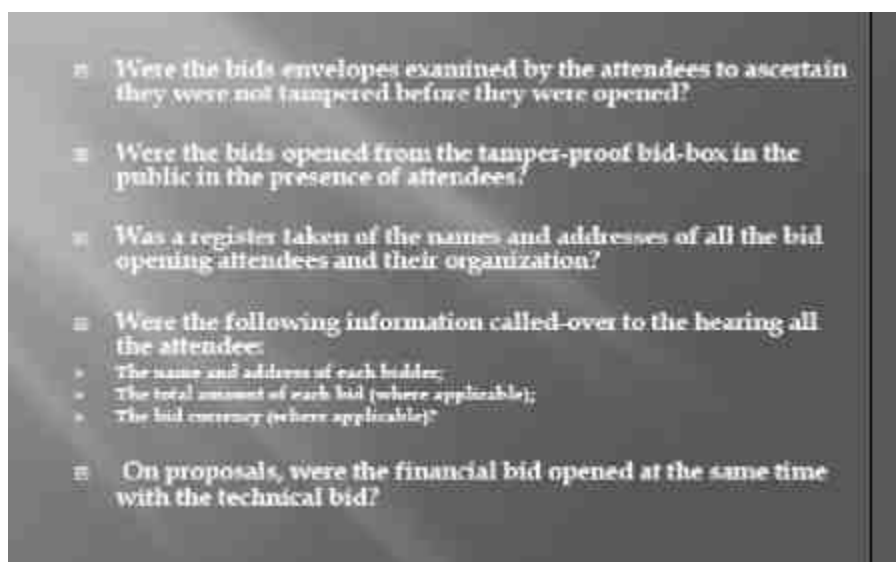


Speaker Notes: What to look for in Bid Opening Process

The speaker discusses what to look out for at the bid opening stage and why:

- Was the opening of the bids done immediately following the deadline stipulated for the submission of bids? The Act stipulates that bids opening time should be soon after bid closing time.
- Were all the bids received before the deadline for bid submission? The Act says bids received after deadline of bid submission must be rejected and returned unopened to bidders.
- Were bidders and their representatives, NGO observers, representatives of a professional body and other stakeholders present during the bid opening? The Act says all of them should be invited and permitted to attend.

Slide 25

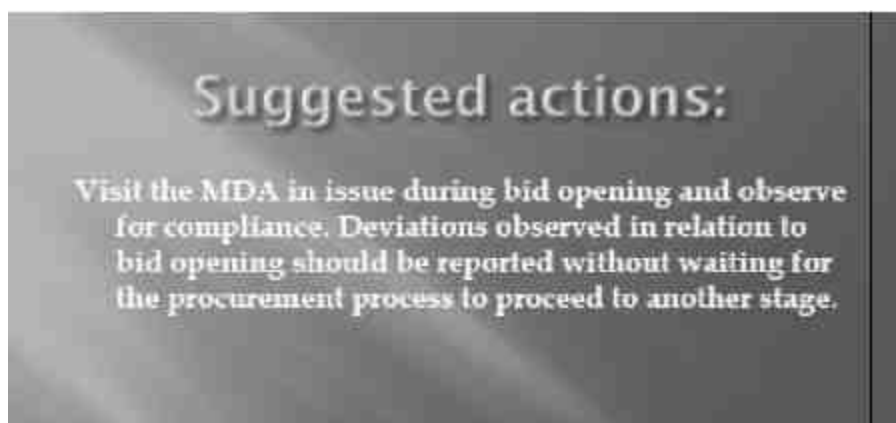


Speaker Notes

The speaker continues to discuss what to look out for at the bid opening stage and why:

- Were the bid envelopes examined by the attendees to ascertain that they were not tampered before they were opened? This is a requirement of the Act.
- Were the bids opened from the tamper-proof bid-box in the public and in the presence of attendees? This is in line with the transparency principle of the Act.
- Were the names and addresses of each bidder, the total amount of each bid (where applicable) and the bid currency (where applicable) called-over to the hearing of all attendees? This is a requirement of the Act.

Slide 26

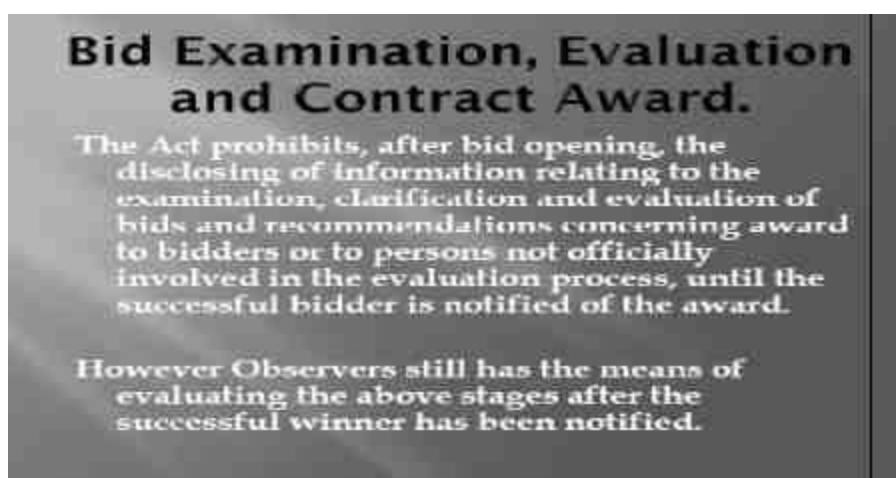


Speaker Notes: Suggested Action relating to Bid Opening Observation

The speaker gives suggested actions by observers when they observe non-compliance in bid opening:

Deviations observed in relation to bid opening should be reported without waiting for the procurement process to proceed to another stage.

Slide 27

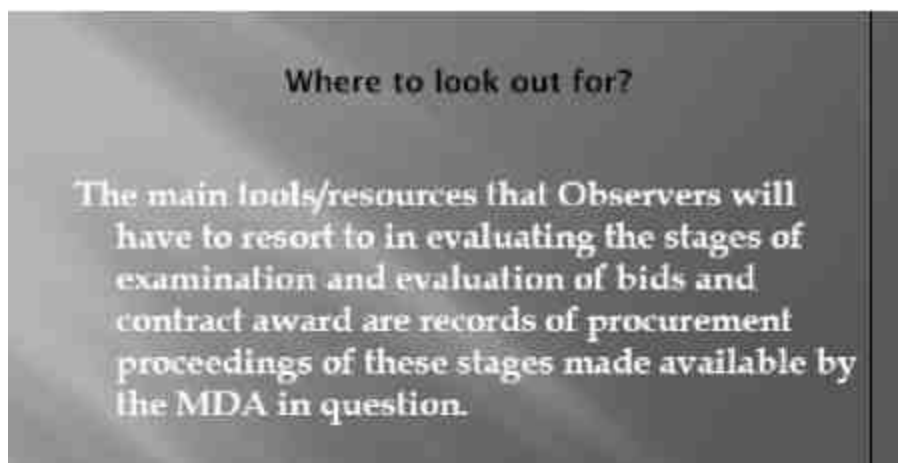


Speaker Notes: Bid Examination, Evaluation and Contract Award

The speaker discusses the role of observers at bid examination, evaluation and contract award stage:

- The Act prohibits the disclosing of information relating to examination, clarification, evaluation of bids and recommendations concerning award to bidders or to persons not officially involved in the evaluation process until the successful bidder is notified of the award.
- Therefore observers will have access to information during these stages but they can evaluate these stage after the successful bidder has been notified.

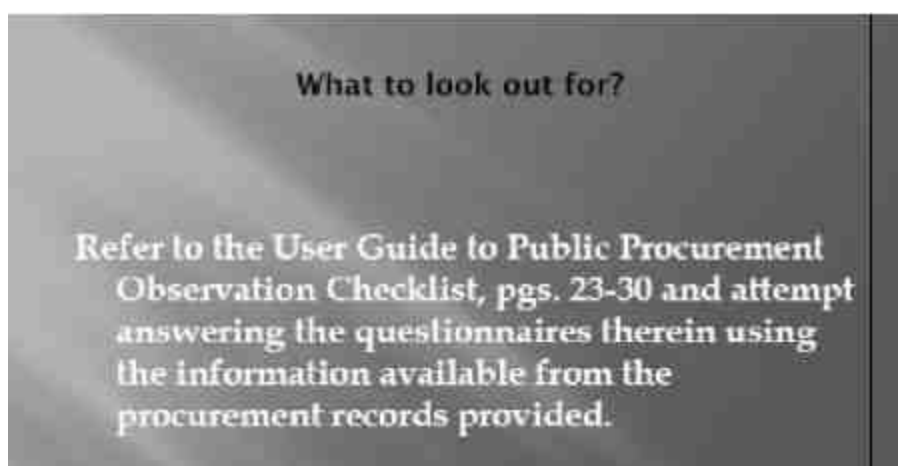
Slide 28



Speaker Notes: What to look out for in Bid Examination and Evaluation

- The speaker discusses what observers are to look out for at this stage:
- The observers should base their evaluation of this stage on the records of procurement proceedings made available by the MDA.

Slide 29

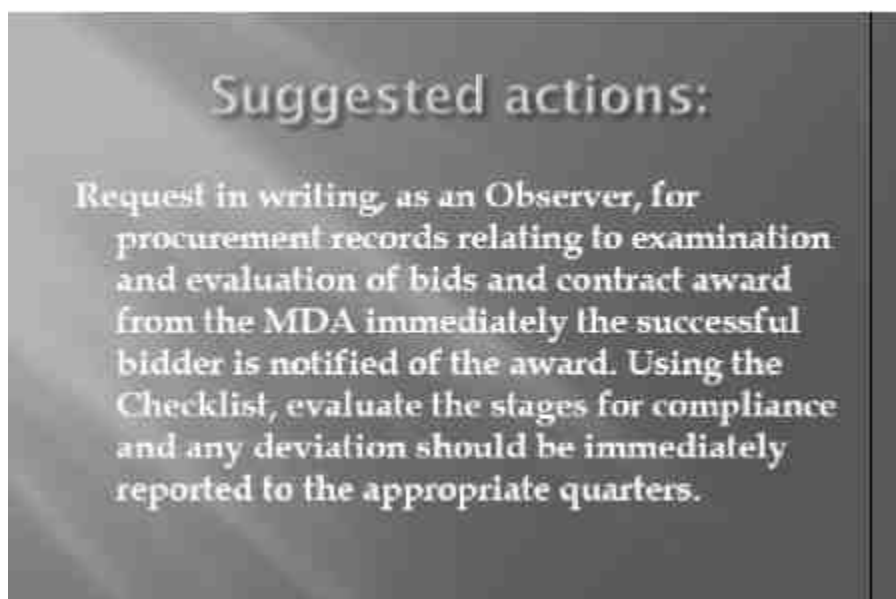


Speaker Notes

The speaker continues to discuss what observers are to look out for at this stage:

- The observers should refer to the User Guide to Public Procurement Observation Checklist and attempt answering the questionnaires therein using the information available from the procurement records provided.

Slide 30

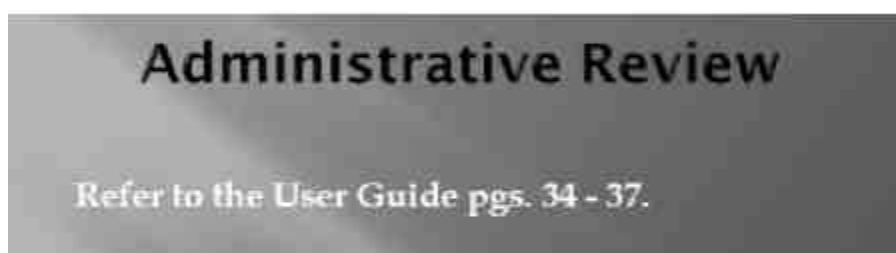


Speaker Notes

The speaker discusses suggested actions by observers:

- The observers should request in writing for procurement record relating to examination and evaluation of bids and contract award from the MDA immediately the successful bidder is notified of the award.
- Using the checklist, the observer evaluates the stage for compliance with the provisions of the Act.
- Any deviation should immediately be reported to their organization and the BPP.

Slide 31



Speaker Notes; Administrative Review

The speaker introduces administrative review:

- The participants are asked to refer to User Guide pages 34-37.
- Where there are infractions or fraud suspected, the observers are to write to BPP and also the relevant investigating agencies such as the ICPC or the EFCC.

Slide 32

How to determine the significance of issues evaluated

- ☐ Does not relate to what the Act expressly provides for?
- ☐ Whose action is in issue: MDA or Supplier/contractors?
- ☐ Does it involve a discretionary or mandatory power?
- ☐ What are the relevant best acceptable practices?
- ☐ What is the procurement method used?
- ☐ At what stage of procurement has the issue arising
- ☐ Is an action in question premeditated or inadvertent?

Speaker Notes: Determining the Significance of Issues Evaluated

The speaker discusses how to determine the significance of issues evaluated:

- Does it relate to what the Act expressly provides for? In this case it is of major significance.
- Whose action is in issue MDA or suppliers/contractors? MDAs actions will have more significance than suppliers/contractors actions in the compliance of the process.
- Does it involve a discretionary or mandatory power?
- What are the relevant best acceptable practices? The observers are to relate with international best practices and BPP's rules and regulations.
- What is the procurement method used? Is it ICB, NCB or National shopping?
- At what stage of procurement has the issue arising?
- Is an action in question premeditated or inadvertent?

Slide 33



Speaker Notes
No comments.

9.0 MODULE IX: NON STATE ACTORS AND THE PUBLIC PROCURMENT PROCESS

9.1 Module Objectives

9.1.1 Rationale

The PPA2007 provides for observers to evaluate every stage of the procurement processes to ascertain their compliance with the provisions of the Act itself. A good understanding of the key success factors and challenges to be encountered will aid the CSO observers and monitors in their job.

9.1.2 Objective

The objective of this module is that participants will at the end of the paper be able to determine the extent to CSO observers and monitors are involved in terms of what they have to look out for, what documents they need, and general challenges to their work and thus equipping them with the means of dealing with primary stakeholders. This knowledge will provide them a deeper understanding of the public procurement system in Nigeria they may observe during the monitoring of various MDAs as they undertake their annual procurement activities.

9.2 Module Programme

The module programme covers the CSO observation of Procurement, what to observe and monitor, documents an Observer needs, challenges to CSO Monitoring and Observation and an introduction to the National Procurement Watch Platform.

9.3 Module Reading

9.3.1 Essential reading

- 1) Public Procurement Act 2007
- 2) Manual for CSO observers

9.3.2 Further reading

Procurement Procedures Manual for Public Procurement in Nigeria issued by the BPP

9.4 Module Content

Slide 1



Speaker Notes: Public Procurement Act and Non State Actors

This lecture presents an overview of the Public Procurement Act 2007

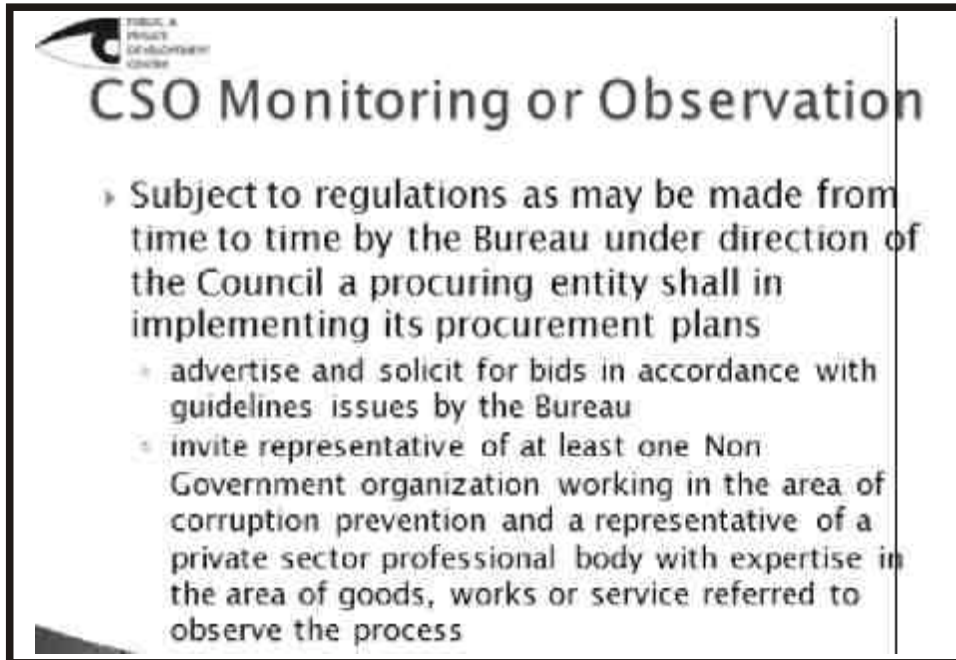
Slide 2



Speaker Notes: An overview of Public Procurement Act 2007

This lecture presents an overview of the Public Procurement Act 2007

Slide 3



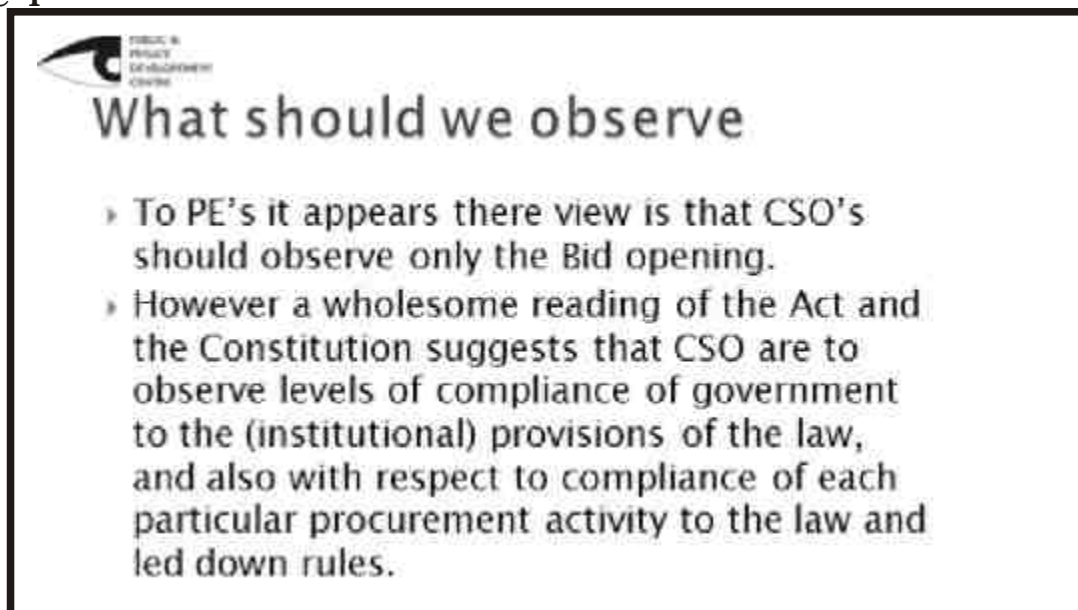
Speaker Notes: Provisions for CSO participation in the PPA 2007

The speaker discusses provisions for CSO in the Act:

Section 19 of the PPA2007 provides as follows: subject to regulations as may be made from time to time by the Bureau under direction of the Council a procuring entity shall in implementing its procurement plans

- advertise and solicit for bids in accordance with guidelines issues by the Bureau
- Invite representative of at least one Non Government organization working in the area of corruption prevention and a representative of a private sector professional body with expertise in the area of goods, works or service referred to observe the process

Slide 4



Public Procurement Monitoring Centre

What should we observe

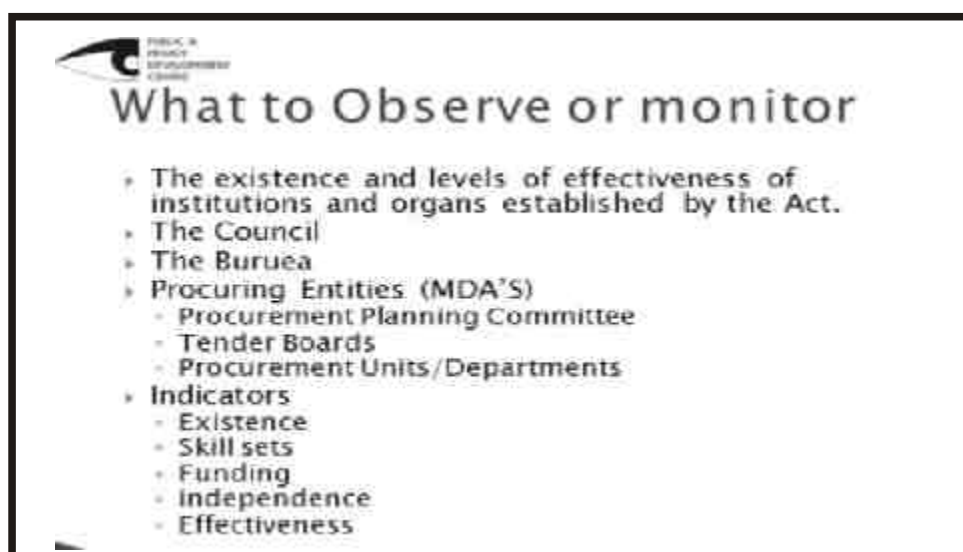
- › To PE's it appears their view is that CSO's should observe only the Bid opening.
- › However a wholesome reading of the Act and the Constitution suggests that CSO are to observe levels of compliance of government to the (institutional) provisions of the law, and also with respect to compliance of each particular procurement activity to the law and led down rules.

Speaker Notes: What CSOS should observe in the Procurement Process

The speaker discusses what CSOs are to observe:

- Some Procuring Entity seem to believe that the Act permits CSO's to observe only the Bid opening.
- However a wholesome reading of the Act and the Constitution suggests that CSOs are to observe levels of compliance of government to the (institutional) provisions of the law, and also with respect to compliance of each particular procurement activity to the law and led down rules (see section 19 of PPA2007).

Slide 5



Public Procurement Monitoring Centre

What to Observe or monitor

- › The existence and levels of effectiveness of institutions and organs established by the Act.
- › The Council
- › The Bureau
- › Procuring Entities (MDA'S)
 - Procurement Planning Committee
 - Tender Boards
 - Procurement Units/Departments
- › Indicators
 - Existence
 - Skill sets
 - Funding
 - Independence
 - Effectiveness

Speaker Notes: Various Observation Indicators

The speaker continues to discuss what CSOs are to observe or monitor:

- The existence and levels of effectiveness of institutions and organs established by the Act.
- The Council still not yet inaugurated
- The Bureau already functional but CSOs are to check that they are meeting up with their mandate
- Procuring Entities (MDA'S) - Procurement Planning Committee, Tender Boards and Procurement Units/Departments are they functional, efficient and effective?

Indicators Existence, Skill sets, Funding, Independence and Effectiveness CSOs to check for the existence of these bodies, the presence or not of the required skill-sets, adequate funding or not, independence required to do their jobs and general effectiveness of the bodies

Slide 6

What to Observe

- › The existence and levels of implementation of the PE's procurement plan
- › What does a procurement plan entail/contain?
 - Needs Assessment
 - Market and statistical survey analysis of cost implications
 - Integration of project costs in the budget
 - Aggregating requirements
 - Prescribing methods of procurement

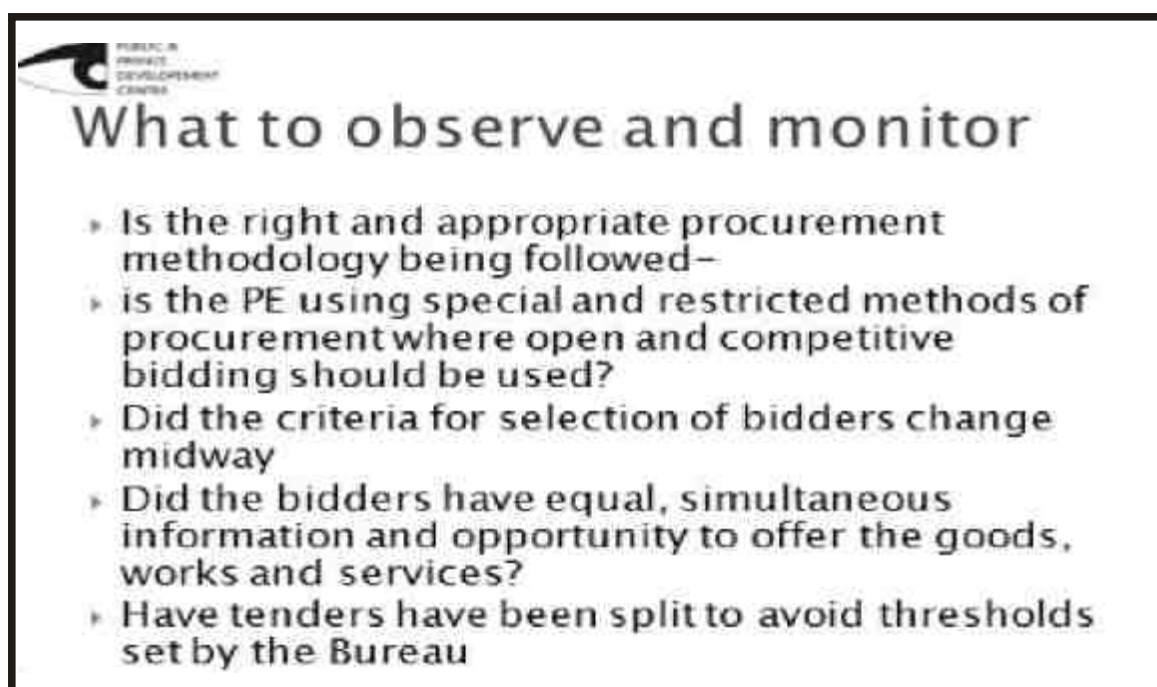
Speaker Notes

The speaker continues to discuss what CSOs are to observe or monitor:

- The existence and levels of implementation of the PE's procurement plan
- What does a procurement plan entail/contain?
 - Needs Assessment should have been done before budget

- o Market and statistical survey analysis of cost implications
- o Integration of project costs in the budget
- o Aggregating requirements to obtain economy of scale, are each departments buying on their own
- o Prescribing methods of procurement

Slide 7



What to observe and monitor


- › Is the right and appropriate procurement methodology being followed–
- › is the PE using special and restricted methods of procurement where open and competitive bidding should be used?
- › Did the criteria for selection of bidders change midway
- › Did the bidders have equal, simultaneous information and opportunity to offer the goods, works and services?
- › Have tenders have been split to avoid thresholds set by the Bureau

Speaker Notes

The speaker continues to discuss what CSOs are to observe or monitor:

- Is the right and appropriate procurement methodology being followed?
 - Is the PE using special and restricted methods of procurement where open and competitive bidding should be used?
 - Did the criteria for selection of bidders change midway?
 - Did the bidders have equal, simultaneous information and opportunity to offer the goods, works and services?
- Have tenders have been split to avoid thresholds set by the Bureau

Slide 8



What other things should we observe


- Solicitation documents, Procurement Notices Adverts pre-qualification or expression of interest.....shortlist/Pre-qualified contractors
- Bidding Documents/RFP's
 - Clear definition of scope of work
 - Clear definition of qualification of bidders
 - Clear Definition of Criteria for selection of winners
- Bid Submission(Register of Bid opening)
- Bid Opening (Minutes of Bid Opening)
- Notification (contracting) of Winners

Speaker Notes

The speaker continues to discuss what CSOs are to observe or monitor:

- Solicitation documents, Procurement Notices, Adverts for pre-qualification or expression of interest, shortlist/Pre-qualified contractors
- Bidding Documents/RFP's - do they have clear definition of scope of work, clear definition of qualification of bidders, and clear Definition of Criteria for selection of winners
- Bid Submission(Register of Bid opening) Bid Opening (Minutes of Bid opening)
- Notification (contracting) of Winners

Slide 9



What to Observe and Monitor cont.

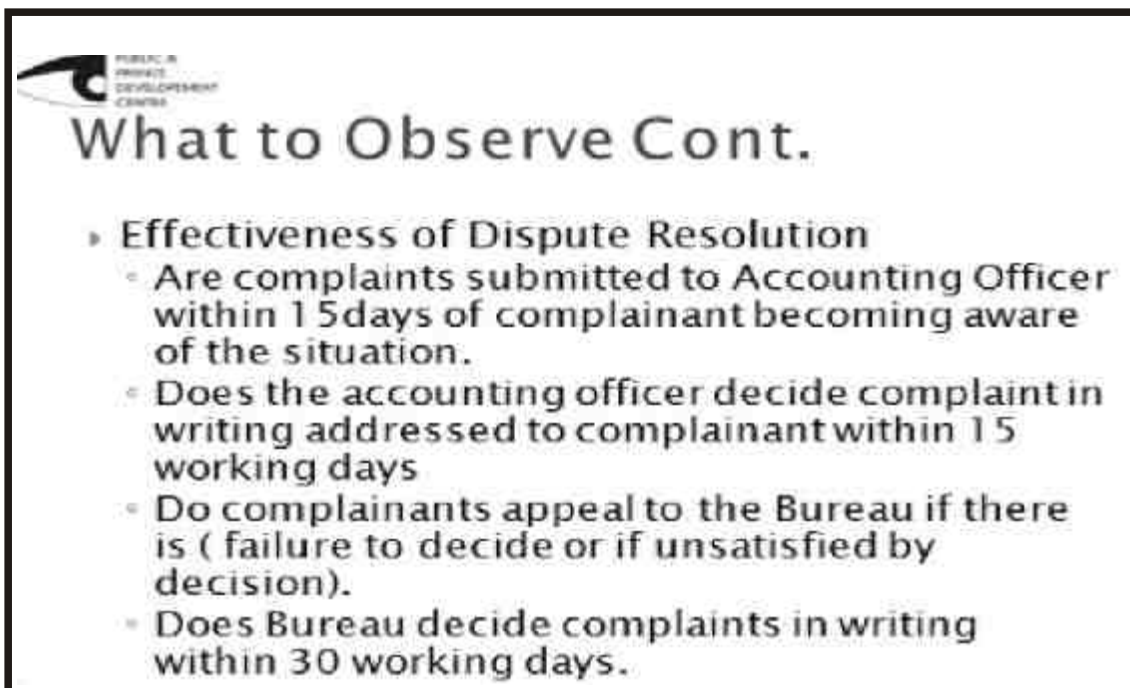
- Is the process producing winners who are?
 - Technically
 - Financially
 - Equipment wise
 - Personnel wise qualified
- Do the (winning) bidders have?
 - Legal Capacity
 - Performance bonds (where required)
 - Convicts (financial impr/Proc offences) in their board or management?
 - Under receivership or bankrupt? OR
 - Have they failed to perform or show due care in performance of any contracts in the three preceding years? etc

Speaker Notes

The speaker continues to discuss what CSOs are to observe or monitor:

- Is the process producing winners who are Technically, Financially, Equipment, Personnel qualified?
- Do the (winning) bidders have Legal Capacity, Performance bonds (where required), Convicts (financial impropriety/Procurement offences) in their board or management? Under receivership or bankrupt? OR Have they failed to perform or show due care in performance of any contracts in the three preceding years? Etc.

Slide 10



What to Observe Cont.


- Effectiveness of Dispute Resolution
 - Are complaints submitted to Accounting Officer within 15 days of complainant becoming aware of the situation.
 - Does the accounting officer decide complaint in writing addressed to complainant within 15 working days
 - Do complainants appeal to the Bureau if there is (failure to decide or if unsatisfied by decision).
 - Does Bureau decide complaints in writing within 30 working days.

Speaker Notes

The speaker continues to discuss what CSOs are to observe or monitor:

- Effectiveness of Dispute Resolution
- Are complaints submitted to Accounting Officer within 15 days of complainant becoming aware of the situation.
- Does the accounting officer decide complaint in writing addressed to complainant within 15 working days
- Do complainants appeal to the Bureau if there is (failure to decide or if unsatisfied by decision).
- Does Bureau decide complaints in writing within 30 working days.

Slide 11



The objective of observation and Monitoring

- Is to determine IF ,
- A particular procurement is conducted in a manner which is transparent, timely, equitable for ensuring accountability and conformity with the Act and regulations;
- Whether the aim of achieving value for money and fitness of purpose is achieved ;
- Whether it is conducted in a manner which promotes fair competition, economy and efficiency;
- And in accordance with the procedure and timelines laid down in this Act and as may be specified by the Bureau from time to time.

Speaker Notes

The speaker discusses the objective of observation and monitoring:

- Is to determine IF ,
- A particular procurement is conducted in a manner which is transparent, timely, equitable for ensuring accountability and conformity with the Act and regulations;
- Whether the aim of achieving value for money and fitness of purpose is achieved
- Whether it is conducted in a manner which promotes fair competition, economy and efficiency;

And in accordance with the procedure and timelines laid down in this Act and as may be specified by the Bureau from time to time.

Slide 12

DOCUMENTS AN OBSERVER NEEDS

- Procurement Plan
- Advertisement for Pre-Qualification or Expression of Interest
- Sample Bidding documents or RFP issued
- Bid Submission Register
- Minutes of bid opening
- Minutes of Evaluation Committee Meeting(After winner is selected)
- Memo of Evaluation Committee recommending winner
- Minutes of TB Meeting
- Tender Board/MDA request for No objection
- Protest Letters and complaints if any
- Copy of Award letter and contract

Speaker Notes

The speaker discusses the various documents that observers need to do a good job:

- Procurement Plan
- Copies of Advertisement for Pre-Qualification or Expression of Interest
- Sample Bidding documents or RFP issued
- Copy of Bid Submission Register
- Copy of Minutes of bid opening
- Minutes of Evaluation Committee Meeting(After winner is selected)
- Memo of Evaluation Committee recommending winner
- Minutes of TB Meeting
- Tender Board/MDA request for No objection
- Protest Letters and complaints if any
- Copy of Award letter and contract